

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on January 12, 1993, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: Rep. Tim Sayles for HB 81

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 81, HB 94
Executive Action: None.

HEARING ON HB 81

Opening Statement by Sponsor:

REP. BOB BACHINI, House District 14, Havre, stated HB 81 has been brought to the House Judiciary Committee by request of the citizens of Montana. This particular bill requires careful judgement as it addresses deliberate homicide. Rep. Bachini believes it necessary that HB 81 include a provision that felons who have committed deliberate homicide, should not be eligible

for parole and that judges have no discretion to give a convicted murderer parole and early release.

Enclosed with these minutes are REP. BACHINI'S amendments to page 2, line 14. EXHIBIT 1 It states that the court shall also impose the restriction that the defendant is ineligible for parole and participation in the supervised release program while serving the sentence. In essence, if a person is convicted of deliberate homicide, he or she shall serve the sentence imposed upon him by the courts. The minimum sentence for deliberate homicide is ten years; therefore, if the defendant is given a ten-year sentence, the full ten-year term must be served.

Recent studies have shown that rehabilitation programs are not doing the job they are intended to do. Studies have also shown that violent crimes are on the increase in this country; in particular, the western part of the United States. REP. BACHINI believes something must be done to keep violent criminal offenders in prison. EXHIBIT 2 News article; EXHIBIT 3 statistical Sheet.

REP. BACHINI mentioned that the cost of keeping an inmate is expensive; however, the cost of losing one's life or the life of a family member is unbearable and asked that the Judiciary Committee keep that in mind when making a decision about this bill.

Proponents' Testimony: None.

Opponents' Testimony:

Mickey Gamble, Corrections Administrator, Division of Corrections, Department of Corrections and Human Services, said the courts already have the authority to impose a life sentence on an individual that does not allow them to be paroled. Parole gives violators a sense of hope and prepares them to go back into society. Mr. Gamble also pointed out that 90 percent of those paroled have been charged with technical violations, not violent crimes. The average time for incarceration has gone up from the 1970s, which was 7-10 years, to currently, 12-15 years. Most of the inmates sentenced to a life sentence stay in prison for that length of time and are not up for parole.

Harley Warner, Montana Association of Churches. As participants and observers in the justice system of Montana, the MAC speaks for the needs of that system. A judge has traditionally accepted an unbiased position and is familiar with the circumstances surrounding each case; MAC, therefore, rises in opposition to this bill.

Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. Referred to EXHIBIT 4 for further explanation.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. DAVE BROWN asked Mr. Gamble what impact this bill will have on the prison population over time, and at what cost to the state.

Mr. Gamble said approximately 4 or 5 inmates out of 14 are paroled; the remainder would be in prison for a longer period of time. It costs the State approximately \$16,000 a year per parolee.

REP. VIVIAN BROOKE asked REP. BACHINI why he feels there is a need for this bill. It originated from a particular incident in REP. BACHINI'S district of Havre. After an offender was let out of prison, he deliberately harassed, stalked and killed three people - all family members. This violent act was deliberate homicide.

REP. RANDY VOGEL asked Mr. Crichton to define deliberate homicide for the committee. Deliberate Homicide is a deliberate death caused by another human being, or a felony murder in which someone dies in the course of a felony.

REP. JIM RICE asked Mr. Gamble how many other states have adopted policies like this, and how often judges use the option of imposing sentences with no possibility of parole, since that option is in the statute now. Mr. Gamble did not have the information but will during executive action.

REP. RICE commented that there are people who have been charged with deliberate homicide who have been rehabilitated, paroled and live a law abiding citizen's life in the community. REP. RICE asked REP. BACHINI if this bill would also eliminate the possibility of those success stories from occurring. REP. BACHINI said the bill plainly states that a person convicted of deliberate homicide will serve the full term sentenced to him. At the same time, REP. BACHINI stated he would not want to take the chance of letting a person convicted of deliberate homicide out of prison.

REP. TIM WHALEN asked REP. BACHINI if his reaction would be the same for crimes of passion versus deliberate homicide.

REP. BACHINI noted that HB 81 strictly pertains to deliberate homicide, and crimes of passion do not apply. Deliberate homicide is defined in statute 45-5-102.

REP. WHALEN said that someone can commit a crime of passion as deliberate homicide; therefore, perhaps the language in the

bill should be changed to clarify the difference between the two. REP. VOGEL explained to the committee that a crime of passion is a mitigated deliberate homicide.

