

HOUSE BILL 428

Introduced by Gould, et al.

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| 1/29 | Introduced |
| 1/29 | Referred to Judiciary |
| 1/29 | First Reading |
| 2/11 | Hearing |
| 2/13 | Committee Report--Bill Passed |
| 2/16 | 2nd Reading Passed as Amended |
| 2/19 | 3rd Reading Passed |
| | Transmitted to Senate |
| 2/20 | First Reading |
| 2/20 | Referred to Judiciary |
| 3/11 | Hearing |
| 3/16 | Committee Report--Bill Not Passed |
| 3/16 | Adverse Committee Report Adopted |

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HOUSE
428
BILL NO. 428
INTRODUCED BY *William Bradford Huels*
request
BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
John T. B...

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A SENTENCE TO THE STATE PRISON IS A SENTENCE OF COMMITMENT TO THE DEPARTMENT OF INSTITUTIONS FOR PLACEMENT IN AN APPROPRIATE CORRECTIONAL INSTITUTION OR PROGRAM; REQUIRING THE DEPARTMENT TO NOTIFY THE SENTENCING COURT IF THE DEPARTMENT DOES NOT INTEND TO PLACE THE DEFENDANT IN A CORRECTIONAL INSTITUTION OR PRERELEASE CENTER; PROVIDING FOR COMMENT BY THE COURT; AND AMENDING SECTIONS 46-18-201, 46-19-101, AND 46-19-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Construction of provisions for imprisonment in the state prison. In this title, Title 46, and other titles of the Montana Code Annotated, a provision for punishment by imprisonment in the state prison must be construed to mean commitment to the department of institutions for placement in an appropriate correctional institution or program, as provided for in 46-18-201(1)(e), and references to imprisonment, imprisonment in the state prison, and confinement in the state prison and similar references must be construed to mean commitment to the

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department.

Section 2. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- (viii) payment of costs of court appointed counsel as provided in 46-8-113;
- (ix) community service;
- (x) any other reasonable conditions considered



1 necessary for rehabilitation or for the protection of
2 society; or

3 (xi) any combination of the above.

4 (b) suspend execution of sentence up to the maximum
5 sentence allowed for each particular offense. The sentencing
6 judge may impose on the defendant any reasonable
7 restrictions or conditions during the period of suspended
8 sentence. Reasonable restrictions or conditions may include
9 any of those listed in subsections (1)(a)(i) through
10 (1)(a)(xi).

11 (c) impose a fine as provided by law for the offense;

12 (d) require payment of costs as provided in 46-18-232
13 or payment of costs of court-appointed counsel as provided
14 in 46-8-113;

15 (e) commit the defendant to a the department of
16 institutions for placement in an appropriate correctional
17 institution or program, with or without a fine as provided
18 by law for the offense. The department may place the
19 defendant in an appropriate correctional institution or
20 program. If the department does not intend to keep the
21 defendant in a correctional institution or a prerelease
22 center after the initial reception period, the department
23 shall give the court written notice of the intended
24 placement and allow the court 15 days from the date of
25 receipt of the notice to respond to the intended placement.

1 If the intended placement occurs, the department shall give
2 the court written notice that the intended placement has
3 been made.

4 (f) impose any combination of subsections (1)(b)
5 through (1)(e).

6 (2) If any financial obligation is imposed as a
7 condition under subsection (1)(a), sentence may be deferred
8 for a period not exceeding 2 years for any misdemeanor or
9 for a period not exceeding 6 years for any felony,
10 regardless of whether any other conditions are imposed.

11 (3) If any restrictions or conditions imposed under
12 subsection (1)(a) or (1)(b) are violated, the court shall
13 consider any elapsed time and either expressly allow part or
14 all of it as a credit against the sentence or reject all or
15 part as a credit and state its reasons in the order. Credit,
16 however, must be allowed for jail time already served.

17 (4) Except as provided in 46-18-222, the imposition or
18 execution of the first 2 years of a sentence of imprisonment
19 imposed under the following sections may not be deferred or
20 suspended: 45-5-103, 45-5-202(3) relating to aggravated
21 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
22 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
23 45-9-103(2).

24 (5) Except as provided in 46-18-222, the imposition or
25 execution of the first 10 years of a sentence of

1 imprisonment imposed under 45-5-102 may not be deferred or
2 suspended.

3 (6) Except as provided in 46-18-222, imposition of
4 sentence in a felony case may not be deferred in the case of
5 a defendant who has been convicted of a felony on a prior
6 occasion, whether or not the sentence was imposed,
7 imposition of the sentence was deferred, or execution of the
8 sentence was suspended.

9 (7) If the victim was less than 16 years old, the
10 imposition or execution of the first 30 days of a sentence
11 of imprisonment imposed under 45-5-502(3), 45-5-503,
12 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
13 suspended. Section 46-18-222 does not apply to the first 30
14 days of such imprisonment.

