

MARCH 23, 1991

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED.

MARCH 28, 1991

CONFERENCE COMMITTEE APPOINTED.

IN THE HOUSE

APRIL 3, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 19, 1991

CONFERENCE COMMITTEE REPORTED.

APRIL 22, 1991

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 23, 1991

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1991

CONFERENCE COMMITTEE REPORT
ADOPTED.

IN THE SENATE

APRIL 23, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 204
 2 INTRODUCED BY [Signature]
 3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL
 6 ALTERNATIVE SENTENCING AUTHORITY FOR OFFENSES RELATED TO
 7 DANGEROUS DRUGS; PROVIDING GOVERNMENTAL IMMUNITY UNDER
 8 CERTAIN CIRCUMSTANCES; PROVIDING AN EXEMPTION FROM MANDATORY
 9 MINIMUM SENTENCES; AND AMENDING SECTIONS 45-9-202 AND
 10 46-18-201, MCA."

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

13 **Section 1.** Section 45-9-202, MCA, is amended to read:
 14 "45-9-202. Alternative sentencing authority. (1) A
 15 person convicted of ~~criminal-possession-of-dangerous-drugs,~~
 16 ~~criminal-sale-of-imitation-dangerous-drugs,~~ ~~criminal~~
 17 ~~possession-of-imitation-dangerous-drugs-with-purpose-to~~
 18 ~~sell,-fraudulently-obtaining-dangerous-drugs,-or-altering~~
 19 ~~labels-on-dangerous-drugs,-if-he-is-shown-to-be-an-excessive~~
 20 ~~or-habitual-user-of-dangerous-drugs,-as-defined-in~~
 21 ~~50-32-101,-either-from-the-face-of-the-record-or-by-a~~
 22 ~~presentence-investigation,~~ a dangerous drug offense under
 23 this chapter may, in lieu of imprisonment, be committed to
 24 the custody of any institution for rehabilitative treatment
 25 for not less than 6 months or more than 2 years sentenced

1 according to the alternatives provided in subsection (2).
 2 (2) If the court determines, either from the face of
 3 the record or from a presentence investigation and report,
 4 that incarceration of the defendant is not appropriate, the
 5 court may, as a condition of a suspended or deferred
 6 sentence, impose one or more of the following alternatives:
 7 (a) imposition of a fine not to exceed the maximum
 8 amount provided by statute for those offenses that specify a
 9 fine as part of the penalty or \$50,000 for those offenses
 10 that do not specify a fine;
 11 (b) commitment to a residential drug treatment facility
 12 licensed and approved by the state for rehabilitative
 13 treatment for not less than the minimum recommended time
 14 determined necessary by the facility and not more than 2
 15 years;
 16 (c) mandatory service of not more than 2,000 hours in a
 17 community-based drug treatment or drug education program
 18 with compliance to be monitored by the probation and parole
 19 bureau of the department of institutions based upon
 20 information provided by the treatment or education program;
 21 (d) if recommended by the probation and parole bureau,
 22 placement in a program of intensive probation that requires,
 23 at a minimum, that the defendant comply with all of the
 24 following conditions:
 25 (i) maintain employment or full-time student status at

1 an approved school, making progress satisfactory to the
 2 probation officer, or be involved in supervised job searches
 3 and community service work designated by the probation
 4 officer;

5 (ii) pay probation supervision fees through the clerk of
 6 the district court of not less than \$50 per month to be
 7 deposited in an account in the state special revenue fund to
 8 the credit of the department of institutions;

9 (iii) find a place to reside approved by the probation
 10 officer that may not be changed without the officer's
 11 approval;

12 (iv) remain at the residence at all times except to go
 13 to work, to attend school, or to perform community service
 14 or as otherwise specifically allowed by the probation
 15 officer;

16 (v) remain drug free and submit to drug and alcohol
 17 tests administered randomly once each month by or under
 18 supervision of the probation officer;

19 (vi) perform not less than 10 hours of community service
 20 each month as approved by the probation officer, except that
 21 full-time students may be exempted or required to perform
 22 fewer hours of community service;

23 (vii) enroll or make satisfactory effort to seek
 24 enrollment in an approved drug rehabilitation program; and

25 (viii) comply with any other conditions imposed by the

1 court to meet the needs of the community and the defendant;

2 (e) suspension or revocation of the defendant's
 3 driver's license issued under Title 61, chapter 5, subject
 4 to the following terms and conditions:

5 (i) upon the first conviction of an offense under this
 6 chapter, the driver's license must be suspended for 6
 7 months;

8 (ii) upon the second conviction, the driver's license
 9 must be revoked for 1 year;

10 (iii) upon a third or subsequent conviction, the
 11 driver's license must be revoked for 3 years."

