

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

#### FREE CONFERENCE COMMITTEE ON HOUSE BILL 157

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on April 7, 1995, at  
9:04 a.m. in Room 410.

#### ROLL CALL

##### Members Present:

Sen. Bruce D. Crippen (R)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Rep. Robert C. Clark (R)  
Rep. Matt Denny (R)  
Rep. Debbie Shea (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council  
Carla Turk, Committee Secretary

##### Discussion:

CHAIRMAN BRUCE CRIPPEN explained this was a Free Conference Committee which would allow addressing most any issue within the Bill. He expressed a desire to clarify the question of the length of sentencing language. CHAIRMAN CRIPPEN related that he had asked Greg Petesch to prepare an amendment which would appear on page 7, line 15 of the Bill (**hb015702.agp**). He remarked that the amendment would strike the reference to "45-5-505" which was the deviant sexual conduct rule. He further explained the amendment as providing coordination instruction which, if HB 214 and HB 157 both passed, then HB 157 would take precedent over SENATOR KLAMPE'S presently standing amendment in HB 214. He further explained his proposed amendment as striking the reference to the section in both Bills. He stated understanding that if nothing was done with the presently adopted Senate Floor Amendment to HB 214 by SENATOR KLAMPE, it would prevail over existing language in HB 157. He expressed a desire to remove the section reference in both Bills to allow a positive approach. CHAIRMAN CRIPPEN sought comments from other Committee Members regarding the amendment.

Motion:

**SENATOR MIKE HALLIGAN MOVED ADOPTION OF AMENDMENT #:**  
**hb015702.agp DATED APRIL 5, 1995.**

**REPRESENTATIVE MATT DENNY** stated he was in favor of the motion, as original introduction of the Bill had included this part of the existing code. He reported having asked the House Judiciary Committee to remove the reference to section 45-5-505 from the registration requirements of the Bill and the Committee's choice to not remove it. He stated being glad to have the reference removed.

**THE QUESTION WAS CALLED FOR.**

Vote:

**THE MOTION CARRIED.**

Discussion:

**CHAIRMAN CRIPPEN** asked **REPRESENTATIVE DENNY** if he would like to discuss some of the changes as he knew **SENATOR HALLIGAN** had some concerns with the way they had been presented in the House. He expressed a desire to hear from interested parties as well.

**REPRESENTATIVE DENNY** stated they had no problem with the Committee Amendments on the front page because the amendments coordinated with HB 214. He said that on the other hand the House Floor Amendments had completely changed the original intent of the Bill. He defined the original intent as providing judges and the Department of Corrections and Human Services the option of returning sex offenders to an appropriate correctional facility if they did not complete their therapy or continue with treatment for their problem. He explained that the amended version of the Bill would basically allow release to non-confining community based programs for potentially dangerous offenders. **REPRESENTATIVE DENNY** attested he did not feel the courts would use that option in sentencing. He maintained that he would like to return the Bill to its original language with the exception of limiting it to "Montana" Correctional Institutions or, as some judges had suggested, strike those sentencing options altogether and replace the upper limit on the allowable time of sentencing to prison with the word life. He added that he was suggesting the change, with the assumption that the judges would use the form of sentencing provisions provided in 46-18-201 to creatively structure sentences which would serve the intent of the Legislature.

**SENATOR HALLIGAN** questioned what the fiscal note impact on that approach would be? **REPRESENTATIVE DENNY** said he had not checked it out with the budget office, but it had always been his belief that it would actually lower the impact on the prisons because there would be a strong incentive for the offenders to complete the treatment program and work their way out of the system. He characterized this affect as occurring because the offenders would otherwise be threatened with being returned to the system if they did not comply with recovery requirements. He accounted that approximately one third of the prisoners in the State Prison were sex offenders and quite a few of them refused to go through treatment because they would not admit having done anything wrong. He reported those prisoners as staying in prison for the full extent of their term and costing a lot of money and professed that if they knew there would be no release unless treatment was completed he thought the State would actually be saving money.

**SENATOR HALLIGAN** stated he could only speak for himself, but he did not think the Senate would have any problem determining a position by striking the rest of the Van Valkenburg Amendment and deal with the Bill as it had reached the Senate Floor.

**CHAIRMAN CRIPPEN** stated a desire to hear comments from the Department and Judge Larson.

**David Ohler, attorney for the Department of Corrections and Human Services**, said the Department was urging the Committee to adopt the initial language in HB 157 which provided a sentencing alternative to judges, whereby they could sentence a sex offender to the Department of Corrections for appropriate placement for the rest of their lives. He described HB 157 as the result of work done by the Governor's Advisory Council on Corrections and Criminal Justice Policy. He reported the Council as a wide cross section of people connected with the criminal justice system which included two district court judges, a justice from the Montana Supreme Court, a couple of county attorneys, police, sheriffs, probation parole officers and people from the prison. He explained there had been a lot of discussion which led to the Council's almost unanimous vote to propose HB 157 as it appeared on the floor. He reported one dissenting vote which was based on the lifetime registration and not the lifetime sentencing.

**Mr. Ohler** stated that sex offenders were never cured and the whole purpose of HB 157 was to keep a handle on those offenders. He said the ideal happening under this Bill would be that a sex offender who was sentenced to the Department would be sent to prison for some period of time until they had gone through treatment and mental health-and-treatment professionals felt that person was not a threat to a community. He contended that at this point the person could be placed out in a community and moved through several steps of intensive supervision within the prerelease program. He said the advantage to having the life time sentence option was always retaining a handle on the

offender so that if the person began behaviors which indicated reoffense, refused to participate in treatment or displayed other behaviors which indicated reoffense the handle could be used to ultimately pull the offender back to prison for redirection toward community supervision.

**Mr. Ohler** said one of the issues considered and rejected by the Council had been to simply change the sentencing statutes to make the maximum term to Montana State Prison life. He stated that idea had been rejected because there was fiscal impact which had not been addressed yet and a life sentence did not really end the problem and provide a solution for trying to get sex offenders into treatment where they did fairly well. He maintained that simply sentencing sex offenders to prison would not give the offender a chance for rehabilitating himself for inclusion back into the community. He stated it was for these reasons that the Department urged the Committee to adopt the language in the initial draft of the Bill.

**Judge John Larson** said he thought the judges of the 4<sup>th</sup> Judicial District were as intent as most of the members of the Committee in that they were confused about the life sentence issue. He stated that prior to the Session he had spoken with the chief sponsor of the Bill, **REPRESENTATIVE DENNY**, and at that time all of the judges of their district had agreed that having the life sentence option to the prison in addition to the life sentence to the Department would be the best of all possible worlds. He attested that it would keep the Department, Executive Branch and Judicial Branch working together in an unprecedented manner. He contended that a life sentence to Montana State Prison gave the sentencing judge a whole range of options. He commented that when the options included treatment the judges could suspend some or all of that sentence and could divert the offender into treatment. He explained that if the offender did not follow through with treatment they would be placed back before the sentencing judge following a parole or probation violation, the victims could be brought back into court for their views to be heard and the judge could determine whether the offender should undergo some other type of treatment or be sent to prison for protection purposes. He said that was not an option when there was only life commitment to the Department of Corrections and the Department was making those decisions. He said he felt the Department's record was quite clear as to how much contact would be made with victims, the community and the sentencing judge before they decided to make any changes. He attested that the Department had a record of trying to make contact with sentencing judges before release, but none regarding placement in prerelease centers or communities.

**Judge Larson** said the judges felt accountable to the community and the victims, and Legislature's giving the judges the sentencing option of a life sentence gave judges a whole range of local treatment decisions best left at the community level. He identified the concept of the Department of Corrections

sentencing as only having been in affect for two years and said the judges had originally been asked by the Department to implement it for non-violent offenders. He professed feeling that his District was one of the most frequent users of the Department of Correction's Commitment when it came to non-violent offenders who didn't greatly impact the community. He remarked that when it came to serious offenses he thought the recommended policy should be that Legislature give the judges the option to have the life sentence to divert offenders to the treatment programs if appropriate.

**Judge Larson** said there were some offenses such as indecent exposure which appeared to be minor offenses for which the possibility of a life sentence was being proposed. He reported knowing at first glance would make that seem extreme and harsh. He attested that recently a judge had an offender appear before him who had three prior sex offenses and a couple of probation violations and was now caught in an indecent exposure situation. He stated the sentencing judge had given the stiffest sentence possible, which was fifty years. **Judge Larson** said that with the way good time and early release worked he calculated by changing the years to months and the sentence would likely be fifty months. He declared that the judge had no leeway on probation and could only give the offender the maximum in prison and with the present system that offender could be back on the street without being subject to supervision. He said that in this case he thought there was a prior sex offender with three or four convictions and when that person was caught in a seemingly minor offense such as indecent exposure, the sentencing judge should have the opportunity to give the offender a life sentence with some time for each prison and treatment, but always keeping control over the offender for the rest of their life.

