

HOUSE BILL NO. 747

INTRODUCED BY LEE

IN THE HOUSE

FEBRUARY 11, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 21, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 22, 1991 PRINTING REPORT.

FEBRUARY 25, 1991 SECOND READING, DO PASS.

 ENGROSSING REPORT.

FEBRUARY 26, 1991 THIRD READING, PASSED.
AYES, 95; NOES, 4.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

APRIL 1, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
AYES, 41; NOES, 9.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 11, 1991 ON MOTION, CONFERENCE COMMITTEE

REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 18, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 18, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 19, 1991

FREE CONFERENCE COMMITTEE REPORTED.

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 20, 1991

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 20, 1991

FREE CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 747
2 INTRODUCED BY Joe

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ALTERNATIVES
5 TO SENTENCING OFFENDERS TO THE STATE PRISON; TO CLARIFY THE
6 CORRECTIONAL POLICY OF THE STATE REGARDING THE SENTENCING OF
7 OFFENDERS; TO ALLOW THE COURTS TO SENTENCE OFFENDERS TO A
8 COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO REQUIRE COURTS
9 TO CONSIDER ALTERNATIVES TO SENTENCING NONVIOLENT FELONY
10 OFFENDERS TO THE STATE PRISON, INCLUDING SENTENCING THE
11 OFFENDER TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO
12 PROVIDE CRITERIA FOR SENTENCING NONVIOLENT FELONY OFFENDERS;
13 TO AUTHORIZE THE DEPARTMENT OF INSTITUTIONS TO PROVIDE
14 COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; AMENDING
15 SECTIONS 46-18-101 AND 46-18-201, MCA; AND PROVIDING AN
16 EFFECTIVE DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 NEW SECTION. Section 1. Definitions. As used in
20 [sections 1, 4, and 5], 46-18-101, and 46-18-201, unless the
21 context requires otherwise, the following definitions apply:

22 (1) "Community corrections" or "community corrections
23 facility or program" means a community-based or
24 community-oriented facility or program designed to provide
25 an alternative method for the rehabilitation of nonviolent

1 felony offenders. The term does not include a state prison
2 or jail.

3 (2) "Crime of violence" means:

4 (a) a crime in which an offender uses or possesses and
5 threatens to use a deadly weapon during the commission or
6 attempted commission of a crime;

7 (b) a crime in which the offender causes a serious
8 bodily injury or death to a person other than himself; or

9 (c) any sexual offense in which the offender causes
10 bodily injury to the victim or uses threat, intimidation, or
11 force against the victim.

12 (3) "Nonviolent felony offender" means a person who has
13 entered a plea of guilty or who has been convicted of a
14 felony offense other than a crime of violence.

15 **Section 2.** Section 46-18-101, MCA, is amended to read:

16 "46-18-101. Correctional policy. (1) It is the purpose
17 of this section to declare the correctional policy of the
18 state of Montana. Laws for the punishment of crime and for
19 the rehabilitation of the convicted are drawn to implement
20 the policy established by this section.

21 (2) The correctional policy of the state of Montana is
22 to protect society by preventing crime through punishment
23 and rehabilitation of the convicted. The legislature finds
24 that an individual is responsible for and must be held
25 accountable for his actions. Corrections laws and programs

1 must be implemented to impress upon each individual his
2 responsibility for obeying the law. To achieve this end, it
3 is the policy of the state to assure that prosecution of
4 criminal offenses occurs whenever probable cause exists and
5 that punishment of the convicted is certain, timely, and
6 consistent. Furthermore, it is the state's policy that
7 persons convicted of a crime shall be dealt with in
8 accordance with their individual characteristics,
9 circumstances, needs, and potentialities.

10 (3) (a) Sentences imposed upon those convicted of crime
11 must be based primarily on the following:

12 (i) the crime committed;

13 (ii) the prospects of rehabilitation of the offender;

14 (iii) the circumstances under which the crime was
15 committed; and

16 (iv) the criminal history of the offender; and

17 (v) consideration of alternatives to imprisonment of
18 the offender in the state prison.

19 (b) Dangerous offenders who habitually violate the law
20 and victimize the public shall be removed from society and
21 correctively treated in custody for long terms as needed.
22 Other offenders shall be dealt with by probation, suspended
23 sentence, community corrections, community service, or fine
24 whenever such disposition appears practicable and not
25 detrimental to the needs of public safety and the welfare of

1 the individual. Whenever possible, sentences for offenders
2 shall include restitution to the victim, payment of costs as
3 provided in 46-18-232, and payment of costs of
4 court-appointed counsel as provided in 46-8-113.

5 (4) It is also the policy of the state that
6 alternatives to imprisonment, such as community corrections,
7 should be used whenever appropriate for nonviolent felony
8 offenders in order to provide them opportunities to gain
9 work experience, to learn life skills, to obtain education
10 and training, or to participate in other activities that
11 will reduce recidivism and enable offenders to become
12 productive members of society."

13 **Section 3.** Section 46-18-201, MCA, is amended to read:

14 **"46-18-201. Sentences that may be imposed.** (1) Whenever
15 a person has been found guilty of an offense upon a verdict
16 or a plea of guilty, the court may:

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

25 (i) jail base release;

1 (ii) jail time not exceeding 180 days;
 2 (iii) conditions for probation;
 3 (iv) restitution;
 4 (v) payment of the costs of confinement;
 5 (vi) payment of a fine as provided in 46-18-231;
 6 (vii) payment of costs as provided in 46-18-232 and
 7 46-18-233;
 8 (viii) payment of costs of court appointed counsel as
 9 provided in 46-8-113;
 10 (ix) placement in a community corrections facility or
 11 program;
 12 ~~(x)~~ community service;
 13 ~~(xi)~~ any other reasonable conditions considered
 14 necessary for rehabilitation or for the protection of
 15 society; or
 16 ~~(xii)~~ any combination of the above.
 17 (b) suspend execution of sentence up to the maximum
 18 sentence allowed for each particular offense. The sentencing
 19 judge may impose on the defendant any reasonable
 20 restrictions or conditions during the period of suspended
 21 sentence. Reasonable restrictions or conditions may include
 22 any of those listed in subsections (1)(a)(i) through
 23 ~~(a)~~ ~~(xii)~~ (1)(a)(xii).
 24 (c) impose a fine as provided by law for the offense;
 25 (d) require payment of costs as provided in 46-18-232

1 or payment of costs of court-appointed counsel as provided
 2 in 46-8-113;
 3 (e) commit the defendant to a correctional institution,
 4 with or without a fine as provided by law for the offense;
 5 (f) order the offender to be placed in a community
 6 corrections facility or program;
 7 ~~(g)~~ impose any combination of subsections (1)(b)
 8 through ~~(e)~~ (1)(f).
 9 (2) If any financial obligation is imposed as a
 10 condition under subsection (1)(a), sentence may be deferred
 11 for a period not exceeding 2 years for any misdemeanor or
 12 for a period not exceeding 6 years for any felony,
 13 regardless of whether any other conditions are imposed.
 14 (3) If any restrictions or conditions imposed under
 15 subsection (1)(a) or (1)(b) are violated, the court shall
 16 consider any elapsed time and either expressly allow part or
 17 all of it as a credit against the sentence or reject all or
 18 part as a credit and state its reasons in the order. Credit,
 19 however, must be allowed for jail time already served.
 20 (4) Except as provided in 46-18-222, the imposition or
 21 execution of the first 2 years of a sentence of imprisonment
 22 imposed under the following sections may not be deferred or
 23 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 24 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
 25 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and

1 45-9-103(2).