12 NEW SECTION. Section 2. Surrender of license. If a
 13 court suspends or revokes a driver's license under
 14 45-9-202(2)(e), the defendant shall, at the time of
 15 sentencing, surrender the license to the court. The court
 16 shall forward the license and a copy of the sentencing order
 17 to the department of justice. The defendant may apply to the
 18 department for issuance of a probationary license under
 19 61-2-302.

20 NEW SECTION. Section 3. Immunity from liability. (1)
 21 Except as provided in subsection (2), if a court imposes
 22 mandatory service under 45-9-202(2)(c) or community service
 23 under 45-9-202(2)(d), an agency supervising the service,
 24 treatment, or education program in which the defendant is
 25 performing the service and the officers, agents, and

1 employees of the program are immune from liability for any
2 act or omission involved in the supervision or
3 administration of the court-ordered service.

4 (2) The immunity provided in subsection (1) does not
5 extend to acts alleged to constitute gross negligence or
6 gross recklessness.

7 NEW SECTION. **Section 4. Exemption from mandatory**
8 **minimum sentences.** If a court imposes any of the sentencing
9 alternatives specified in 45-9-202, the mandatory minimum
10 sentences provided in 46-18-201(4) do not apply.

11 **Section 5.** Section 46-18-201, MCA, is amended to read:

12 **"46-18-201. Sentences that may be imposed.** (1) Whenever
13 a person has been found guilty of an offense upon a verdict
14 or a plea of guilty, the court may:

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

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

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

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

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

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

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

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

25 (6) Except as provided in 46-18-222, imposition of

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

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

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

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

20 NEW SECTION. **Section 6.** Codification instruction.
21 [Sections 2 through 4] are intended to be codified as an
22 integral part of Title 45, chapter 9, part 2, and the
23 provisions of Title 45, chapter 9, part 2, apply to
24 [sections 2 through 4].

25 NEW SECTION. **Section 7.** Two-thirds vote required.

LC 0558/01

1 Because [section 3] limits governmental liability, Article
2 II, section 18, of the Montana constitution requires a vote
3 of two-thirds of the members of each house for passage.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 204

INTRODUCED BY GAGE

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL
ALTERNATIVE SENTENCING AUTHORITY FOR OFFENSES RELATED TO
DANGEROUS DRUGS; PROVIDING GOVERNMENTAL IMMUNITY UNDER
CERTAIN CIRCUMSTANCES; PROVIDING AN EXEMPTION FROM MANDATORY
MINIMUM SENTENCES; AND AMENDING SECTIONS 45-9-202 AND
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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person convicted of ~~criminal-possession-of-dangerous-drugs;~~
~~criminal--sale--of--imitation--dangerous---drugs;--criminal~~
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~~sell;--fraudulently-obtaining-dangerous--drugs;--or--altering~~
~~labels-on-dangerous-drugs;--if-he-is-shown-to-be-an-excessive~~
~~or---habitual---user--of--dangerous--drugs;--as--defined--in~~
~~50-32-101;--either-from-the--face--of--the--record--or--by--a~~
presentence--investigation; a dangerous drug offense under
this chapter may, in lieu of imprisonment, be committed--to
the--custody-of-any-institution-for-rehabilitative-treatment
for-not-less-than-6-months-or-more-than--2--years sentenced

according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of
the record or from a presentence investigation and report,
that incarceration of the defendant is not appropriate, the
court may, as a condition of a suspended or deferred
sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum
amount provided by statute for those offenses that specify a
fine as part of the penalty or ~~\$50,000~~ \$1,000 for those
offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility
licensed and approved by the state for rehabilitative
treatment for not less than the minimum recommended time
determined necessary by the facility and not more than 2
years 1 YEAR;

(c) mandatory service of not more than 2,000 hours in a
community-based drug treatment or drug education program
with compliance to be monitored by the probation and parole
bureau of the department of institutions based upon
information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau,
placement in a program of intensive probation that requires,
at a minimum, that the defendant comply with all of the
following conditions:

