

SENATE BILL NO. 49

INTRODUCED BY WATERMAN, JACOBSON, HALLIGAN, HOCKETT,  
WEEDING, BARDANOUE, SCHYE, GRADY, DARKO, RANEY, BROOKE,  
FORRESTER, COCCHIARELLA, DOLEZAL, J. RICE, J. BROWN,  
MESSMORE, H. HANSON, GILBERT, FOSTER, KASTEN,  
BERGSAGEL, MERCER, GRINDE  
BY REQUEST OF THE BOARD OF CRIME CONTROL

IN THE SENATE

JANUARY 3, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

JANUARY 7, 1991                   FIRST READING.

JANUARY 12, 1991                  ON MOTION, ADDITIONAL SPONSORS ADDED.

JANUARY 22, 1991                  COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

JANUARY 23, 1991                  PRINTING REPORT.

                                    SECOND READING, DO PASS.

JANUARY 24, 1991                  ENGROSSING REPORT.

                                    THIRD READING, PASSED.  
AYES, 50; NOES, 0.

                                    TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 25, 1991                  INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

                                    FIRST READING.

FEBRUARY 6, 1991                  COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

FEBRUARY 9, 1991                  SECOND READING, CONCURRED IN.

                                    SEGREGATED FROM COMMITTEE OF THE  
WHOLE REPORT AND RETURNED TO  
SECOND READING.

FEBRUARY 11, 1991                 ON MOTION, CONSIDERATION PASSED.

FEBRUARY 12, 1991 SECOND READING, CONCURRED IN AS AMENDED.

FEBRUARY 13, 1991 THIRD READING, CONCURRED IN. AYES, 97; NOES, 1.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

FEBRUARY 15, 1991 SECOND READING, AMENDMENTS NOT CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE REQUESTED.

MARCH 6, 1991 CONFERENCE COMMITTEE APPOINTED.

IN THE HOUSE

MARCH 8, 1991 ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 28, 1991 ON MOTION, CONFERENCE COMMITTEE DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 3, 1991 ON MOTION, CONFERENCE COMMITTEE DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 8, 1991 FREE CONFERENCE COMMITTEE REPORTED.

IN THE HOUSE

APRIL 8, 1991 FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 9, 1991 SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 10, 1991

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 10, 1991

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 11, 1991

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 12, 1991

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1                   SENATE BILL NO. 49  
 2                   INTRODUCED BY WATERMAN  
 3                   BY REQUEST OF THE BOARD OF CRIME CONTROL  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
 6 CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY;  
 7 PROVIDING PENALTIES; CREATING AN AFFIRMATIVE DEFENSE; AND  
 8 AMENDING SECTIONS 46-18-201, 46-18-231, AND 46-23-201, MCA."  
 9

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

11        NEW SECTION.   **Section 1.** Criminal sale of dangerous  
 12 drugs on or near school property -- penalty -- affirmative  
 13 defense. (1) A person commits the offense of criminal sale  
 14 of dangerous drugs on or near school property if he violates  
 15 45-9-101 in, on, or within 1,000 feet of the real property  
 16 comprising a public or private elementary or secondary  
 17 school or vocational school.

18        (2) Except as provided in 46-18-222, a person convicted  
 19 of criminal sale of dangerous drugs on or near school  
 20 property:

21        (a) shall be imprisoned in the state prison for a term  
 22 of not less than 2 years or more than life; and

23        (b) may be fined an amount of not more than \$50,000.

24        (3) It is not a defense to prosecution under subsection

25        (1) that the person did not know the distance involved.

1        (4) It is an affirmative defense to prosecution for a  
 2 violation of this section that:

3        (a) the prohibited conduct took place entirely within a  
 4 private residence; and

5        (b) no person 17 years of age or younger was present in  
 6 the private residence at any time during the commission of  
 7 the offense.

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

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

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

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

1 (vii) payment of costs as provided in 46-18-232 and  
 2 46-18-233;

3 (viii) payment of costs of ~~court---~~appointed  
 4 court-appointed counsel as provided in 46-8-113;

5 (ix) community service;

6 (x) any other reasonable conditions considered  
 7 necessary for rehabilitation or for the protection of  
 8 society; or

9 (xi) any combination of the above.

10 (b) suspend execution of sentence up to the maximum  
 11 sentence allowed for each particular offense. The sentencing  
 12 judge may impose on the defendant any reasonable  
 13 restrictions or conditions during the period of suspended  
 14 sentence. Reasonable restrictions or conditions may include  
 15 any of those listed in subsections (1)(a)(i) through  
 16 (1)(a)(xi).

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

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

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

23 (f) impose any combination of subsections (1)(b)  
 24 through (1)(e).

25 (2) If any financial obligation is imposed as a

1 condition under subsection (1)(a), sentence may be deferred  
 2 for a period not exceeding 2 years for any misdemeanor or  
 3 for a period not exceeding 6 years for any felony,  
 4 regardless of whether any other conditions are imposed.

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

11 (4) Except as provided in 46-18-222, the imposition or  
 12 execution of the first 2 years of a sentence of imprisonment  
 13 imposed under the following sections may not be deferred or  
 14 suspended: 45-5-103, 45-5-202(3) relating to aggravated  
 15 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)  
 16 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and  
 17 45-9-103(2), and [section 1].

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

22 (6) Except as provided in 46-18-222, imposition of  
 23 sentence in a felony case may not be deferred in the case of  
 24 a defendant who has been convicted of a felony on a prior  
 25 occasion, whether or not the sentence was imposed,

1 imposition of the sentence was deferred, or execution of the  
2 sentence was suspended.