2 (5) Except as provided in 46-18-222, the imposition or
3 execution of the first 10 years of a sentence of
4 imprisonment imposed under 45-5-102 may not be deferred or
5 suspended.

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

12 (7) If the victim was less than 16 years old, the
13 imposition or execution of the first 30 days of a sentence
14 of imprisonment imposed under 45-5-502(3), 45-5-503,
15 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
16 suspended. Section 46-18-222 does not apply to the first 30
17 days of such imprisonment.

18 (8) In imposing a sentence on a defendant convicted of
19 a sexual offense as defined in 46-23-502, the court may not
20 waive the registration requirement provided in 46-18-254,
21 46-18-255, and Title 46, chapter 23, part 5.

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

1 (10) In sentencing a nonviolent felony offender, the
2 court shall first consider alternatives to imprisonment of
3 the offender in the state prison, including placement of the
4 offender in a community corrections facility or program. In
5 considering alternatives to imprisonment, the court shall
6 examine the sentencing criteria contained in [section 4]. If
7 the offender is subsequently sentenced to the state prison,
8 the court shall state its reasons why alternatives to
9 imprisonment were not selected, based on the criteria
10 contained in [section 4]."

11 NEW SECTION. Section 4. Criteria for sentencing
12 nonviolent felony offenders. Prior to sentencing a
13 nonviolent felony offender to a term of imprisonment in the
14 state prison, the court shall take into account whether:

15 (1) the interests of justice and the needs of public
16 safety truly require the level of security provided by
17 imprisonment of the offender in the state prison;

18 (2) the needs of the offender can be better served in
19 the community or in a facility or program other than the
20 state prison;

21 (3) there are substantial grounds tending to excuse or
22 justify the offense, though failing to establish a defense;

23 (4) the offender acted under strong provocation;

24 (5) the offender has made restitution or will make
25 restitution to the victim of his criminal conduct;

1 (6) the offender has no prior history of conviction for
2 a criminal act or has led a law-abiding life for a
3 substantial period of time before the commission of the
4 present crime;

5 (7) the offender's criminal conduct was the result of
6 circumstances that are unlikely to recur;

7 (8) the character and attitude of the offender indicate
8 that he is likely to commit another crime;

9 (9) the offender is likely to respond quickly to
10 correctional or rehabilitative treatment; and

11 (10) imprisonment of the offender would create an
12 excessive hardship on himself or his family.

13 NEW SECTION. Section 5. Community corrections
14 facilities or programs. The department of institutions may
15 provide community corrections facilities or programs for the
16 rehabilitation of nonviolent felony offenders[, as
17 authorized under House Bill No. 272].

18 NEW SECTION. Section 6. Codification instruction.
19 [Sections 1, 4, and 5] are intended to be codified as an
20 integral part of Title 46, chapter 18, and the provisions of
21 Title 46, chapter 18, apply to [sections 1, 4, and 5].

22 NEW SECTION. Section 7. Coordination instruction. If
23 House Bill No. 272 is not passed and approved, the bracketed
24 language in [section 5 of this bill] is void.

25 NEW SECTION. Section 8. Effective date. [This act] is

1 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0747, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill for an act entitled: "An act to provide alternatives to sentencing offenders to the state prison; to clarify the correctional policy of the state regarding the sentencing of offenders; to allow the courts to sentence offenders to a community corrections facility or program; to require courts to consider alternatives to sentencing nonviolent felony offenders to the state prison, including sentencing the offender to a community corrections facility or program; to provide criteria for sentencing nonviolent felony offenders; to authorize the Department of Institutions to provide community corrections facilities and programs; amending sections 46-18-101 and 46-18-201, MCA; and providing an effective date."

ASSUMPTIONS:

1. This bill provides community-based alternatives to incarceration and specifically requires judges to consider such placements for non-violent felony offenders and empowers judges to make such placements.
2. Current level community services in the Executive Budget are: Intensive Supervision Programs with a capacity of 50 slots at a general fund cost of \$709,992 FY92 and \$506,420 FY93; Swan River Forest Camp at a general fund cost of \$969,941 FY92 and \$961,379 FY93; five pre-release centers across Montana with a capacity for 120 beds at a general fund cost of \$1,943,543 in FY92 and \$1,945,282 FY93; and four regional probation and parole offices and 14 district offices with personnel of 43 officers and four supervisors at a general fund cost of \$1,935,000 each year of the biennium.
3. Modifications submitted in the Executive Budget for community corrections increases include: (1) create 25 Intensive Supervision Program slots in Great Falls at a general fund cost of \$128,978 FY92 and \$71,836 FY93; (2) continue the community service program in Missoula at a cost of \$35,048 FY92 and \$35,037 FY93; (3) add a new 25 bed pre-release center and increase 25 beds in existing centers at a general fund cost of \$486,395 FY92 and \$508,145 FY93; (4) develop a new contract with non-profit organizations to supervise inmates in house arrest at a general fund cost of \$45,000 each year; (5) expand probation and parole services at a general fund cost of \$132,749 FY92 and \$136,586 FY93; (6) increase variable costs at the Billings Life Skills Pre-Release Center at a general fund cost of \$3,110 each year to provide for three additional residents per year; and (7) create a 16-bed women's pre-release center at a general fund cost of \$278,119 FY92 and \$237,043 FY93.
4. If the modified requests in the Executive Budget are not approved, there may be a need for approximately 119 community corrections slots at a cost of about \$8,033 per offender per year.
5. If the modified recommendations in the Executive Budget are approved, there does not appear to be a need for additional programs in the community because about 10% of the corrections population will be placed in the community. This is 3% over the national average.

FISCAL IMPACT:

No fiscal impact.


 ROD SUNDSTED, BUDGET DIRECTOR 2-15-91
 Office of Budget and Program Planning DATE


 THOMAS N. LEE, PRIMARY SPONSOR 2-18-91
 Fiscal Note for HB0747, as introduced DATE HB 747

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 747

INTRODUCED BY LEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ALTERNATIVES TO SENTENCING OFFENDERS TO THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY; TO CLARIFY THE CORRECTIONAL POLICY OF THE STATE REGARDING THE SENTENCING OF OFFENDERS; TO ALLOW THE COURTS TO SENTENCE OFFENDERS TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO REQUIRE COURTS TO CONSIDER ALTERNATIVES TO SENTENCING NONVIOLENT FELONY OFFENDERS TO THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY, INCLUDING SENTENCING THE OFFENDER TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO PROVIDE CRITERIA FOR SENTENCING NONVIOLENT FELONY OFFENDERS; TO AUTHORIZE THE DEPARTMENT OF INSTITUTIONS TO PROVIDE COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; AMENDING SECTIONS 46-18-101 AND 46-18-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in

[sections 1, 4, and 5], 46-18-101, and 46-18-201, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community-based or community-oriented facility or program designed to provide

an alternative method for the rehabilitation of nonviolent felony offenders. The term does not include a state prison, A WOMEN'S CORRECTIONAL FACILITY, A STATE PRERELEASE CENTER, A PRIVATE PRERELEASE CENTER OR THAT PART OF A PRIVATE PRERELEASE CENTER UNDER CONTRACT TO THE STATE, or a jail.

(2) "Crime of violence" means:

(a) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(b) a crime in which the offender causes a serious bodily injury or death to a person other than himself; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty or who has been convicted of a felony offense other than a crime of violence.