(i) maintain employment or full-time student status at

SECOND READING



1 an approved school, making progress satisfactory to the
 2 probation officer, or be involved in supervised job searches
 3 and community service work designated by the probation
 4 officer;

5 (ii) pay probation supervision fees through the clerk of
 6 the district court of not less than \$50 per month to be
 7 deposited in an account in the state special revenue fund to
 8 the credit of the department of institutions;

9 (iii) find a place to reside approved by the probation
 10 officer that may not be changed without the officer's
 11 approval;

12 (iv) remain at the residence at all times except to go
 13 to work, to attend school, or to perform community service
 14 or as otherwise specifically allowed by the probation
 15 officer;

16 (v) remain drug free and submit to drug and alcohol
 17 tests administered randomly NOT LESS THAN once each month by
 18 or under supervision of the probation officer;

19 (vi) perform not less than 10 hours of community service
 20 each month as approved by the probation officer, except that
 21 full-time students may be exempted or required to perform
 22 fewer hours of community service;

23 (vii) enroll or make satisfactory effort to seek
 24 enrollment in an approved drug rehabilitation program; and

25 (viii) comply with any other conditions imposed by the

1 court to meet the needs of the community and the defendant;

2 (e) suspension or revocation of the defendant's
 3 driver's license issued under Title 61, chapter 5, subject
 4 to the following terms and conditions:

5 (i) upon the first conviction of an offense under this
 6 chapter, the driver's license must be suspended for 6
 7 months;

8 (ii) upon the second conviction, the driver's license
 9 must be revoked for 1 year;

10 (iii) upon a third or subsequent conviction, the
 11 driver's license must be revoked for 3 years."

12 NEW SECTION. Section 2. Surrender of license. If a
 13 court suspends or revokes a driver's license under
 14 45-9-202(2)(e), the defendant shall, at the time of
 15 sentencing, surrender the license to the court. The court
 16 shall forward the license and a copy of the sentencing order
 17 to the department of justice. The defendant may apply to the
 18 department for issuance of a probationary license under
 19 61-2-302.

20 NEW SECTION. Section 3. Immunity from liability. (1)
 21 Except as provided in subsection (2), if a court imposes
 22 mandatory service under 45-9-202(2)(c) or community service
 23 under 45-9-202(2)(d), an agency supervising the service,
 24 treatment, or education program in which the defendant is
 25 performing the service and the officers, agents, and

1 employees of the program are immune from liability for any
 2 act or omission involved in the supervision or
 3 administration of the court-ordered service. THE IMMUNITY
 4 GRANTED BY THIS SECTION APPLIES ONLY TO LAWSUITS FILED BY
 5 THE DEFENDANT AGAINST THE SUPERVISING AGENCY AND ITS AGENTS
 6 AND EMPLOYEES AND ONLY TO ACTS ALLEGED TO HAVE OCCURRED
 7 DURING THE COURSE OF SUPERVISION.

8 (2) The immunity provided in subsection (1) does not
 9 extend to acts alleged to constitute gross negligence or
 10 gross recklessness.

11 NEW SECTION. Section 4. Exemption from mandatory
 12 minimum sentences. If a court imposes any of the sentencing
 13 alternatives specified in 45-9-202, the mandatory minimum
 14 sentences provided in 46-18-201(4) do not apply.

15 **Section 5.** Section 46-18-201, MCA, is amended to read:

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

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 20 for driving under the influence of alcohol or drugs, for a
 21 period, except as otherwise provided, not exceeding 1 year
 22 for any misdemeanor or for a period not exceeding 3 years
 23 for any felony. The sentencing judge may impose upon the
 24 defendant any reasonable restrictions or conditions during
 25 the period of the deferred imposition. Reasonable

1 restrictions or conditions may include:

- 2 (i) jail base release;
- 3 (ii) jail time not exceeding 180 days;
- 4 (iii) conditions for probation;
- 5 (iv) restitution;
- 6 (v) payment of the costs of confinement;
- 7 (vi) payment of a fine as provided in 46-18-231;
- 8 (vii) payment of costs as provided in 46-18-232 and
- 9 46-18-233;
- 10 (viii) payment of costs of court appointed counsel as
- 11 provided in 46-8-113;
- 12 (ix) community service;
- 13 (x) any other reasonable conditions considered
- 14 necessary for rehabilitation or for the protection of
- 15 society; or
- 16 (xi) 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 (1)(a)(xi).
- 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) impose any combination of subsections (1)(b)
6 through (1)(e).