**Judge Larson** identified the part of the Senate Amendment which the judges would have a problem with as a sentence to the Department with the restriction on no good time, parole, furlough or early supervised release. He contended there may be some people who the judges could send to the Department and state that was final as there appeared to be no hope of any benefit through treatment and the party should never be released. He said that portion of the Senate Amendment gave the judges an even stronger method of dealing, as the Department would not have any discretion to release that person out and that language was stronger than any power in existing statute.

**Judge Larson** stated he had not heard the Floor Debate on the community based program amendment and did not have all the background Committee Members had. He termed his concern regarding a community based program for life as not thinking they had any community based sex offender programs within prerelease centers. He told of standing before a crowd of approximately three hundred in a community and stated knowing that people did not want sex offenders in community based programs and that they would refuse to enlarge or support prerelease centers which

housed sex offenders. He said that for these reasons he had serious concerns, but if the Senators or others wished to inform him as to why that would be a benefit, he was open to hearing their ideas.

**Judge Larson** said the judges primarily wished to ask for the increased sentencing option of life so that they could give offenders an appropriate sentence. He portrayed that as the reason for judges and if there was only going to be a simple formula for implementation, he did not think judges were needed. He said he felt there were people in this position for the purpose of looking at the particular circumstances of the events, how many priors, and what prior treatment experience the offender had. He said it appeared that Legislature wanted to place a priority concern, the judges applauded the concept and thought it should follow through as to the option for prison. He stated his reasoning was not because offenders would be sent to prison for life but that judges would be allowed to maintain direct control over the criminal for the rest of their life while giving them a chance at rehabilitation or treatment. He said that if treatment efforts failed, the community would be assured that the offender would not be released.

**CHAIRMAN CRIPPEN** said **SENATOR VAN VALKENBURG** had expressed concern on the Senate Floor that offenders could be sentenced to out-of-state facilities and the Senate had not wanted that to happen. **Judge Larson** said they concurred with that as they would not want to see them sent out-of-state or any increased expense incurred.

**SENATOR LORENTS GROSFIELD** said it seemed problematic to have the community based program language in the Bill when the State did not have community based programs. He referred to **Judge Larson's** comment that there may be resistance to establishing that sort of facility if local people understood it would lead to sex offenders being placed in their community. He said he was not sure if that possibility existed with the original language but he didn't feel it made sense to have the language when community based programs did not exist.

**CHAIRMAN CRIPPEN** asked if there were any of these programs available? **Judge Larson** said none really suitable for violent sex offenders as the only ones in existence put offenders out on their own, with no supervision and only a provision for offenders to report to a doctor.

**CHAIRMAN CRIPPEN** asked the sponsor's thoughts on his Bill.

**REPRESENTATIVE DENNY** expressed thoughts that he would like to see the second sentencing option be returned to its original form, allowing judges the option to sentence offenders to the Department of Corrections and Human Services for life and additionally change the first sentencing option so the upper limit was changed to not exceed life. He said perhaps it would

be appropriate to place a statement of intent on the Bill which would make Legislature's intent clear that judges should use their discretion and creativity with these sentencing options to minimize costs while maximizing protection of society, the victims, and the potential for rehabilitation.

**CHAIRMAN CRIPPEN** asked how the Department felt? **David Ohler** stated one fiscal impact hadn't been considered and he felt it would exist if offenders could be sentenced to Montana State Prison for life. He said the possible impact was something for Legislature to decide but he thought they needed to be aware the life imprisonment sentence for sex offenders was going to impact the prison population. He maintained not knowing how many sex offenders would be sentenced to life imprisonment but termed it a concern. He commented that if the Legislature was considering extending the maximum term in prison to life, he did not believe it would be necessary to retain the language about sentencing to the Department of Corrections for life. **Mr. Ohler** attested he felt the language would be taken care of.

**CHAIRMAN CRIPPEN** queried as to how it was taken care of? **David Ohler** stated there was already a sentencing option providing for offenders to be sentenced to the Department of Corrections or Montana State Prison. He contended that along with this proposed language there was another statute which in affect stated the judge could sentence to the Prison or the Department of Corrections.

**CHAIRMAN CRIPPEN** asked what the Department would do with an offender sentenced to the Department? **David Ohler** stated the Department would place the offender and incorporate a correctional institutional program based on the Department's evaluation.

**CHAIRMAN CRIPPEN** asked to be given an example? **David Ohler** explained that if a sex offender was sentenced to the Department of Corrections for appropriate placement, it would be up to the Department to determine where that individual should be placed initially, how and when that individual should be move through the correction system from the prison to pre-release centers or whatever. He stated the determination would be made by the Department of Corrections.

**REPRESENTATIVE DENNY** stated that if **Mr. Ohler** was correct about the statute he supposed it would be appropriate to just change the upper limit to life and strike the second sentencing option. He said in that case, he would agree.

**CHAIRMAN CRIPPEN** suggested using sexual intercourse without consent language as an example on page 2, section 2, beginning on line 12.

**REPRESENTATIVE DENNY** stated the changes could be made on page 1, line 29 by changing the twenty years to life, imprisoned in the State Prison for a term of not less than two years or more than life and on page 2 strike (b).

**Valencia Lane** asked where he meant to strike (b)? **REPRESENTATIVE DENNY** replied on page 2, line 1.

**Valencia Lane** stated they were starting on page 2 on 45-5-503, line 29 and asked if they wanted to change 40 years to life? **REPRESENTATIVE DENNY** said page 2, line 18 was the first instance requiring the change of twenty years to the word life and strike (b) beginning on line 20.

**Valencia Lane** clarified as to whether he meant to strike the entirety of lines 20 through 25? **REPRESENTATIVE DENNY** affirmed that as correct, because all of the fines available were the same.

**CHAIRMAN CRIPPEN** asked if this solved the problem the sponsor wanted addressed? **REPRESENTATIVE DENNY** replied yes, because as **Mr. Ohler** had stated, there was an option in the forms of sentences for placement with the Department of Corrections.

**SENATOR CRIPPEN** stated he thought the sense of the Legislature would be to sentence these offenders for life under some type of supervision. He narrated that with this change the judge could sentence offenders to the Montana State Prison for life, have the option of sentencing them for life under the authority of the Department of Corrections, or have the discretion to modify their decision by suspending a portion of the sentence.

**SENATOR HALLIGAN** asked how a portion could be suspended when someone was sentenced for life? **Judge Larson** said a period of years could be suspended or all but a period of years could be suspended.

**CHAIRMAN CRIPPEN** asked if the Department could work under the amendments? **David Ohler** said he thought the Department could work under the amendments as long as the Committee was aware there was a fiscal impact associated with them. He commented that **SENATOR HALLIGAN** had raised a good question, as he did not know how a portion of a life sentence could be suspended when it was not known when that person's life was going to end.

**REPRESENTATIVE DENNY** asked if it could be done as some form of a condition of probation? **Beth Baker, Assistant Attorney General, Department of Justice**, said the sentencing for deliberate homicide or aggravated kidnapping already provided that alternative by the sentence being "termed life imprisonment or by a term of not less than ten years or not more than one hundred years". She suggested the same language could be utilized in this Bill.



**CHAIRMAN CRIPPEN** queried as to whether that language would answer the question raised? **SENATOR HALLIGAN** said he thought that would provide the option needed.

**CHAIRMAN CRIPPEN** said there was still a provision in the Bill where the defendant could come in and petition before the judge. **Dave Ohler** clarified that as only having to do with lifetime registration.

**CHAIRMAN CRIPPEN** asked why that provision was in this Bill? **Dave Ohler** answered that this Bill was also a lifetime registration bill essentially identical to HB 214 except with the lifetime sentencing added.

**CHAIRMAN CRIPPEN** asked if the Senator carrying the Bill on the Senate Floor had any comments. **SENATOR RIC HOLDEN** said the method of petitioning was still provided for ceasing lifetime registration on pages 7 and 8, so that avenue was still open to the defendants and the Department of Corrections. He stated having no problem with the suggested changes and thinking **REPRESENTATIVE DENNY'S** proposals would work.