Section 2. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional policy. (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment

1 and rehabilitation of the convicted. The legislature finds
 2 that an individual is responsible for and must be held
 3 accountable for his actions. Corrections laws and programs
 4 must be implemented to impress upon each individual his
 5 responsibility for obeying the law. To achieve this end, it
 6 is the policy of the state to assure that prosecution of
 7 criminal offenses occurs whenever probable cause exists and
 8 that punishment of the convicted is certain, timely, and
 9 consistent. Furthermore, it is the state's policy that
 10 persons convicted of a crime shall be dealt with in
 11 accordance with their individual characteristics,
 12 circumstances, needs, and potentialities.

13 (3) (a) Sentences imposed upon those convicted of crime
 14 must be based primarily on the following:

- 15 (i) the crime committed;
- 16 (ii) the prospects of rehabilitation of the offender;
- 17 (iii) the circumstances under which the crime was
 18 committed; and
- 19 (iv) the criminal history of the offender; and
- 20 (v) consideration of alternatives to imprisonment of
 21 the offender in the state prison OR A WOMEN'S CORRECTIONAL
 22 FACILITY.

23 (b) Dangerous offenders who habitually violate the law
 24 and victimize the public shall be removed from society and
 25 correctively treated in custody for long terms as needed.

1 Other offenders shall be dealt with by probation, suspended
 2 sentence, community corrections, community service, or fine
 3 whenever such disposition appears practicable and not
 4 detrimental to the needs of public safety and the welfare of
 5 the individual. Whenever possible, sentences for offenders
 6 shall include restitution to the victim, payment of costs as
 7 provided in 46-18-232, and payment of costs of
 8 court-appointed counsel as provided in 46-8-113.

9 (4) It is also the policy of the state that
 10 alternatives to imprisonment, such as community corrections,
 11 should be used whenever appropriate for nonviolent felony
 12 offenders in order to provide them opportunities to gain
 13 work experience, to learn life skills, to obtain education
 14 and training, or to participate in other activities that
 15 will reduce recidivism and enable offenders to become
 16 productive members of society."

17 **Section 3.** Section 46-18-201, MCA, is amended to read:

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

21 (a) defer imposition of sentence, excepting sentences
 22 for driving under the influence of alcohol or drugs, for a
 23 period, except as otherwise provided, not exceeding 1 year
 24 for any misdemeanor or for a period not exceeding 3 years
 25 for any felony. The sentencing judge may impose upon the

1 defendant any reasonable restrictions or conditions during
 2 the period of the deferred imposition. Reasonable
 3 restrictions or conditions may include:

- 4 (i) jail base release;
- 5 (ii) jail time not exceeding 180 days;
- 6 (iii) conditions for probation;
- 7 (iv) restitution;
- 8 (v) payment of the costs of confinement;
- 9 (vi) payment of a fine as provided in 46-18-231;
- 10 (vii) payment of costs as provided in 46-18-232 and
 11 46-18-233;

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

14 (ix) WITH THE APPROVAL OF THE FACILITY OR PROGRAM,
 15 placement in a community corrections facility or program;

- 16 ~~(x)~~ (x) community service;
- 17 ~~(xi)~~ (xi) any other reasonable conditions considered
 18 necessary for rehabilitation or for the protection of
 19 society; or

20 ~~(xii)~~ (xii) any combination of the above.

21 (b) suspend execution of sentence up to the maximum
 22 sentence allowed for each particular offense. The sentencing
 23 judge may impose on the defendant any reasonable
 24 restrictions or conditions during the period of suspended
 25 sentence. Reasonable restrictions or conditions may include

1 any of those listed in subsections (1)(a)(i) through
 2 ~~(i)(a)(xi)~~ (1)(a)(xii).

- 3 (c) impose a fine as provided by law for the offense;
- 4 (d) require payment of costs as provided in 46-18-232
 5 or payment of costs of court-appointed counsel as provided
 6 in 46-8-113;

7 (e) commit the defendant to a correctional institution,
 8 with or without a fine as provided by law for the offense;

9 (f) WITH THE APPROVAL OF THE FACILITY OR PROGRAM, order
 10 the offender to be placed in a community corrections
 11 facility or program;

12 ~~(g)~~ (g) impose any combination of subsections (1)(b)
 13 through ~~(f)~~ (f).

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

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

25 (4) Except as provided in 46-18-222, the imposition or

1 execution of the first 2 years of a sentence of imprisonment
2 imposed under the following sections may not be deferred or
3 suspended: 45-5-103, 45-5-202(3) relating to aggravated
4 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
5 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
6 45-9-103(2).

7 (5) Except as provided in 46-18-222, the imposition or
8 execution of the first 10 years of a sentence of
9 imprisonment imposed under 45-5-102 may not be deferred or
10 suspended.

11 (6) Except as provided in 46-18-222, imposition of
12 sentence in a felony case may not be deferred in the case of
13 a defendant who has been convicted of a felony on a prior
14 occasion, whether or not the sentence was imposed,
15 imposition of the sentence was deferred, or execution of the
16 sentence was suspended.

17 (7) If the victim was less than 16 years old, the
18 imposition or execution of the first 30 days of a sentence
19 of imprisonment imposed under 45-5-502(3), 45-5-503,
20 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
21 suspended. Section 46-18-222 does not apply to the first 30
22 days of such imprisonment.

23 (8) In imposing a sentence on a defendant convicted of
24 a sexual offense as defined in 46-23-502, the court may not
25 waive the registration requirement provided in 46-18-254,

1 46-18-255, and Title 46, chapter 23, part 5.

2 (9) A person convicted of a sexual offense, as defined
3 in 46-23-502, and sentenced to imprisonment in the state
4 prison shall enroll in the educational phase of the prison's
5 sexual offender program.

6 (10) In sentencing a nonviolent felony offender, the
7 court shall first consider alternatives to imprisonment of
8 the offender in the state prison, including placement of the
9 offender in a community corrections facility or program. In
10 considering alternatives to imprisonment, the court shall
11 examine the sentencing criteria contained in [section 4]. If
12 the offender is subsequently sentenced to the state prison
13 OR A WOMEN'S CORRECTIONAL FACILITY, the court shall state
14 its reasons why alternatives to imprisonment were not
15 selected, based on the criteria contained in [section 4]."

16 NEW SECTION. Section 4. Criteria for sentencing
17 nonviolent felony offenders. Prior to sentencing a
18 nonviolent felony offender to a term of imprisonment in the
19 state prison OR A WOMEN'S CORRECTIONAL FACILITY, the court
20 shall take into account whether:

21 (1) the interests of justice and the needs of public
22 safety truly require the level of security provided by
23 imprisonment of the offender in the state prison OR A
24 WOMEN'S CORRECTIONAL FACILITY;

25 (2) the needs of the offender can be better served in

1 the community or in a facility or program other than the
 2 state prison OR A WOMEN'S CORRECTIONAL FACILITY;

3 (3) there are substantial grounds tending to excuse or
 4 justify the offense, though failing to establish a defense;

5 (4) the offender acted under strong provocation;

6 (5) the offender has made restitution or will make
 7 restitution to the victim of his criminal conduct;

8 (6) the offender has no prior history of conviction for
 9 a criminal act or has led a law-abiding life for a
 10 substantial period of time before the commission of the
 11 present crime;

12 (7) the offender's criminal conduct was the result of
 13 circumstances that are unlikely to recur;

14 (8) the character and attitude of the offender indicate
 15 that he is likely to commit another crime;

16 (9) the offender is likely to respond quickly to
 17 correctional or rehabilitative treatment; and

18 (10) imprisonment of the offender would create an
 19 excessive hardship on himself or his family.

20 NEW SECTION. Section 5. Community corrections
 21 facilities or programs. The department of institutions may
 22 provide community corrections facilities or programs for the
 23 rehabilitation of nonviolent felony offenders[, as
 24 authorized under House Bill No. 272].