REP. LIZ SMITH asked Mr. Gamble what the cost is to care for parolees at the Pre-Release Center, and if a parolee is convicted of deliberate homicide, does it cost us more money for higher security? Mr. Gamble said that it would cost more, as they are a higher risk to society.

REP. DUANE GRIMES asked Mr. Gamble if he could describe the parole process and why some inmates are more successful than others. To be eligible for parole, one has to serve that sentence or a quarter of that sentence, depending on that person's behavior and how dangerous the person is. A person then must go before the Parole Board.

REP. VOGEL asked Mr. Gamble what the rate of recidivism is for felony offenders. Mr. Gamble said that the recidivism rate, nationally, runs at about 50 percent; and 11 percent in Montana.

REP. ELLEN BERGMAN commented that perhaps we should change the law so that certain crimes would not be eligible for parole, and that the judge is the person who evaluates the criminal and makes that decision. REP. BACHINI agreed, and said that the minimum sentence for deliberate homicide is ten years, which is too short. He prefers that they are not paroled at all.

Closing by Sponsor:

REP. BACHINI reminded the committee that deliberate homicide is increasing and pleaded that cost not be a main determinant in this bill. He asked the committee to think about how many rights are given to the criminals and not enough to the victims of the crime. He also warned the committee that while criminals go through rehabilitation while in prison, they are not ignorant to the system. They learn the system very fast and use it to their advantage. The general public should be cautious and should not be sympathetic towards these people. Finally, REP. BACHINI said that we really never know when any of these people are truly ready for parole.

HEARING ON HB 94

Opening Statement by Sponsor:

REP. HAL HARPER, House District 44, Helena, introduced and sponsored HB 94. HB 94 is a "code of ethics" for legislators. REP. HARPER noted that the 1972 Constitutional Convention directed the Legislature to adopt one, but it has never transpired. HB 94's purpose is to accomplish three things: 1) Before a legislator can vote on a bill, he must eliminate any conflict of interest, disclose the conflict of interest, or abstain from voting. Currently, the law says legislators "should

consider" doing those things; 2) Legislators could not serve as lobbyists within two years of leaving the legislature; and 3) it would bar legislators from accepting any gift worth more than \$50.

Included with the minutes, but not part of the testimony or executive action are amendments requested by REP. HARPER and prepared by John MacMaster, Staff Attorney. EXHIBIT 5

Proponents' Testimony:

Amy Kelley, Executive Director, Common Cause of Montana.
EXHIBIT 6

Tootie Walker, Montana Alliance for Progressive Policy. MAPP is a coalition comprised of women, educators, Native Americans, senior citizens, laborers and conservation groups. MAPP is very involved in various participation projects and is very concerned about the voter attitude across the nation. MAPP wants to trust the nature of the body of the legislature.

Dan Stahly, Montana Public Interest Research Group. MONTPIRG is a non-profit, non-partisan, research advocacy organization located on the University Montana campus. MONTPIRG has a very high concern with the ethical practices of people working in government. MONTPIRG is opposed to acceptance of gifts and disclosure of information for economic gain.

Opponents' Testimony: None.

Informational Testimony:

REP. HARPER presented a letter of support to HB 94 from SEN. PAT REGAN. EXHIBIT 7

Questions From Committee Members and Responses:

Referring to Section 2, line 21, REP. CLARK asked REP. HARPER why the bill is separating campaign contributions from gifts, and if so, why not do away with this since the public is more interested in the campaign ideas rather than the money involved. REP. HARPER said that the legislature has no finance campaign funding. He also reiterated that campaign contributions will be the subject of another committee meeting.

REPS. RICE and CLARK were concerned about REP. HARPER'S prohibition against legislators working soon after the election term is over, specifically lobbying. In order to control this revolving door, the bill asks that legislators wait two years after serving in public office. REPS. CLARK and WINSLOW could not understand how, after working in the private sector for a year after leaving the legislature, it would have any more effect or influence on running again. REP. HARPER said something needs to be put in writing that there's 'no sure door open into public

or legislative office'. He would like legislators to wait at least one year. REP. BOB CLARK would like to amend the bill to 18 months and REP. HOWARD TOOLE to 20 months.