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

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

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19 imposition or execution of the first 2 years of a sentence
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23 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d),
24 45-9-102(3), and 45-9-103(2).

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

1 execution of the first 10 years of a sentence of
2 imprisonment imposed under 45-5-102 may not be deferred or
3 suspended.

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

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

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

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

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25 [Sections 2 through 4] are intended to be codified as an

1 integral part of Title 45, chapter 9, part 2, and the
2 provisions of Title 45, chapter 9, part 2, apply to
3 [sections 2 through 4].

4 NEW SECTION. **Section 7.** Two-thirds vote required.

5 Because [section 3] limits governmental liability, Article
6 II, section 18, of the Montana constitution requires a vote
7 of two-thirds of the members of each house for passage.

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according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

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(i) maintain employment or full-time student status at

THIRD READING



1 an approved school, making progress satisfactory to the
 2 probation officer, or be involved in supervised job searches
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 14 necessary for rehabilitation or for the protection of
 15 society; or
 16 (xi) 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 (1)(a)(xi).
 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) impose any combination of subsections (1)(b)
6 through (1)(e).

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

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

18 (4) Except as provided in 45-9-202 and 46-18-222, the
19 imposition or execution of the first 2 years of a sentence
20 of imprisonment imposed under the following sections may not
21 be deferred or suspended: 45-5-103, 45-5-202(3) relating to
22 aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
23 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d),
24 45-9-102(3), and 45-9-103(2).

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

1 execution of the first 10 years of a sentence of
2 imprisonment imposed under 45-5-102 may not be deferred or
3 suspended.

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

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

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

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

24 NEW SECTION. Section 6. Codification instruction.
25 [Sections 2 through 4] are intended to be codified as an

1 integral part of Title 45, chapter 9, part 2, and the
2 provisions of Title 45, chapter 9, part 2, apply to
3 [sections 2 through 4].

4 NEW SECTION. **Section 7. Two-thirds vote required.**
5 Because [section 3] limits governmental liability, Article
6 II, section 18, of the Montana constitution requires a vote
7 of two-thirds of the members of each house for passage.

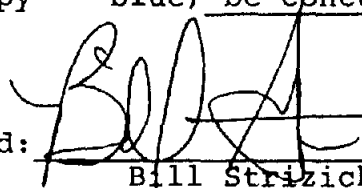
-End-

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 204 (third reading copy -- blue) be concurred in as amended.

Signed: 
Bill Strizich, Chairman

Carried by: Rep. Boharski

And, that such amendments read:

1. Title, line 6.

Following: "FOR"

Insert: "FELONY"

2. Title, lines 7 and 8.

Strike: "PROVIDING GOVERNMENTAL IMMUNITY UNDER CERTAIN CIRCUMSTANCES;"

3. Page 1, line 22.

Following: "drug"

Insert: "felony"

4. Page 4, line 20 through page 5, line 10.

Strike: section 3 in its entirety

Renumber: subsequent sections

5. Page 8, line 25.

Page 9, line 3.

Strike: "through 4"

Insert: "and 3"

6. Page 9, lines 4 through 7.

Strike: section 7 in its entirety

HOUSE
SB 204

SENATE BILL NO. 204

INTRODUCED BY GAGE

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL ALTERNATIVE SENTENCING AUTHORITY FOR FELONY OFFENSES RELATED TO DANGEROUS DRUGS; PROVIDING GOVERNMENTAL IMMUNITY UNDER CERTAIN CIRCUMSTANCES; PROVIDING AN EXEMPTION FROM MANDATORY MINIMUM SENTENCES; AND AMENDING SECTIONS 45-9-202 AND 46-18-201, MCA."