25 NEW SECTION. Section 6. Codification instruction.

1 [Sections 1, 4, and 5] are intended to be codified as an
 2 integral part of Title 46, chapter 18, and the provisions of
 3 Title 46, chapter 18, apply to [sections 1, 4, and 5].

4 NEW SECTION. Section 7. Coordination instruction. If
 5 House Bill No. 272 is not passed and approved, the bracketed
 6 language in [section 5 of this bill] is void.

7 NEW SECTION. Section 8. Effective date. [This act] is
 8 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 747

2 INTRODUCED BY LEE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ALTERNATIVES
5 TO SENTENCING OFFENDERS TO THE STATE PRISON OR A WOMEN'S
6 CORRECTIONAL FACILITY; TO CLARIFY THE CORRECTIONAL POLICY OF
7 THE STATE REGARDING THE SENTENCING OF OFFENDERS; TO ALLOW
8 THE COURTS TO SENTENCE OFFENDERS TO A COMMUNITY CORRECTIONS
9 FACILITY OR PROGRAM; TO REQUIRE COURTS TO CONSIDER
10 ALTERNATIVES TO SENTENCING NONVIOLENT FELONY OFFENDERS TO
11 THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY,
12 INCLUDING SENTENCING THE OFFENDER TO A COMMUNITY CORRECTIONS
13 FACILITY OR PROGRAM; TO PROVIDE CRITERIA FOR SENTENCING
14 NONVIOLENT FELONY OFFENDERS; TO AUTHORIZE THE DEPARTMENT OF
15 INSTITUTIONS TO PROVIDE COMMUNITY CORRECTIONS FACILITIES AND
16 PROGRAMS; AMENDING SECTIONS 46-18-101 AND 46-18-201, MCA;
17 AND PROVIDING AN EFFECTIVE DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. **Section 1. Definitions.** As used in
21 [sections 1, 4, and 5], 46-18-101, and 46-18-201, unless the
22 context requires otherwise, the following definitions apply:

23 (1) "Community corrections" or "community corrections
24 facility or program" means a community-based or
25 community-oriented facility or program designed to provide

1 an alternative method for the rehabilitation of nonviolent
2 felony offenders. The term does not include a state prison,
3 A WOMEN'S CORRECTIONAL FACILITY, A STATE PRERELEASE CENTER,
4 A PRIVATE PRERELEASE CENTER OR THAT PART OF A PRIVATE
5 PRERELEASE CENTER UNDER CONTRACT TO THE STATE, or A jail.

6 (2) "Crime of violence" means:

7 (a) a crime in which an offender uses or possesses and
8 threatens to use a deadly weapon during the commission or
9 attempted commission of a crime;

10 (b) a crime in which the offender causes a serious
11 bodily injury or death to a person other than himself; or

12 (c) any sexual offense in which the offender causes
13 bodily injury to the victim or uses threat, intimidation, or
14 force against the victim.

15 (3) "Nonviolent felony offender" means a person who has
16 entered a plea of guilty or who has been convicted of a
17 felony offense other than a crime of violence.

18 **Section 2.** Section 46-18-101, MCA, is amended to read:

19 "**46-18-101. Correctional policy.** (1) It is the purpose
20 of this section to declare the correctional policy of the
21 state of Montana. Laws for the punishment of crime and for
22 the rehabilitation of the convicted are drawn to implement
23 the policy established by this section.

24 (2) The correctional policy of the state of Montana is
25 to protect society by preventing crime through punishment

1 and rehabilitation of the convicted. The legislature finds
 2 that an individual is responsible for and must be held
 3 accountable for his actions. Corrections laws and programs
 4 must be implemented to impress upon each individual his
 5 responsibility for obeying the law. To achieve this end, it
 6 is the policy of the state to assure that prosecution of
 7 criminal offenses occurs whenever probable cause exists and
 8 that punishment of the convicted is certain, timely, and
 9 consistent. Furthermore, it is the state's policy that
 10 persons convicted of a crime shall be dealt with in
 11 accordance with their individual characteristics,
 12 circumstances, needs, and potentialities.

13 (3) (a) Sentences imposed upon those convicted of crime
 14 must be based primarily on the following:

15 (i) the crime committed;

16 (ii) the prospects of rehabilitation of the offender;

17 (iii) the circumstances under which the crime was
 18 committed; and

19 (iv) the criminal history of the offender; and

20 (v) consideration of alternatives to imprisonment of
 21 the offender in the state prison OR A WOMEN'S CORRECTIONAL
 22 FACILITY.

23 (b) Dangerous offenders who habitually violate the law
 24 and victimize the public shall be removed from society and
 25 correctively treated in custody for long terms as needed.

1 Other offenders shall be dealt with by probation, suspended
 2 sentence, community corrections, community service, or fine
 3 whenever such disposition appears practicable and not
 4 detrimental to the needs of public safety and the welfare of
 5 the individual. Whenever possible, sentences for offenders
 6 shall include restitution to the victim, payment of costs as
 7 provided in 46-18-232, and payment of costs of
 8 court-appointed counsel as provided in 46-8-113.

9 (4) It is also the policy of the state that
 10 alternatives to imprisonment, such as community corrections,
 11 should be used whenever appropriate for nonviolent felony
 12 offenders in order to provide them opportunities to gain
 13 work experience, to learn life skills, to obtain education
 14 and training, or to participate in other activities that
 15 will reduce recidivism and enable offenders to become
 16 productive members of society."

17 **Section 3.** Section 46-18-201, MCA, is amended to read:

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

21 (a) defer imposition of sentence, excepting sentences
 22 for driving under the influence of alcohol or drugs, for a
 23 period, except as otherwise provided, not exceeding 1 year
 24 for any misdemeanor or for a period not exceeding 3 years
 25 for any felony. The sentencing judge may impose upon the

1 defendant any reasonable restrictions or conditions during
 2 the period of the deferred imposition. Reasonable
 3 restrictions or conditions may include:
 4 (i) jail base release;
 5 (ii) jail time not exceeding 180 days;
 6 (iii) conditions for probation;
 7 (iv) restitution;
 8 (v) payment of the costs of confinement;
 9 (vi) payment of a fine as provided in 46-18-231;
 10 (vii) payment of costs as provided in 46-18-232 and
 11 46-18-233;
 12 (viii) payment of costs of court appointed counsel as
 13 provided in 46-8-113;
 14 (ix) WITH THE APPROVAL OF THE FACILITY OR PROGRAM,
 15 placement in a community corrections facility or program;
 16 ~~(x)~~ community service;
 17 ~~(xi)~~ any other reasonable conditions considered
 18 necessary for rehabilitation or for the protection of
 19 society; or
 20 ~~(xii)~~ any combination of the above.
 21 (b) suspend execution of sentence up to the maximum
 22 sentence allowed for each particular offense. The sentencing
 23 judge may impose on the defendant any reasonable
 24 restrictions or conditions during the period of suspended
 25 sentence. Reasonable restrictions or conditions may include

1 any of those listed in subsections (1)(a)(i) through
 2 ~~(1)(a)(xi)~~ (1)(a)(xii).
 3 (c) impose a fine as provided by law for the offense;
 4 (d) require payment of costs as provided in 46-18-232
 5 or payment of costs of court-appointed counsel as provided
 6 in 46-8-113;
 7 (e) commit the defendant to a correctional institution,
 8 with or without a fine as provided by law for the offense;
 9 (f) WITH THE APPROVAL OF THE FACILITY OR PROGRAM, order
 10 the offender to be placed in a community corrections
 11 facility or program;
 12 ~~(g)~~ impose any combination of subsections (1)(b)
 13 through ~~(1)(e)~~ (1)(f).
 14 (2) If any financial obligation is imposed as a
 15 condition under subsection (1)(a), sentence may be deferred
 16 for a period not exceeding 2 years for any misdemeanor or
 17 for a period not exceeding 6 years for any felony,
 18 regardless of whether any other conditions are imposed.
 19 (3) If any restrictions or conditions imposed under
 20 subsection (1)(a) or (1)(b) are violated, the court shall
 21 consider any elapsed time and either expressly allow part or
 22 all of it as a credit against the sentence or reject all or
 23 part as a credit and state its reasons in the order. Credit,
 24 however, must be allowed for jail time already served.
 25 (4) Except as provided in 46-18-222, the imposition or

1 execution of the first 2 years of a sentence of imprisonment
 2 imposed under the following sections may not be deferred or
 3 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 4 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
 5 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
 6 45-9-103(2).