**CHAIRMAN CRIPPEN** said he thought that by changing the option there was still going to be a problem with the fiscal note. He stated he thought that was going to be a problem no matter what was in the Bill. **Dave Ohler** said they did not believe there was a fiscal impact the way HB 157 was originally written, because the impact was principally going to be on increased probation and parole and that was provided for in the Governor's budget. He said he thought that had been received through the Legislative process. He said the part which had not been addressed was offenders who were going to be sentenced to Montana State Prison for life. He said he thought that would be an added fiscal impact.

**REPRESENTATIVE DENNY** pointed out that the maximum sentences ranged upward twenty to forty years and the fiscal impact of their further sentence would be quite a bit down the line. He said that he did not know if it was going to be that great of an increase in the Prison population that wouldn't already go there under current law.

**SENATOR HALLIGAN** said he guessed the House Amendments to **SENATOR LYNCH'S** Bill delayed this one year for the purpose of getting an idea of the numbers. He suggested that since there was an ongoing Commission the normal effective date of October 1<sup>st</sup> could be moved one year to allow the judges to potentially give some idea how many people they normally would have sentenced to life. He said that may allow the Department of Corrections to get a better idea of what was going to happen.

**CO-CHAIRMAN CLARK** said he thought another consideration was that generally, on a first offense, they would not be required for registration for a life sentence and you would not see a life or 100 year sentence for a first offense. He asked if it would be way down the line before there would be that type of sentencing **Judge Larson** said their experience was that there was some possibility the first time, but he did not think they wanted to repeat three or four before they were out. He said he thought **SENATOR LYNCH'S** Bill took care of one of the areas, but if there was no hope for much treatment he thought it should be like two offenses of a serious nature or a prior juvenile record in the same area. He stated it would delay the fiscal impact.

**Dave Ohler** said he thought the fiscal impact could begin tomorrow as an offender could commit their third offense tomorrow. He did state that he thought **CO-CHAIRMAN CLARK** was right that the fiscal impact was not going to be felt for a while. He said the average incarceration rate for sex offenders from 1990 to 1994 was 10.8 years and that was when a fiscal impact from people sentenced to Montana State Prison for life would become evident.

**Judge Larson** said he thought the sentence would give an extra incentive to some people in Prison to go through treatment and have a positive performance. He said people could actually get out of Prison earlier when they saw this new sentence and knew they would have to go through some type of treatment.

**CHAIRMAN CRIPPEN** said he thought that for the most part offenders denied their crime for a period of time. He stated there was a treatment program in Billings, outside the Prison, and said that would be an incentive for these folks to get to that point. He suggested that they knew they were going to be registered for life. He asked if it was retroactive. **Judge Larson** stated no it was not.

**SENATOR GROSFIELD** asked to look at page 2, line 18-25 and clarify the amendment. **CHAIRMAN CRIPPEN** asked for a review of the proposed amendment, as it applied to all of these sections. **REPRESENTATIVE DENNY** stated that at the end of line 18 they replaced twenty years with life or 99 years and struck lines 20-25.

**CHAIRMAN CRIPPEN** asked if there wasn't already a code section containing dual time sentences? **David Ohler** said yes, 100 years or life. **Beth Baker** read the code section in question.

**CHAIRMAN CRIPPEN** asked if the proposed amendment could be changed to 100 years so it would conform with existing sentencing language in the other code section and be consistent?

**Beth Baker** pointed out that there was a difference between a life sentence and sentence of a term of years. She said that with a term of years you were eligible for parole after a period of

seventeen and one half years and with a life sentence it was thirty years.

**CHAIRMAN CRIPPEN** stated that covered the first part of the amendment and asked for clarification on the second part.

**REPRESENTATIVE DENNY** said that struck the second sentencing option in line 20-25. He asked if he was correct that the judges could put a condition on the parole? **Judge Larson** said that within the requirement for parole they could put limitations on the requirements for probation, but could not affect good time.

**CHAIRMAN CRIPPEN** said if they struck the community based program, which seemed to be a stickler, then would he suggest keeping (b) in the Bill. He stated that would give the alternative sentence to the Department of Corrections for placement in an appropriate Montana correctional facility for a period not exceeding the maximum prison sentence without the right to earn good time. He said all that was being addressed here, was keeping good time to be released on parole or placed on furlough. He asked if anyone had a problem with that part?

**SENATOR HALLIGAN** said he thought just the fiscal impact which he felt was massive. **CHAIRMAN CRIPPEN** replied that it was an option for a person who was very bad and obviously had to be incarcerated for the rest of their life, with no opportunity of release. He asked if the judge shouldn't have that option?

**Dave Ohler** said he thought the judge already had that option. He said the judge could currently sentence the described person to Montana State Prison for life through existing criminal Codes, by making them ineligible for parole.

**CHAIRMAN CRIPPEN** asked for a response from the judge. **Judge Larson** said he had been told he could not affect good time and they had seen very violent people on some sort of supervised release or furlough status, commit other crimes. He said he thought this gave a clear expression of the Legislative desire regarding these particular repeat violent offenders, as it gave a clear sentence that the victim, people of the community and even possible potential perpetrators could understand that this was what the sentence was and this was what the sentence meant. He said he felt one thing which would be very helpful to the criminal justice system was for more people to be able to understand that a sentence was a sentence and that life without release possibilities or supervision violations meant exactly that. He said he thought the system had a credibility problem because of some recent incidents and he thought this would convey policy and a statement to the people, from the Legislature. He portrayed that statement as an understanding by the Legislature that when a judge determined that these types of offenders should not be released, this policy would explain what "never get out" meant = no good time, no parole and no furlough.

**CHAIRMAN CRIPPEN** stated there was (a) for in the State Prison and (b) in an appropriate Montana Correctional Institution for that period of time and no longer did the maximum of 100 years or life now apply. **REPRESENTATIVE DENNY** suggested striking (b) and stating "no more that 100 years with or without the right to earn good time". He said that then there would be discretion and asked if that could be done?

**Beth Baker** said she was sure it could be done, but thought it was not necessary. She said the only thing they were adding to Statute was good time. She stated that was because the judges could, under 46-18-202, impose a restriction that an offender was going to be ineligible for parole and participation in a supervised release program while serving this term. She said that within 46-18-201 the court had the option of sentencing to the Department. She said that by amending the Bill to impose the life sentence and adding the restriction on the good time, it was sort of a double whammy to the Department because it could restrict their flexibility in terms of the Prison population.

**CHAIRMAN CRIPPEN** stated that was the whole purpose of this Legislation. **Beth Baker** said that was correct and the Legislature needed to be aware of it.

**CHAIRMAN CRIPPEN** said he thought the Legislature was aware and felt that was the decision which had to be made, that there was no possibility of being released. He said his only question was if there should be a provision, even though the appropriate facility would include Montana State Prison, to also include another option if one arose? He said that could possibly reduce the fiscal note. **Beth Baker** said she thought she agreed there did not to be two subsections, if the maximum sentence was going to be life, because under current sentencing stature the judge could sentence to the Prison or the Department.

**CHAIRMAN CRIPPEN** explained that the Bill only stated to the Prison. **Beth Baker** said that in the other sentencing statutes that meant either to Prison or the Department. She expressed no need for two subsections and said they could add the good time restriction if desired.

**CHAIRMAN CRIPPEN** asked if she was telling the Committee that when they said State Prison it could be to either State Prison or to the Department of Corrections? He asked if there was any further caveat if the sentence was to the Department of Corrections? **Beth Baker** said that in 46-18-201 it stated "the court may impose a State Prison sentence for the offense or commit the defendant to the Department of Corrections and Human Services for placement in an appropriate correctional institutional program".

**CHAIRMAN CRIPPEN** asked how the amendment should be drafted? **David Ohler** explained this language came from statute 46-18-201 and the language regarding the sex offenses had come from various other Code sources. **Valencia Lane** asked if there was a reason

the language would be better amended in 46-18-201 as opposed to placing it in the individual title 45 crimes that are in the Bill.

**CHAIRMAN CRIPPEN** said he would like to see the amendments prepared and stated the Committee had adopted one which struck the references to 45-5-505. He expressed his concern for the need to utilize the same language throughout and allowing time for the drafting to be done. **Valencia Lane** said she would look it over and choose whether to draft the language for page 2, line 18 or list these particular sex crimes within 46-18-201 or 46-18-202 and state those crimes would not be eligible for good time.

**REPRESENTATIVE DENNY** said he thought eligibility for good time should be at the option of the judge.

**SENATOR HALLIGAN** suggested adopting the amendments because Committee Members seemed to agree and knew the desired affect. He said **Valencia Lane** could then choose the best way to accomplish the drafting of the amendments.