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

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

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

17 **Section 3.** Section 46-18-231, MCA, is amended to read:

18 "46-18-231. Fines in felony and misdemeanor cases. (1)  
19 Whenever, upon a verdict or a plea of guilty, a person has  
20 been found guilty of an offense for which a felony penalty  
21 of imprisonment could be imposed, the court may impose a  
22 fine, only in accordance with subsection (3), and in lieu of  
23 or in addition to a sentence of imprisonment. For those  
24 crimes for which penalties are provided in 45-5-103,  
25 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),

1 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and  
2 (5)(d), 45-9-102(3), and 45-9-103(2), and [section 1], a  
3 fine may be imposed in accordance with subsection (3) in  
4 addition to a sentence of imprisonment.

5 (2) Whenever, upon a verdict or plea of guilty, a  
6 person has been found guilty of an offense for which a  
7 misdemeanor penalty of a fine could be imposed, the court  
8 may impose a fine only in accordance with subsection (3).

9 (3) The court may not sentence a defendant to pay a  
10 fine unless the defendant is or will be able to pay the  
11 fine. In determining the amount and method of payment, the  
12 court shall take into account the nature of the crime  
13 committed, the financial resources of the defendant, and the  
14 nature of the burden that payment of the fine will impose.

15 (4) Any fine levied under this section in a felony case  
16 shall be in an amount fixed by the court not to exceed  
17 \$50,000."

18 **Section 4.** Section 46-23-201, MCA, is amended to read:

19 "46-23-201. Prisoners eligible for parole. (1) Subject  
20 to the restrictions contained in subsections (2) through ~~(4)~~  
21 (5), the board may release on parole by appropriate order  
22 any person confined in the Montana state prison or the  
23 women's correction center, except persons under sentence of  
24 death and persons serving sentences imposed under  
25 46-18-202(2), when in its opinion there is reasonable

1 probability that the prisoner can be released without  
2 detriment to the prisoner or to the community.

3 (2) A convict serving a time sentence may not be  
4 paroled until he has served at least one-half of his full  
5 term, less the good time allowance provided for in  
6 53-30-105; except that as provided in subsection (3), a  
7 convict designated as a nondangerous offender under  
8 46-18-404 may be paroled after he has served one-quarter of  
9 his full term, less the good time allowance provided for in  
10 53-30-105. Any offender serving a time sentence may be  
11 paroled after he has served, upon his term of sentence,  
12 17 1/2 years.

13 (3) A convict serving a time sentence under [section 1]  
14 may not be paroled until he has served at least one-half of  
15 his full term, less the good time allowance provided for in  
16 53-30-105.

17 ~~(3)~~(4) A convict serving a life sentence may not be  
18 paroled until he has served 30 years, less the good time  
19 allowance provided for in 53-30-105.

20 ~~(4)~~(5) A parole may be ordered only for the best  
21 interests of society and not as an award of clemency or a  
22 reduction of sentence or pardon. A prisoner may be placed on  
23 parole only when the board believes that he is able and  
24 willing to fulfill the obligations of a law-abiding citizen.

25 ~~(5)~~(6) If the department of institutions certifies to

1 the board that the population at the Montana state prison  
2 exceeds its design capacity of 744 by 96 inmates or that the  
3 population at the women's correction center exceeds its  
4 design capacity of 35 inmates and that the prison or the  
5 center has exceeded its capacity for a period of more than  
6 30 days, the board shall consider convicts in the  
7 institution in which the design capacity has been exceeded  
8 eligible for parole 120 days prior to the eligibility dates  
9 provided for in subsections (2) ~~and (3)~~ through (4).

10 ~~(6)~~(7) Regardless of length of sentence, if the  
11 conditions of parole eligibility are met within the initial  
12 12 months of incarceration at Montana state prison, the  
13 provisions of subsection ~~(5)~~(6) do not apply."

14 NEW SECTION. Section 5. Codification instruction.  
15 [Section 1] is intended to be codified as an integral part  
16 of Title 45, chapter 9, part 1, and the provisions of Title  
17 45, chapter 9, part 1, apply to [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0049, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill creating the offense of criminal sale of dangerous drugs on or near school property, providing penalties, and creating an affirmative defense.

ASSUMPTIONS:

1. Prison admissions solely for drug crimes have tripled (from 26 to 73 admissions) since 1986.
2. Admissions will increase by an additional three inmates per year and length of stay will increase.
3. Variable cost is \$4.62 per day per inmate (3 inmates x \$4.62 = \$13.86 x 365 days = \$5,059 per year).


FISCAL IMPACT:

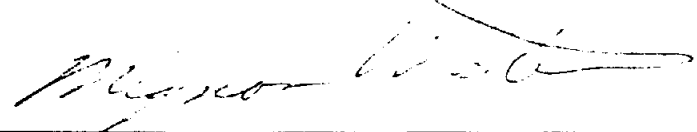
Department of Institutions:

	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>
<u>Expenditures:</u>						
Operating Costs	0	5,059	5,059	0	5,059	5,059
<u>Funding:</u>						
General Fund	0	5,059	5,059	0	5,059	5,059

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

No known data on potential fine revenue from convictions under the bill.