7 (5) Except as provided in 46-18-222, the imposition or
 8 execution of the first 10 years of a sentence of
 9 imprisonment imposed under 45-5-102 may not be deferred or
 10 suspended.

11 (6) Except as provided in 46-18-222, imposition of
 12 sentence in a felony case may not be deferred in the case of
 13 a defendant who has been convicted of a felony on a prior
 14 occasion, whether or not the sentence was imposed,
 15 imposition of the sentence was deferred, or execution of the
 16 sentence was suspended.

17 (7) If the victim was less than 16 years old, the
 18 imposition or execution of the first 30 days of a sentence
 19 of imprisonment imposed under 45-5-502(3), 45-5-503,
 20 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
 21 suspended. Section 46-18-222 does not apply to the first 30
 22 days of such imprisonment.

23 (8) In imposing a sentence on a defendant convicted of
 24 a sexual offense as defined in 46-23-502, the court may not
 25 waive the registration requirement provided in 46-18-254,

1 46-18-255, and Title 46, chapter 23, part 5.

2 (9) A person convicted of a sexual offense, as defined
 3 in 46-23-502, and sentenced to imprisonment in the state
 4 prison shall enroll in the educational phase of the prison's
 5 sexual offender program.

6 (10) In sentencing a nonviolent felony offender, the
 7 court shall first consider alternatives to imprisonment of
 8 the offender in the state prison, including placement of the
 9 offender in a community corrections facility or program. In
 10 considering alternatives to imprisonment, the court shall
 11 examine the sentencing criteria contained in [section 4]. If
 12 the offender is subsequently sentenced to the state prison
 13 OR A WOMEN'S CORRECTIONAL FACILITY, the court shall state
 14 its reasons why alternatives to imprisonment were not
 15 selected, based on the criteria contained in [section 4]."

16 NEW SECTION. Section 4. Criteria for sentencing
 17 nonviolent felony offenders. Prior to sentencing a
 18 nonviolent felony offender to a term of imprisonment in the
 19 state prison OR A WOMEN'S CORRECTIONAL FACILITY, the court
 20 shall take into account whether:

21 (1) the interests of justice and the needs of public
 22 safety truly require the level of security provided by
 23 imprisonment of the offender in the state prison OR A
 24 WOMEN'S CORRECTIONAL FACILITY;

25 (2) the needs of the offender can be better served in

1 the community or in a facility or program other than the
2 state prison OR A WOMEN'S CORRECTIONAL FACILITY;

3 (3) there are substantial grounds tending to excuse or
4 justify the offense, though failing to establish a defense;

5 (4) the offender acted under strong provocation;

6 (5) the offender has made restitution or will make
7 restitution to the victim of his criminal conduct;

8 (6) the offender has no prior history of conviction for
9 a criminal act or has led a law-abiding life for a
10 substantial period of time before the commission of the
11 present crime;

12 (7) the offender's criminal conduct was the result of
13 circumstances that are unlikely to recur;

14 (8) the character and attitude of the offender indicate
15 that he is likely to commit another crime;

16 (9) the offender is likely to respond quickly to
17 correctional or rehabilitative treatment; and

18 (10) imprisonment of the offender would create an
19 excessive hardship on himself or his family.

20 NEW SECTION. Section 5. Community corrections
21 facilities or programs. The department of institutions may
22 provide community corrections facilities or programs for the
23 rehabilitation of nonviolent felony offenders[, as
24 authorized under House Bill No. 272].

25 NEW SECTION. Section 6. Codification instruction.

1 [Sections 1, 4, and 5] are intended to be codified as an
2 integral part of Title 46, chapter 18, and the provisions of
3 Title 46, chapter 18, apply to [sections 1, 4, and 5].

4 NEW SECTION. Section 7. Coordination instruction. If
5 House Bill No. 272 is not passed and approved, the bracketed
6 language in [section 5 of this bill] is void.

7 NEW SECTION. Section 8. Effective date. [This act] is
8 effective July 1, 1991.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 1, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 747 (third reading copy -- blue), respectfully report that House Bill No. 747 be amended and as so amended be concurred in:

1. Page 2, lines 3 through 5.

Following: "FACILITY," on line 3

Strike: remainder of line 3 through "STATE," on line 5

2. Page 2, line 16.

Following: "guilty"

Insert: "to a felony offense other than a crime of violence"

Signed: 

Richard Pinsoneault, Chairman

WJ 4-1-91
Asst. Coord.

SPS 4-1 2:00
Sec. of Senate

HB 747
SENATE

1 HOUSE BILL NO. 747
 2 INTRODUCED BY LEE
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ALTERNATIVES
 5 TO SENTENCING OFFENDERS TO THE STATE PRISON OR A WOMEN'S
 6 CORRECTIONAL FACILITY; TO CLARIFY THE CORRECTIONAL POLICY OF
 7 THE STATE REGARDING THE SENTENCING OF OFFENDERS; TO ALLOW
 8 THE COURTS TO SENTENCE OFFENDERS TO A COMMUNITY CORRECTIONS
 9 FACILITY OR PROGRAM; TO REQUIRE COURTS TO CONSIDER
 10 ALTERNATIVES TO SENTENCING NONVIOLENT FELONY OFFENDERS TO
 11 THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY,
 12 INCLUDING SENTENCING THE OFFENDER TO A COMMUNITY CORRECTIONS
 13 FACILITY OR PROGRAM; TO PROVIDE CRITERIA FOR SENTENCING
 14 NONVIOLENT FELONY OFFENDERS; TO AUTHORIZE THE DEPARTMENT OF
 15 INSTITUTIONS TO PROVIDE COMMUNITY CORRECTIONS FACILITIES AND
 16 PROGRAMS; AMENDING SECTIONS 46-18-101 AND 46-18-201, MCA;
 17 AND PROVIDING AN EFFECTIVE DATE."

18
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. **Section 1.** Definitions. As used in
 21 [sections 1, 4, and 5], 46-18-101, and 46-18-201, unless the
 22 context requires otherwise, the following definitions apply:

23 (1) "Community corrections" or "community corrections
 24 facility or program" means a community-based or
 25 community-oriented facility or program designed to provide

1 an alternative method for the rehabilitation of nonviolent
 2 felony offenders. The term does not include a state prison,
 3 A WOMEN'S CORRECTIONAL FACILITY, ~~a state prerelease center,~~
 4 ~~a private prerelease center or that part of a private~~
 5 ~~prerelease center under contract to the state,~~ or A jail.

