

APRIL 10, 1991

CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. *631*

Knox INTRODUCED BY *McCulloch, Dave Bran, Tom Whalen, Lee, Kellen, Debye, Quinn, Pinner, Becker, Clark, Wexler, Madison, J. H. Thompson*
A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MINIMUM SENTENCE FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16 YEARS OF AGE; PROVIDING THAT A MANDATORY SENTENCE OF IMPRISONMENT FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16 YEARS OF AGE MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS 45-5-502 AND 46-18-201, MCA."
Huffman

1 shall include an attempt to commit the offense or flight
2 after the attempt or commission.

3 (5) Consent is ineffective under this section if the
4 victim is less than 14 years old and the offender is 3 or
5 more years older than the victim."

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

7 "46-18-201. Sentences that may be imposed. (1) Whenever
8 a person has been found guilty of an offense upon a verdict
9 or a plea of guilty, the court may:

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

- 18 (i) jail base release;
- 19 (ii) jail time not exceeding 180 days;
- 20 (iii) conditions for probation;
- 21 (iv) restitution;
- 22 (v) payment of the costs of confinement;
- 23 (vi) payment of a fine as provided in 46-18-231;
- 24 (vii) payment of costs as provided in 46-18-232 and
25 46-18-233;

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

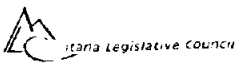
12 **Section 1.** Section 45-5-502, MCA, is amended to read:

13 "45-5-502. Sexual assault. (1) A person who knowingly
14 subjects another not his spouse to any sexual contact
15 without consent commits the offense of sexual assault.

16 (2) A person convicted of sexual assault shall be fined
17 not to exceed \$500 or be imprisoned in the county jail for
18 any term not to exceed 6 months, or both.

19 (3) If the victim is less than 16 years old and the
20 offender is 3 or more years older than the victim or if the
21 offender inflicts bodily injury upon anyone in the course of
22 committing sexual assault, he shall be imprisoned in the
23 state prison for any term not to exceed less than 2 years or
24 more than 20 years and may be fined not more than \$50,000.

25 (4) An act "in the course of committing sexual assault"



1 (viii) payment of costs of court appointed counsel as
 2 provided in 46-8-113;
 3 (ix) community service;
 4 (x) any other reasonable conditions considered
 5 necessary for rehabilitation or for the protection of
 6 society; or
 7 (xi) any combination of the above.
 8 (b) suspend execution of sentence up to the maximum
 9 sentence allowed for each particular offense. The sentencing
 10 judge may impose on the defendant any reasonable
 11 restrictions or conditions during the period of suspended
 12 sentence. Reasonable restrictions or conditions may include
 13 any of those listed in subsections (1)(a)(i) through
 14 (1)(a)(xi).
 15 (c) impose a fine as provided by law for the offense;
 16 (d) require payment of costs as provided in 46-18-232
 17 or payment of costs of court-appointed counsel as provided
 18 in 46-8-113;
 19 (e) commit the defendant to a correctional institution,
 20 with or without a fine as provided by law for the offense;
 21 (f) impose any combination of subsections (1)(b)
 22 through (1)(e).
 23 (2) If any financial obligation is imposed as a
 24 condition under subsection (1)(a), sentence may be deferred
 25 for a period not exceeding 2 years for any misdemeanor or

1 for a period not exceeding 6 years for any felony,
 2 regardless of whether any other conditions are imposed.
 3 (3) If any restrictions or conditions imposed under
 4 subsection (1)(a) or (1)(b) are violated, the court shall
 5 consider any elapsed time and either expressly allow part or
 6 all of it as a credit against the sentence or reject all or
 7 part as a credit and state its reasons in the order. Credit,
 8 however, must be allowed for jail time already served.
 9 (4) Except as provided in 46-18-222, the imposition or
 10 execution of the first 2 years of a sentence of imprisonment
 11 imposed under the following sections may not be deferred or
 12 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 13 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
 14 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d),
 15 45-9-102(3), and 45-9-103(2).
 16 (5) Except as provided in 46-18-222, the imposition or
 17 execution of the first 10 years of a sentence of
 18 imprisonment imposed under 45-5-102 may not be deferred or
 19 suspended.
 20 (6) Except as provided in 46-18-222, imposition of
 21 sentence in a felony case may not be deferred in the case of
 22 a defendant who has been convicted of a felony on a prior
 23 occasion, whether or not the sentence was imposed,
 24 imposition of the sentence was deferred, or execution of the
 25 sentence was suspended.

