

Sentencing

February 18, 2022
OPD Annual Conference
Billings, MT

- Sentencing OPD Annual Conference Feb 2022
- ▼ Plea Agreement
 - Type - 1(a), 1(b), 1(c), bracketed (floor/ceiling) MCA 46-12-211
 - conditional plea agreements
 - Waiver of rights, separate document or contained in plea agreement
 - It is a contract
 - prosecutors like violation clause that can turn the agreement worse
 - include conditions if no PSI
 - have the conditions typed up if want to go to sentencing at COP
 - they do not have to be in writing
 - you must convey a plea agreement to you client - Missouri v. Frye, 566 U.S. 134 (2012)
 - NOT waiving - atty/client relationship, right to remain silent to other matters
 - Can agree to register, even in not required by law, MCA 46-23-512
- ▼ Change of Plea Hearing
 - ▼ Judge Advice to Defendant MCA 46-12-210
 - Def must understand nature of the charge
 - Mandatory penalty and Min and Max Penalty
 - Any enhancement or Parole Restriction
 - That Court may require restitution
 - ▼ Factual Basis MCA 46-12-212
 - help you client, give them a script or ask questions
 - doesn't need to be under oath
 - don't let the Judge be curious and ask non-relevant questions
 - less is better
 - ▼ No Contest MCA 46-12-212 (2)
 - prosecutor must provide factual basis
 - not on sex offenses - State v Hansen, 2017 MT 280
 - requires prosecutor and judge approval
 - ▼ Alford Plea
 - ok for sex offense
 - does not require approval
 - it is a guilty plea
 - Ask judge to order screenings
 - ▼ You can appear remotely MCA 46-12-211(5)
 - have the right to object
- ▼ Fines/Costs/Fee
 - Fines MCA 46-18-231
 - Costs MCA 46-18-232
 - Must be based on ability to pay - Practice Memo

- Must make affirmative finding State v. Terry, 2021 MT 305N - meaningful inquiry, fully consider, etc.
- Don't just argue against PD fees, fight them all, object State v. Steger, 2021 MT 321
- No costs pretrial, except DUIs
- Trial Costs - OPD
- Time Pay must be authorized
- Remember one IT fee
- ▼ Restitution MCA 46-18-241
 - Not based on ability to pay
 - ▼ Can be waived if would cause unjust burden - State v. Lodahl - 2021 MT 156
 - good language about being able to have a phone and internet
 - other exceptions to restitution in State v. Erickson, 2018 MT 9
 - burden on defendant to show
 - Requires sworn affidavit or testimony MCA 46-18-242
 - could perform community service if unable to pay
 - deduct what has been paid from other sources - State v. Lamb, 2021 MT 302
 - civil defenses MCA 46-18-244
 - can petition to waive or modify payment MCA 46-18-246
- ▼ Pre-sentence Investigation (PSI) MCA 46-18-111
 - You should attend the interview
 - Review the PSI questionnaire prior
 - 3 deadly questions
 - Your client should participate as much as they can, unless it is going to hurt them
 - Can remain silent on advice of counsel
 - PSI due in 30 business days
 - PSI writer can make recommendations (make writer your friend)
 - ▼ Risk Assessment
 - MORA
 - WORNA
 - Should be sealed
 - How do you get changes to stick?
 - ▼ Sex Offense - must have SOE
 - Court pays for it MCA 46-18-111 (1)(b)(iii)
 - Should you have your own?
 - Failure to Register
 - Assault on a Minor
- ▼ Sentencing Hearing

- ▼ Allocation State v. McCoy, 2021 MT 303
 - take responsibility, no blame, depending the plea
 - if no contest or alford, be careful with allocution
 - if the client writes it up, review it
- Prosecutor recommendation
- Remote Appearance MCA 46-18-102, all parties have to agree
- Sentencing Memorandum
- Sentencing Stats
- ▼ Victim Testimony
 - Decision to cross
 - does it have to be sworn
- hearsay admissible
- ▼ Types of Sentences
 - ▼ Sentencing Policy - MCA 46-18-101
 - Punish
 - Protect
 - Repair victim
 - Rehab Defendant
 - deal with nonviolent offender outside prison/jail - State v. Chandler, 922 P.2d 1164
 - ▼ Misdemeanor offense MCA 46-18-201
 - defer 1 year, unless financial 2 years
 - suspended up to max sentence, or 6 months, whichever greater
 - ▼ DOC
 - all but 5 years must be suspended
 - on revocation can be longer
 - can be longer if more than one case and runs consecutive
 - ▼ MSP
 - must make specific findings if nonviolent offense MCA 46-18-225
 - Life without parole MCA 46-18-219 - 3 strikes?
 - ▼ Deferred
 - not a conviction?
 - up to 3 years without financial, up to 6 years with financial
 - registration during?
 - can involve jail time, 2021 MT 162
 - credit for time served doesn't shorten
 - presumption of deferred on drug offense - State v. Doubek, 2021 MT 76
 - can't have prior felony? MCA 46-18-201 (1)(b) - BUT look at State v. Wright, 2021 MT 239 ASA in drug statute
 - auto dismissed after expiration of felony, not misd, MCA 46-18-204

- ▼ Suspended felony MCA 46-18-201 (2)(a) and (b)
 - 20 years sex offense
 - 15 years violent offense
 - 10 years drug offenses
 - 5 years all other felony offenses
 - limitation in statute about how long sentence can be suspended, exception if Judge makes specific findings, or restitution exceeds 50k
- Consecutive Sentences MCA 46-18-401 default unless otherwise ordered
- ▼ Conditions of Sentence
 - Montana Administrative Rule 20.7.1101
 - Must be Nexus to the crime OR necessary to protect public OR rehabilitate Defendant
 - narrowly tailored/least restrictive necessary
 - PSI writer laundry list
- ▼ Mandatory Minimums (222 exceptions) MCA 46-18-222
 - entitled to a hearing MCA 46-18-223
 - ▼ Exceptions
 - Less than 18 years of age at time of offense
 - Mental health issue not sufficient for defense
 - Acted under unusual and substantial duress
 - Offender was accomplice and participation was minor
 - In bodily injury offense, but no serious injury, unless weapon
 - sex offender exception narrowed, and doesn't apply to certain sex offense
 - Mandatory Minimums - no deferral or suspension on certain offenses MCA 46-18-205
- ▼ REVIEW THE JUDGMENT
 - All for not if not in the Judgment or the Judgment is wrong
 - Credit for time served - MCA 46-18-403
 - Make sure they get credit for time served - State v. Mendoza - 2021 MT 94; Killiam v. Salmonsén, 2021 MT 196
 - 120 days to correct to oral pronouncement
- ▼ Enhancements
 - Guns MCA 46-18-221 - 2 to 10 years
 - 46-1-401 Pleading, proof and mental state
 - 2nd or subsequent 4 to 20 years
 - must be consecutive and not deferred or suspended unless exception
 - Armor Piercing Ammunition MCA 46-18-224 - 5 to 25 years
 - Forcible Felony against Pregnant Woman MCA 46-18-226