**CHAIRMAN CRIPPEN** asked if everyone was clear as to what was being done? A brief interchange of thoughts followed with a consensus of approach being reached to: 1) increase penalties for the crime in the Bill to "life imprisonment or by a term of not less than 10 years or more than 100 years and strike the new subsections (b)s in the Bill that provide for sentencing to the Department of Corrections; 2) put into the Bill a provision prohibiting good time, at the option of the sentencing judge; 3) take out the Senate Floor Amendments; 4) strike the reference to 45-5-505; and 5) amend the Title of the Bill, as needed. It was also decided that the amendments should keep the distinction of enhanced penalties for subsequent offenses, as currently appear in several of the criminal sections in the Bill. It was decided that **Valencia Lane** would draft the amendments and all parties present would be consulted to assure their agreement that the proceedings of the Committee work had been reached.

Motion/Vote:

**SENATOR HALLIGAN** MOVED THE AMENDMENTS AS THEY HAD BEEN DISCUSSED AND EXPRESSED BY REPRESENTATIVE DENNY AND INCLUDED THE ABILITY OF VALENCIA LANE AND OTHERS TO WORK TOGETHER TO FINALIZE THE AMENDMENTS AND PREPARE THE FREE CONFERENCE COMMITTEE REPORT. THE MOTION CARRIED UNANIMOUSLY.

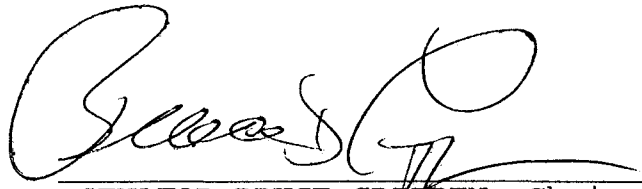
**SENATOR HALLIGAN** suggested **CHAIRMAN CRIPPEN** would have to request a revised fiscal note. **CHAIRMAN CRIPPEN** agreed and assigned the Secretary to the needed tasks.

**CHAIRMAN CRIPPEN** clarified that as a matter of procedure he thought the Senate Amendments had to have been struck. **Valencia Lane** stated the amendments she drafted would include those changes as necessary.

**CHAIRMAN CRIPPEN** asked if anyone felt a need for the Committee to meet again? A brief discussion revealed that each Member and participant would review the amendments for their approval before signing the Committee Report and another meeting would not be necessary.

**ADJOURNMENT**

**Adjournment:** The meeting was adjourned at 10:05 a.m.

A handwritten signature in black ink, appearing to read "Bruce Crippen", written over a horizontal line.

**SENATOR BRUCE CRIPPEN, Chairman**

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**CARLA TURK, Secretary**

BC/cmt

HOUSE BILL NO. 157

INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER, CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT, MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS, EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE, KOTTEL, MCCULLOCH, LARSON, HEAVY RUNNER, SHEA, GALVIN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

INCREASING PENALTIES FOR

A BILL FOR AN ACT ENTITLED: "AN ACT ~~ALLOWING CERTAIN SEX OFFENDERS TO BE SENTENCED TO THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR LIFE, TO BE PLACED IN A COMMUNITY-BASED PROGRAM FOR LIFE OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION OR PROGRAM FOR NOT LONGER THAN THE PERMISSIBLE PRISON SENTENCE,~~ <sup>CERTAIN SEXUAL OFFENDERS</sup> INCREASING FINES FOR THOSE OFFENSES; PROVIDING THAT ~~THOSE PERSONS~~ ARE TO REGISTER AS SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-18-202, 46-23-502, 46-23-506, AND 46-23-507, MCA."

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

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

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

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

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he the~~ offender shall be *punished by life imprisonment or by imprisonment*

~~to~~ imprisoned in the state prison for any a term of not less than 2 years or more than <sup>100</sup> ~~20~~ years and may be fined not more than \$50,000 ~~of~~

INCREASING THE MAXIMUM PENALTY FOR CERTAIN OFFENSES TO LIFE IMPRISONMENT

1 ~~(b) sentenced to the department of corrections and human services for placement by the~~  
 2 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~  
 3 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
 4 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
 5 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
 6 ~~be fined not more than \$50,000.~~

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

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

11

12 Section 2. Section 45-5-503, MCA, is amended to read:

13 "45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual  
 14 intercourse without consent with another person commits the offense of sexual intercourse without  
 15 consent. A person may not be convicted under this section based on the age of the person's spouse, as  
 16 provided in 45-5-501(1)(b)(iii).

17 (2) A person convicted of sexual intercourse without consent shall be  
 18 *punished by life imprisonment or by imprisonment 100*  
~~(a) imprisoned~~ in the state prison for a term of not less than 2 years or more than 20 years and  
 19 may be fined not more than \$50,000, except as provided in 46-18-222 ~~or~~

20 ~~(b) sentenced to the department of corrections and human services for placement by the~~  
 21 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~  
 22 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
 23 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
 24 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
 25 ~~be fined not more than \$50,000.~~

26 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the  
 27 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse  
 28 without consent, the offender shall be

29 *punished by life imprisonment or by imprisonment 4 100*  
~~(a) imprisoned~~ in the state prison for any a term of not less than 2 years or more than 40 years and  
 30 may be fined not more than \$50,000, except as provided in 46-18-222. ~~An act "in the course of~~



1 committing sexual intercourse without consent" includes an attempt to commit the offense or flight after  
2 the attempt or commission.

3 ~~(ii) sentenced to the department of corrections and human services for placement by the department~~  
4 ~~in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~  
5 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
6 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
7 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
8 ~~be fined not more than \$50,000.~~

9 (b) If two or more persons are convicted of sexual intercourse without consent with the same  
10 victim in an incident in which each offender was present at the location where another offender's offense  
11 occurred during a time period in which each offender could have reasonably known of the other's offense,  
12 each offender shall be

13 ~~(i) imprisoned~~ *punished by life imprisonment or by imprisonment*  
14 ~~in the state prison for a term of not less than 5 years or more than 40 years and may~~  
15 ~~be fined not more than \$50,000, except as provided in 46-18-222.~~ <sup>100</sup>

16 ~~(ii) sentenced to the department of corrections and human services for placement by the~~  
17 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~  
18 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
19 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
20 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
21 ~~be fined not more than \$50,000.~~

22 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
23 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
24 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from  
25 the offense. The amount, method, and time of payment must be determined in the same manner as  
26 provided for in 46-18-244.

27 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
28 consent" includes an attempt to commit the offense or flight after the attempt or commission."

29 Section 3. Section 45-5-504, MCA, is amended to read:

30 "45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying the

1 person's own sexual desire of himself or the sexual desire of any person, exposes his the person's genitals  
2 under circumstances in which he the person knows his the conduct is likely to cause affront or alarm  
3 commits the offense of indecent exposure.

4 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to  
5 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

6 (b) On a second conviction, he the person shall be fined an amount not to exceed \$1,000 or be  
7 imprisoned in the county jail for a term of not more than 1 year, or both.

8 (c) On a third or subsequent conviction, he the person shall be *punished by life inprison  
or by imprisonment*  
9 ~~(i) fined an amount not to exceed \$10,000 or be imprisoned~~ in the state prison for a term of not less  
10 *5 years or 100* more than ~~5 years, or both, or~~ *and may be fined not more than \$10,000*

11 ~~(ii) sentenced to the department of corrections and human services for placement by the~~  
12 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~  
13 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
14 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
15 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
16 ~~be fined not more than \$10,000."~~

18 Section 4. Section 45-5-507, MCA, is amended to read:

19 "45-5-507. Incest. (1) A person commits the offense of incest if he the person knowingly marries,  
20 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,  
21 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The  
22 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,  
23 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

24 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but  
25 consent is ineffective if the victim is less than 18 years old.

26 (3) A person convicted of incest shall be *punished by life imprisonment or*  
27 ~~imprisoned~~ in the state prison for any a term not to exceed *20* years or be fined an amount not  
28 to exceed \$50,000, ~~or both, or~~ *100*

29 ~~(b) sentenced to the department of corrections and human services for placement by the~~  
30 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~

~~1 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
 2 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
 3 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
 4 ~~be fined not more than \$50,000.~~

5 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim  
 6 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall  
 7 be *punished by life imprisonment or by imprisonment of not less than 4 years or more than 100*  
 8 ~~(a) imprisoned~~ in the state prison for any <sup>^</sup> term ~~not to exceed 20~~ years and may be fined not more  
 9 than \$50,000 ~~on~~

10 ~~(b) sentenced to the department of corrections and human services for placement by the~~  
 11 ~~department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~  
 12 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
 13 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
 14 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
 15 ~~be fined not more than \$50,000.~~

16 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial  
 17 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
 18 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.  
 19 The amount, method, and time of payment must be determined in the same manner as provided for in  
 20 46-18-244."