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

Section 1. Section 45-9-202, MCA, is amended to read:

"45-9-202. Alternative sentencing authority. (1) A person convicted of criminal possession of dangerous drugs, criminal sale of imitation dangerous drugs, criminal possession of imitation dangerous drugs with purpose to sell, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation, a dangerous drug FELONY offense under this chapter may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more

than 2 years sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or \$50,000 \$1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 2 years 1 YEAR;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of institutions based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:



1 (i) maintain employment or full-time student status at
 2 an approved school, making progress satisfactory to the
 3 probation officer, or be involved in supervised job searches
 4 and community service work designated by the probation
 5 officer;

6 (ii) pay probation supervision fees through the clerk of
 7 the district court of not less than \$50 per month to be
 8 deposited in an account in the state special revenue fund to
 9 the credit of the department of institutions;

10 (iii) find a place to reside approved by the probation
 11 officer that may not be changed without the officer's
 12 approval;

13 (iv) remain at the residence at all times except to go
 14 to work, to attend school, or to perform community service
 15 or as otherwise specifically allowed by the probation
 16 officer;

17 (v) remain drug free and submit to drug and alcohol
 18 tests administered randomly NOT LESS THAN once each month by
 19 or under supervision of the probation officer;

20 (vi) perform not less than 10 hours of community service
 21 each month as approved by the probation officer, except that
 22 full-time students may be exempted or required to perform
 23 fewer hours of community service;

24 (vii) enroll or make satisfactory effort to seek
 25 enrollment in an approved drug rehabilitation program; and

1 (viii) comply with any other conditions imposed by the
 2 court to meet the needs of the community and the defendant;

3 (e) suspension or revocation of the defendant's
 4 driver's license issued under Title 61, chapter 5, subject
 5 to the following terms and conditions:

6 (i) upon the first conviction of an offense under this
 7 chapter, the driver's license must be suspended for 6
 8 months;

9 (ii) upon the second conviction, the driver's license
 10 must be revoked for 1 year;

11 (iii) upon a third or subsequent conviction, the
 12 driver's license must be revoked for 3 years."

13 NEW SECTION. Section 2. Surrender of license. If a
 14 court suspends or revokes a driver's license under
 15 45-9-202(2)(e), the defendant shall, at the time of
 16 sentencing, surrender the license to the court. The court
 17 shall forward the license and a copy of the sentencing order
 18 to the department of justice. The defendant may apply to the
 19 department for issuance of a probationary license under
 20 61-2-302.

21 ~~NEW SECTION. Section 3. Immunity from liability. (1)~~
 22 ~~Except as provided in subsection (2), if a court imposes~~
 23 ~~mandatory service under 45-9-202(2)(c) or community service~~
 24 ~~under 45-9-202(2)(d), an agency supervising the service,~~
 25 ~~treatment, or education program in which the defendant is~~

1 performing the service and the officers, agents, and
 2 employees of the program are immune from liability for any
 3 act or omission involved in the supervision or
 4 administration of the court-ordered service. ~~THE IMMUNITY~~
 5 ~~GRANTED BY THIS SECTION APPLIES ONLY TO LAWSUITS FILED BY~~
 6 ~~THE DEFENDANT AGAINST THE SUPERVISING AGENCY AND ITS AGENTS~~
 7 ~~AND EMPLOYEES AND ONLY TO ACTS ALLEGED TO HAVE OCCURRED~~
 8 ~~DURING THE COURSE OF SUPERVISION.~~

9 (2) The immunity provided in subsection (1) does not
 10 extend to acts alleged to constitute gross negligence or
 11 gross recklessness.

12 NEW SECTION. Section 3. Exemption from mandatory
 13 minimum sentences. If a court imposes any of the sentencing
 14 alternatives specified in 45-9-202, the mandatory minimum
 15 sentences provided in 46-18-201(4) do not apply.

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

17 **"46-18-201. Sentences that may be imposed.** (1) Whenever
 18 a person has been found guilty of an offense upon a verdict
 19 or a plea of guilty, the court may:

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

1 the period of the deferred imposition. Reasonable
 2 restrictions or conditions may include:

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

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

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

6 (f) impose any combination of subsections (1)(b)
7 through (1)(e).

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

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

19 (4) Except as provided in 45-9-202 and 46-18-222, the
20 imposition or execution of the first 2 years of a sentence
21 of imprisonment imposed under the following sections may not
22 be deferred or suspended: 45-5-103, 45-5-202(3) relating to
23 aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
24 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d),
25 45-9-102(3), and 45-9-103(2).

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

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

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

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

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

25 NEW SECTION. **Section 5.** Codification instruction.

SB 0204/03

1 [Sections 2 through-4 AND 3] are intended to be codified as
2 an integral part of Title 45, chapter 9, part 2, and the
3 provisions of Title 45, chapter 9, part 2, apply to
4 [sections 2 through-4 AND 3].