REP. HARPER'S amendment, HB 94 would not allow legislators to accept gifts more than \$50. REP. RICE feels apprehensive concerning this rule. He mentioned receiving a gift worth more than \$50 from foreign visitors. Not wanting to offend the visitors, REP. RICE accepted the gift. REP. RICE believes \$50 should be the line of demarcation. REP. HARPER asks legislators to think about the intention of the gift first before accepting; will the gift improperly influence your vote, and is the gift the primary purpose of your vote.

Closing by Sponsor:

REP. HARPER wants the legislators to understand they are making a sacrifice to the state. People need, deserve, and demand some sort of enforceable ethics from legislators.

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

1-12-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	X		
Rep. Randy Vogel, Vice-Chair	X		
Rep. Dave Brown, Vice-Chair	X		
Rep. Jodi Bird	X		
Rep. Ellen Bergman	X		
Rep. Vivian Brooke	X		
Rep. Bob Clark	X		
Rep. Duane Grimes	X		
Rep. Scott McCulloch	X		
Rep. Jim Rice	X		
Rep. Angela Russell	X		
Rep. Tim Sayles	X		
Rep. Liz Smith	X		
Rep. Bill Tash	X		
Rep. Howard Toole	X		
Rep. Tim Whalen	X		
Rep. Karyl Winslow	X		
Rep. Diana Wyatt	X		


HR:1993

wp.rollcall.man

CS-09

ADJOURNMENT

Adjournment: 11:30 a.m.



RUSSELL FAGG, Chair



BETH MIKSCHÉ, Secretary

RF/bcm

1 HOUSE BILL NO. 81

2 INTRODUCED BY BACHINI

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SENTENCE
5 FOR A CONVICTION OF DELIBERATE HOMICIDE TO INCLUDE A
6 PROVISION THAT THE OFFENDER IS NOT ELIGIBLE FOR PAROLE OR
7 PARTICIPATION IN A SUPERVISED RELEASE PROGRAM; AMENDING
8 SECTION 46-18-202, MCA; AND PROVIDING AN APPLICABILITY
9 DATE."
10

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

12 Section 1. Section 46-18-202, MCA, is amended to read:

13 "46-18-202. Additional restrictions on sentence. (1)
14 The district court may also impose any of the following
15 restrictions or conditions on the sentence provided for in
16 46-18-201 which that it considers necessary to obtain the
17 objectives of rehabilitation and the protection of society:

18 (a) prohibition of the defendant's holding public
19 office;

20 (b) prohibition of his the defendant's owning or
21 carrying a dangerous weapon;

22 (c) restrictions on his the defendant's freedom of
23 association;

24 (d) restrictions on his the defendant's freedom of
25 movement;

EXHIBIT 1

DATE 1-12-93

HB 81

1 (e) any other limitation reasonably related to the
2 objectives of rehabilitation and the protection of society.

3 (2) (a) Whenever Subject to subsection (2)(b), if the
4 district court imposes a sentence of imprisonment in the
5 state prison for a term exceeding 1 year, the court may also
6 impose the restriction that the defendant be is ineligible
7 for parole and participation in the supervised release
8 program while serving his the term. If such a restriction is
9 to be imposed, the court shall state the reasons for it in
10 writing. If the court finds that the restriction is
11 necessary for the protection of society, it shall impose the
12 restriction as part of the sentence and the judgment shall
13 must contain a statement of the reasons for the restriction.

14 (b) If the district court imposes a sentence of
15 imprisonment in the state prison for deliberate homicide,
16 the court shall also impose the restriction that the
17 defendant is ineligible for parole and participation in the
18 supervised release program while serving the sentence.

19 (3) The judge in a justice's, city, or municipal court
20 does not have the authority to restrict an individual's
21 rights as enumerated in subsections (1) and (2).

22 (4) When the district court imposes a sentence of
23 probation, as defined in 46-23-1001, any probation agreement
24 signed by the defendant may contain a clause waiving
25 extradition."

- 1 NEW SECTION. Section 2. Applicability. [This act]
- 2 applies to sentences imposed for crimes committed on or
- 3 after October 1, 1993.

-End-

ppf
 EXHIBIT 2
 DATE 1-12-93
 #B 51
 Exhibit 2

Some killers and sex offenders just can't be rehabilitated

By ANDREW VACHSS

Westley Allan Dodd was hanged at 12:05 a.m. Tuesday morning at the Washington State Penitentiary in Walla Walla.

Sentenced to execution for the torture-murder of three boys, Dodd refused all efforts to appeal his case.

He may not have exhausted his legal remedies, but he has certainly exhausted society's efforts at "rehabilitation."