22 Section 5. Section 45-5-625, MCA, is amended to read:

23 "45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of  
 24 children if the person knowingly:

- 25 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual  
 26 conduct, actual or simulated;
- 27 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or  
 28 videotapes, or records a child engaging in sexual conduct, actual or simulated;
- 29 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual  
 30 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

1 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~  
2 ~~intent to sell~~, exhibits, or advertises any visual or print medium in which children are engaged in sexual  
3 conduct, actual or simulated;

4 (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in  
5 which children are engaged in sexual conduct, actual or simulated; or

6 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing  
7 that the activity is of the nature described in those subsections; or

8 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual  
9 conduct, actual or simulated.

10 (2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of  
11 sexual abuse of children shall be ~~punished by life imprisonment or by imprisonment~~

12 ~~(i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed~~  
13 ~~20 years, or both, or~~ 100 ~~and may be fined not more than \$10,000~~

14 ~~(ii) sentenced to the department of corrections and human services for placement by the department~~  
15 ~~in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~  
16 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
17 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
18 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
19 ~~be fined not more than \$10,000.~~

20 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of  
21 children shall be ~~punished by life imprisonment or by imprisonment~~

22 ~~(i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed~~  
23 ~~50 years, or both, or~~ or more than 100 ~~and may be fined not more than \$10,000~~ of not less than 4

24 ~~(ii) sentenced to the department of corrections and human services for placement by the department~~  
25 ~~in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN~~  
26 ~~APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE~~  
27 ~~MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED~~  
28 ~~ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may~~  
29 ~~be fined not more than \$10,000.~~

30 (c) A person convicted of the offense of sexual abuse of children for the possession of material,

1 as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for  
2 a term not to exceed 6 months, or both.

3 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print  
4 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed  
5 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment  
6 course or program conducted or approved by the department of corrections and human services."

7 *Section 6. amend 46-18-202*

8 *Section 7.* Section 46-23-502, MCA, is amended to read:

9 "46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions  
10 apply:

11 (1) "Department" means the department of corrections and human services provided for in Title  
12 2, chapter 15, part 23.

13 (2) "Sexual offender" means a person who has been convicted of a sexual offense.

14 (3) "Sexual offense" means:

15 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), ~~45-5-505~~, 45-5-507 (unless the act  
16 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

17 (b) any violation of a law of another state or the federal government reasonably equivalent to a  
18 violation listed in subsection (3)(a)."

19 *Section 8.* Section 46-23-506, MCA, is amended to read:

20 "46-23-506. Duration of registration. (1) A person required to register under 46-18-254,  
21 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the  
22 person's life, except as provided in subsection (2) of this section or during a period of 10 years after  
23 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,  
24 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions  
25 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which  
26 the person is in prison.

27 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~  
28 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~  
29 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~  
30

1 ~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,~~  
 2 ~~the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if~~  
 3 ~~that court is not in this state, the district court for the judicial district in which the sexual offender resides~~  
 4 A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254,  
 5 46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of  
 6 the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender  
 7 was convicted THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE  
 8 THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL  
 9 A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER  
 10 WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any  
 11 written or oral statements of the victim or victims. The court may grant the petition upon finding that:

- 12 (a) the sexual offender has remained a law-abiding citizen; and
- 13 (b) continued registration is not necessary for public protection and that relief from registration is  
 14 in the best interests of society.

15 (3) THE OFFENDER MAY MOVE THAT ALL OR PART OF THE PROCEEDINGS IN A HEARING  
 16 UNDER SUBSECTION (2) BE CLOSED TO THE PUBLIC, OR THE JUDGE MAY TAKE ACTION ON THE  
 17 JUDGE'S OWN MOTION. NOTWITHSTANDING CLOSURE OF THE PROCEEDING TO THE PUBLIC, THE  
 18 JUDGE SHALL PERMIT A VICTIM OF THE OFFENSE TO BE PRESENT UNLESS THE JUDGE DETERMINES  
 19 THAT EXCLUSION OF THE VICTIM IS NECESSARY TO PROTECT THE OFFENDER'S RIGHT OF PRIVACY  
 20 OR THE SAFETY OF THE VICTIM. IF THE VICTIM IS PRESENT, THE JUDGE, AT THE VICTIM'S REQUEST,  
 21 SHALL PERMIT THE PRESENCE OF AN INDIVIDUAL TO PROVIDE SUPPORT TO THE VICTIM UNLESS THE  
 22 JUDGE DETERMINES THAT EXCLUSION OF THE INDIVIDUAL IS NECESSARY TO PROTECT THE  
 23 OFFENDER'S RIGHT TO PRIVACY."

24  
 25 Section <sup>9</sup>8. Section 46-23-507, MCA, is amended to read:

26 "46-23-507. Penalty. A sexual offender who knowingly fails to register under 46-18-254,  
 27 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or more  
 28 than 5 years or a fine may be fined not to exceed ~~\$250~~ more than ~~\$5,000~~ \$10,000, or both."

29  
 30 NEW SECTION. Section <sup>10</sup>9. Dissemination of information in register. Information in the register

1 maintained under 46-18-254 and this part is confidential criminal justice information, as defined in  
 2 44-5-103, except that:

3 (1) the name of a registered sexual offender is public criminal justice information, as defined in  
 4 44-5-103; and

5 (2) before releasing from a state prison an inmate who is a sexual offender, if the department  
 6 believes that release of information concerning the inmate is necessary for public protection, the department  
 7 shall petition the district court for the judicial district in which the prison is located or for the judicial district  
 8 in which the inmate intends to reside for an order allowing the department to release relevant and necessary  
 9 register information regarding the inmate to the public. The court shall grant the order if the court finds  
 10 that the information is necessary for public protection.

11

12 NEW SECTION. Section <sup>11</sup>30. Codification instruction. [Section <sup>10</sup>9] is intended to be codified as an  
 13 integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section <sup>10</sup>9].

14

-END-

NEW §. Section 12. Coordination instruction. If [this act  
 and House Bill No. 214 are both passed and  
 approved, then the amendment to 46-23-502(3)(a)  
 in House Bill No. 214 is void.



## FREE CONFERENCE COMMITTEE

on House Bill 157

Report No. 1; April 7, 1995

Page 1 of 6

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 157 and recommend the following amendments:

1. Title, line 9.

Following: "AN ACT"

Strike: "ALLOWING"

Insert: "INCREASING PENALTIES FOR"

2. Title, lines 9 through 13.

Following: "SEX" on line 9

Strike: remainder of line 9 through first "THOSE" on line 13

3. Title, line 13.

Following: "OFFENSES;"

Insert: "INCREASING THE MAXIMUM PENALTY FOR CERTAIN SEX OFFENSES  
TO LIFE IMPRISONMENT"

Strike: "THOSE PERSONS"

Insert: "CERTAIN SEXUAL OFFENDERS"

4. Title, line 17.

Following: "45-5-625,"

Insert: "46-18-202,"

5. Page 1, lines 28 and 29.

Following: "be" on line 28

Strike: remainder of line 28 through "imprisoned" on line 29

Insert: "punished by life imprisonment or by imprisonment"

6. Page 1, line 29.

Strike: "20"

Insert: "100"

7. Page 1, line 30 through page 2, line 6.

Following: "\$50,000" on line 30

Strike: remainder of line 30 through "\$50,000" on page 2, line 6

8. Page 2, lines 17 and 18.

Following: "be" on line 17

Strike: remainder of line 17 through "imprisoned" on line 18

ADOPT

REJECT

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Insert: "punished by life imprisonment or by imprisonment"

9. Page 2, line 18.

Strike: "20"

Insert: "100"

10. Page 2, lines 19 through 25.

Following: "46-18-222" on line 19

Strike: remainder of line 19 through "\$50,000" on line 25

11. Page 2, lines 28 and 29.

Following: "be" on line 28

Strike: remainder of line 28 through "imprisoned" on line 29

Insert: "punished by life imprisonment or by imprisonment"

12. Page 2, line 29.

Strike: "2"

Insert: "4"

Strike: "40"

Insert: "100"

13. Page 3, line 2 through page 3, line 8.

Following: "~~commission.~~" on line 2

Strike: remainder of line 2 through "\$50,000" on line 8

14. Page 3, lines 12 and 13.

Following: "be" on line 12

Strike: remainder of line 12 through "imprisoned" on line 13

Insert: "punished by life imprisonment or by imprisonment"

15. Page 3, line 13.

Strike: "40"

Insert: "100"