5 ~~NEW-SECTION: Section-7.--Two-thirds---vote---required.~~
6 ~~Because--{section--3}-limits-governmental-liability,-Article~~
7 ~~11,-section-18,-of-the-Montana-constitution-requires-a--vote~~
8 ~~of-two-thirds-of-the-members-of-each-house-for-passage.~~

-End-

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 204, met and considered the amendments in the House Judiciary Standing Committee Report on Senate Bill No. 204 dated March 11, 1991.

We recommend that Senate Bill No. 204 (reference copy - salmon) be amended as follows:

1. Title, line 8.
Following: "CIRCUMSTANCES,"
Insert: "PROVIDING GOVERNMENTAL IMMUNITY UNDER CERTAIN CIRCUMSTANCES;"

2. Page 5, line 12.
Following: line 11
Insert: "NEW SECTION. Section 3. Immunity from liability.
Except as provided in [subsections (2) and (3)], if a court imposes mandatory service under 45-9-202(2)(c) or community service under 45-9-202(2)(d), a public or private agency supervising the service, treatment, or education program in which the defendant is participating and the officers, agents, and employees of the public or private agency are immune from liability to the defendant for any acts or omissions alleged to have occurred within the course and scope of supervision.
(2) The immunity provided in subsection (1) does not extend to acts or omissions alleged to constitute gross negligence or intentional acts.
(3) The immunity provided in subsection (1) for a public agency does not extend to claims for workers' compensation benefits when the defendant is injured while performing community service."

Renumber; subsequent sections

3. Page 9, lines 1 and 4.
Strike: "AND 3"
Insert: "through 4"

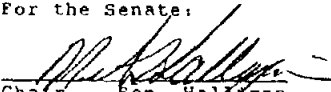
4. Page 9, line 9.
Following: line 8
Insert: "NEW SECTION. Section 7. Two-thirds vote required.
Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house for passage.

NEW SECTION. Section 8. Coordination instruction. If Senate Bill No. 473 is not passed and approved, then [section 3 of this act] is amended as follows:

- (1) the bracketed language in subsection (1) is amended to read "subsection (2)"; and
(2) subsection (3) is void."

And that this Conference Committee report be adopted.


For the Senate:

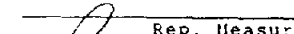

Chair, Sen. Halligan

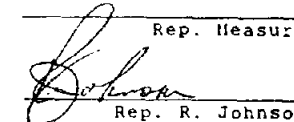

Sen. Doherty


Sen. Gage

For the House:


Chair, Rep. Strizich


Rep. Measure


Rep. R. Johnson

M 4-20-91
Ad. Coord.

SB 4-2091 9:40
Sec. of Senate

ADOPT

REJECT

841640CC.Sj1

C.C.R #1
SB 204
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1 SENATE BILL NO. 204

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL
6 ALTERNATIVE SENTENCING AUTHORITY FOR FELONY OFFENSES RELATED
7 TO DANGEROUS DRUGS; ~~PROVIDING GOVERNMENTAL IMMUNITY UNDER~~
8 ~~CERTAIN CIRCUMSTANCES; PROVIDING GOVERNMENTAL IMMUNITY UNDER~~
9 CERTAIN CIRCUMSTANCES; PROVIDING AN EXEMPTION FROM MANDATORY
10 MINIMUM SENTENCES; AND AMENDING SECTIONS 45-9-202 AND
11 46-18-201, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 45-9-202, MCA, is amended to read:

15 "45-9-202. Alternative sentencing authority. (1) A
16 person convicted of ~~criminal-possession-of-dangerous--drugs;~~
17 ~~criminal--sale--of--imitation--dangerous--drugs;~~ ~~criminal~~
18 ~~possession-of-imitation--dangerous--drugs--with--purpose--to~~
19 ~~sell;~~ ~~fraudulently--obtaining--dangerous-drugs;~~ ~~or--altering~~
20 ~~labels-on-dangerous-drugs;~~ ~~if-he-is-shown-to-be-an-excessive~~
21 ~~or--habitual--user--of--dangerous--drugs;~~ ~~as---defined---in~~
22 ~~50-32-101;~~ ~~either--from--the--face--of--the--record--or--by--a~~
23 ~~presentence-investigation;~~ a dangerous drug FELONY offense
24 under this chapter may, in lieu of imprisonment, be
25 ~~committed--to--the--custody--of--any--institution--for~~

1 ~~rehabilitative--treatment-for-not-less-than-6-months-or-more~~
2 ~~than--2--years~~ sentenced according to the alternatives
3 provided in subsection (2).