A chronic, calcified sexual sadist, Dodd stated in a recent court brief, "If I do escape, I promise you I will kill and rape again and I will enjoy every minute of it."

Dodd's threat demands a response because we know he is not unique. There can be no dispute that monsters live among us. The only question is what to do with them once they become known to us.

The death penalty is not a response. Racially and economically biased and endlessly protracted, it returns little for its enormous economic and social costs.

Though it is effective — the killer will not strike again — the death penalty is limited to murderers; it will not protect us from rapists and child molesters who are virtually assured of release and who are almost

certain to commit their crimes again.

If we do not intend to execute sex criminals, does our hope lie in killing their destructive impulses?

Dodd and his ilk are sociopaths. They are characterized by a fundamental lack of empathy.

All children are born pure egoists. They perceive their needs to the exclusion of all others. Only through socialization do they learn that some forms of gratification must be deferred and others denied.

When a child's development is incomplete or perverted — and child abuse is the most dominant cause in that equation — he or she tends not to develop empathy.

There's a missing card, one that cannot be put back in the deck once the personality is fully formed.

Sociopaths can learn to project a veneer of civilization — for predators, it is part of their camouflage — but they will always lack the ability to feel any pain but their own, pursuing only self-gratification.

Some predatory sociopaths can be deterred. None can be rehabilitated because they cannot return to a state that never existed.

What makes sexual predators so intrac-

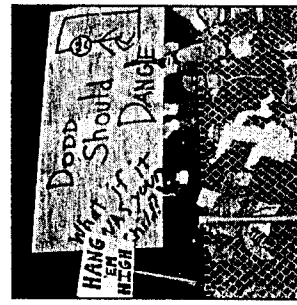


table and dangerous is that, as Dodd candidly acknowledged, they like what they do and intend to keep doing it.

Another factor that thwarts rehabilitation is the need for offenders to seek higher and higher levels of stimulation. There is no observable waning of their desires over time. Sexual predators do not outgrow their behavior.

Thus, while most sadistic sex offenders are not first arrested for homicide, they may well try to murder someone in the future.

What about a traditional self-help program? Should we concentrate on raising their self-esteem?

Sexual predators are already narcissistic; they laugh behind their masks at our attempts to understand and rehabilitate them. We have earned their contempt by our belief that they can change — by our confusion of "crazy" with "dangerous" and "sick" with "sickening."

If we don't intend to execute sexual predators and we have no treatment, what is our final line of defense?

Washington State has a so-called sexual predator law permitting indefinite confinement of sex offenders deemed to be dangerous if released. The law's critics argue that psychiatry has been a woefully inadequate forecaster. Others cite the constitutional problems of imprisonment based on prospective conduct.

Recently there has been much discussion of voluntary castration. Such a "remedy" ignores reality. Sexual violence is not sex gone too far; it is violence with sex as its

instrument.

Our response to sexual predators must balance the extent and intensity of the possible behavior with the probability of its occurrence.

An ex-prisoner likely to expose himself on a crowded subway may be a risk we are willing to assume. A prisoner with even a moderate probability of sexual torture and murder is not.

Such violence is like a rock dropped into a calm pool — the concentric circles spread even after the rock has sunk. More and more victims will be affected.

When it comes to sexual violence, the sum of our social and psychiatric knowledge adds up to this: Behavior is the truth.

Chronic sexual predators have crossed an osmotic membrane. They can't step back to the other side — our side. And they don't want to. If we don't kill or release them, we have but one choice: Call them monsters and isolate them.

Andrew Vachss, a lawyer who represents children, is author of a forthcoming novel, "Shelia." His column is distributed by the New York Times Feature Service.

Trile 1-6-93

118143 Inmate Population Convicted of Deliberate Homicide or
Sentenced to Life or Death

Rule Codes

1 = White
2 = Native Amer.

N = 20

EXHIBIT 3
DATE 1-12-93
HB 31

MT. Res = MT Resident; 1 = Yes
1st Inc. = First Incarceration; 1 = Yes
1st Conv. = First Conviction; 1 = Yes
Tot Conv. = Total Convictions; real number
Per Elig. = Ineligible for parole; 1 = Yes
Desig. = Designation; 2 = Dangerous
NSY = Not Sentence in Years

Life
Death

Act. Last Name
FLD1 FLD26

First Name
FLD27

Age Race Sex MT 1st 1st Tot. Per Desig NSY Word
FLD2 FLD3 FLD8 FLD30 FLD31 FLD32 FLD63 FLD72 FLN232 FLD235

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EXHIBIT 3

DATE 1-12-93

HB 31

The original of this document is stored at the Historical Society at

225 North Roberts Street, Helena, MT 59620-1201. The phone number is

444-2694.