15 (8) In imposing a sentence on a defendant convicted of
16 a sexual offense as defined in 46-23-502, the court may not
17 waive the registration requirement provided in 46-18-254,
18 46-18-255, and Title 46, chapter 23, part 5.

19 (9) A person convicted of a sexual offense, as defined
20 in 46-23-502, and sentenced to imprisonment in the state
21 prison shall enroll in the educational phase of the prison's
22 sexual offender program."

23 **Section 3.** Section 46-19-101, MCA, is amended to read:

24 "46-19-101. Commitment of defendant. Upon rendition of
25 judgment after pronouncement of a sentence imposing

1 punishment of imprisonment or death, the court shall commit
2 the defendant to the custody of the sheriff, who shall
3 deliver the defendant to the correctional institution or
4 program or the place of his confinement or execution chosen
5 by the department of institutions."

6 **Section 4.** Section 46-19-103, MCA, is amended to read:

7 "46-19-103. Execution of death sentence. (1) In
8 pronouncing the sentence of death, the court shall set the
9 date of execution which must not be less than 30 days or
10 more than 60 days from the date the sentence is pronounced.
11 If execution has been stayed by any court and the date set
12 for execution has passed prior to dissolution of the stay,
13 the court in which the defendant was previously sentenced
14 shall, upon dissolution of the stay, set a new date of
15 execution for not less than 20 or more than 90 days from the
16 day the date is set. The defendant is entitled to be present
17 in court on the day the new date of execution is set.

18 (2) Pending execution of a sentence of death, the
19 sheriff may deliver the defendant to the state-prison
20 correctional institution chosen by the department of
21 institutions for confinement pending his execution, and the
22 state shall bear the costs of imprisoning the defendant from
23 the date of delivery.

24 (3) The punishment of death must be inflicted by
25 hanging the defendant by the neck until he is dead or, at

1 the election of the defendant, by administration of a
 2 continuous, intravenous injection of a lethal quantity of an
 3 ultra-fast-acting barbiturate in combination with a chemical
 4 paralytic agent until a licensed physician pronounces that
 5 the defendant is dead according to accepted standards of
 6 medical practice. A defendant who wishes to choose execution
 7 by lethal injection shall do so at the hearing at which an
 8 execution date is set, and if he does not, the option to
 9 choose death by lethal injection is waived.

10 (4) When an execution date is set, a death warrant
 11 signed by the judge and attested by the clerk of court under
 12 the seal of the court must, within 5 days, be prepared. The
 13 warrant and a certified copy of the judgment must be
 14 delivered to the warden of the state prison. The warrant
 15 must be directed to the warden and recite the conviction,
 16 judgment, method of execution, appointed date of execution,
 17 and the duration of the warrant.

18 (5) The warden of the Montana state prison shall
 19 provide a suitable and efficient room or place in which
 20 executions will be carried out, enclosed from public view,
 21 within the walls of the state prison, and shall provide all
 22 implements necessary to the execution. The warden shall,
 23 subject to subsection (6), select the person to perform the
 24 execution, and the warden or his designee shall supervise
 25 the execution. The identity of the executioner must remain

1 anonymous. Facts pertaining to the selection and training of
 2 the executioner must remain confidential.

3 (6) An execution carried out by lethal injection must
 4 be performed by a person selected by the warden and trained
 5 to administer the injection. The person administering the
 6 injection need not be a physician, registered nurse, or
 7 licensed practical nurse licensed or registered under the
 8 laws of this or any other state. The warden must allow the
 9 execution to be observed by 12 witnesses, 3 of whom may be
 10 designated by the person to be executed.

11 (7) Within 20 days after the execution, the warden
 12 shall return the death warrant to the clerk of the court
 13 from which it was issued, noting on the warrant the time,
 14 mode, and manner in which it was executed."

15 NEW SECTION. Section 5. Codification instruction.
 16 [Section 1] is intended to be codified as an integral part
 17 of Title 45, chapter 1, part 1, and the provisions of Title
 18 45 apply to [section 1].

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE
(10/16)
BILL NO. *428*
Wally Beardsley
Robert T. Beardsley

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2 INTRODUCED BY
3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A
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8 APPROPRIATE CORRECTIONAL INSTITUTION OR PROGRAM; REQUIRING
9 THE DEPARTMENT TO NOTIFY THE SENTENCING COURT IF THE
10 DEPARTMENT DOES NOT INTEND TO PLACE THE DEFENDANT IN A
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21 46-18-233;
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23 provided in 46-8-113;
- 24 (ix) community service;
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2 society; or

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25 judgment after pronouncement of a sentence imposing

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11 If execution has been stayed by any court and the date set
12 for execution has passed prior to dissolution of the stay,
13 the court in which the defendant was previously sentenced
14 shall, upon dissolution of the stay, set a new date of
15 execution for not less than 20 or more than 90 days from the
16 day the date is set. The defendant is entitled to be present
17 in court on the day the new date of execution is set.