6 (2) "Crime of violence" means:

7 (a) a crime in which an offender uses or possesses and
 8 threatens to use a deadly weapon during the commission or
 9 attempted commission of a crime;

10 (b) a crime in which the offender causes a serious
 11 bodily injury or death to a person other than himself; or

12 (c) any sexual offense in which the offender causes
 13 bodily injury to the victim or uses threat, intimidation, or
 14 force against the victim.

15 (3) "Nonviolent felony offender" means a person who has
 16 entered a plea of guilty TO A FELONY OFFENSE OTHER THAN A
 17 CRIME OF VIOLENCE or who has been convicted of a felony
 18 offense other than a crime of violence.

19 **Section 2.** Section 46-18-101, MCA, is amended to read:

20 "46-18-101. Correctional policy. (1) It is the purpose
 21 of this section to declare the correctional policy of the
 22 state of Montana. Laws for the punishment of crime and for
 23 the rehabilitation of the convicted are drawn to implement
 24 the policy established by this section.

25 (2) The correctional policy of the state of Montana is

1 to protect society by preventing crime through punishment
 2 and rehabilitation of the convicted. The legislature finds
 3 that an individual is responsible for and must be held
 4 accountable for his actions. Corrections laws and programs
 5 must be implemented to impress upon each individual his
 6 responsibility for obeying the law. To achieve this end, it
 7 is the policy of the state to assure that prosecution of
 8 criminal offenses occurs whenever probable cause exists and
 9 that punishment of the convicted is certain, timely, and
 10 consistent. Furthermore, it is the state's policy that
 11 persons convicted of a crime shall be dealt with in
 12 accordance with their individual characteristics,
 13 circumstances, needs, and potentialities.

14 (3) (a) Sentences imposed upon those convicted of crime
 15 must be based primarily on the following:

- 16 (i) the crime committed;
- 17 (ii) the prospects of rehabilitation of the offender;
- 18 (iii) the circumstances under which the crime was
 19 committed; and
- 20 (iv) the criminal history of the offender; and
- 21 (v) consideration of alternatives to imprisonment of
 22 the offender in the state prison OR A WOMEN'S CORRECTIONAL
 23 FACILITY.

24 (b) Dangerous offenders who habitually violate the law
 25 and victimize the public shall be removed from society and

1 correctively treated in custody for long terms as needed.
 2 Other offenders shall be dealt with by probation, suspended
 3 sentence, community corrections, community service, or fine
 4 whenever such disposition appears practicable and not
 5 detrimental to the needs of public safety and the welfare of
 6 the individual. Whenever possible, sentences for offenders
 7 shall include restitution to the victim, payment of costs as
 8 provided in 46-18-232, and payment of costs of
 9 court-appointed counsel as provided in 46-8-113.

10 (4) It is also the policy of the state that
 11 alternatives to imprisonment, such as community corrections,
 12 should be used whenever appropriate for nonviolent felony
 13 offenders in order to provide them opportunities to gain
 14 work experience, to learn life skills, to obtain education
 15 and training, or to participate in other activities that
 16 will reduce recidivism and enable offenders to become
 17 productive members of society."

18 **Section 3.** Section 46-18-201, MCA, is amended to read:

19 **"46-18-201. Sentences that may be imposed.** (1) Whenever
 20 a person has been found guilty of an offense upon a verdict
 21 or a plea of guilty, the court may:

- 22 (a) defer imposition of sentence, excepting sentences
 23 for driving under the influence of alcohol or drugs, for a
 24 period, except as otherwise provided, not exceeding 1 year
 25 for any misdemeanor or for a period not exceeding 3 years

1 for any felony. The sentencing judge may impose upon the
 2 defendant any reasonable restrictions or conditions during
 3 the period of the deferred imposition. Reasonable
 4 restrictions or conditions may include:

- 5 (i) jail base release;
- 6 (ii) jail time not exceeding 180 days;
- 7 (iii) conditions for probation;
- 8 (iv) restitution;
- 9 (v) payment of the costs of confinement;
- 10 (vi) payment of a fine as provided in 46-18-231;
- 11 (vii) payment of costs as provided in 46-18-232 and
 12 46-18-233;
- 13 (viii) payment of costs of court appointed counsel as
 14 provided in 46-8-113;
- 15 (ix) WITH THE APPROVAL OF THE FACILITY OR PROGRAM,
 16 placement in a community corrections facility or program;
- 17 ~~(ix)~~(x) community service;
- 18 ~~(x)~~(xi) any other reasonable conditions considered
 19 necessary for rehabilitation or for the protection of
 20 society; or
- 21 ~~(xi)~~(xii) any combination of the above.

22 (b) suspend execution of sentence up to the maximum
 23 sentence allowed for each particular offense. The sentencing
 24 judge may impose on the defendant any reasonable
 25 restrictions or conditions during the period of suspended

1 sentence. Reasonable restrictions or conditions may include
 2 any of those listed in subsections (1)(a)(i) through
 3 ~~(i)~~(a)~~(xi)~~ (1)(a)(xii).

- 4 (c) impose a fine as provided by law for the offense;
- 5 (d) require payment of costs as provided in 46-18-232
 6 or payment of costs of court-appointed counsel as provided
 7 in 46-8-113;
- 8 (e) commit the defendant to a correctional institution,
 9 with or without a fine as provided by law for the offense;
- 10 (f) WITH THE APPROVAL OF THE FACILITY OR PROGRAM, order
 11 the offender to be placed in a community corrections
 12 facility or program;
- 13 ~~(f)~~(g) impose any combination of subsections (1)(b)
 14 through ~~(i)~~(e) (1)(f).

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

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

1 (4) Except as provided in 46-18-222, the imposition or
 2 execution of the first 2 years of a sentence of imprisonment
 3 imposed under the following sections may not be deferred or
 4 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 5 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
 6 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
 7 45-9-103(2).

8 (5) Except as provided in 46-18-222, the imposition or
 9 execution of the first 10 years of a sentence of
 10 imprisonment imposed under 45-5-102 may not be deferred or
 11 suspended.

12 (6) Except as provided in 46-18-222, imposition of
 13 sentence in a felony case may not be deferred in the case of
 14 a defendant who has been convicted of a felony on a prior
 15 occasion, whether or not the sentence was imposed,
 16 imposition of the sentence was deferred, or execution of the
 17 sentence was suspended.

18 (7) If the victim was less than 16 years old, the
 19 imposition or execution of the first 30 days of a sentence
 20 of imprisonment imposed under 45-5-502(3), 45-5-503,
 21 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
 22 suspended. Section 46-18-222 does not apply to the first 30
 23 days of such imprisonment.

24 (8) In imposing a sentence on a defendant convicted of
 25 a sexual offense as defined in 46-23-502, the court may not

1 waive the registration requirement provided in 46-18-254,
 2 46-18-255, and Title 46, chapter 23, part 5.

3 (9) A person convicted of a sexual offense, as defined
 4 in 46-23-502, and sentenced to imprisonment in the state
 5 prison shall enroll in the educational phase of the prison's
 6 sexual offender program.

7 (10) In sentencing a nonviolent felony offender, the
 8 court shall first consider alternatives to imprisonment of
 9 the offender in the state prison, including placement of the
 10 offender in a community corrections facility or program. In
 11 considering alternatives to imprisonment, the court shall
 12 examine the sentencing criteria contained in [section 4]. If
 13 the offender is subsequently sentenced to the state prison
 14 OR A WOMEN'S CORRECTIONAL FACILITY, the court shall state
 15 its reasons why alternatives to imprisonment were not
 16 selected, based on the criteria contained in [section 4]."