  
 \_\_\_\_\_  
 ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
 Office of Budget and Program Planning

  
 \_\_\_\_\_  
 MIGNON WATERMAN, PRIMARY SPONSOR                      DATE

Fiscal Note for SB0049, as introduced



APPROVED BY COMMITTEE  
ON JUDICIARY

1                   SENATE BILL NO. 49  
2                   INTRODUCED BY WATERMAN  
3                   BY REQUEST OF THE BOARD OF CRIME CONTROL  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
6 CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY;  
7 PROVIDING PENALTIES; CREATING AN AFFIRMATIVE DEFENSE; AND  
8 AMENDING SECTIONS 46-18-201, 46-18-231, AND 46-23-201, MCA."  
9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11        NEW SECTION.   **Section 1.** Criminal sale of dangerous  
12 drugs on or near school property -- penalty -- affirmative  
13 defense. (1) A person commits the offense of criminal sale  
14 of dangerous drugs on or near school property if he violates  
15 45-9-101 in, on, or within 1,000 feet of the real property  
16 comprising a public or private elementary or secondary  
17 school or vocational school.  
18        (2) Except as provided in 46-18-222, a person convicted  
19 of criminal sale of dangerous drugs on or near school  
20 property:  
21        (a) shall be imprisoned in the state prison for a term  
22 of not less than 2 years or more than life; and  
23        (b) may be fined an amount of not more than \$50,000.  
24        (3) It is not a defense to prosecution under subsection  
25 (1) that the person did not know the distance involved.

1                   (4) It is an affirmative defense to prosecution for a  
2 violation of this section that:  
3        (a) the prohibited conduct took place entirely within a  
4 private residence; and  
5        (b) no person 17 years of age or younger was present in  
6 the private residence at any time during the commission of  
7 the offense.  
8        **Section 2.** Section 46-18-201, MCA, is amended to read:  
9        "46-18-201. Sentences that may be imposed. (1) Whenever  
10 a person has been found guilty of an offense upon a verdict  
11 or a plea of guilty, the court may:  
12        (a) defer imposition of sentence, excepting sentences  
13 for driving under the influence of alcohol or drugs, for a  
14 period, except as otherwise provided, not exceeding 1 year  
15 for any misdemeanor or for a period not exceeding 3 years  
16 for any felony. The sentencing judge may impose upon the  
17 defendant any reasonable restrictions or conditions during  
18 the period of the deferred imposition. Reasonable  
19 restrictions or conditions may include:  
20        (i) jail base release;  
21        (ii) jail time not exceeding 180 days;  
22        (iii) conditions for probation;  
23        (iv) restitution;  
24        (v) payment of the costs of confinement;  
25        (vi) payment of a fine as provided in 46-18-231;



1 (vii) payment of costs as provided in 46-18-232 and  
 2 46-18-233;

3 (viii) payment of costs of ~~court---~~appointed  
 4 court-appointed counsel as provided in 46-8-113;

5 (ix) community service;

6 (x) any other reasonable conditions considered  
 7 necessary for rehabilitation or for the protection of  
 8 society; or

9 (xi) any combination of the above.

10 (b) suspend execution of sentence up to the maximum  
 11 sentence allowed for each particular offense. The sentencing  
 12 judge may impose on the defendant any reasonable  
 13 restrictions or conditions during the period of suspended  
 14 sentence. Reasonable restrictions or conditions may include  
 15 any of those listed in subsections (1)(a)(i) through  
 16 (1)(a)(xi).

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

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

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

23 (f) impose any combination of subsections (1)(b)  
 24 through (1)(e).

25 (2) If any financial obligation is imposed as a

1 condition under subsection (1)(a), sentence may be deferred  
 2 for a period not exceeding 2 years for any misdemeanor or  
 3 for a period not exceeding 6 years for any felony,  
 4 regardless of whether any other conditions are imposed.

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

11 (4) Except as provided in 46-18-222, the imposition or  
 12 execution of the first 2 years of a sentence of imprisonment  
 13 imposed under the following sections may not be deferred or  
 14 suspended: 45-5-103, 45-5-202(3) relating to aggravated  
 15 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)  
 16 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and  
 17 45-9-103(2), and [section 1].

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

22 (6) Except as provided in 46-18-222, imposition of  
 23 sentence in a felony case may not be deferred in the case of  
 24 a defendant who has been convicted of a felony on a prior  
 25 occasion, whether or not the sentence was imposed,

1 imposition of the sentence was deferred, or execution of the  
2 sentence was suspended.

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

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

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

17 **Section 3.** Section 46-18-231, MCA, is amended to read:

18 "46-18-231. Fines in felony and misdemeanor cases. (1)  
19 Whenever, upon a verdict or a plea of guilty, a person has  
20 been found guilty of an offense for which a felony penalty  
21 of imprisonment could be imposed, the court may impose a  
22 fine, only in accordance with subsection (3), and in lieu of  
23 or in addition to a sentence of imprisonment. For those  
24 crimes for which penalties are provided in 45-5-103,  
25 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),

1 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and  
2 (5)(d), 45-9-102(3), and 45-9-103(2), and [section 1], a  
3 fine may be imposed in accordance with subsection (3) in  
4 addition to a sentence of imprisonment.

5 (2) Whenever, upon a verdict or plea of guilty, a  
6 person has been found guilty of an offense for which a  
7 misdemeanor penalty of a fine could be imposed, the court  
8 may impose a fine only in accordance with subsection (3).

9 (3) The court may not sentence a defendant to pay a  
10 fine unless the defendant is or will be able to pay the  
11 fine. In determining the amount and method of payment, the  
12 court shall take into account the nature of the crime  
13 committed, the financial resources of the defendant, and the  
14 nature of the burden that payment of the fine will impose.

15 (4) Any fine levied under this section in a felony case  
16 shall be in an amount fixed by the court not to exceed  
17 \$50,000."

18 **Section 4.** Section 46-23-201, MCA, is amended to read:

19 "46-23-201. Prisoners eligible for parole. (1) Subject  
20 to the restrictions contained in subsections (2) through ~~(4)~~  
21 (5), the board may release on parole by appropriate order  
22 any person confined in the Montana state prison or the  
23 women's correction center, except persons under sentence of  
24 death and persons serving sentences imposed under  
25 46-18-202(2), when in its opinion there is reasonable

1 probability that the prisoner can be released without  
2 detriment to the prisoner or to the community.