EXHIBIT 4

DATE 1-12-93

HB 81

Scott Crichton, ACLU

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

January 7, 1993

Bill: House Bill #81

Mr. Chairman and Members of the Committee:

For the record, I am Scott Crichton, Executive Director of the American Civil Liberties Union of Montana.

I am here to testify against House Bill #81 which is seeking to require that people convicted of deliberate homicide not be eligible for parole or participation in supervised release programs.

You have heard the intent of this measure, but it is important for you to consider some of the actual impacts.

First, let's be direct and acknowledge the expected fiscal impacts. Current costs for housing inmates at MSP are about \$16,000 per inmate per year. Assuming there are 5 such cases which are currently parole eligible of individuals who would never become parole eligible should HB 81 become law, this bill may cost tax payers an additional \$100,000 annually. This then would be multiplied by the additional years of sentence served. Inflation and other increasing costs would also have to be considered. Given existing overcrowding and public concern over rising corrections costs, ACLU believes this bill heads us in the absolute wrong direction of needed reforms.

Second, I assume you are interested in more than just the dollars and cents of this proposal. It should be acknowledged that you are considering putting away a lot of citizens forever-- people who otherwise are fairly average citizens who may have simply had a lapse at some point. With this bill you are saying that they categorically are beyond any rehabilitation. I know corrections professionals can demonstrate the case is exactly the opposite.

Third, it appears that what this bill will in fact do is guarantee that the state must pick up additional costs and responsibilities for those who are capable of rehabilitation. The Court already can find that a person involved in the homicide is a dangerous offender. It is done fairly commonly.

46-18-404, MCA, The designation as a non-dangerous offender for purposes of parole eligibility. The Court can designate an offender a non-dangerous offender under certain conditions. If the Court determines that an offender is a dangerous offender, it makes that determination as part of the sentence and states it in the judgement.

This section of the law, 46-18-202, MCA, as it exists now, already provides the Court the option in section (2) of restricting parole or supervised release options.

Fourth, I'd like to offer another idea for your consideration. How are judges going to respond if this bill is enacted into law? It is impossible to predict, but I'd offer a couple of possible scenarios. Some judges might react to this proposed bill by not sentencing to prison people convicted of deliberate homicide. A judge, in looking at the offender, may well understand that this is a person who should not be ineligible for parole. Other judges might adjust sentences downward accordingly so that instead of someone being sentenced to 40 years, (where he might be under supervision for 10 years after serving 10 years), a judge may instead choose to have the offender be sentenced to 10 years, with no supervision on the outside after release.

Finally, the reality is that judges, on a regular basis, already do find convicted defendants ineligible for parole. They have the discretion and exercise it. In some cases where it is arguable whether it is warranted, they are already erring on the side of imposing such ineligibility.

To close, the effect of this bill would be to toss everybody into the same pot, and make people who should be eligible for parole at some point in their prison sentence, permanently ineligible. The result then would be that instead of the Board of Pardons determining whether or not an offender is a good prisoner who is going to be a benefit if he is released to society, the Court is going to have to decide that at the time of sentencing before anything else happens.

We urge you not to pass HB 81. Thank you.

- 5-303. Aggravated kidnapping.
- 5-304. Custodial interference.

Part 4 — Robbery

- 5-401. Robbery.

Part 5 — Sexual Crimes

- 5-501. Definition.
- 5-502. Sexual assault.
- 5-503. Sexual intercourse without consent.
- 5-504. Indecent exposure.
- 5-505. Deviate sexual conduct.
- 5-506. Renumbered 45-5-511 by Code Commissioner, 1983.
- 5-507. Incest.
- 5-508 through 45-5-510 reserved.
- 5-511. Provisions generally applicable to sexual crimes.