17 NEW SECTION. Section 4. Criteria for sentencing
 18 nonviolent felony offenders. Prior to sentencing a
 19 nonviolent felony offender to a term of imprisonment in the
 20 state prison OR A WOMEN'S CORRECTIONAL FACILITY, the court
 21 shall take into account whether:

22 (1) the interests of justice and the needs of public
 23 safety truly require the level of security provided by
 24 imprisonment of the offender in the state prison OR A
 25 WOMEN'S CORRECTIONAL FACILITY;

1 (2) the needs of the offender can be better served in
 2 the community or in a facility or program other than the
 3 state prison OR A WOMEN'S CORRECTIONAL FACILITY;

4 (3) there are substantial grounds tending to excuse or
 5 justify the offense, though failing to establish a defense;

6 (4) the offender acted under strong provocation;

7 (5) the offender has made restitution or will make
 8 restitution to the victim of his criminal conduct;

9 (6) the offender has no prior history of conviction for
 10 a criminal act or has led a law-abiding life for a
 11 substantial period of time before the commission of the
 12 present crime;

13 (7) the offender's criminal conduct was the result of
 14 circumstances that are unlikely to recur;

15 (8) the character and attitude of the offender indicate
 16 that he is likely to commit another crime;

17 (9) the offender is likely to respond quickly to
 18 correctional or rehabilitative treatment; and

19 (10) imprisonment of the offender would create an
 20 excessive hardship on himself or his family.

21 NEW SECTION. Section 5. Community corrections
 22 facilities or programs. The department of institutions may
 23 provide community corrections facilities or programs for the
 24 rehabilitation of nonviolent felony offenders[, as
 25 authorized under House Bill No. 272].

1 NEW SECTION. Section 6. Codification instruction.
 2 [Sections 1, 4, and 5] are intended to be codified as an
 3 integral part of Title 46, chapter 18, and the provisions of
 4 Title 46, chapter 18, apply to [sections 1, 4, and 5].

5 NEW SECTION. Section 7. Coordination instruction. If
 6 House Bill No. 272 is not passed and approved, the bracketed
 7 language in [section 5 of this bill] is void.

8 NEW SECTION. Section 8. Effective date. [This act] is
 9 effective July 1, 1991.

-End-

Free Conference Committee
on House Bill 747
Report No. 1, April 19, 1991

4-19-91
A. U. S. on
B. G. P.

Mr. Speaker and Mr. President:

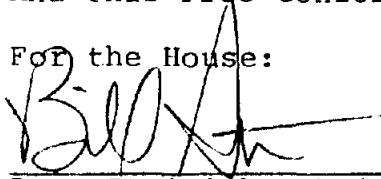
We, your Free Conference Committee on House Bill 747 met and considered Senate committee on Judiciary amendments, dated April 1, 1991 and recommend that House Bill 747 (reference copy -- salmon) be amended as follows:

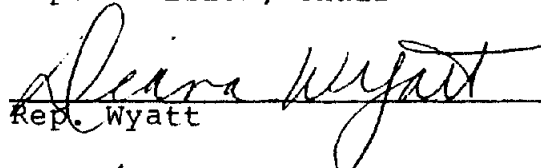
1. Page 10, line 5.
Following: "instruction."
Insert: "(1)"

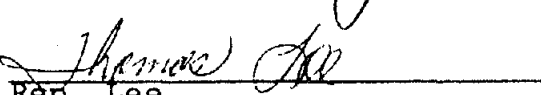
2. Page 10, line 8.
Following: line 7
Insert: "(2) If this bill and House Bill No. 272 are both passed and approved, then the definition of "community corrections" or "community corrections facility or program" contained in [section 1(1) of this act] is amended to read:
"(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in [section 3 of House Bill No. 272]."

And this Free Conference Committee report be adopted.

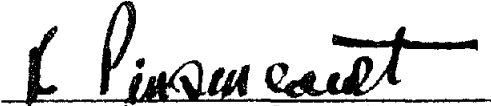
For the House:

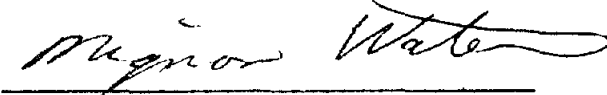

Rep. Strizich, Chair


Rep. Wyatt


Rep. Lee

For the Senate:


Sen. Pinesoneault, Chair


Sen. Waterman


Sen. Grosfield

ADOPT

REJECT

F.C.C.R.#1
HB 747
830846CC.HSF

HOUSE BILL NO. 747

INTRODUCED BY LEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ALTERNATIVES TO SENTENCING OFFENDERS TO THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY; TO CLARIFY THE CORRECTIONAL POLICY OF THE STATE REGARDING THE SENTENCING OF OFFENDERS; TO ALLOW THE COURTS TO SENTENCE OFFENDERS TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO REQUIRE COURTS TO CONSIDER ALTERNATIVES TO SENTENCING NONVIOLENT FELONY OFFENDERS TO THE STATE PRISON OR A WOMEN'S CORRECTIONAL FACILITY, INCLUDING SENTENCING THE OFFENDER TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM; TO PROVIDE CRITERIA FOR SENTENCING NONVIOLENT FELONY OFFENDERS; TO AUTHORIZE THE DEPARTMENT OF INSTITUTIONS TO PROVIDE COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; AMENDING SECTIONS 46-18-101 AND 46-18-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1, 4, and 5], 46-18-101, and 46-18-201, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community-based or community-oriented facility or program designed to provide

an alternative method for the rehabilitation of nonviolent felony offenders. The term does not include a state prison, ~~A WOMEN'S CORRECTIONAL FACILITY, A STATE PRERELEASE CENTER, A PRIVATE PRERELEASE CENTER OR THAT PART OF A PRIVATE PRERELEASE CENTER UNDER CONTRACT TO THE STATE,~~ or a jail.

(2) "Crime of violence" means:

(a) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(b) a crime in which the offender causes a serious bodily injury or death to a person other than himself; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty TO A FELONY OFFENSE OTHER THAN A CRIME OF VIOLENCE or who has been convicted of a felony offense other than a crime of violence.

Section 2. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional policy. (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is



1 to protect society by preventing crime through punishment
 2 and rehabilitation of the convicted. The legislature finds
 3 that an individual is responsible for and must be held
 4 accountable for his actions. Corrections laws and programs
 5 must be implemented to impress upon each individual his
 6 responsibility for obeying the law. To achieve this end, it
 7 is the policy of the state to assure that prosecution of
 8 criminal offenses occurs whenever probable cause exists and
 9 that punishment of the convicted is certain, timely, and
 10 consistent. Furthermore, it is the state's policy that
 11 persons convicted of a crime shall be dealt with in
 12 accordance with their individual characteristics,
 13 circumstances, needs, and potentialities.

14 (3) (a) Sentences imposed upon those convicted of crime
 15 must be based primarily on the following:

- 16 (i) the crime committed;
 17 (ii) the prospects of rehabilitation of the offender;
 18 (iii) the circumstances under which the crime was
 19 committed; and
 20 (iv) the criminal history of the offender; and
 21 (v) consideration of alternatives to imprisonment of
 22 the offender in the state prison OR A WOMEN'S CORRECTIONAL
 23 FACILITY.

24 (b) Dangerous offenders who habitually violate the law
 25 and victimize the public shall be removed from society and

1 correctively treated in custody for long terms as needed.
 2 Other offenders shall be dealt with by probation, suspended
 3 sentence, community corrections, community service, or fine
 4 whenever such disposition appears practicable and not
 5 detrimental to the needs of public safety and the welfare of
 6 the individual. Whenever possible, sentences for offenders
 7 shall include restitution to the victim, payment of costs as
 8 provided in 46-18-232, and payment of costs of
 9 court-appointed counsel as provided in 46-8-113.