16. Page 3, lines 14 through 20.

Following: "46-18-222" on line 14

Strike: remainder of line 14 through "\$50,000" on line 20

17. Page 4, lines 8 and 9.

Following: "be" on line 8

Strike: remainder of line 8 through "imprisoned" on line 9

Insert: "punished by life imprisonment or by imprisonment"

18. Page 4, line 9.

Following: second "not"

Insert: "less than 5 years or"

19. Page 4, line 10.

Strike: "5"  
Insert: "100"  
Following: "years"  
Strike: remainder of line 10  
Insert: "and may be fined not more than \$10,000"

20. Page 4, lines 11 through 16.  
Strike: line 11 in its entirety through "\$10,000" on line 16

21. Page 4, lines 26 and 27.  
Following: "be" on line 26  
Strike: remainder of line 26 through "imprisoned" on line 27  
Insert: "punished by life imprisonment or by imprisonment"

22. Page 4, line 27.  
Strike: "20"  
Insert: "100"

23. Page 4, line 28 through page 5, line 4.  
Following: "\$50,000" on line 28  
Strike: remainder of line 28 through "\$50,000" on page 5, line 4

24. Page 5, lines 7 and 8.  
Following: "be" on line 7  
Strike: remainder of line 7 through "imprisoned" on line 8  
Insert: "punished by life imprisonment or by imprisonment"

25. Page 5, line 8.  
Following: "term"  
Strike: "not to exceed 20"  
Insert: "of not less than 4 years or more than 100"

26. Page 5, lines 9 through 15.  
Following: "\$50,000" on line 9  
Strike: remainder of line 9 through "\$50,000" on line 15

27. Page 6, lines 11 and 12.  
Following: "be" on line 11  
Strike: remainder of line 11 through "imprisoned" on line 12  
Insert: "punished by life imprisonment or by imprisonment"

28. Page 6, line 13.  
Strike: "20"  
Insert: "100"  
Following: "years"  
Strike: remainder of line 13  
Insert: "and may be fined not more than \$10,000"

29. Page 6, lines 14 through 19.

Strike: line 14 in its entirety through "\$10,000" on line 19

30. Page 6, lines 21 and 22.

Following: "be" on line 21

Strike: remainder of line 21 through "imprisoned" on line 22

Insert: "punished by life imprisonment or by imprisonment"

31. Page 6, lines 22 and 23.

Following: "term" on line 22

Strike: remainder of line 22 through "50" on line 23

Insert: "of not less than 4 years or more than 100"

32. Page 6, line 23.

Following: "years"

Strike: remainder of line 23

Insert: "and may be fined not more than \$10,000"

33. Page 6, lines 24 through 29.

Strike: line 24 in its entirety through "\$10,000" on line 29

34. Page 7, line 7.

Insert: "Section 6. Section 46-18-202, MCA, is amended to read:

"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 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

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

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

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

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

(e) 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 that 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 contain a statement of the reasons for the

restriction.

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

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

(5) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that 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 must contain a statement of the reasons for the restriction."

Renumber: subsequent sections

35. Page 7, line 15.  
Strike: "45-5-505,"

36. Page 9, lines 12 and 13.  
Strike: "9"  
Insert: "10"

37. Page 9, line 14.  
Insert: "NEW SECTION. Section 12. Coordination instruction. If [this act] and House Bill No. 214 are both passed and approved, then the amendment to 46-23-502(3)(a) in House Bill No. 214 is void."

We recommend that the amendments considered above to House Bill 157 be acceded to by the senate.

And this FREE Conference Committee report be adopted.

For the House:

Clark

Bob Clark

Chair

Denny

Matt Denny

Shea

Pat Shea

For the Senate:

Crippen

John Crippen

Chair

Grosfield

John Grosfield

Halligan

Mike Halligan

Amendments to House Bill No. 157  
Reference Reading Copy

Requested by Senator Crippen  
For the Free Conference Committee

Prepared by Greg Petesch  
April 5, 1995

1. Page 7, line 15.  
Strike: "45-5-505,"

2. Page 9, line 14.  
Insert: "

NEW SECTION. **Section 11. Coordination instruction.** If  
[this act] and House Bill No. 214 are both passed and approved,  
then the amendment to section 46-23-502(3)(a) in House Bill No.  
214 is void."

HOUSE BILL NO. 157

INTRODUCED BY DENNY, HOLDEN, BRAINARD, DEVANEY, AHNER, KEENAN, S. SMITH, SLITER, CLARK, KNOX, FORBES, BARNETT, BOHLINGER, HERRON, MERCER, STOVALL, BURNETT, MURDOCK, TAYLOR, MCKEE, MASOLO, ARNOTT, L. SMITH, FISHER, MILLS, BAER, WELLS, EMERSON, SOFT, ELLIS, MCGEE, BOHARSKI, SOMERVILLE, KOTTEL, MCCULLOCH, LARSON, HEAVY RUNNER, SHEA, GALVIN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN SEX OFFENDERS TO BE SENTENCED TO THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES FOR LIFE, TO BE PLACED IN A COMMUNITY-BASED PROGRAM FOR LIFE OR IN AN APPROPRIATE MONTANA CORRECTIONAL INSTITUTION OR PROGRAM FOR NOT LONGER THAN THE PERMISSIBLE PRISON SENTENCE; INCREASING FINES FOR THOSE OFFENSES; PROVIDING THAT THOSE PERSONS ARE TO REGISTER AS SEXUAL OFFENDERS FOR THE REMAINDER OF THEIR LIVES UNLESS A COURT FINDS THAT PUBLIC PROTECTION NO LONGER DEMANDS REGISTRATION; REGULATING THE DISSEMINATION OF MATERIAL IN THE SEX OFFENDER REGISTER; AND AMENDING SECTIONS 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, 46-23-502, 46-23-506, AND 46-23-507, MCA."

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

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

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

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

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, ~~he~~ the offender shall be:

(a) imprisoned in the state prison for ~~any~~ a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000; or





1 ~~committing sexual intercourse without consent" includes an attempt to commit the offense or flight after~~  
2 ~~the attempt or commission; or~~

3 (ii) sentenced to the department of corrections and human services for placement by the department  
4 in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN  
5 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE  
6 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED  
7 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may  
8 be fined not more than \$50,000.

9 (b) If two or more persons are convicted of sexual intercourse without consent with the same  
10 victim in an incident in which each offender was present at the location where another offender's offense  
11 occurred during a time period in which each offender could have reasonably known of the other's offense,  
12 each offender shall be:

13 (i) imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may  
14 be fined not more than \$50,000, except as provided in 46-18-222; or

15 (ii) sentenced to the department of corrections and human services for placement by the  
16 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN  
17 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE  
18 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED  
19 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may  
20 be fined not more than \$50,000.

21 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
22 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
23 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from  
24 the offense. The amount, method, and time of payment must be determined in the same manner as  
25 provided for in 46-18-244.

26 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
27 consent" includes an attempt to commit the offense or flight after the attempt or commission."

28  
29 **Section 3.** Section 45-5-504, MCA, is amended to read:

30 **"45-5-504. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying the

1 person's own sexual desire of himself or the sexual desire of any person, exposes ~~his~~ the person's genitals  
 2 under circumstances in which ~~he~~ the person knows ~~his~~ the conduct is likely to cause affront or alarm  
 3 commits the offense of indecent exposure.

4 (2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to  
 5 exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

6 (b) On a second conviction, ~~he~~ the person shall be fined an amount not to exceed \$1,000 or be  
 7 imprisoned in the county jail for a term of not more than 1 year, or both.

8 (c) On a third or subsequent conviction, ~~he~~ the person shall be:

9 (i) fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term of not  
 10 more than 5 years, or both; or

11 (ii) sentenced to the department of corrections and human services for placement by the  
 12 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN  
 13 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE  
 14 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED  
 15 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may  
 16 be fined not more than \$10,000."

17  
 18 **Section 4.** Section 45-5-507, MCA, is amended to read:

19 "**45-5-507. Incest.** (1) A person commits the offense of incest if ~~he~~ the person knowingly marries,  
 20 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor,  
 21 a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The  
 22 relationships referred to ~~herein~~ in this subsection include blood relationships without regard to legitimacy,  
 23 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

24 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but  
 25 consent is ineffective if the victim is less than 18 years old.

26 (3) A person convicted of incest shall be:

27 (a) imprisoned in the state prison for any a term not to exceed 20 years or be fined an amount not  
 28 to exceed \$50,000, or both; or

29 (b) sentenced to the department of corrections and human services for placement by the  
 30 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN

1 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE  
 2 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED  
 3 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may  
 4 be fined not more than \$50,000.