1 (7) If the victim was less than 16 years old, the
2 imposition or execution of the first 30 days of a sentence
3 of imprisonment imposed under ~~45-5-502(3)~~, 45-5-503,
4 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
5 suspended. Section 46-18-222 does not apply to the first 30
6 days of such imprisonment.

7 (8) In imposing a sentence on a defendant convicted of
8 a sexual offense as defined in 46-23-502, the court may not
9 waive the registration requirement provided in 46-18-254,
10 46-18-255, and Title 46, chapter 23, part 5.

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

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0631, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act increasing the minimum sentence for sexual assault involving a person under 16 years of age; providing that a mandatory sentence of imprisonment for sexual assault involving a person under 16 years of age may not be deferred or suspended."

ASSUMPTIONS:

1. This bill imposes a mandatory minimum prison term for conviction of sexual assault involving a person under 16 years of age.
2. Assume 40% of all sexual assault convictions involve victims less than 16 years of age (Montana Uniform Crime Reporting System). This would result in approximately 24 additional prison admissions per year.
3. Assume the admissions would serve an average term that is 21% greater than the average inmate; therefore, the admissions would equate approximately to an average of 25 admissions per year.
4. The bill is effective October 1, 1991.

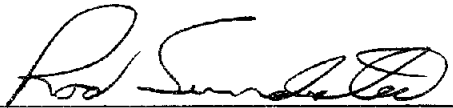
FISCAL IMPACT:

Expenditures:

	FY '92			FY '93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Operating Costs	0	33,945	33,945	0	50,644	50,644
<u>Funding:</u>						
General Fund	0	33,945	33,945	0	50,644	50,644

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Costs in future years would be approximately \$50,644 plus inflation.

 2-11-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-12-91
SCOTT MCCULLOCH, PRIMARY SPONSOR DATE

Fiscal Note for HB0631, as introduced

HB 631

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 631

INTRODUCED BY MCCULLOCH, D. BROWN, TOOLE, WHALEN, GOULD,
KELLER, SCHYE, SQUIRES, RUSSELL, BECKER, HALLIGAN, STRIZICH,
LEE, DARKO, WYATT, MADISON, YELLOWTAIL, KEATING, KNOX,
BENEDICT, HOFFMAN, R. DEBRUYCKER, GILBERT, SCOTT, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MINIMUM
SENTENCE FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16
YEARS OF AGE; PROVIDING, WITH AN EXCEPTION, THAT A MANDATORY
SENTENCE OF IMPRISONMENT FOR SEXUAL ASSAULT INVOLVING A
PERSON UNDER 16 YEARS OF AGE MAY NOT BE DEFERRED OR
SUSPENDED; AND AMENDING SECTIONS 45-5-502 AND, 46-18-201,
AND 46-18-222, MCA."

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

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly
subjects another not his spouse to any sexual contact
without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined
not to exceed \$500 or be imprisoned in the county jail for
any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the
offender is 3 or more years older than the victim or if the
offender inflicts bodily injury upon anyone in the course of

committing sexual assault, he shall be imprisoned in the
state prison for any term not to exceed less than 2 years or
more than 20 years and may be fined not more than \$50,000.

(4) An act "in the course of committing sexual assault"
shall include an attempt to commit the offense or flight
after the attempt or commission.

(5) Consent is ineffective under this section if the
victim is less than 14 years old and the offender is 3 or
more years older than the victim."