Part 6 — Offenses Against the Family

- 5-5601. Prostitution.
- 5-5602. Promoting prostitution.
- 5-5603. Aggravated promotion of prostitution.
- 5-5604. Evidence in cases of promotion.
- 5-5605 through 45-5-610 reserved.
- 5-5611. Bigamy.
- 5-5612. Marrying a bigamist.
- 5-5613. Renumbered 45-5-507 by Code Commissioner, 1983.
- 5-5614 through 45-5-620 reserved.
- 5-5621. Nonsupport.
- 5-5622. Endangering the welfare of children.
- 5-5623. Unlawful transactions with children.
- 5-5624. Unlawful possession of an intoxicating substance — interference with sentence or court order.
- 5-5625. Sexual abuse of children.
- 5-5626. Violation of protective order — misdemeanor.
- 5-5627 through 45-5-630 reserved.
- 5-5631. Visitation interference.
- 5-5632. Aggravated visitation interference.
- 5-5633. Defenses to visitation interference and aggravated visitation interference.

Part 1

Homicide

Part Cross-References
Family member of victim — reimburse-
ment for mental health treatment, 53-9-128.

45-5-101. Repealed. Sec. 11, Ch. 610, L. 1987.
History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-101.

EXHIBIT 4

PART 1-12-93
HR 21

45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) he purposely or knowingly causes the death of another human being;

or

(b) he attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, he or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 338, L. 1977; amd. Sec. 4, Ch. 584, L. 1977; R.C.M. 1947, 94-5-102; amd. Sec. 1, Ch. 322, L. 1979; amd. Sec. 1, Ch. 322, L. 1987; amd. Sec. 4, Ch. 610, L. 1987.

Cross-References

- Definition of "felony", 45-2-101.
- Definition of "knowingly", 45-2-101.
- Definition of "purposely", 45-2-101.
- Causal relationship between conduct and result, 45-2-201.
- Burden of the state in homicide trial, 45-5-111, 45-5-112.
- Kidnapping, 45-5-301 through 45-5-304.
- Robbery, 45-5-401.
- Sexual intercourse without consent, 45-5-503.
- Arson, 45-6-103.
- Burglary, 45-6-204.
- Escape, 45-7-306.
- Limitation on deferred imposition of sentence, 46-18-201.
- Sentences for certain offenses committed in state prison, 46-18-220.
- Killing of peace officer — aggravating circumstances, 46-18-303.
- Protection of premature infants born alive, 50-20-108.

45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when he purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress for which there was reasonable explanation or excuse, the reasonableness of which shall be determined from the viewpoint of a reasonable person in the actor's situation. This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.

(3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 5, Ch. 584, L. 1977; R.C.M. 1947, 94-5-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 610, L. 1987.

the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967, rep. and re-en. by Sec. 31, Ch. 513, L. 1973, am. Sec. 36, Ch. 184, L. 1977; am. Sec. 1, Ch. 436, L. 1977, am. Sec. 1, Ch. 580, L. 1977, am. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(1), (2), (4), am. Sec. 21, Ch. 116, L. 1979; am. Sec. 2, Ch. 322, L. 1979; am. Sec. 2, Ch. 587, L. 1979; am. Sec. 6, Ch. 198, L. 1981; am. Sec. 1, Ch. 207, L. 1981; am. Sec. 7, Ch. 415, L. 1981; am. Sec. 1, Ch. 189, L. 1983, am. Sec. 9, Ch. 581, L. 1983; am. Sec. 1, Ch. 205, L. 1985; am. Sec. 1, Ch. 524, L. 1985; am. Sec. 104, Ch. 370, L. 1987; am. Sec. 7, Ch. 610, L. 1987; am. Sec. 1, Ch. 626, L. 1987; am. Sec. 10, Ch. 293, L. 1989; am. Sec. 2, Ch. 575, L. 1989; am. Sec. 2, Ch. 42, L. 1991; am. Sec. 10, Ch. 105, L. 1991; am. Sec. 17, Ch. 554, L. 1991; am. Sec. 2, Ch. 564, L. 1991; am. Sec. 3, Ch. 794, L. 1991; am. Sec. 5, Ch. 802, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 42 in (4) changed subsection reference to 45-9-102; and made minor change in style.

Chapter 105 in (1)(a), in first sentence before "sentences", substituted "except as provided in 61-8-714 and 61-8-722 for" "excepting", inserted (1)(a)(xi) providing for home arrest; at end of (1)(b) deleted reference to subsections of (1)(a), in last sentence of (3), after "jail", inserted "or home arrest"; and made minor changes in style.

Chapter 554 inserted (1)(e)(ix) and (1)(f) allowing court to place an offender in a community corrections facility or program; and in (1)(b) and (1)(g) changed subsection reference. Amendment effective July 1, 1991.