5 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim  
 6 or if the offender inflicts bodily injury upon anyone in the course of committing incest, ~~he~~ the offender shall  
 7 be:

8 (a) imprisoned in the state prison for ~~any a~~ a term not to exceed 20 years and may be fined not more  
 9 than \$50,000; or

10 (b) sentenced to the department of corrections and human services for placement by the  
 11 department in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN  
 12 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE  
 13 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED  
 14 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may  
 15 be fined not more than \$50,000.

16 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial  
 17 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
 18 require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.  
 19 The amount, method, and time of payment must be determined in the same manner as provided for in  
 20 46-18-244."

21  
 22 **Section 5.** Section 45-5-625, MCA, is amended to read:  
 23 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of  
 24 children if the person knowingly:

25 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual  
 26 conduct, actual or simulated;

27 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or  
 28 videotapes, or records a child engaging in sexual conduct, actual or simulated;

29 (c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual  
 30 or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

1 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, ~~possesses with~~  
 2 ~~intent to sell,~~ exhibits, or advertises any visual or print medium in which children are engaged in sexual  
 3 conduct, actual or simulated;

4 (e) knowingly possesses ~~material referred to in subsection (1)(d)~~ any visual or print medium in  
 5 which children are engaged in sexual conduct, actual or simulated; ~~or~~

6 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing  
 7 that the activity is of the nature described in those subsections; or

8 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual  
 9 conduct, actual or simulated.

10 (2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A person convicted of the offense of  
 11 sexual abuse of children shall be:

12 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed  
 13 20 years, or both; or

14 (ii) sentenced to the department of corrections and human services for placement by the department  
 15 in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN  
 16 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE  
 17 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED  
 18 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may  
 19 be fined not more than \$10,000.

20 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of  
 21 children shall be:

22 (i) fined not to exceed \$10,000 or be imprisoned in the state prison for any a term not to exceed  
 23 50 years, or both; or

24 (ii) sentenced to the department of corrections and human services for placement by the department  
 25 in an appropriate correctional institution or A COMMUNITY-BASED program for life OR IN AN  
 26 APPROPRIATE MONTANA CORRECTIONAL INSTITUTION FOR ANY PERIOD NOT EXCEEDING THE  
 27 MAXIMUM POSSIBLE PRISON SENTENCE WITHOUT THE RIGHT TO EARN GOOD TIME, TO BE RELEASED  
 28 ON PAROLE, OR TO BE PLACED ON FURLOUGH OR SUPERVISED RELEASE. In addition, the offender may  
 29 be fined not more than \$10,000.

30 (c) A person convicted of the offense of sexual abuse of children for the possession of material,

1 as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for  
2 a term not to exceed 6 months, or both.

3 (3) An offense is not committed under subsections (1)(d) through ~~(1)(f)~~ (1)(g) if the visual or print  
4 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed  
5 with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment  
6 course or program conducted or approved by the department of corrections and human services."  
7

8 **Section 6.** Section 46-23-502, MCA, is amended to read:

9 **"46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions  
10 apply:

11 (1) "Department" means the department of corrections and human services provided for in Title  
12 2, chapter 15, part 23.

13 (2) "Sexual offender" means a person who has been convicted of a sexual offense.

14 (3) "Sexual offense" means:

15 (a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-505, 45-5-507 (unless the act  
16 occurred between two consenting persons 16 years of age or older), or 45-5-625; or

17 (b) any violation of a law of another state or the federal government reasonably equivalent to a  
18 violation listed in subsection (3)(a)."  
19

20 **Section 7.** Section 46-23-506, MCA, is amended to read:

21 **"46-23-506. Duration of registration.** (1) A person required to register under 46-18-254,  
22 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the  
23 person's life, except as provided in subsection (2) of this section or during a period of 10 years after  
24 conviction, if not imprisoned during that period. If a person required to register under 46-18-254,  
25 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions  
26 of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison time during which  
27 the person is in prison.

28 (2) ~~A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part~~  
29 ~~terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year~~  
30 ~~period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this~~

1 ~~part. At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense,~~  
 2 ~~the sexual offender may petition the court that sentenced the sexual offender for the last conviction or, if~~  
 3 ~~that court is not in this state, the district court for the judicial district in which the sexual offender resides~~  
 4 A DISTRICT COURT for an order relieving the sexual offender of the duty to register under 46-18-254,  
 5 46-18-255, and this part. Within 3 days after the petition is filed, the sexual offender shall mail a copy of  
 6 the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender  
 7 was convicted THE PETITION MUST BE SERVED ON THE COUNTY ATTORNEY IN THE COUNTY WHERE  
 8 THE PETITION IS FILED. PRIOR TO A HEARING ON THE PETITION, THE COUNTY ATTORNEY SHALL MAIL  
 9 A COPY OF THE PETITION TO THE VICTIM OF THE LAST OFFENSE FOR WHICH THE SEXUAL OFFENDER  
 10 WAS CONVICTED IF THE VICTIM'S ADDRESS IS REASONABLY AVAILABLE. The court shall consider any  
 11 written or oral statements of the victim or victims. The court may grant the petition upon finding that:

12 (a) the sexual offender has remained a law-abiding citizen; and

13 (b) continued registration is not necessary for public protection and that relief from registration is  
 14 in the best interests of society.

15 (3) THE OFFENDER MAY MOVE THAT ALL OR PART OF THE PROCEEDINGS IN A HEARING  
 16 UNDER SUBSECTION (2) BE CLOSED TO THE PUBLIC, OR THE JUDGE MAY TAKE ACTION ON THE  
 17 JUDGE'S OWN MOTION. NOTWITHSTANDING CLOSURE OF THE PROCEEDING TO THE PUBLIC, THE  
 18 JUDGE SHALL PERMIT A VICTIM OF THE OFFENSE TO BE PRESENT UNLESS THE JUDGE DETERMINES  
 19 THAT EXCLUSION OF THE VICTIM IS NECESSARY TO PROTECT THE OFFENDER'S RIGHT OF PRIVACY  
 20 OR THE SAFETY OF THE VICTIM. IF THE VICTIM IS PRESENT, THE JUDGE, AT THE VICTIM'S REQUEST,  
 21 SHALL PERMIT THE PRESENCE OF AN INDIVIDUAL TO PROVIDE SUPPORT TO THE VICTIM UNLESS THE  
 22 JUDGE DETERMINES THAT EXCLUSION OF THE INDIVIDUAL IS NECESSARY TO PROTECT THE  
 23 OFFENDER'S RIGHT TO PRIVACY."

24  
 25 **Section 8.** Section 46-23-507, MCA, is amended to read:

26 **"46-23-507. Penalty.** A sexual offender who knowingly fails to register under 46-18-254,  
 27 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or more  
 28 than 5 years or a fine may be fined not to exceed \$250 more than \$5,000 \$10,000, or both."

29  
 30 **NEW SECTION. Section 9. Dissemination of information in register.** Information in the register

1 maintained under 46-18-254 and this part is confidential criminal justice information, as defined in  
2 44-5-103, except that:

3 (1) the name of a registered sexual offender is public criminal justice information, as defined in  
4 44-5-103; and

5 (2) before releasing from a state prison an inmate who is a sexual offender, if the department  
6 believes that release of information concerning the inmate is necessary for public protection, the department  
7 shall petition the district court for the judicial district in which the prison is located or for the judicial district  
8 in which the inmate intends to reside for an order allowing the department to release relevant and necessary  
9 register information regarding the inmate to the public. The court shall grant the order if the court finds  
10 that the information is necessary for public protection.

11  
12 **NEW SECTION. Section 10. Codification instruction.** [Section 9] is intended to be codified as an  
13 integral part of Title 46, chapter 23, part 5, and the provisions of Title 46 apply to [section 9].

14 -END-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

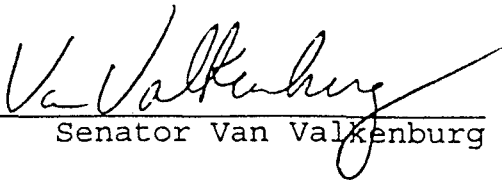
March 22, 1995 1:56 pm

Mr. Chairman: I move to amend HB 157 (reference copy -- salmon).

ADOPT  
V.V.

REJECT

Signed: \_\_\_\_\_

  
Senator Van Valkenburg

That such amendments read:

1. Title, line 10.

Following: "PLACED"

Insert: "IN A COMMUNITY-BASED PROGRAM FOR LIFE OR"

2. Title, line 11.

Following: "APPROPRIATE"

Insert: "MONTANA"

Strike: "OR PROGRAM"

Insert: "FOR NOT LONGER THAN THE PERMISSIBLE PRISON SENTENCE"

3. Page 2, line 1.

Page 2, line 17.