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;

SECOND READING



- 1 (v) payment of the costs of confinement;
- 2 (vi) payment of a fine as provided in 46-18-231;
- 3 (vii) payment of costs as provided in 46-18-232 and
- 4 46-18-233;
- 5 (viii) payment of costs of court appointed counsel as
- 6 provided in 46-8-113;
- 7 (ix) community service;
- 8 (x) any other reasonable conditions considered
- 9 necessary for rehabilitation or for the protection of
- 10 society; or
- 11 (xi) any combination of the above.
- 12 (b) suspend execution of sentence up to the maximum
- 13 sentence allowed for each particular offense. The sentencing
- 14 judge may impose on the defendant any reasonable
- 15 restrictions or conditions during the period of suspended
- 16 sentence. Reasonable restrictions or conditions may include
- 17 any of those listed in subsections (1)(a)(i) through
- 18 (1)(a)(xi).
- 19 (c) impose a fine as provided by law for the offense;
- 20 (d) require payment of costs as provided in 46-18-232
- 21 or payment of costs of court-appointed counsel as provided
- 22 in 46-8-113;
- 23 (e) commit the defendant to a correctional institution,
- 24 with or without a fine as provided by law for the offense;
- 25 (f) impose any combination of subsections (1)(b)

- 1 through (1)(e).
- 2 (2) If any financial obligation is imposed as a
- 3 condition under subsection (1)(a), sentence may be deferred
- 4 for a period not exceeding 2 years for any misdemeanor or
- 5 for a period not exceeding 6 years for any felony,
- 6 regardless of whether any other conditions are imposed.
- 7 (3) If any restrictions or conditions imposed under
- 8 subsection (1)(a) or (1)(b) are violated, the court shall
- 9 consider any elapsed time and either expressly allow part or
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- 11 part as a credit and state its reasons in the order. Credit,
- 12 however, must be allowed for jail time already served.
- 13 (4) Except as provided in 46-18-222, the imposition or
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- 17 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
- 18 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d),
- 19 45-9-102(3), and 45-9-103(2).
- 20 (5) Except as provided in 46-18-222, the imposition or
- 21 execution of the first 10 years of a sentence of
- 22 imprisonment imposed under 45-5-102 may not be deferred or
- 23 suspended.
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- 25 sentence in a felony case may not be deferred in the case of

1 a defendant who has been convicted of a felony on a prior
2 occasion, whether or not the sentence was imposed,
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4 sentence was suspended.

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12 a sexual offense as defined in 46-23-502, the court may not
13 waive the registration requirement provided in 46-18-254,
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15 (9) A person convicted of a sexual offense, as defined
16 in 46-23-502, and sentenced to imprisonment in the state
17 prison shall enroll in the educational phase of the prison's
18 sexual offender program."

19 **SECTION 3. SECTION 46-18-222, MCA, IS AMENDED TO READ:**

20 "46-18-222. Exceptions to mandatory minimum sentences
21 and restrictions on deferred imposition and suspended
22 execution of sentence. All mandatory minimum sentences
23 prescribed by the laws of this state and the restrictions on
24 deferred imposition and suspended execution of sentence
25 prescribed by subsections (4), (5), and (6) of 46-18-201,

1 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

2 (1) the defendant was less than 18 years of age at the
3 time of the commission of the offense for which he is to be
4 sentenced;

5 (2) the defendant's mental capacity, at the time of the
6 commission of the offense for which he is to be sentenced,
7 was significantly impaired, although not so impaired as to
8 constitute a defense to the prosecution. However, a
9 voluntarily induced intoxicated or drugged condition may not
10 be considered an impairment for the purposes of this
11 subsection.

12 (3) the defendant, at the time of the commission of the
13 offense for which he is to be sentenced, was acting under
14 unusual and substantial duress, although not such duress as
15 would constitute a defense to the prosecution;

16 (4) the defendant was an accomplice, the conduct
17 constituting the offense was principally the conduct of
18 another, and the defendant's participation was relatively
19 minor; or

20 (5) where applicable, no serious bodily injury was
21 inflicted on the victim unless a weapon was used in the
22 commission of the offense; or

23 (6) the offense was committed under 45-5-502(3) and the
24 court determines that treatment of the defendant at the
25 local level affords a better opportunity for rehabilitation

HB 0631/02

1 of the defendant and for the ultimate protection of society,
2 in which case the court shall include in its judgment a
3 statement of the reasons for its determination."