- ▼ Persistent Felony Offender (PFO) Defined in 46-1-202
 - Must be served at Omni
 - ▼ Requires
 - two prior felony offenses
 - one prior must be violent or sexual offense
 - within 5 years of prior to conviction or release from custody
 - Notice must be sealed until sentencing
 - changes potential sentence to 5 years min to 100 max, must be 21 or older at time of offense
 - 10 to 100 years if already PFO
- ▼ Registration Offenses MCA 46-23-501
 - Violent Offenses MCA 46-23-502 (13)
 - Sexual Offenses MCA 46-23-502 (9)
 - Beware of Assault on Peace or Judicial Officer - 45-5-210 1(a) not registration offense
- ▼ Mental Health Sentencing
 - possible to get a DPHHS commit
 - Mental Health Sentencing not covered here
- ▼ Probation
 - ▼ Revocation MCA 46-18-203
 - must exhaust the MIIG MCA 46-23-1028 (unless misdemeanor offense, Missoula v. Sadiku, 2021 MT 295)
 - compliance vs. non-compliance
 - street time, State v. Tolliver, 2021 MT 34N
 - remember the prior credit for time served
 - hearsay is admissible
 - ▼ Early Termination MCA 46-18-208
 - Deferred - if served 2 year or 1/2 sentence
 - Suspended - if served 3 years or 2/3 sentence and already conditional discharged for 12 months
 - Conditional Discharge MCA 46-23-1020
- ▼ Parole
 - restriction on parole, necessary findings MCA 46-18-202 (2)
 - sentencing Court may recommend, can not order
- ▼ Sentence Review (SRD Sentence Review Division) MCA 46-18-901
 - don't waive in plea agreement
 - don't do it if Court follows the plea
 - SRD can increase or decrease the sentence MCA 46-18-904
 - must be sentenced to 1 year or more MCA 46-18-903
 - 60 days from date sentence imposed, file request with clerk of court
- ▼ Juveniles

- It is way different, read the statutes

OPD PRACTICE MEMORANDUM

No. 2021-002

Date:

Re: Sentencing Fees



This memorandum addresses the fees clients face at sentencing and advocating against the imposition of those fees. If the client is unable to pay fees, attorneys should advocate against the imposition of all costs and not pick one or two fees or costs to attack individually.

The Court must make a finding of ability to pay financial obligations before they may be imposed.

- a. Supervision Fees – supervision fee cannot be imposed if it is a significant hardship to the probationer – MCA 46-23-1031 (1)(c).
- b. Misdemeanor Surcharge - surcharges may not be imposed if the defendant is unable to pay them, or unable to pay within a reasonable time – MCA 46-18-236 (2).
- c. Felony Surcharge - surcharges may not be imposed if the defendant is unable to pay them, or unable to pay within a reasonable time – MCA 46-18-236 (2).
- d. Victim/Witness - surcharges may not be imposed if the defendant is unable to pay them, or unable to pay within a reasonable time – MCA 46-18-236 (2).
- e. IT Surcharge – surcharge may not be imposed if the party is unable to pay the surcharge – MCA 3-1-317(2).
- f. OPD Fees – a “court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay the costs” – MCA 46-8-113 (4).
- g. PSI Fee – a court may not order a PSI fee if “the court determines that the defendant is not able to pay the fee within a reasonable time” – MCA 46-18-111 (3).
- h. Restitution – No finding of ability to pay is necessary for the initial restitution finding – MCA 46-18-241 – however the Court can order the defendant to perform community service if unable to pay restitution 241 (3); only able to revoke the sentence if the defendant does not make a good faith effort to pay the restitution MCA 46-18-247 (2).
- i. Fine – a court may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine” – MCA 46-18-231 (3).
- j. Costs – a court may not order a defendant “to pay costs unless the defendant is or will be able to pay them” – MCA 46-18-232 (2).

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

23. Obligations of Counsel at Sentencing Hearing

- A. Among counsel's obligations in the sentencing process are the following:
 - a. where a client chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial, and collateral implications;
 - b. to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;
 - c. to ensure all reasonably available mitigating and favorable information which is likely to benefit the client is presented to the court;
 - d. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;
 - e. to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful, or is otherwise improper, is stricken from the text of the pre-sentence investigation report before distribution of the report; and,
 - f. to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever warranted and possible.

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

24. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

- a. any minimum sentences and any exceptions;
- b. deferred sentences, suspended sentences, and diversionary programs;
- c. the effect of confidential criminal justice information;
- d. probation or suspension of sentence and permissible conditions of probation;
- e. the potential of recidivist sentencing;
- f. fines, associated fees, court costs;
- g. victim restitution;
- h. reimbursement of attorneys' fees;
- i. imprisonment including any mandatory minimum requirements;
- j. the effects of mental disease or defect, or the implication of MCA §46-14-311,312, "Guilty But Developmentally Disabled"; and,
- k. civil forfeiture implications of a guilty plea.

B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

- a. credit for pre-trial detention and credit against fines imposed;
- b. parole eligibility and applicable parole release ranges;
- c. place of confinement, level of security, and classification criteria used by Department of Corrections;
- d. eligibility for correctional and educational programs;
- e. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;
- f. deportation and other immigration consequences;
- g. loss of civil rights;
- h. impact of a fine or restitution and any resulting civil liability;
- i. possible revocation of probation or possible revocation of parole status if client is subject to a prior sentence;
- j. suspension of a motor vehicle operator's permit;
- k. prohibition of carrying a firearm;
- l. other consequences of conviction including, but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender and/or violent offender, loss of public housing, and the loss of the right to hold public office; and,
- m. potential federal consequences.