3 (2) A convict serving a time sentence may not be  
4 paroled until he has served at least one-half of his full  
5 term, less the good time allowance provided for in  
6 53-30-105; except that as provided in subsection (3), a  
7 convict designated as a nondangerous offender under  
8 46-18-404 may be paroled after he has served one-quarter of  
9 his full term, less the good time allowance provided for in  
10 53-30-105. Any offender serving a time sentence may be  
11 paroled after he has served, upon his term of sentence,  
12 17 1/2 years.

13 (3) A convict serving a time sentence under [section 1]  
14 may not be paroled until he has served at least one-half of  
15 his full term, less the good time allowance provided for in  
16 53-30-105.

17 ~~(3)~~(4) A convict serving a life sentence may not be  
18 paroled until he has served 30 years, less the good time  
19 allowance provided for in 53-30-105.

20 ~~(4)~~(5) A parole may be ordered only for the best  
21 interests of society and not as an award of clemency or a  
22 reduction of sentence or pardon. A prisoner may be placed on  
23 parole only when the board believes that he is able and  
24 willing to fulfill the obligations of a law-abiding citizen.

25 ~~(5)~~(6) If the department of institutions certifies to

1 the board that the population at the Montana state prison  
2 exceeds its design capacity of 744 by 96 inmates or that the  
3 population at the women's correction center exceeds its  
4 design capacity of 35 inmates and that the prison or the  
5 center has exceeded its capacity for a period of more than  
6 30 days, the board shall consider convicts in the  
7 institution in which the design capacity has been exceeded  
8 eligible for parole 120 days prior to the eligibility dates  
9 provided for in subsections (2) and ~~(3)~~ through (4).

10 ~~(6)~~(7) Regardless of length of sentence, if the  
11 conditions of parole eligibility are met within the initial  
12 12 months of incarceration at Montana state prison, the  
13 provisions of subsection ~~(5)~~(6) do not apply."

14 NEW SECTION. Section 5. Codification instruction.  
15 [Section 1] is intended to be codified as an integral part  
16 of Title 45, chapter 9, part 1, and the provisions of Title  
17 45, chapter 9, part 1, apply to [section 1].

-End-

1                   SENATE BILL NO. 49  
 2                   INTRODUCED BY WATERMAN  
 3                   BY REQUEST OF THE BOARD OF CRIME CONTROL  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
 6 CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY;  
 7 PROVIDING PENALTIES; CREATING AN AFFIRMATIVE DEFENSE; AND  
 8 AMENDING SECTIONS 46-18-201, 46-18-231, AND 46-23-201, MCA."

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

11        NEW SECTION. Section 1. Criminal sale of dangerous  
 12 drugs on or near school property -- penalty -- affirmative  
 13 defense. (1) A person commits the offense of criminal sale  
 14 of dangerous drugs on or near school property if he violates  
 15 45-9-101 in, on, or within 1,000 feet of the real property  
 16 comprising a public or private elementary or secondary  
 17 school or vocational school.

18        (2) Except as provided in 46-18-222, a person convicted  
 19 of criminal sale of dangerous drugs on or near school  
 20 property:

21        (a) shall be imprisoned in the state prison for a term  
 22 of not less than 2 years or more than life; and

23        (b) may be fined an amount of not more than \$50,000.

24        (3) It is not a defense to prosecution under subsection  
 25 (1) that the person did not know the distance involved.

1           (4) It is an affirmative defense to prosecution for a  
 2 violation of this section that:

3           (a) the prohibited conduct took place entirely within a  
 4 private residence; and

5           (b) no person 17 years of age or younger was present in  
 6 the private residence at any time during the commission of  
 7 the offense.

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

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

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

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

THIRD READING



1 (vii) payment of costs as provided in 46-18-232 and  
 2 46-18-233;

3 (viii) payment of costs of ~~court---~~appointed  
 4 court-appointed counsel as provided in 46-8-113;

5 (ix) community service;

6 (x) any other reasonable conditions considered  
 7 necessary for rehabilitation or for the protection of  
 8 society; or

9 (xi) any combination of the above.

10 (b) suspend execution of sentence up to the maximum  
 11 sentence allowed for each particular offense. The sentencing  
 12 judge may impose on the defendant any reasonable  
 13 restrictions or conditions during the period of suspended  
 14 sentence. Reasonable restrictions or conditions may include  
 15 any of those listed in subsections (1)(a)(i) through  
 16 (1)(a)(xi).

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

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

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

23 (f) impose any combination of subsections (1)(b)  
 24 through (1)(e).

25 (2) If any financial obligation is imposed as a

1 condition under subsection (1)(a), sentence may be deferred  
 2 for a period not exceeding 2 years for any misdemeanor or  
 3 for a period not exceeding 6 years for any felony,  
 4 regardless of whether any other conditions are imposed.

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

11 (4) Except as provided in 46-18-222, the imposition or  
 12 execution of the first 2 years of a sentence of imprisonment  
 13 imposed under the following sections may not be deferred or  
 14 suspended: 45-5-103, 45-5-202(3) relating to aggravated  
 15 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)  
 16 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and  
 17 45-9-103(2), and [section 1].

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

22 (6) Except as provided in 46-18-222, imposition of  
 23 sentence in a felony case may not be deferred in the case of  
 24 a defendant who has been convicted of a felony on a prior  
 25 occasion, whether or not the sentence was imposed,

1 imposition of the sentence was deferred, or execution of the  
2 sentence was suspended.