-End-

1 HOUSE BILL NO. 631

2 INTRODUCED BY MCCULLOCH, D. BROWN, TOOLE, WHALEN, GOULD,
 3 KELLER, SCHYE, SQUIRES, RUSSELL, BECKER, HALLIGAN, STRIZICH,
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 21 not to exceed \$500 or be imprisoned in the county jail for
 22 any term not to exceed 6 months, or both.

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 24 offender is 3 or more years older than the victim or if the
 25 offender inflicts bodily injury upon anyone in the course of

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 2 state prison for any term not ~~to exceed~~ less than 2 years or
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 5 shall include an attempt to commit the offense or flight
 6 after the attempt or commission.

7 (5) Consent is ineffective under this section if the
 8 victim is less than 14 years old and the offender is 3 or
 9 more years older than the victim."
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- 23 (i) jail base release;
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THIRD READING

1 (v) payment of the costs of confinement;

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4 46-18-233;

5 (viii) payment of costs of court appointed counsel as
6 provided in 46-8-113;

7 (ix) community service;

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9 necessary for rehabilitation or for the protection of
10 society; or

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HB 0631/02

1 of the defendant and for the ultimate protection of society,
2 in which case the court shall include in its judgment a
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-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1991

MR. PRESIDENT:

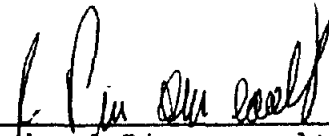
We, your committee on Judiciary having had under consideration House Bill No. 631 (third reading copy -- blue), respectfully report that House Bill No. 631 be amended and as so amended be concurred in:

1. Page 6, lines 24 and 25.

Following: "defendant" on line 24

Strike: remainder of line 24 through "level" on line 25

Insert: "in a local community"

Signed: 

Richard Pinsoneault, Chairman

LB 3/23/91
Amd. Coord.

SB 3/23 12:00
Sec. of Senate

SENATE

HB 631

1 HOUSE BILL NO. 631

2 INTRODUCED BY MCCULLOCH, D. BROWN, TOOLE, WHALEN, GOULD,
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14 (a) defer imposition of sentence, excepting sentences
 15 for driving under the influence of alcohol or drugs, for a
 16 period, except as otherwise provided, not exceeding 1 year
 17 for any misdemeanor or for a period not exceeding 3 years
 18 for any felony. The sentencing judge may impose upon the
 19 defendant any reasonable restrictions or conditions during
 20 the period of the deferred imposition. Reasonable
 21 restrictions or conditions may include:

- 22 (i) jail base release;
 23 (ii) jail time not exceeding 180 days;
 24 (iii) conditions for probation;
 25 (iv) restitution;

1 (v) payment of the costs of confinement;
 2 (vi) payment of a fine as provided in 46-18-231;
 3 (vii) payment of costs as provided in 46-18-232 and
 4 46-18-233;
 5 (viii) payment of costs of court appointed counsel as
 6 provided in 46-8-113;
 7 (ix) community service;
 8 (x) any other reasonable conditions considered
 9 necessary for rehabilitation or for the protection of
 10 society; or
 11 (xi) any combination of the above.
 12 (b) suspend execution of sentence up to the maximum
 13 sentence allowed for each particular offense. The sentencing
 14 judge may impose on the defendant any reasonable
 15 restrictions or conditions during the period of suspended
 16 sentence. Reasonable restrictions or conditions may include
 17 any of those listed in subsections (1)(a)(i) through
 18 (1)(a)(xi).
 19 (c) impose a fine as provided by law for the offense;
 20 (d) require payment of costs as provided in 46-18-232
 21 or payment of costs of court-appointed counsel as provided
 22 in 46-8-113;
 23 (e) commit the defendant to a correctional institution,
 24 with or without a fine as provided by law for the offense;
 25 (f) impose any combination of subsections (1)(b)