C. Counsel should be familiar with the sentencing procedures, including:

- a. the effect that plea negotiations may have upon the sentencing discretion of the court;

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

- b. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
 - c. the use of “Victim Impact” evidence at any sentencing hearing;
 - d. the right of the defendant to speak prior to being sentenced;
 - e. any discovery rules and reciprocal discovery rules that apply to sentencing hearings;
 - f. the use of any minimum sentences;
 - g. any restrictions that may be placed on parole or other early release; and,
 - h. the possibility of any increases in sentencing due to a persistent felony offender notice and any possible challenges to such notice.
- D. Where the Court uses a pre-sentence report, counsel should be familiar with:
- a. the practices of the officials who prepare the pre-sentence report and the defendant’s rights in that process;
 - b. the access to the pre-sentence report by counsel and the defendant;
 - c. the prosecution’s practice in preparing a memorandum on punishment; and,
 - d. the use of a sentencing memorandum by the defense.
- E. Counsel shall, where appropriate, attend any interview with the client, review any pre-sentencing homework, and review the pre-sentence investigation report with the client.

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

25. Preparation for Sentencing

- A. In preparing for sentencing, counsel should consider the need to:
- a. Inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
 - b. Maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
 - c. Obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, financial status, and family obligations, as well as sources through which the information provided can be corroborated;
 - d. Inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the any statement to be made to the court, taking into consideration the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial, or trial on other offenses;
 - e. Inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;
 - f. Prepare the client to be interviewed by the official preparing the pre-sentencing report and be present during any such interview. Counsel shall also review any pre-sentence investigation report with the client sufficiently in advance of the sentencing hearing to allow adequate time to rebut any inaccurate information in the PSI report.
 - g. Inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;
 - h. Collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence; and,
 - i. Inform the client of the operation of the Sentence Review Division and the procedures to be followed in submitting any possible sentence to them for review, if applicable.

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

26. The Prosecution's Sentencing Position

Counsel should attempt to determine whether the prosecution will advocate that a particular type or length of sentence be imposed, unless there is a sound tactical reason for not doing so.

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

27. The Sentencing Process

A. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

C. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, counsel should ascertain who has the burden of proving a fact unfavorable to the client, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

D. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

E. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment, or drug rehabilitation.

F. Where appropriate, counsel should prepare the client to personally address the court.

Rule: 20.7.1101

[Prev](#) [Up](#) [Next](#)

Rule Title: CONDITIONS ON PROBATION OR PAROLE

Department: [CORRECTIONS](#)
Chapter: [COMMUNITY CORRECTIONS DIVISION](#)
Subchapter: [Conditions on Probation or Parole](#)



[Add to Favorites](#)

Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

[Printer Friendly Version](#)

20.7.1101 CONDITIONS ON PROBATION OR PAROLE

(1) The offender must obtain prior approval from his/her supervising officer before taking up residence in any location. The offender shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The offender must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The offender will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

(2) The offender must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.

(3) The offender must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.

(4) Unless otherwise directed, the offender must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The offender must personally contact his/her supervising officer or designee when directed by the officer.

(5) The offender is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.

(6) The offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.

(7) Upon reasonable suspicion that the offender has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the offender, and the offender must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the offender has violated the conditions of supervision.

(8) The offender must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The offender is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The offender must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.

(9) The offender is prohibited from using or possessing alcoholic beverages and illegal drugs. The offender is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

(10) The offender is prohibited from gambling.

(11) The offender shall pay all fines, fees, and restitution ordered by the sentencing court.

(12) The Montana Board of Pardons and Parole and the sentencing court have the authority to order the offender to abide by additional conditions and such conditions must be contained in the judgment or parole decision.

History: [2-4-201](#), [46-23-1011](#), [53-1-203](#), MCA; IMP, [46-23-1011](#), [46-23-1021](#), MCA; [NEW](#), 1978 MAR p. 1330, Eff. 8/30/78; [AMD](#), 1990 MAR p. 1560, Eff. 8/17/90; [AMD](#), 1992 MAR p. 1482, Eff. 7/17/92; [AMD](#), 2008 MAR p. 1145, Eff. 6/13/08.

MAR Notices	Effective From	Effective To	History Notes
20-7-39	6/13/2008	Current	History: 2-4-201 , 46-23-1011 , 53-1-203 , MCA; IMP, 46-23-1011 , 46-23-1021 , MCA; NEW , 1978 MAR p. 1330, Eff. 8/30/78; AMD , 1990 MAR p. 1560, Eff. 8/17/90; AMD , 1992 MAR p. 1482, Eff. 7/17/92; AMD , 2008 MAR p. 1145, Eff. 6/13/08.
	7/17/1992	6/13/2008	History: Sec. 2-4-201 , 46-23-1011 , 53-1-203 , 53-24-204 , MCA; IMP, Sec. 46-23-1021 , 46-23-1011 , MCA; NEW , 1978 MAR p. 1330, Eff. 8/30/78; AMD , 1990 MAR p. 1560, Eff. 8/17/90; AMD , 1992 MAR p. 1482, Eff. 7/17/92.



STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
ADULT PROBATION & PAROLE

PRE-SENTENCE INVESTIGATION REPORT

Predisposition Investigation

CONFIDENTIAL INFORMATION, FOR PROFESSIONAL USE ONLY

NAME: DATE OF REPORT:
AKA: DATE OF SENTENCE:
ADDRESS:
PHONE #: CELL PHONE #:

IDENTIFICATION

DOB AGE PLACE OF BIRTH SS#
HT WT EYES HAIR HANDED Right Left
COMPLEXION BUILD US CITIZEN Yes No
SEX RACE TRIBAL AFFILIATION#
HEALTH Good Fair Poor S.I.D.# F.B.I.#
DRIVERS LICENSE # STATE RELIGION
SCARS/MARKS/TATTOOS

PIERCINGS

LEGAL STATUS

JUDGE COUNTY DOCKET #
COUNTY ATTORNEY
DEFENSE ATTORNEY APPOINTED RETAINED
ARRESTED RELEASED JAIL TIME SERVED DAYS AS OF
TYPE OF RELEASE O.R. BOND
CURRENT OFFENSE(S) TRIAL PLEA

SENTENCE(S)

PLEA AGREEMENT Yes No PRIOR CRIMINAL HISTORY Yes No
DETAINERS/WARRANTS Yes No PRIOR PROBATION/PAROLE Yes No

CO-DEFENDANT(S)

CO-DEFENDANT(S) DISPOSITION

Commented [dag1]: This form is not a locked form, therefore, information can be added or deleted where applicable. The Officer must type "X" where applicable. The format of this form through "Background" must not be changed.