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

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

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

17 **Section 3.** Section 46-18-231, MCA, is amended to read:

18 "46-18-231. Fines in felony and misdemeanor cases. (1)  
19 Whenever, upon a verdict or a plea of guilty, a person has  
20 been found guilty of an offense for which a felony penalty  
21 of imprisonment could be imposed, the court may impose a  
22 fine, only in accordance with subsection (3), and in lieu of  
23 or in addition to a sentence of imprisonment. For those  
24 crimes for which penalties are provided in 45-5-103,  
25 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),

1 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2); (3), and  
2 (5)(d), 45-9-102(3), and 45-9-103(2), and [section 1], a  
3 fine may be imposed in accordance with subsection (3) in  
4 addition to a sentence of imprisonment.

5 (2) Whenever, upon a verdict or plea of guilty, a  
6 person has been found guilty of an offense for which a  
7 misdemeanor penalty of a fine could be imposed, the court  
8 may impose a fine only in accordance with subsection (3).

9 (3) The court may not sentence a defendant to pay a  
10 fine unless the defendant is or will be able to pay the  
11 fine. In determining the amount and method of payment, the  
12 court shall take into account the nature of the crime  
13 committed, the financial resources of the defendant, and the  
14 nature of the burden that payment of the fine will impose.

15 (4) Any fine levied under this section in a felony case  
16 shall be in an amount fixed by the court not to exceed  
17 \$50,000."

18 **Section 4.** Section 46-23-201, MCA, is amended to read:

19 "46-23-201. Prisoners eligible for parole. (1) Subject  
20 to the restrictions contained in subsections (2) through ~~(4)~~  
21 (5), the board may release on parole by appropriate order  
22 any person confined in the Montana state prison or the  
23 women's correction center, except persons under sentence of  
24 death and persons serving sentences imposed under  
25 46-18-202(2), when in its opinion there is reasonable

1 probability that the prisoner can be released without  
2 detriment to the prisoner or to the community.

3 (2) A convict serving a time sentence may not be  
4 paroled until he has served at least one-half of his full  
5 term, less the good time allowance provided for in  
6 53-30-105; except that as provided in subsection (3), a  
7 convict designated as a nondangerous offender under  
8 46-18-404 may be paroled after he has served one-quarter of  
9 his full term, less the good time allowance provided for in  
10 53-30-105. Any offender serving a time sentence may be  
11 paroled after he has served, upon his term of sentence,  
12 17 1/2 years.

13 (3) A convict serving a time sentence under [section 1]  
14 may not be paroled until he has served at least one-half of  
15 his full term, less the good time allowance provided for in  
16 53-30-105.

17 ~~(3)~~(4) A convict serving a life sentence may not be  
18 paroled until he has served 30 years, less the good time  
19 allowance provided for in 53-30-105.

20 ~~(4)~~(5) A parole may be ordered only for the best  
21 interests of society and not as an award of clemency or a  
22 reduction of sentence or pardon. A prisoner may be placed on  
23 parole only when the board believes that he is able and  
24 willing to fulfill the obligations of a law-abiding citizen.

25 ~~(5)~~(6) If the department of institutions certifies to

1 the board that the population at the Montana state prison  
2 exceeds its design capacity of 744 by 96 inmates or that the  
3 population at the women's correction center exceeds its  
4 design capacity of 35 inmates and that the prison or the  
5 center has exceeded its capacity for a period of more than  
6 30 days, the board shall consider convicts in the  
7 institution in which the design capacity has been exceeded  
8 eligible for parole 120 days prior to the eligibility dates  
9 provided for in subsections (2) ~~and (3)~~ through (4).

10 ~~(6)~~(7) Regardless of length of sentence, if the  
11 conditions of parole eligibility are met within the initial  
12 12 months of incarceration at Montana state prison, the  
13 provisions of subsection ~~(5)~~(6) do not apply."

14 NEW SECTION. Section 5. Codification instruction.  
15 [Section 1] is intended to be codified as an integral part  
16 of Title 45, chapter 9, part 1, and the provisions of Title  
17 45, chapter 9, part 1, apply to [section 1].

-End-



HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 49 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bill Strizich, Chairman

Carried by: Rep. ?Bardanouve

And, that such amendments read:

1. Page 1, line 17.  
Strike: "or vocational school"

HOUSE

SB 49

#1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 49  
Representative Driscoll

February 12, 1991 1:24 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 49 (third reading copy --blue).

Signed: *Driscoll*  
Representative Driscoll

And, that such amendments to Senate Bill 49 read as follows:

- 1. Page 1, line 22.
- Following: "not"
- Strike: "less than 2 years or"

ADOPT

REJECT

HOUSE

SB 49

HB 0049.L  
321323CW.Hpd

SENATE BILL NO. 49

INTRODUCED BY WATERMAN, JACOBSON, HALLIGAN, HOCKETT, WEEDING, BARDANOUE, SCHYE, GRADY, DARKO, RANEY, BROOKE, FORRESTER, COCCHIARELLA, DOLEZAL, J. RICE, J. BROWN, MESSMORE, H. HANSON, GILBERT, FOSTER, KASTEN, BERGSAGEL, MERCER, GRINDE

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY; PROVIDING PENALTIES; CREATING AN AFFIRMATIVE DEFENSE; AND AMENDING SECTIONS 46-18-201, 46-18-231, AND 46-23-201, MCA."

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

NEW SECTION. Section 1. Criminal sale of dangerous

drugs on or near school property -- penalty -- affirmative defense. (1) A person commits the offense of criminal sale of dangerous drugs on or near school property if he violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school or vocational school.