4 (2) IF the court determines, either from the face of
5 the record or from a presentence investigation and report,
6 that incarceration of the defendant is not appropriate, the
7 court may, as a condition of a suspended or deferred
8 sentence, impose one or more of the following alternatives:

9 (a) imposition of a fine not to exceed the maximum
10 amount provided by statute for those offenses that specify a
11 fine as part of the penalty or ~~950,000~~ \$1,000 for those
12 offenses that do not specify a fine;

13 (b) commitment to a residential drug treatment facility
14 licensed and approved by the state for rehabilitative
15 treatment for not less than the minimum recommended time
16 determined necessary by the facility and not more than 2
17 years 1 YEAR;

18 (c) mandatory service of not more than 2,000 hours in a
19 community-based drug treatment or drug education program
20 with compliance to be monitored by the probation and parole
21 bureau of the department of institutions based upon
22 information provided by the treatment or education program;

23 (d) if recommended by the probation and parole bureau,
24 placement in a program of intensive probation that requires,
25 at a minimum, that the defendant comply with all of the

1 Following conditions:

2 (i) maintain employment or full-time student status at
 3 an approved school, making progress satisfactory to the
 4 probation officer, or be involved in supervised job searches
 5 and community service work designated by the probation
 6 officer;

7 (ii) pay probation supervision fees through the clerk of
 8 the district court of not less than \$50 per month to be
 9 deposited in an account in the state special revenue fund to
 10 the credit of the department of institutions;

11 (iii) find a place to reside approved by the probation
 12 officer that may not be changed without the officer's
 13 approval;

14 (iv) remain at the residence at all times except to go
 15 to work, to attend school, or to perform community service
 16 or as otherwise specifically allowed by the probation
 17 officer;

18 (v) remain drug free and submit to drug and alcohol
 19 tests administered randomly NOT LESS THAN once each month by
 20 or under supervision of the probation officer;

21 (vi) perform not less than 10 hours of community service
 22 each month as approved by the probation officer, except that
 23 full-time students may be exempted or required to perform
 24 fewer hours of community service;

25 (vii) enroll or make satisfactory effort to seek

1 enrollment in an approved drug rehabilitation program; and

2 (viii) comply with any other conditions imposed by the
 3 court to meet the needs of the community and the defendant;

4 (e) suspension or revocation of the defendant's
 5 driver's license issued under Title 61, chapter 5, subject
 6 to the following terms and conditions:

7 (i) upon the first conviction of an offense under this
 8 chapter, the driver's license must be suspended for 6
 9 months;

10 (ii) upon the second conviction, the driver's license
 11 must be revoked for 1 year;

12 (iii) upon a third or subsequent conviction, the
 13 driver's license must be revoked for 3 years."

14 NEW SECTION. Section 2. Surrender of license. If a
 15 court suspends or revokes a driver's license under
 16 45-9-202(2)(e), the defendant shall, at the time of
 17 sentencing, surrender the license to the court. The court
 18 shall forward the license and a copy of the sentencing order
 19 to the department of justice. The defendant may apply to the
 20 department for issuance of a probationary license under
 21 61-2-302.

22 ~~NEW SECTION. Section 3. Immunity from liability. (1)~~
 23 ~~Except as provided in subsection (2), if a court imposes~~
 24 ~~mandatory service under 45-9-202(2)(c) or community service~~
 25 ~~under 45-9-202(2)(d), an agency supervising the service,~~

1 ~~treatment, or education program in which the defendant is~~
 2 ~~performing the service and the officers, agents, and~~
 3 ~~employees of the program are immune from liability for any~~
 4 ~~act or omission involved in the supervision or~~
 5 ~~administration of the court-ordered service. THE IMMUNITY~~
 6 ~~GRANTED BY THIS SECTION APPLIES ONLY TO LAWSUITS FILED BY~~
 7 ~~THE DEFENDANT AGAINST THE SUPERVISING AGENCY AND ITS AGENTS~~
 8 ~~AND EMPLOYEES AND ONLY TO ACTS ALLEGED TO HAVE OCCURRED~~
 9 ~~DURING THE COURSE OF SUPERVISION.~~