BACKGROUND

CHEMICAL USE Yes No Not Significant PSYCHOLOGICAL INFORMATION Yes No
SIGNIFICANT FAMILY INFORMATION Yes No EDUCATION _____
MARITAL STATUS _____ NUMBER OF CHILDREN _____
SUPPORT PAYMENTS Yes No AMOUNT \$ _____ CURRENT Yes No
EMPLOYMENT STATUS _____
INCOME \$ _____ SOURCE _____
FINANCIAL ASSETS \$ _____ DEBTS \$ _____
MILITARY Yes No BRANCH/DISCHARGE _____
OTHER PERTINENT INFORMATION Yes No RESTITUTION Yes No
EMERGENCY CONTACT _____ RELATIONSHIP _____
ADDRESS _____
PHONE # _____

CRIMINAL HISTORY

JUVENILE HISTORY:

DATE OF
ARREST PLACE OFFENSE DISPOSITION

ADULT HISTORY:

DATE OF
ARREST PLACE OFFENSE DISPOSITION

CIRCUMSTANCES OF THE OFFENSE

DEFENDANT'S STATEMENT

(Typed Verbatim)

The following is a typed version of a handwritten statement from the Defendant in response to the following questions:

In your own words, what did you do to get arrested on this charge?

What reason do you have for your involvement in this offense?

Give your recommendation as to what you think the Court should do in your case.

Commented [dag2]: To add a line, place cursor arrow at front of line and click to highlight line, then click on the + sign below the highlighted line. (Or right click on mouse and choose "Copy." With line still highlighted, right click on mouse and choose "Insert as New Row.") To delete lines or sections not applicable to offender, place cursor arrow at front of line and highlight lines to be deleted. Right click on mouse and choose "Delete Rows."

Commented [dag3]: This information is taken from the Affidavit and Motion for Leave to File Information.

VICTIM'S IMPACT

COMMENTS

CHEMICAL USE:

PSYCHOLOGICAL INFORMATION:

RESTITUTION:

PLEA AGREEMENT:

EVALUATION/RECOMMENDATION:

This defendant was assessed using a validated risk assessment screening tool, indicating the following:

- Low** – Minimal risk of reoffending. None or few needs and require little to no intervention.
- Moderate** – Have multiple needs which vary in severity. Have some identified strengths but require some intervention to assist in behavior change.
- Medium** – Have many criminogenic needs with a number of them being chronic or severe. May have strengths but chronic barriers to accessing resources. A higher than average rate of reoffending. Requires significant interventions to assist in behavior change.
- High** – Have most, if not all, major criminogenic needs. Many needs are chronic, severe, and longstanding. Requires most intensive interventions to support behavior change.

DOMAINS	AREAS OF RISK REQUIRING INTERVENTION		
	Not an Issue (L)	Potential Concern (M)	Significant Problem (H)
Anti-social Attitudes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Peer Associations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Substance Abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment/Education	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Criminal History	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family/Marital Support	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anti-social Personality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prosocial/Leisure Activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(Choose the appropriate statement) The plea agreement is for a (choose one) community / incarceration placement. (OR if there is no plea agreement) The recommendation is for a (choose one) community / incarceration placement. The term of sentence will be decided by the court.

Based upon the validated risk assessment and criminal history, the following conditions are recommended:

This is a list of standard, statutory, and special conditions to be used as recommendations for the court. Those special conditions that do not apply should be deleted. The red print is instructions and should be deleted

Commented [dag4]: The ability of the offender to pay restitution must be addressed in this section. Ability is based on physical health, mental status, educational status, vocational status, employment status, assets, and earning ability.

Commented [dag5]: Areas marked low. Note risk assessment level and complete table.

Commented [GD6]: Community placement is used for deferred or suspended sentences. Incarceration is used for DOC or MSP/MWP commits.

Commented [GD7]: Conditions that are not applicable to the offender can be deleted: Place cursor arrow at front of row and highlight rows to be deleted. Right click on mouse and choose "Cut" or hit the "Delete" on keyboard. The lines will be removed and number sequence changed.

Adding Conditions: Go to end of the row above where the condition will be added and hit "Enter" or "Return" on keyboard. This will add a new number for the condition.

and not included in the recommendations. There are headings below that specifically outline conditions for sexual offenders and DUI offenders.

The following are the Department of Corrections Standard Conditions that have been duly enacted in the Administrative Rules of Montana (§20.7.1101) and should be imposed in every case in which the Defendant is put under the supervision of the Department. Because these conditions are in administrative rules, they require no proof of a nexus between the rule and the crime or Defendant.

STANDARD CONDITIONS

1. The Defendant shall be placed under the supervision of the Department of Corrections, subject to all rules and regulations of Adult Probation & Parole.
2. The Defendant must obtain prior written approval from his/her supervising officer before taking up residence in any location. The Defendant shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.
3. The Defendant must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.
4. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the Defendant must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.
5. Unless otherwise directed, the Defendant must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his/her supervising officer or designee when directed by the officer.
6. The Defendant is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.
7. The Defendant must obtain permission from his/her supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.
8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.
9. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.
10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

11. The Defendant is prohibited from gambling.
12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.

The following are conditions imposed pursuant to statute (fines and fees may be waived by judge based on offender's ability to pay).