1 through (1)(e).
 2 (2) If any financial obligation is imposed as a
 3 condition under subsection (1)(a), sentence may be deferred
 4 for a period not exceeding 2 years for any misdemeanor or
 5 for a period not exceeding 6 years for any felony,
 6 regardless of whether any other conditions are imposed.
 7 (3) If any restrictions or conditions imposed under
 8 subsection (1)(a) or (1)(b) are violated, the court shall
 9 consider any elapsed time and either expressly allow part or
 10 all of it as a credit against the sentence or reject all or
 11 part as a credit and state its reasons in the order. Credit,
 12 however, must be allowed for jail time already served.
 13 (4) Except as provided in 46-18-222, the imposition or
 14 execution of the first 2 years of a sentence of imprisonment
 15 imposed under the following sections may not be deferred or
 16 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 17 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
 18 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d),
 19 45-9-102(3), and 45-9-103(2).
 20 (5) Except as provided in 46-18-222, the imposition or
 21 execution of the first 10 years of a sentence of
 22 imprisonment imposed under 45-5-102 may not be deferred or
 23 suspended.
 24 (6) Except as provided in 46-18-222, imposition of
 25 sentence in a felony case may not be deferred in the case of

1 a defendant who has been convicted of a felony on a prior
 2 occasion, whether or not the sentence was imposed,
 3 imposition of the sentence was deferred, or execution of the
 4 sentence was suspended.

5 (7) If the victim was less than 16 years old, the
 6 imposition or execution of the first 30 days of a sentence
 7 of imprisonment imposed under 45-5-502(3), 45-5-503,
 8 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
 9 suspended. Section 46-18-222 does not apply to the first 30
 10 days of such imprisonment.

11 (8) In imposing a sentence on a defendant convicted of
 12 a sexual offense as defined in 46-23-502, the court may not
 13 waive the registration requirement provided in 46-18-254,
 14 46-18-255, and Title 46, chapter 23, part 5.

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

19 **SECTION 3. SECTION 46-18-222, MCA, IS AMENDED TO READ:**

20 "46-18-222. Exceptions to mandatory minimum sentences
 21 and restrictions on deferred imposition and suspended
 22 execution of sentence. All mandatory minimum sentences
 23 prescribed by the laws of this state and the restrictions on
 24 deferred imposition and suspended execution of sentence
 25 prescribed by subsections (4), (5), and (6) of 46-18-201,

1 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

2 (1) the defendant was less than 18 years of age at the
 3 time of the commission of the offense for which he is to be
 4 sentenced;

5 (2) the defendant's mental capacity, at the time of the
 6 commission of the offense for which he is to be sentenced,
 7 was significantly impaired, although not so impaired as to
 8 constitute a defense to the prosecution. However, a
 9 voluntarily induced intoxicated or drugged condition may not
 10 be considered an impairment for the purposes of this
 11 subsection.

12 (3) the defendant, at the time of the commission of the
 13 offense for which he is to be sentenced, was acting under
 14 unusual and substantial duress, although not such duress as
 15 would constitute a defense to the prosecution;

16 (4) the defendant was an accomplice, the conduct
 17 constituting the offense was principally the conduct of
 18 another, and the defendant's participation was relatively
 19 minor; or

20 (5) where applicable, no serious bodily injury was
 21 inflicted on the victim unless a weapon was used in the
 22 commission of the offense; or

23 (6) the offense was committed under 45-5-502(3) and the
 24 court determines that treatment of the defendant at the
 25 local-level IN A LOCAL COMMUNITY affords a better

HB 0631/03

1 opportunity for rehabilitation of the defendant and for the
2 ultimate protection of society, in which case the court
3 shall include in its judgment a statement of the reasons for
4 its determination."

-End-