(2) Except as provided in 46-18-222, a person convicted of criminal sale of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term

of not less than 2 years or more than life; and

(b) may be fined an amount of not more than \$50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

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;



1 (iii) conditions for probation;  
 2 (iv) restitution;  
 3 (v) payment of the costs of confinement;  
 4 (vi) payment of a fine as provided in 46-18-231;  
 5 (vii) payment of costs as provided in 46-18-232 and  
 6 46-18-233;  
 7 (viii) payment of costs of court---appointed  
 8 court-appointed counsel as provided in 46-8-113;  
 9 (ix) community service;  
 10 (x) any other reasonable conditions considered  
 11 necessary for rehabilitation or for the protection of  
 12 society; or  
 13 (xi) any combination of the above.  
 14 (b) suspend execution of sentence up to the maximum  
 15 sentence allowed for each particular offense. The sentencing  
 16 judge may impose on the defendant any reasonable  
 17 restrictions or conditions during the period of suspended  
 18 sentence. Reasonable restrictions or conditions may include  
 19 any of those listed in subsections (1)(a)(i) through  
 20 (1)(a)(xi).  
 21 (c) impose a fine as provided by law for the offense;  
 22 (d) require payment of costs as provided in 46-18-232  
 23 or payment of costs of court-appointed counsel as provided  
 24 in 46-8-113;  
 25 (e) commit the defendant to a correctional institution.

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

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

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

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

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

21 **Section 3.** Section 46-18-231, MCA, is amended to read:

22 "46-18-231. Fines in felony and misdemeanor cases. (1)  
23 Whenever, upon a verdict or a plea of guilty, a person has  
24 been found guilty of an offense for which a felony penalty  
25 of imprisonment could be imposed, the court may impose a

1 fine, only in accordance with subsection (3), and in lieu of  
2 or in addition to a sentence of imprisonment. For those  
3 crimes for which penalties are provided in 45-5-103,  
4 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),  
5 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and  
6 (5)(d), 45-9-102(3), and 45-9-103(2), and [section 1], a  
7 fine may be imposed in accordance with subsection (3) in  
8 addition to a sentence of imprisonment.

9 (2) Whenever, upon a verdict or plea of guilty, a  
10 person has been found guilty of an offense for which a  
11 misdemeanor penalty of a fine could be imposed, the court  
12 may impose a fine only in accordance with subsection (3).

13 (3) The court may not sentence a defendant to pay a  
14 fine unless the defendant is or will be able to pay the  
15 fine. In determining the amount and method of payment, the  
16 court shall take into account the nature of the crime  
17 committed, the financial resources of the defendant, and the  
18 nature of the burden that payment of the fine will impose.

19 (4) Any fine levied under this section in a felony case  
20 shall be in an amount fixed by the court not to exceed  
21 \$50,000."

22 **Section 4.** Section 46-23-201, MCA, is amended to read:

23 "46-23-201. Prisoners eligible for parole. (1) Subject  
24 to the restrictions contained in subsections (2) through {4}  
25 {5}, the board may release on parole by appropriate order

1 any person confined in the Montana state prison or the  
2 women's correction center, except persons under sentence of  
3 death and persons serving sentences imposed under  
4 46-18-202(2), when in its opinion there is reasonable  
5 probability that the prisoner can be released without  
6 detriment to the prisoner or to the community.

7 (2) A convict serving a time sentence may not be  
8 paroled until he has served at least one-half of his full  
9 term, less the good time allowance provided for in  
10 53-30-105; except that as provided in subsection (3), a  
11 convict designated as a nondangerous offender under  
12 46-18-404 may be paroled after he has served one-quarter of  
13 his full term, less the good time allowance provided for in  
14 53-30-105. Any offender serving a time sentence may be  
15 paroled after he has served, upon his term of sentence,  
16 17 1/2 years.

17 (3) A convict serving a time sentence under [section 1]  
18 may not be paroled until he has served at least one-half of  
19 his full term, less the good time allowance provided for in  
20 53-30-105.

21 ~~†3†~~(4) A convict serving a life sentence may not be  
22 paroled until he has served 30 years, less the good time  
23 allowance provided for in 53-30-105.

24 ~~†4†~~(5) A parole may be ordered only for the best  
25 interests of society and not as an award of clemency or a

1 reduction of sentence or pardon. A prisoner may be placed on  
2 parole only when the board believes that he is able and  
3 willing to fulfill the obligations of a law-abiding citizen.

4 ~~†5†~~(6) If the department of institutions certifies to  
5 the board that the population at the Montana state prison  
6 exceeds its design capacity of 744 by 96 inmates or that the  
7 population at the women's correction center exceeds its  
8 design capacity of 35 inmates and that the prison or the  
9 center has exceeded its capacity for a period of more than  
10 30 days, the board shall consider convicts in the  
11 institution in which the design capacity has been exceeded  
12 eligible for parole 120 days prior to the eligibility dates  
13 provided for in subsections (2) ~~and-†3†~~ through (4).

14 ~~†6†~~(7) Regardless of length of sentence, if the  
15 conditions of parole eligibility are met within the initial  
16 12 months of incarceration at Montana state prison, the  
17 provisions of subsection ~~†5†~~(6) do not apply."

18 NEW SECTION. Section 5. Codification instruction.  
19 [Section 1] is intended to be codified as an integral part  
20 of Title 45, chapter 9, part 1, and the provisions of Title  
21 45, chapter 9, part 1, apply to [section 1].

-End-

Free Conference Committee  
on Senate Bill No. 49  
Report No. 1, March 27, 1991

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 49, considered and recommend Senate Bill No. 49 (reference copy - salmon) be amended as follows:

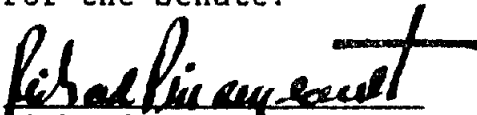
1. Title, line 12.  
Following: "SECTIONS"  
Strike: "46-18-201,"  
Following: "46-18-231"  
Strike: ", "

2. Page 2, line 1.  
Following: "or"  
Insert: "less than 3 years or"

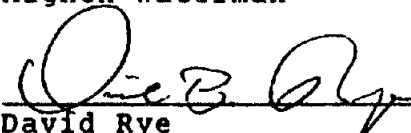
3. Page 2, line 12 through page 5, line 20.  
Strike: section 2 in its entirety  
Renumber: subsequent sections

And that this Free Conference Committee report be adopted.