18 (2) Pending execution of a sentence of death, the
19 sheriff may deliver the defendant to the state-prison
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22 state shall bear the costs of imprisoning the defendant from
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 7 by lethal injection shall do so at the hearing at which an
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10 (4) When an execution date is set, a death warrant
 11 signed by the judge and attested by the clerk of court under
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 13 warrant and a certified copy of the judgment must be
 14 delivered to the warden of the state prison. The warrant
 15 must be directed to the warden and recite the conviction,
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 19 provide a suitable and efficient room or place in which
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 10 designated by the person to be executed.

11 (7) Within 20 days after the execution, the warden
 12 shall return the death warrant to the clerk of the court
 13 from which it was issued, noting on the warrant the time,
 14 mode, and manner in which it was executed."

15 **NEW SECTION. Section 5. Codification instruction.**
 16 [Section 1] is intended to be codified as an integral part
 17 of Title 45, chapter 1, part 1, and the provisions of Title
 18 45 apply to [section 1].

-End-

1 HOUSE BILL NO. 428
 2 INTRODUCED BY GOULD, HALLIGAN, BROOKE,
 3 THOFT, KASTEN, G. BECK, T. BECK
 4 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A
 7 SENTENCE TO THE STATE PRISON IS A SENTENCE OF COMMITMENT TO
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 9 APPROPRIATE CORRECTIONAL INSTITUTION OR PROGRAM; REQUIRING
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 13 ~~COMMENT--BY~~ REQUIRING APPROVAL OF THE COURT; AND AMENDING
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THIRD READING



1 (x) any other reasonable conditions considered
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3 society; or

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22 defendant in a correctional institution or a prerelease
23 center after the initial reception period, the department
24 shall give the court written notice of the intended
25 placement and allow the court 15 days from the date of

1 receipt of the notice to-respond-to-the-intended-placement-
2 TO DISAPPROVE OF THE INTENDED PLACEMENT. IN THE EVENT THE
3 COURT DISAPPROVES OF THE PLACEMENT, IT SHALL ORDER A HEARING
4 TO BE HELD WITHIN 15 DAYS AND SHALL AT THAT TIME IMPOSE ITS
5 SENTENCE. If the intended placement occurs, the department
6 shall give the court written notice that the intended
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 3 imprisoning the defendant from the date of delivery.

4 (3) The punishment of death must be inflicted by
 5 hanging the defendant by the neck until he is dead or, at
 6 the election of the defendant, by administration of a
 7 continuous, intravenous injection of a lethal quantity of an
 8 ultra-fast-acting barbiturate in combination with a chemical
 9 paralytic agent until a licensed physician pronounces that
 10 the defendant is dead according to accepted standards of
 11 medical practice. A defendant who wishes to choose execution
 12 by lethal injection shall do so at the hearing at which an
 13 execution date is set, and if he does not, the option to
 14 choose death by lethal injection is waived.

15 (4) When an execution date is set, a death warrant
 16 signed by the judge and attested by the clerk of court under
 17 the seal of the court must, within 5 days, be prepared. The
 18 warrant and a certified copy of the judgment must be
 19 delivered to the warden of the state prison. The warrant
 20 must be directed to the warden and recite the conviction,
 21 judgment, method of execution, appointed date of execution,
 22 and the duration of the warrant.

23 (5) The warden of the Montana state prison shall
 24 provide a suitable and efficient room or place in which
 25 executions will be carried out, enclosed from public view,

1 within the walls of the state prison, and shall provide all
 2 implements necessary to the execution. The warden shall,
 3 subject to subsection (6), select the person to perform the
 4 execution, and the warden or his designee shall supervise
 5 the execution. The identity of the executioner must remain
 6 anonymous. Facts pertaining to the selection and training of
 7 the executioner must remain confidential.

8 (6) An execution carried out by lethal injection must
 9 be performed by a person selected by the warden and trained
 10 to administer the injection. The person administering the
 11 injection need not be a physician, registered nurse, or
 12 licensed practical nurse licensed or registered under the
 13 laws of this or any other state. The warden must allow the
 14 execution to be observed by 12 witnesses, 3 of whom may be
 15 designated by the person to be executed.

16 (7) Within 20 days after the execution, the warden
 17 shall return the death warrant to the clerk of the court
 18 from which it was issued, noting on the warrant the time,
 19 mode, and manner in which it was executed."

20 NEW SECTION. Section 5. Codification instruction.
 21 [Section 1] is intended to be codified as an integral part
 22 of Title 45, chapter 1, part 1, and the provisions of Title
 23 45 apply to [section 1].

-End-