10 (4) It is also the policy of the state that
 11 alternatives to imprisonment, such as community corrections,
 12 should be used whenever appropriate for nonviolent felony
 13 offenders in order to provide them opportunities to gain
 14 work experience, to learn life skills, to obtain education
 15 and training, or to participate in other activities that
 16 will reduce recidivism and enable offenders to become
 17 productive members of society."

18 **Section 3.** Section 46-18-201, MCA, is amended to read:

19 "46-18-201. Sentences that may be imposed. (1) Whenever
 20 a person has been found guilty of an offense upon a verdict
 21 or a plea of guilty, the court may:

22 (a) defer imposition of sentence, excepting sentences
 23 for driving under the influence of alcohol or drugs, for a
 24 period, except as otherwise provided, not exceeding 1 year
 25 for any misdemeanor or for a period not exceeding 3 years

1 for any felony. The sentencing judge may impose upon the
2 defendant any reasonable restrictions or conditions during
3 the period of the deferred imposition. Reasonable
4 restrictions or conditions may include:

- 5 (i) jail base release;
- 6 (ii) jail time not exceeding 180 days;
- 7 (iii) conditions for probation;
- 8 (iv) restitution;
- 9 (v) payment of the costs of confinement;
- 10 (vi) payment of a fine as provided in 46-18-231;
- 11 (vii) payment of costs as provided in 46-18-232 and
12 46-18-233;

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

15 (ix) WITH THE APPROVAL OF THE FACILITY OR PROGRAM,
16 placement in a community corrections facility or program;

17 ~~(x)~~ community service;

18 ~~(xi)~~ any other reasonable conditions considered
19 necessary for rehabilitation or for the protection of
20 society; or

21 ~~(xii)~~ any combination of the above.

22 (b) suspend execution of sentence up to the maximum
23 sentence allowed for each particular offense. The sentencing
24 judge may impose on the defendant any reasonable
25 restrictions or conditions during the period of suspended

1 sentence. Reasonable restrictions or conditions may include
2 any of those listed in subsections (1)(a)(i) through
3 ~~(1)(a)(xii)~~ (1)(a)(xii).

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

5 (d) require payment of costs as provided in 46-18-232
6 or payment of costs of court-appointed counsel as provided
7 in 46-8-113;

8 (e) commit the defendant to a correctional institution,
9 with or without a fine as provided by law for the offense;

10 (f) WITH THE APPROVAL OF THE FACILITY OR PROGRAM, order
11 the offender to be placed in a community corrections
12 facility or program;

13 ~~(g)~~ impose any combination of subsections (1)(b)
14 through ~~(1)(f)~~ (1)(f).

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

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

1 (4) Except as provided in 46-18-222, the imposition or
2 execution of the first 2 years of a sentence of imprisonment
3 imposed under the following sections may not be deferred or
4 suspended: 45-5-103, 45-5-202(3) relating to aggravated
5 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
6 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
7 45-9-103(2).

8 (5) Except as provided in 46-18-222, the imposition or
9 execution of the first 10 years of a sentence of
10 imprisonment imposed under 45-5-102 may not be deferred or
11 suspended.

12 (6) Except as provided in 46-18-222, imposition of
13 sentence in a felony case may not be deferred in the case of
14 a defendant who has been convicted of a felony on a prior
15 occasion, whether or not the sentence was imposed,
16 imposition of the sentence was deferred, or execution of the
17 sentence was suspended.

18 (7) If the victim was less than 16 years old, the
19 imposition or execution of the first 30 days of a sentence
20 of imprisonment imposed under 45-5-502(3), 45-5-503,
21 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
22 suspended. Section 46-18-222 does not apply to the first 30
23 days of such imprisonment.

24 (8) In imposing a sentence on a defendant convicted of
25 a sexual offense as defined in 46-23-502, the court may not

1 waive the registration requirement provided in 46-18-254,
2 46-18-255, and Title 46, chapter 23, part 5.

3 (9) A person convicted of a sexual offense, as defined
4 in 46-23-502, and sentenced to imprisonment in the state
5 prison shall enroll in the educational phase of the prison's
6 sexual offender program.

7 (10) In sentencing a nonviolent felony offender, the
8 court shall first consider alternatives to imprisonment of
9 the offender in the state prison, including placement of the
10 offender in a community corrections facility or program. In
11 considering alternatives to imprisonment, the court shall
12 examine the sentencing criteria contained in [section 4]. If
13 the offender is subsequently sentenced to the state prison
14 OR A WOMEN'S CORRECTIONAL FACILITY, the court shall state
15 its reasons why alternatives to imprisonment were not
16 selected, based on the criteria contained in [section 4]."

17 NEW SECTION. Section 4. Criteria for sentencing
18 nonviolent felony offenders. Prior to sentencing a
19 nonviolent felony offender to a term of imprisonment in the
20 state prison OR A WOMEN'S CORRECTIONAL FACILITY, the court
21 shall take into account whether:

22 (1) the interests of justice and the needs of public
23 safety truly require the level of security provided by
24 imprisonment of the offender in the state prison OR A
25 WOMEN'S CORRECTIONAL FACILITY;

1 (2) the needs of the offender can be better served in
2 the community or in a facility or program other than the
3 state prison OR A WOMEN'S CORRECTIONAL FACILITY;

4 (3) there are substantial grounds tending to excuse or
5 justify the offense, though failing to establish a defense;

6 (4) the offender acted under strong provocation;

7 (5) the offender has made restitution or will make
8 restitution to the victim of his criminal conduct;

9 (6) the offender has no prior history of conviction for
10 a criminal act or has led a law-abiding life for a
11 substantial period of time before the commission of the
12 present crime;

13 (7) the offender's criminal conduct was the result of
14 circumstances that are unlikely to recur;

15 (8) the character and attitude of the offender indicate
16 that he is likely to commit another crime;

17 (9) the offender is likely to respond quickly to
18 correctional or rehabilitative treatment; and

19 (10) imprisonment of the offender would create an
20 excessive hardship on himself or his family.

21 NEW SECTION. Section 5. Community corrections
22 facilities or programs. The department of institutions may
23 provide community corrections facilities or programs for the
24 rehabilitation of nonviolent felony offenders[, as
25 authorized under House Bill No. 272].

1 NEW SECTION. Section 6. Codification instruction.
2 [Sections 1, 4, and 5] are intended to be codified as an
3 integral part of Title 46, chapter 18, and the provisions of
4 Title 46, chapter 18, apply to [sections 1, 4, and 5].

5 NEW SECTION. Section 7. Coordination instruction. (1)
6 If House Bill No. 272 is not passed and approved, the
7 bracketed language in [section 5 of this bill] is void.

8 (2) IF THIS BILL AND HOUSE BILL NO. 272 ARE BOTH PASSED
9 AND APPROVED, THEN THE DEFINITION OF "COMMUNITY CORRECTIONS"
10 OR "COMMUNITY CORRECTIONS FACILITY OR PROGRAM" CONTAINED IN
11 [SECTION 1(1) OF THIS ACT] IS AMENDED TO READ:

12 "(1) "COMMUNITY CORRECTIONS" OR "COMMUNITY CORRECTIONS
13 FACILITY OR PROGRAM" MEANS A COMMUNITY CORRECTIONS FACILITY
14 OR PROGRAM AS DEFINED IN [SECTION 3 OF HOUSE BILL NO. 272]."

15 NEW SECTION. Section 8. Effective date. [This act] is
16 effective July 1, 1991.

-End-