Chapter 564 in (4) inserted reference to 45-5-502(3); and in (7) deleted reference to 45-5-502(3).

Chapter 794 inserted (1)(a)(ix) concerning approval for community corrections placement; in (1)(b), at end, extended reference to subsection (1)(a)(xii); inserted (1)(f) concerning approval for community corrections placement.

ment in (1)(e) extended reference to subsection (1)(f); and inserted (10) concerning consideration of alternative sentencing for nonviolent offenders. Amendment effective July 1, 1991. The Code Commissioner has combined the amendments inserting (1)(a)(ix) and (1)(f) made by Ch. 554 and Ch. 794 to reflect the content of both chapters.

Chapter 802 in (4) inserted reference to 45-9-202.

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

Cross-References

Determination of what sentence may be imposed, 45-1-201.

Alternative sentencing authority, 45-9-202.

Death as a sentence that may be imposed, Title 46, ch. 18, part 3.

Sentencing of persistent felony offender, 46-18-502.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

- prohibition of the defendant's holding public office;
- prohibition of his owning or carrying a dangerous weapon;
- restrictions on his freedom of association;
- restrictions on his freedom of movement;
- any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose

the restriction as part of the sentence and the judgment shall statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have authority to restrict an individual's rights as enumerated in subsections (1) and (2).

(4) When the district court imposes a sentence of probation as provided in 46-23-1001, any probation agreement signed by the defendant may include a clause waiving extradition.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967, rep. and re-en. by Sec. 31, Ch. 513, L. 1973, am. Sec. 36, Ch. 184, L. 1977; am. Sec. 1, Ch. 436, L. 1977; am. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(3); am. Sec. 22, Ch. 198, L. 1981; am. Sec. 10, Ch. 583, L. 1981; am. Sec. 2, Ch. 392, L. 1987.

Cross-References

Effect of conviction — civil disabilities, 46-18-801.

Parole eligibility, 46-23-201.

Participation in furlough program, 46-23-411.

Registration of sexual offenders, ch. 23, part 5.

46-18-203. Revocation of suspended or deferred sentence. The filing of a petition for revocation, accompanied by an affidavit showing probable cause that the defendant has violated any condition of a suspended sentence or any condition of a deferred imposition of sentence, the court may order for a hearing on revocation. The order must require the defendant to appear at a specified time and place for the hearing and be accompanied by a copy of the petition and order to the defendant person. The court may also issue an arrest warrant directing any peace officer or probation officer to arrest the defendant and bring the defendant to court.

(2) The petition for a revocation must be filed with the sentence during the period of suspension or deferral. Expiration of the suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 46, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the defendant must be brought to court, and the defendant must be advised of:

- the allegations of the petition;
- the opportunity to appear and to present evidence in the defendant's own behalf;
- the opportunity to question adverse witnesses; and
- the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence is revoked or the terms or conditions of the sentence can be modified, and the defendant admits the allegations and waives the right to a hearing or

(b) the relief to be granted is favorable to the defendant, the prosecutor, after having been given notice of the proposed relief, has not objected. An extension of

Amendments to House Bill No. 94
First Reading Copy

Requested by Rep. Harper
For the Committee on the Judiciary

Prepared by John MacMaster
January 11, 1993

1. Title, lines 7 and 8.

Strike: "2" on line 7 through "YEARS" on line 8

Insert: "1 YEAR"

2. Page 5, line 14.

Strike: "2 years"

Insert: "1 year"

3. Page 5.

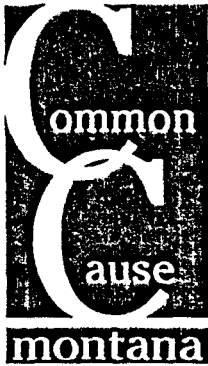
Following: line 24

Insert: "NEW SECTION. Section 5. Rulings of rules committees.

A legislator may ask the rules committee of the house in which the legislator serves for a ruling as to whether the legislator's past conduct is or contemplated conduct would be in violation of 2-2-111 or 2-2-112. A legislator may ask the rules committee of the house in which another legislator serves for a ruling as to whether the other legislator's past conduct is or contemplated conduct would be in violation of 2-2-111 or 2-2-112.

NEW SECTION. Section 6 {standard} Codification instruction.

[Section 5] is intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to [section 5]."