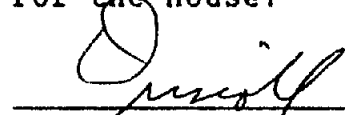
For the Senate:

  
Richard Pinsonneault, Chair

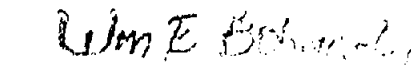
  
Mignon Waterman

  
David Rye

For the House:

  
Jerry Driscoll, Chair

  
Vicki Cocchiarella

  
William Boharski

B. 3/23/91  
Amd. Coord.

SB 4/8 10:50  
Sec. of Senate

ADOPT

REJECT

SB 49

## 1 SENATE BILL NO. 49

2 INTRODUCED BY WATERMAN, JACOBSON, HALLIGAN, HOCKETT,  
3 WEEDING, BARDANOUE, SCHYE, GRADY, DARKO, RANEY, BROOKE,  
4 FORRESTER, COCCHIARELLA, DOLEZAL, J. RICE, J. BROWN,  
5 MESSMORE, H. HANSON, GILBERT, FOSTER, KASTEN,  
6 BERGSAGEL, MERCER, GRINDE  
7 BY REQUEST OF THE BOARD OF CRIME CONTROL

8  
9 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
10 CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY;  
11 PROVIDING PENALTIES; CREATING AN AFFIRMATIVE DEFENSE; AND  
12 AMENDING SECTIONS ~~46-18-201~~, ~~46-18-231~~, AND ~~46-23-201~~, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. **Section 1.** Criminal sale of dangerous  
16 drugs on or near school property -- penalty -- affirmative  
17 defense. (1) A person commits the offense of criminal sale  
18 of dangerous drugs on or near school property if he violates  
19 45-9-101 in, on, or within 1,000 feet of the real property  
20 comprising a public or private elementary or secondary  
21 school ~~or vocational school.~~

22 (2) Except as provided in 46-18-222, a person convicted  
23 of criminal sale of dangerous drugs on or near school  
24 property:

25 (a) shall be imprisoned in the state prison for a term

1 of not ~~less than 2 years or~~ LESS THAN 3 YEARS OR more than  
2 life; and

3 (b) may be fined an amount of not more than \$50,000.

4 (3) It is not a defense to prosecution under subsection  
5 (1) that the person did not know the distance involved.

6 (4) It is an affirmative defense to prosecution for a  
7 violation of this section that:

8 (a) the prohibited conduct took place entirely within a  
9 private residence; and

10 (b) no person 17 years of age or younger was present in  
11 the private residence at any time during the commission of  
12 the offense.

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

14 ~~"46-18-201. Sentences that may be imposed. (i) 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

9       court-appointed counsel-as-provided-in-46-8-113;

10       (ix)-community-service;

11       (x)--any---other---reasonable---conditions---considered

12       necessary--for--rehabilitation--or--for--the--protection--of

13       society;-or

14       (xi)-any-combination-of-the-above;

15       (b)--suspend-execution-of-sentence-up-to-the-maximum

16       sentence-allowed-for-each-particular-offense;-The-sentencing

17       judge---may---impose---on---the---defendant---any---reasonable

18       restrictions-or-conditions-during-the--period--of--suspended

19       sentence;-Reasonable-restrictions-or-conditions-may-include

20       any--of--those--listed--in--subsections--(1)(a)(i)---through

21       (1)(a)(xi);

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

23       (d)--require--payment--of--costs--as--provided--in-46-18-232

24       or-payment-of-costs-of-court-appointed-counsel--as--provided

25       in-46-8-113;

1       (e)--commit-the-defendant-to-a-correctional-institution;

2       with-or-without-a-fine-as-provided-by-law-for-the-offense;

3       (f)--impose---any---combination--of--subsections--(1)(b)

4       through-(1)(e);

5       (2)--if--any--financial--obligation--is--imposed--as---a

6       condition--under-subsection-(1)(a);-sentence-may-be-deferred

7       for-a-period-not-exceeding-2-years-for--any--misdemeanor--or

8       for---a--period--not--exceeding--6--years--for--any--felony;

9       regardless-of-whether-any-other-conditions-are-imposed;

10       (3)--if-any-restrictions--or--conditions--imposed--under

11       subsection--(1)(a)--or--(1)(b)-are-violated;-the-court-shall

12       consider-any-elapsed-time-and-either-expressly-allow-part-or

13       all-of-it-as-a-credit-against-the-sentence-or-reject-all--or

14       part-as-a-credit-and-state-its-reasons-in-the-order--Credit;

15       however;-must-be-allowed-for-jail-time-already-served-

16       (4)--Except--as-provided-in-46-18-222;-the-imposition-or

17       execution-of-the-first-2-years-of-a-sentence-of-imprisonment

18       imposed-under-the-following-sections-may-not-be-deferred--or

19       suspended;-45-5-103;-45-5-202(3)--relating--to--aggravated

20       assault;-45-5-302(2);-45-5-303(2);-45-5-401(2);-45-5-503(2)

21       and-(3);-45-9-101(2);-(3);-and--(5)(d);-45-9-102(3);-and

22       45-9-103(2);-and-{section-1};

23       (5)--Except--as-provided-in-46-18-222;-the-imposition-or

24       execution--of--the--first--10--years--of--a--sentence--of

25       imprisonment--imposed--under-45-5-102-may-not-be-deferred-or

1 suspended.