STATUTORY CONDITIONS

13. The Defendant shall pay the following fees and/or charges:
 - a. The Probation & Parole Officer shall determine the amount of supervision fees (§46-23-1031, MCA) to be paid each month in the form of money order or cashier's check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 (\$50 per month if the Defendant is sentenced under §45-9-202, MCA, dangerous drug felony offense and placed on ISP). The DOC shall take a portion of the Defendant's inmate account if the Defendant is incarcerated.
 - b. Surcharge of \$15 for each misdemeanor. [§46-18-236(1)(a), MCA]
 - c. Surcharge of the greater of \$20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA]
 - d. Surcharge for victim and witness advocate programs of \$50 for each misdemeanor or felony charge under Title 45, Crimes; §61-8-401 (DUI); §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-tetrahydrocannabinol). [§46-18-236(1)(c), MCA]
 - e. \$10.00 for court information technology fee. (§3-1-317, MCA)
 - f. Costs of assigned counsel: (§46-8-113, MCA)
 - i. **If offender pleads guilty prior to trial**, \$250 for one or more misdemeanor charges and no felony charges or \$800 for one or more felony charges.
 - ii. **If case goes to trial**, offender shall pay costs incurred by the Office of Public Defender for providing counsel in the criminal trial. Costs incurred: \$ _____.
 - g. A \$50 fee at the time a PSI report is completed, unless the court determines the Defendant is not able to pay the fee within a reasonable time (§46-18-111, MCA). The Defendant shall submit this payment to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620. **(This fee is in effect for offenses committed after July 1, 2005.)**
The Defendant did or did not **(choose one)** pay the PSI fee.
 - h. The Defendant shall pay court-ordered restitution by money order or cashier's check sent to the Department of Corrections, Collection Unit, P.O. Box 201350, Helena, MT 59620. The Defendant shall be assessed a 10% administration fee on all restitution ordered. All of the methods for collection of restitution provided under §46-18-241 through §46-18-249, MCA, shall apply, including garnishment of wages and interception of tax refunds. Pursuant to §46-18-244(6)(b), MCA, the Defendant shall sign a statement allowing any employer to garnish up to 25% of his/her wages. The Defendant shall continue to make monthly restitution payments until he/she has paid full restitution, even after incarceration or supervision has ended.
 - i. The Defendant shall pay a fine(s) over and above any amount credited for pre-conviction incarceration as ordered and directed by the court. (§46-18-231, MCA) **(Officers need to list fine(s) per Cause No. or Offense if only one Cause No.)**
Recommended net fine to be paid to the Clerk of District Court: \$ _____.

- j. The Defendant shall pay costs of legal fees and expenses defined in §25-10-201, MCA, plus costs of jury service, prosecution, and pretrial, probation, or community service supervision or \$100 per felony case or \$50 per misdemeanor case, whichever is greater. (§46-18-232, MCA)
14. If the Defendant is convicted of a crime listed in §46-23-502(9), MCA, he/she shall register as a sex offender. [§46-18-201(7), MCA] **(The court cannot waive this registration requirement.)**
15. If the Defendant is convicted of a crime listed in §46-23-502(13), MCA, he/she shall register as a violent offender. [§46-18-201(7), MCA] **(The court cannot waive this registration requirement.)**
16. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, MCA) **(The court cannot waive this requirement.)**
17. The Defendant, required to register as a sexual or violent offender under §46-23-504, MCA, shall submit to DNA testing. (§44-6-103, MCA) **(The court cannot waive this requirement.)**
18. The Defendant shall or shall not **(choose one)** be given credit against the time served in jail prior to or after conviction. (§46-18-403, MCA) **(Officer needs to make a recommendation that the Defendant shall not receive credit for time served if the judge imposes a deferred sentence.)**
19. The Defendant shall or shall not **(choose one)** be given credit against the fine for time served in jail prior to conviction. (§46-18-403, MCA) **(Officer can make a recommendation for crimes that are committed on or after October 1, 2005.)**
20. The Defendant will surrender to the court any registry identification card issued under the Medical Marijuana Act. [§46-18-202(1)(f), MCA]

The following are Special Conditions and must have a nexus to the offense and/or the domains contained in the risk assessment between the condition and the Defendant or Defendant's crime.

RECOMMENDED SPECIAL CONDITIONS

21. The Defendant shall obtain a chemical dependency evaluation by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.
22. The Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.
23. The Defendant shall successfully complete Cognitive Principles & Restructuring (CP&R) or similar cognitive and behavioral modification program.
24. The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications.
25. The Defendant shall abide by a curfew as determined necessary and appropriate by the Probation & Parole Officer.
26. The Defendant shall complete any community service ordered by the court or the Probation & Parole Officer.
27. The Defendant shall not enter any bars.
28. The Defendant shall not enter any casinos.
29. The Defendant shall not establish a checking or credit account.

30. The Defendant shall provide yearly credit report. (In cases of significant restitution obligations or financial crimes, where appropriate.)
31. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.
32. The Defendant shall not knowingly have any contact, oral, written, electronic or through a third party, with the victim(s) unless such contact is voluntarily initiated by the victim(s) through the Department of Corrections. DOC staff may notify victims about the availability of opportunities for facilitated contact with their offenders without being considered “third parties.”
33. The Defendant shall attend self-help meetings at the direction of the Probation & Parole Officer.
34. The Defendant shall advise all medical personnel of addiction history/conviction, including all prescribed narcotics and/or medical marijuana.
35. The Defendant shall inform the Probation & Parole Officer of all prescriptions obtained from medical personnel prior to filling them. The Defendant shall take all prescription medications as prescribed and in the manner in which they were prescribed.
36. The Defendant may not be a registered card holder and may not obtain or possess a registry identification card under the Montana Medical Marijuana Act while in the custody or under the supervision of the Department of Corrections or a youth court. [§50-46-307(4), MCA]
37. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.
38. The Defendant’s driver’s license shall be suspended pursuant to §45-9-202(2)(e), MCA or §61-5-205 (choose one), and §61-5-208, MCA.
39. The Defendant shall enter and complete an Anger Management Program to assist in dealing with his/her violent criminal behaviors.
40. (Use this condition only if the Defendant is convicted of PFMA or Assault on a Minor) The Defendant is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. Defendant shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the state-approved counseling provider, and complete a minimum of 40 hours of counseling. [§45-5-206(4)(a) and (b), MCA; §45-5-212(3), MCA]
41. The Defendant shall enter and complete a parenting class to provide him/her with the proper tools to become a more appropriate parent and role model.
42. The Defendant shall obtain a state-approved high school equivalency assessment one year before the current sentence discharges.
43. The Defendant is required to disclose his/her conviction involving theft from an employer to any and all employers. [§46-23-1004(9), MCA]
44. The Defendant shall participate in the 24/7 Sobriety and Drug Monitoring Program, or any program specifically designed to monitor and address the Defendant’s use of intoxicants, for a period of time to

be determined by the supervising Probation & Parole Officer, if the Officer deems it necessary and the program is available. [§46-18-201(4)(n), MCA]

45. The Defendant shall participate in a restorative justice program approved by court order, if available. The Defendant shall pay a participation fee of up to \$150 for program expenses if accepted by the program. [§46-18-201(4)(o), MCA]
46. (Use this condition only if the Defendant will be convicted under §45 Chapter 9. Dangerous Drugs, MCA, and given a sentence that makes the offense a misdemeanor as defined in §45-2-101, MCA.) The Defendant shall, in addition to any other sentence imposed, complete a dangerous drug information course offered by a chemical dependency facility approved by the Department of Public Health and Human Services under §52-24-208, MCA, and undergo chemical dependency treatment if a licensed addiction counselor working with the person recommends treatment. (§45-9-208, MCA)