P.O. Box 623
Helena, MT
59624
406/442-9251

COMMON CAUSE TESTIMONY
IN SUPPORT OF HB 94
JANUARY 12, 1993

Exhibit 6
Amy Kelley
HB 94

Mister Chairman, members of the House Judiciary Committee, for the record my name is Amy Kelley, Executive Director of Common Cause/Montana. Common Cause/Montana is a nonpartisan, non-profit citizen group of over 800 members working to promote open, accessible democratic government in Montana.

On behalf of those members, I would like to register our support for HB 94.

This is a time of profound crisis of public confidence in government. At stake is the health of our democratic system of government, for self-government rests upon the people's trust and confidence in public officials. In the words of Speaker of the House John Mercer, *"The problems we [legislators] face are enormous...but none more important than the following: We must restore public confidence in the state legislature."*

The problem affects state officials across the country. In its July 1988 issue, State Legislatures reported that federal prosecutions of state and local officials had more than doubled between 1986 and 1988. In fact, ten times as many state and local officials are being convicted on federal corruption charges today as were two decades ago.

Even here in Montana, recent newspaper headlines have raised questions concerning ethics in government. A recent Independent Record editorial criticizing several events involving Public Service Commission members said, *"...it points to the need for the state to have a code of ethics that governs elected officials and employees. They should never forget that they must be like Caesar's wife -- above reproach..."*

The Montana Constitution mandates the enactment of such a code of ethics. Article XIII, section 4 provides:

Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Despite this mandate, the legislature has not, to date, established real ethics legislation. HB 94 addresses one aspect of that potential code: conflicts of interest pertaining to legislators.

The fundamental goal of a conflict-of-interest statute should be to prevent public officials from abusing -- or appearing to abuse -- the power and status of public office for private gain. It should protect the public against potential abuses, and the legislature itself against the appearance of abuse.

This bill helps achieve that goal in three ways. First, it expands current statute to spell out more specifically the rules of conduct for legislators.

Second, it requires, rather than leave voluntary, disclosure of personal or financial interests that would directly be affected by a legislator's official action. By disclosing such potential conflicts of interest, a legislator is better protected from the appearance of impropriety.

Third, it establishes a 2-year "cooling off period" after leaving elected office, during which a former legislator cannot be licensed as a lobbyist. By establishing some separation between holding public office and representing private interests before the legislature, a legislator is better protected against public perceptions of the undue influence of "insider connections" and easy access to the halls of government decision-making. A 2-year lobbying ban does not, however, take away the right to seek such employment in the future. On a national level, President-elect Clinton has called for a similar "revolving door policy," although one extending 5 years rather than 2.

It is not our intention to imply that the Montana legislature is corrupt or self-interested. Quite the opposite: we are fully aware of the sacrifices each of you makes to serve the public as a legislator, and commend you for that service. It is our intent to help address the concerns of the public and support legislation providing ethical guidelines -- guidelines we feel can only benefit legislators and public officials who stand at risk of potentially unjust yet politically damaging public criticism.

Greg Petesch expressed this issue in his March 1990 study for the Legislative Council entitled Through the Magnifying Glass: An Analysis of Montana's Governmental Ethics Laws:

"Ethical conduct is often in the eye of the beholder. Acting pursuant to one's own ethical code is insufficient for public servants due to the variances that must result."

For these reasons, Common Cause/Montana urges a "do pass" on House Bill 94.

January 9, 1993

Mr. Chairman and members of the House Judiciary Committee,

Montana needs a code of ethics. Because of concerns expressed by the public dealing with the environment under which legislators work, guidelines must be drawn.

In response to earlier concerns, I and others requested legislative council studies in the past, to address the possibility of enacting a code of ethics for legislators. House Bill 94 deserves your support, because it is a start toward achieving that goal.

It is true, it is difficult to legislate ethics. On matters of conscience, it sometimes becomes an individual choice. All of you who have served any length of time in the legislature have been presented with situations which have caused you some concern, whether it be writing letters of recommendation for constituents in your district, or interceding on a constituent's behalf with members of state government.

This bill addresses very basic ethical principles on which we all should agree. However, the issue of being able to accept even \$50 as a legislator is unseemly to me. If you cannot give away anything of value when you run for office, why should you be able to accept anything of value when you serve?

While this bill is not definitive, it is a start. If this committee or the legislature were to find fault with particulars in this bill, it should be amended, not killed. I thank you for your consideration.

Sincerely,



Pat Regan

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

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JUDICIARY

COMMITTEE

BILL NO. HB 94

DATE 1-12-93 SPONSOR(S) HARPER

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