2 {6}--Except-as--provided--in--46-18-222,--imposition--of  
3 sentence-in-a-felony-case-may-not-be-deferred-in-the-case-of  
4 a--defendant--who--has-been-convicted-of-a-felony-on-a-prior  
5 occasion,--whether--or--not--the--sentence--was--imposed,  
6 imposition-of-the-sentence-was-deferred,--or--execution-of-the  
7 sentence-was-suspended.

8 {7}--If--the--victim--was--less--than--16-years-old,--the  
9 imposition-or-execution-of-the-first-30-days-of--a--sentence  
10 of--imprisonment--imposed--under--45-5-502(3),--45-5-503,  
11 45-5-504,--45-5-505,--or--45-5-507--may--not--be--deferred--or  
12 suspended.--Section-46-18-222--does--not--apply--to--the--first-30  
13 days-of-such-imprisonment.

14 {8}--In-imposing-a-sentence-on-a-defendant-convicted--of  
15 a--sexual-offense-as-defined-in-46-23-502,--the-court-may-not  
16 waive-the-registration-requirement--provided--in--46-18-254,  
17 46-18-255,--and--Title-46,--chapter-23,--part-5.

18 {9}--A--person-convicted-of-a-sexual-offense,--as-defined  
19 in-46-23-502,--and-sentenced-to--imprisonment--in--the--state  
20 prison-shall-enroll-in-the-educational-phase-of-the-prison's  
21 sexual-offender-program."

22 **Section 2.** Section 46-18-231, MCA, is amended to read:

23 "46-18-231. Fines in felony and misdemeanor cases. (1)  
24 Whenever, upon a verdict or a plea of guilty, a person has  
25 been found guilty of an offense for which a felony penalty

1 of imprisonment could be imposed, the court may impose a  
2 fine, only in accordance with subsection (3), and in lieu of  
3 or in addition to a sentence of imprisonment. For those  
4 crimes for which penalties are provided in 45-5-103,  
5 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),  
6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and  
7 (5)(d), 45-9-102(3), and 45-9-103(2), and [section 1], a  
8 fine may be imposed in accordance with subsection (3) in  
9 addition to a sentence of imprisonment.

10 (2) Whenever, upon a verdict or plea of guilty, a  
11 person has been found guilty of an offense for which a  
12 misdemeanor penalty of a fine could be imposed, the court  
13 may impose a fine only in accordance with subsection (3).

14 (3) The court may not sentence a defendant to pay a  
15 fine unless the defendant is or will be able to pay the  
16 fine. In determining the amount and method of payment, the  
17 court shall take into account the nature of the crime  
18 committed, the financial resources of the defendant, and the  
19 nature of the burden that payment of the fine will impose.

20 (4) Any fine levied under this section in a felony case  
21 shall be in an amount fixed by the court not to exceed  
22 \$50,000."

23 **Section 3.** Section 46-23-201, MCA, is amended to read:

24 "46-23-201. Prisoners eligible for parole. (1) Subject  
25 to the restrictions contained in subsections (2) through (4)

1 (5), the board may release on parole by appropriate order  
 2 any person confined in the Montana state prison or the  
 3 women's correction center, except persons under sentence of  
 4 death and persons serving sentences imposed under  
 5 46-18-202(2), when in its opinion there is reasonable  
 6 probability that the prisoner can be released without  
 7 detriment to the prisoner or to the community.

8 (2) A convict serving a time sentence may not be  
 9 paroled until he has served at least one-half of his full  
 10 term, less the good time allowance provided for in  
 11 53-30-105; except that as provided in subsection (3), a  
 12 convict designated as a nondangerous offender under  
 13 46-18-404 may be paroled after he has served one-quarter of  
 14 his full term, less the good time allowance provided for in  
 15 53-30-105. Any offender serving a time sentence may be  
 16 paroled after he has served, upon his term of sentence,  
 17 17 1/2 years.

18 (3) A convict serving a time sentence under [section 1]  
 19 may not be paroled until he has served at least one-half of  
 20 his full term, less the good time allowance provided for in  
 21 53-30-105.

22 ~~(3)~~(4) A convict serving a life sentence may not be  
 23 paroled until he has served 30 years, less the good time  
 24 allowance provided for in 53-30-105.

25 ~~(4)~~(5) A parole may be ordered only for the best

1 interests of society and not as an award of clemency or a  
 2 reduction of sentence or pardon. A prisoner may be placed on  
 3 parole only when the board believes that he is able and  
 4 willing to fulfill the obligations of a law-abiding citizen.

5 ~~(5)~~(6) If the department of institutions certifies to  
 6 the board that the population at the Montana state prison  
 7 exceeds its design capacity of 744 by 96 inmates or that the  
 8 population at the women's correction center exceeds its  
 9 design capacity of 35 inmates and that the prison or the  
 10 center has exceeded its capacity for a period of more than  
 11 30 days, the board shall consider convicts in the  
 12 institution in which the design capacity has been exceeded  
 13 eligible for parole 120 days prior to the eligibility dates  
 14 provided for in subsections (2) ~~and (3)~~ through (4).

15 ~~(6)~~(7) Regardless of length of sentence, if the  
 16 conditions of parole eligibility are met within the initial  
 17 12 months of incarceration at Montana state prison, the  
 18 provisions of subsection ~~(5)~~(6) do not apply."

19 **NEW SECTION. Section 4. Codification instruction.**  
 20 [Section 1] is intended to be codified as an integral part  
 21 of Title 45, chapter 9, part 1, and the provisions of Title  
 22 45, chapter 9, part 1, apply to [section 1].

-End-