Page 2, line 27.

Page 3, line 6.

Page 3, line 29.

Page 4, line 13.

Page 4, line 21.

Page 5, line 22.

Page 5, line 29.

Strike: "an appropriate correctional institution or"

Insert: "a community-based"

Following: "life"

Insert: "or in an appropriate Montana correctional institution for any period not exceeding the maximum possible prison sentence without the right to earn good time, to be released on parole, or to be placed on furlough or supervised release"

-END-



Amd. Coord.

HB 157  
SENATE  
661356CW.SPV



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0157, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill allowing certain sex offenders to be sentenced to the Department of Corrections and Human Services (DCHS) for life, to be placed in an appropriate correctional institution or program, increasing fines for these offenses, providing that offenders register as sexual offenders for life unless the court finds that public protection no longer demands registration, and regulating the dissemination of material in the sex offender register.

ASSUMPTIONS:

1. Current financial profile of prospective defendants will continue.
2. For the offenders defined in this bill, the length of stay in Montana State Prison will not change.
3. The five year average number of offenders convicted of the crimes defined in this bill is 185 persons per year.
4. The increase in workload will be experienced in the Probation and Parole Bureau of the DCHS. Probation and Parole will need 2.00 FTE in FY96 and 3.00 FTE in FY97. These FTE and their associated operating budgets result in total general fund costs of \$110,038 in FY96 and \$114,669 in FY97, as included in the Governor's proposed budget.
5. The duration of registration under 45-18-254 and 45-18-255, MCA, will increase from the current 10 years to a lifetime registration. The costs of registering these offenders from the current 10 years to a lifetime registration will be minimal and DCHS will absorb these costs within its recommended budget.

FISCAL IMPACT:

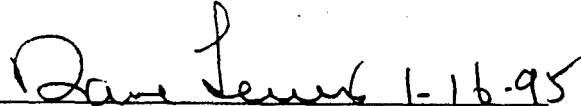
No further impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This bill will increase the number of convicted sex offenders in the corrections system at an estimated rate of 185 per year. Probation and Parole will continue to need additional FTE to supervise these people and maintain a manageable caseload.

TECHNICAL NOTES:

Historically, most defendants convicted under this section are either indigent or have limited financial resources. A court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine [see 46-18-231, MCA].

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

      1-17-95  
MATT DENNY, PRIMARY SPONSOR      DATE

Fiscal Note for HB0157, as introduced

**HB 157**

Amendments to House Bill No. 157  
Corrected Reference As Amended Reading Copy (salmon)

Requested by Conference Committee on HB 157  
For the Committee of the Whole

Prepared by Valencia Lane  
April 7, 1995

1. Title, line 9.  
Following: "AN ACT"  
Strike: "ALLOWING"  
Insert: "INCREASING PENALTIES FOR"
2. Title, lines 9 through 13.  
Following: "SEX" on line 9  
Strike: remainder of line 9 through first "THOSE" on line 13
3. Title, line 13.  
Following: "OFFENSES;"  
Insert: "INCREASING THE MAXIMUM PENALTY FOR CERTAIN SEX OFFENSES  
TO LIFE IMPRISONMENT"  
Strike: "THOSE PERSONS"  
Insert: "CERTAIN SEXUAL OFFENDERS"
4. Title, line 17.  
Following: "45-5-625,"  
Insert: "46-18-202,"
5. Page 1, lines 28 and 29.  
Following: "be" on line 28  
Strike: remainder of line 28 through "imprisoned" on line 29  
Insert: "punished by life imprisonment or by imprisonment"
6. Page 1, line 29.  
Strike: "20"  
Insert: "100"
7. Page 1, line 30 through page 2, line 6.  
Following: "\$50,000" on line 30  
Strike: remainder of line 30 through "\$50,000" on page 2, line 6
8. Page 2, lines 17 and 18.  
Following: "be" on line 17  
Strike: remainder of line 17 through "imprisoned" on line 18  
Insert: "punished by life imprisonment or by imprisonment"
9. Page 2, line 18.  
Strike: "20"  
Insert: "100"
10. Page 2, lines 19 through 25.  
Following: "46-18-222" on line 19  
Strike: remainder of line 19 through "\$50,000" on line 25

11. Page 2, lines 28 and 29.

Following: "be" on line 28

Strike: remainder of line 28 through "imprisoned" on line 29

Insert: "punished by life imprisonment or by imprisonment"

12. Page 2, line 29.

Strike: "2"

Insert: "4"

Strike: "40"

Insert: "100"

13. Page 3, line 2 through page 3, line 8.

Following: "~~commission.~~" on line 2

Strike: remainder of line 2 through "\$50,000" on line 8

14. Page 3, lines 12 and 13.

Following: "be" on line 12

Strike: remainder of line 12 through "imprisoned" on line 13

Insert: "punished by life imprisonment or by imprisonment"

15. Page 3, line 13.

Strike: "40"

Insert: "100"

16. Page 3, lines 14 through 20.

Following: "46-18-222" on line 14

Strike: remainder of line 14 through "\$50,000" on line 20

17. Page 4, lines 8 and 9.

Following: "be" on line 8

Strike: remainder of line 8 through "imprisoned" on line 9

Insert: "punished by life imprisonment or by imprisonment"

18. Page 4, line 9.

Following: second "not"

Insert: "less than 5 years or"

19. Page 4, line 10.

Strike: "5"

Insert: "100"

Following: "years"

Strike: remainder of line 10

Insert: "and may be fined not more than \$10,000"

20. Page 4, lines 11 through 16.

Strike: line 11 in its entirety through "\$10,000" on line 16

21. Page 4, lines 26 and 27.

Following: "be" on line 26

Strike: remainder of line 26 through "imprisoned" on line 27

Insert: "punished by life imprisonment or by imprisonment"

22. Page 4, line 27.

Strike: "20"

Insert: "100"

23. Page 4, line 28 through page 5, line 4.  
Following: "\$50,000" on line 28  
Strike: remainder of line 28 through "\$50,000" on page 5, line 4

24. Page 5, lines 7 and 8.  
Following: "be" on line 7  
Strike: remainder of line 7 through "imprisoned" on line 8  
Insert: "punished by life imprisonment or by imprisonment"

25. Page 5, line 8.  
Following: "term"  
Strike: "not to exceed 20"  
Insert: "of not less than 4 years or more than 100"

26. Page 5, lines 9 through 15.  
Following: "\$50,000" on line 9  
Strike: remainder of line 9 through "\$50,000" on line 15

27. Page 6, lines 11 and 12.  
Following: "be" on line 11  
Strike: remainder of line 11 through "imprisoned" on line 12  
Insert: "punished by life imprisonment or by imprisonment"

28. Page 6, line 13.  
Strike: "20"  
Insert: "100"  
Following: "years"  
Strike: remainder of line 13  
Insert: "and may be fined not more than \$10,000"

29. Page 6, lines 14 through 19.  
Strike: line 14 in its entirety through "\$10,000" on line 19

30. Page 6, lines 21 and 22.  
Following: "be" on line 21  
Strike: remainder of line 21 through "imprisoned" on line 22  
Insert: "punished by life imprisonment or by imprisonment"

31. Page 6, lines 22 and 23.  
Following: "term" on line 22  
Strike: remainder of line 22 through "50" on line 23  
Insert: "of not less than 4 years or more than 100"

32. Page 6, line 23.  
Following: "years"  
Strike: remainder of line 23  
Insert: "and may be fined not more than \$10,000"

33. Page 6, lines 24 through 29.  
Strike: line 24 in its entirety through "\$10,000" on line 29

34. Page 7, line 7.  
Insert: "**Section 6.** Section 46-18-202, MCA, is amended to read:  
"**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 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

- (a) prohibition of the defendant's holding public office;
- (b) prohibition of the defendant's owning or carrying a dangerous weapon;
- (c) restrictions on the defendant's freedom of association;
- (d) restrictions on the defendant's freedom of movement;
- (e) 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 that 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 contain a statement of the reasons for the restriction.

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

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

(5) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that 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 must contain a statement of the reasons for the restriction."

Renumber: subsequent sections

35. Page 7, line 15.  
Strike: "45-5-505,"

36. Page 9, lines 12 and 13.  
Strike: "9"  
Insert: "10"

37. Page 9, line 14.  
Insert: "NEW SECTION. Section 12. Coordination instruction. If

[this act] and House Bill No. 214 are both passed and approved, then the amendment to 46-23-502(3)(a) in House Bill No. 214 is void."