Special Conditions specific to Sexual Offenders or offenders whose crimes are sexually motivated

47. The Defendant shall enter and successfully complete sexual offender treatment with a clinical provider who is a member in good standing with MSOTA or its equivalent, and who is approved by the Probation & Parole Officer. The Defendant shall pay for the costs of the treatment and abide by all treatment rules and recommendations of the provider.
48. The Defendant shall obtain a psychosexual evaluation by a clinical provider who is a member in good standing with MSOTA or its equivalent and who is approved by the Probation & Parole Officer. The Defendant shall pay the costs of the evaluation and follow all recommendations of said evaluation.
49. The Defendant shall undergo annual HIV testing for the next five (5) years and make the results of each test available to the Probation & Parole Officer and the victim(s). (§46-18-256, MCA)
50. The Defendant shall not knowingly have contact, oral, written, electronic or through a third party, with the victim(s) or the immediate family unless such contact is voluntarily initiated by the victim(s) through the Department of Corrections. DOC staff may notify victims about the availability of opportunities for facilitated contact with their offenders without being considered "third parties."
51. The Defendant shall not have contact with any individual under the age of 18 unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant's sexual conviction and is approved by the Probation & Parole Officer and sexual offender treatment provider. The Defendant shall sign a "No Contact" contract and abide by all conditions of the contract. (Copy of this contract P&P 60-1(I) What Does "No Contact" Mean? available for Officers to use if this condition is ordered.)
52. The Defendant shall not frequent places where children congregate unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant's sexual conviction and is approved by the Probation & Parole Officer and sexual offender treatment provider. This includes, but is not limited to, schools, parks, playgrounds, malls, movies, fairs, parades, swimming pools, carnivals, arcades, parties, family functions, holiday festivities, or any other place or function where children are present or reasonably expected to be present. The Defendant shall obtain permission from the Officer prior to going to any of the above places.
53. The Defendant shall not access or have in his/her possession or under his/her control any material that describes or depicts human nudity, the exploitation of children, consensual sexual acts, non-consensual sexual acts, sexual acts involving force or violence, including but not limited to computer programs, computer links, photographs, drawings, video tapes, audio tapes, magazines, books, literature, writings,

etc., without prior written approval of the Probation & Parole Officer and therapist. The Defendant shall not frequent adult book stores, topless bars, massage parlors, or use the services of prostitutes.

54. The Defendant shall not view television shows or motion pictures geared toward his/her sexual offending cycle, or as a stimulus to arouse deviant thoughts or fantasies (i.e., shows based on sexualization of underage girls or boys, etc.).
55. The Defendant shall not have access to the internet without prior permission from the Probation & Parole Officer and sexual offender therapist, nor can the Defendant have on any computer he/she owns any software that is intended for data elimination, encryption or hiding data. If Internet access is allowed, the Defendant must allow the Department to install rating control software and conduct random searches of the hard drive for pornography or other inappropriate material.
56. The Defendant shall not possess or use any computer or other device with access to any on-line computer service including, but not limited to "Cloud" data storage, without the prior written approval of the Probation & Parole Officer. The Defendant shall allow the Probation & Parole Officer to make unannounced examinations of his/her computer, hardware, and software, which may include the retrieval and copying of all data from his/her computer and computing and data storage devices. The Defendant shall allow the Probation & Parole Officer to install software to restrict the Defendant's computer access or to monitor the Defendant's computer access. The Defendant shall not possess encryption or steganography software. The Defendant shall not utilize software designed to eliminate traces of internet activity. The Defendant shall provide records of all passwords, internet service, and user identifications (both past and present) to the Probation & Parole Officer and immediately report changes. The defendant shall sign releases to allow the Probation & Parole Officer to access phone, wireless, internet, and utility records.
57. The court shall designate the Defendant as a Level 1, 2, or 3 (select one) sexual offender based on the psychosexual evaluation and other pertinent documentation. (§46-23-509, MCA)
58. (Use this condition only if the Defendant is designated a Level 3 Sexual Offender and the offense is committed on or after July 1, 2005.) The Defendant shall be required to participate in the program for the continuous satellite-based monitoring established under §46-23-1010, MCA. (§46-18-206, MCA)
59. The Defendant's chaperone/supervisor shall sign a statement of responsibility and be approved by both the Probation & Parole Officer and the treatment provider.
60. The Defendant shall not be involved in any type of employment, service or recreational pursuit which involves the supervision of children. Under no circumstances should the Defendant be in a position of power and authority over children.
61. The Defendant shall be subject to reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses. [§46-18-255(1), MCA]
62. The Defendant's residence, changes and any co-habitants must have prior approval of the Probation & Parole Officer. The Defendant shall not reside in a residence where there are any children under the age of 18 without the written approval of the therapist and the Officer.
63. If designated a Level 3 sexual offender, and the offense was committed against a minor, the Defendant may not live in the proximity of a private or public elementary or high school, preschool, licensed daycare center, church or park maintained by a city, town or county. (§46-18-255(2), MCA)

64. (Use this condition only if the Defendant is 18 years old or older, designated as a Level 3 Sexual Offender, and has committed a sexual offense against a victim 12 years old or younger.) Pursuant to §45-5-513, MCA and §46-18-255(4), MCA, the Defendant may not:
- establish a residence within 300 feet of a school, day-care center, playground, developed or improved park, athletic field or facility that primarily serves minors, or business or facility having a principal purpose of caring for, educating, or entertaining minors. (if the residence was not established on or before May 5, 2015)
 - establish a residence or any other living accommodation in a place where a minor resides.
 - knowingly make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim or a member of the victim's immediate family.
 - knowingly come within 300 feet of a former victim without the prior written permission of the victim or the victim's legal guardian.
 - accept, maintain, or carry on regular employment at or within 300 feet of a school, day-care center, playground, developed or improved park, athletic field or facility that primarily serves minors, or business or facility having a principal purpose of caring for, educating, or entertaining minors.
65. The Defendant shall not access "900" number telephone sex lines and shall have a "900" number block on his/her telephone.
66. The Defendant shall not have a cell phone, or such other technology/device with photo, video, or Internet capabilities.
67. If cell phone use is allowed, all bills and records shall be made available to the Probation & Parole Officer.
68. The Defendant shall remain in Aftercare or Relapse Prevention Class for the entirety of his/her supervision unless released at the discretion of the Probation & Parole Officer and therapist.
69. The Defendant shall reenter treatment at any time if deemed appropriate by the Probation & Parole Officer and therapist.
70. The Defendant shall submit to annual polygraph testing.
71. The Defendant shall not date, live with, or otherwise be aligned with any person with children under the age of 18 without the express prior approval of the therapist and Probation & Parole Officer. If this approval is granted, they shall both be involved with the Defendant's treatment to the extent recommended by the treatment provider.