10 (2) ~~The immunity provided in subsection (1) does not~~
 11 ~~extend to acts alleged to constitute gross negligence or~~
 12 ~~gross recklessness.~~

13 NEW SECTION. SECTION 3. IMMUNITY FROM LIABILITY. (1)
 14 EXCEPT AS PROVIDED IN [SUBSECTIONS (2) AND (3)], IF A COURT
 15 IMPOSES MANDATORY SERVICE UNDER 45-9-202(2)(C) OR COMMUNITY
 16 SERVICE UNDER 45-9-202(2)(D), A PUBLIC OR PRIVATE AGENCY
 17 SUPERVISING THE SERVICE, TREATMENT, OR EDUCATION PROGRAM IN
 18 WHICH THE DEFENDANT IS PARTICIPATING AND THE OFFICERS,
 19 AGENTS, AND EMPLOYEES OF THE PUBLIC OR PRIVATE AGENCY ARE
 20 IMMUNE FROM LIABILITY TO THE DEFENDANT FOR ANY ACTS OR
 21 OMISSIONS ALLEGED TO HAVE OCCURRED WITHIN THE COURSE AND
 22 SCOPE OF SUPERVISION.

23 (2) THE IMMUNITY PROVIDED IN SUBSECTION (1) DOES NOT
 24 EXTEND TO ACTS OR OMISSIONS ALLEGED TO CONSTITUTE GROSS
 25 NEGLIGENCE OR INTENTIONAL ACTS.

1 (3) THE IMMUNITY PROVIDED IN SUBSECTION (1) FOR A
 2 PUBLIC AGENCY DOES NOT EXTEND TO CLAIMS FOR WORKERS'
 3 COMPENSATION BENEFITS WHEN THE DEFENDANT IS INJURED WHILE
 4 PERFORMING COMMUNITY SERVICE.

5 NEW SECTION. Section 4. Exemption from mandatory
 6 minimum sentences. If a court imposes any of the sentencing
 7 alternatives specified in 45-9-202, the mandatory minimum
 8 sentences provided in 46-18-201(4) do not apply.

9 Section 5. Section 46-18-201, MCA, is amended to read:
 10 "46-18-201. Sentences that may be imposed. (1) Whenever
 11 a person has been found guilty of an offense upon a verdict
 12 or a plea of guilty, the court may:

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

- 21 (i) jail base release;
- 22 (ii) jail time not exceeding 180 days;
- 23 (iii) conditions for probation;
- 24 (iv) restitution;
- 25 (v) payment of the costs of confinement;

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

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

1 occasion, whether or not the sentence was imposed,
2 imposition of the sentence was deferred, or execution of the
3 sentence was suspended.

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

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

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

18 NEW SECTION. Section 6. Codification instruction.
19 [Sections 2 through--4 AND-3 THROUGH 4] are intended to be
20 codified as an integral part of Title 45, chapter 9, part 2,
21 and the provisions of Title 45, chapter 9, part 2, apply to
22 [sections 2 through-4 AND-3 THROUGH 4].

23 ~~NEW-SECTION- Section-7:--Two-thirds---vote---required-~~
24 ~~Because-{section-3}-limits-governmental--liability,--Article~~
25 ~~if--section-18,--of--the-Montana-constitution-requires-a-vote~~

1 ~~of-two-thirds-of-the-members-of-each-house-for-passage-~~

2 NEW SECTION. SECTION 7. TWO-THIRDS VOTE REQUIRED.
3 BECAUSE [SECTION 3] LIMITS GOVERNMENTAL LIABILITY, ARTICLE
4 II, SECTION 18, OF THE MONTANA CONSTITUTION REQUIRES A VOTE
5 OF TWO-THIRDS OF THE MEMBERS OF EACH HOUSE FOR PASSAGE.

6 NEW SECTION. SECTION 8. COORDINATION INSTRUCTION. IF
7 SENATE BILL NO. 473 IS NOT PASSED AND APPROVED, THEN
8 [SECTION 3 OF THIS ACT] IS AMENDED AS FOLLOWS:

- 9 (1) THE BRACKETED LANGUAGE IN SUBSECTION (1) IS AMENDED
10 TO READ "SUBSECTION (2)"; AND
11 (2) SUBSECTION (3) IS VOID.

-End-