Special Conditions specific to DUI Offenders

72. (For Defendants who committed his/her offense prior to October 1, 2005.) The Defendant shall be committed to the Department of Corrections for a term of 13 months for placement in an appropriate treatment/correctional facility or program. If the Defendant successfully completes a residential alcohol treatment program operated or approved by the DOC, the remaining time shall be suspended. The Defendant further shall be sentenced to the DOC or Montana State Prison/Montana Women's Prison (Select one) for a term of (enter amount here) years, suspended, to run consecutively to the initial 13 month sentence.
73. (For Defendants who committed his/her offense on or after October 1, 2005 through September 30, 2015 – two sentencing options depending on the stipulations indicated below.)
- (For Defendants with a prior conviction of Vehicular Homicide While Under the Influence [pursuant to §61-8-731, MCA] or any combination of three or more prior convictions under §45-5-104, MCA [Negligent homicide], §45-5-205, MCA [Negligent vehicular assault], §61-8-401, MCA [Driving

under the influence of alcohol or drugs], §61-8-406, MCA [Operation of noncommercial vehicle by person with alcohol concentration of .08 or more], or §61-8-465, MCA [Aggravated DUI-Effective 10/01/13], and the offense under §45-5-104, MCA, occurred while under the influence of alcohol, dangerous drug, any drug or any combination of the three.) The Defendant shall be committed to the Department of Corrections for a term of 13 months for placement in an appropriate correctional facility or program. If the Defendant successfully completes a residential alcohol treatment program operated or approved by the DOC, the remaining time shall be suspended. The Defendant further shall be sentenced to the DOC or Montana State Prison/Montana Women's Prison (Select one) for a term of (enter amount here, not to exceed 5 years) suspended, to run consecutively to the initial 13 month sentence.

- b. (For Defendants with a prior conviction of Vehicular Homicide While Under the Influence [pursuant to §61-8-731, MCA] or any combination of four or more prior convictions under §45-5-104, MCA [Negligent homicide], §45-5-205, MCA [Negligent vehicular assault], §61-8-401, MCA [Driving under the influence of alcohol or drugs], §61-8-406, MCA [Operation of noncommercial vehicle by person with alcohol concentration of .08 or more], or §61-8-465, MCA [Aggravated DUI-Effective 10/01/13], and the offense under §45-5-104, MCA, occurred while under the influence of alcohol, a dangerous drug, any drug or any combination of the three, and the person was, upon a prior conviction, placed in a residential alcohol treatment program whether or not the person successfully completed the program.) The Defendant is sentenced to the Department of Corrections for a term of (enter number of months/years here, not less than 13 months or more than 5 years).
74. (For Defendants who committed his/her offense on or after October 1, 2015 – two sentencing options depending on the stipulations indicated below.)
- a. (For Defendants with a prior conviction of Vehicular Homicide While Under the Influence [pursuant to §61-8-731, MCA] or any combination of three or more prior convictions under §45-5-104, MCA [Negligent homicide], §45-5-205, MCA [Negligent vehicular assault], §45-5-628(1)(e) [Criminal child endangerment], §61-8-401, MCA [Driving under the influence of alcohol or drugs], §61-8-406, MCA [Operation of noncommercial vehicle by person with alcohol concentration of .08 or more], or §61-8-465, MCA [Aggravated DUI], and the offense under §45-5-104, MCA, occurred while under the influence of alcohol, dangerous drug, any drug or any combination of the three.) The Defendant shall be committed to the Department of Corrections for a term of not less than 13 months or more than 2 years for placement in an appropriate correctional facility or program. If the Defendant successfully completes a residential alcohol treatment program approved by the DOC, the remaining time shall be on probation. The Defendant further shall be sentenced to the DOC or Montana State Prison/Montana Women's Prison (Select one) for a term of (enter amount here, not to exceed 5 years) suspended, to run consecutively to the initial term imposed.
- b. (For Defendants with a prior conviction of Vehicular Homicide While Under the Influence [pursuant to §61-8-731, MCA] or any combination of four or more prior convictions under §45-5-104, MCA [Negligent homicide], §45-5-205, MCA [Negligent vehicular assault], §45-5-628(1)(e) [Criminal child endangerment], §61-8-401, MCA [Driving under the influence of alcohol or drugs], §61-8-406, MCA [Operation of noncommercial vehicle by person with alcohol concentration of .08 or more], or §61-8-465, MCA [Aggravated DUI], and the offense under §45-5-104, MCA, occurred while under the influence of alcohol, a dangerous drug, any drug or any combination of the three, and the person was, upon a prior conviction, placed in a residential alcohol treatment program whether or not the person successfully completed the program.) The Defendant is sentenced to the Department of Corrections for a term of (enter number of months/years here, not less than 13 months or more than 5 years).

75. The Defendant shall pay a fine of not less than \$1,000 (prior to May 5, 2015) or \$5,000 (on or after May 5, 2015) (choose one) or more than \$10,000. (§61-8-731, MCA)
76. The Defendant, if financially able, as a condition of probation, shall pay for the cost of imprisonment, probation, and alcohol treatment for the length of time he/she is imprisoned, on probation, or in alcohol treatment. (§61-8-731, MCA)
77. The Defendant shall not operate a motor vehicle unless authorized by the Probation & Parole Officer. If the Officer authorizes the Defendant to drive, he/she shall not drive unless the vehicle is equipped with an ignition interlock system. (§61-8-731, MCA)
78. The Defendant shall enter and remain in an aftercare treatment program for the entirety of the probationary period. The Defendant shall pay for the cost of out-patient alcohol treatment during the term of probation. (§61-8-731, MCA)
79. The Defendant shall submit to random or routine drug and/or alcohol testing. (§61-8-731, MCA)
80. The Defendant shall complete a chemical dependency education course. (§61-8-732, MCA)

Special Conditions specific to PSI Distribution

81. The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation.

Respectfully Submitted,

(Insert Name Here), Probation/Parole Officer
(Insert Address Here)
(Insert Phone Number Here)

cc: Sentencing Court – Original
Prosecuting Attorney
Defendant's Attorney
Defendant
Field File
District Office
Deputy Chief/POII (If applicable)

DOC Description	Amount
Restitution (to be determined by the PSI writer, if any) (§46-18-241, MCA)	
Restitution Administrative Fee (10% of total) [§46-18-241(2), MCA]	
PSI Fee [§46-18-111(3), MCA]	
Supervision Fees (§46-23-1031, MCA)	
TOTAL:	\$
Fine & Fees Description to be paid to the District Clerk of Court	
Fine (§46-18-231, MCA)	
Credit for time served (at \$ per day @ days)	-
Statutory Surcharges [§46-18-236,(1)(a), (1)(b), and (1) (c), MCA]: \$15 each misdemeanor Greater of \$20 or 10% of fine levied for each felony \$50 per count (Victim Witness Surcharge)	
Prosecution Costs (§46-18-232 and §25-10-201(9), MCA, and Local District Court Rule _____) Greater of amount of costs or \$100 per felony case, \$50 per misdemeanor case	
Public Defender Fees (§46-8-113, MCA) a. Offender pleads guilty prior to trial to: One or more misdemeanor charges and no felony charges - \$250 One or more felony charges - \$800 OR b. Case goes to trial – Costs incurred by Office of Public Defender for providing counsel	
Court Information Technology Surcharge (§3-1-317, MCA) \$10	
Community Service Program \$ per case	
Misc. (pre-trial supervision fees, cost of extradition, etc.)	
TOTAL:	\$
GRAND TOTAL OF ALL RESTITUTION/FINES/FEEES	\$

PROBATION CONDITIONS

Defendant shall be placed under the Department of Corrections' Adult Probation and Parole supervision and follow their standard rules and regulation, including the following:

STANDARD CONDITIONS State v. Asby, 2008 MT 83, ARM 20.7.1101

1. The Defendant must obtain prior written approval from his/her supervising officer before taking up residence in any location. The Defendant shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.
2. The Defendant must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.
3. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the Defendant must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.
4. Unless otherwise directed, the Defendant must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his/her supervising officer or designee when directed by the officer.
5. The Defendant is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.
6. The Defendant must obtain permission from his/her supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.
7. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.
8. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The Defendant must be cooperative and truthful in all

communications and dealings with any probation and parole officer and with any law enforcement agency.

9. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.
10. The Defendant is prohibited from gambling.
11. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.

SPECIAL CONDITIONS

12. that Defendant not enter any bars or casinos or any establishment where alcoholic beverages are served;
13. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, MCA)
14. The Defendant will surrender to the court any registry identification card issued under the Medical Marijuana Act. [§46-18-202(1)(f), MCA]
15. The Defendant may not be a registered card holder and may not obtain or possess a registry identification card under the Montana Medical Marijuana Act while in the custody or under the supervision of the Department of Corrections or a youth court. [50-46-307(4), MCA]
16. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.
17. The Defendant shall obtain a chemical dependency evaluation by a state-approved evaluator if ordered by his/her supervising officer. The Defendant shall pay for the evaluation, follow all the evaluator's treatment recommendations, and waive confidentiality regarding those recommendations **to the extent necessary for supervision.**
18. The Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator if ordered by his/her supervising officer. The Defendant shall pay for the evaluation, follow all the evaluator's treatment recommendations, and waive confidentiality regarding those recommendations **to the extent necessary for supervision.**
19. ~~The Defendant shall enter in and remain in an aftercare treatment program for the entirety of the probationary period if directed to do so by his/her probation officer; (this is a DUI 4th condition MCA 61-8-731)~~

20. The Defendant shall successfully complete Cognitive Principles & Restructuring (CP&R) or similar cognitive and behavioral modification program if recommended by his/her probation officer.
21. ~~The Defendant, if found financially able, pay the costs of imprisonment, probation, and alcohol treatment ordered by the court. (this is a DUI 4th condition MCA 61-8-731)~~
22. ~~The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications. Must be related to the offense or the offender.~~
23. ~~The Defendant shall abide by a curfew as determined necessary and appropriate by his/her probation officer. State v. Field, 2000 MT 268, State v. Hatfield, 256 Mont. 340.~~
24. ~~The Defendant shall complete any community service ordered by the court or his/her probation officer. State v. Field, 2000 MT 268, State v. Hatfield, 256 Mont. 340.~~
25. The Defendant shall attend self-help meetings at the direction of his/her probation officer at the direction of her treatment providers.
26. ~~The Defendant pay all costs of any future incarceration and medical costs while incarcerated under section 7-32-2245, MCA. Must be subject to ability to pay and not a standard condition of probation.~~
27. ~~The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing. Cannot agree to future event, violates due process, must be related to the offense or the offender.~~
28. ~~The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation~~ **release is governed by MCA 46-18-113. However, the Department is authorized to disclose the report to treatment providers subject to a continued confidentiality within the treatment provider relationship.**

_____, District Judge

_____, MT 59 _____
(406)

MONTANA _____ JUDICIAL DISTRICT COURT, _____
COUNTY

STATE OF MONTANA,

Plaintiff,

v.

,

Defendant.

Cause No.

ORDER

The matter was tried to a jury on _____. The jury found _____ guilty of _____ in violation of Montana Code Annotated § _____. The Defendant was represented by _____. The State was represented by _____,

NOW, THEREFORE, IT IS ORDERED that this matter is set for sentencing on _____.

IT IS FURTHER ORDERED that the Department of Corrections, Adult Probation and Parole Field Services Office, conduct a pre-sentence investigation of this Defendant and submit its written report to this Court

before sentencing. The Department of Corrections shall not contact the Defendant without counsel being present or consenting to the contact.

IT IS FURTHER ORDERED pursuant to 46-18-111 (1)(b)(i), the Defendant complete a psychosexual evaluation. The Court appoints the following evaluator:

The evaluation shall be provided to the County Attorney's Office, the Defendant's Attorney, the Probation and Parole Officer and the Court. As the Defendant is indigent, the cost of the evaluation shall be paid by the Court Administrator. M.C.A. § 46-18-111(1)(b)(iii).

Dated this _____ day of _____, 202____.

_____, District Judge