

1 H. BILL NO. 261 *Mular*
 2 INTRODUCED BY *Ramsey Mular*
 3 *Facaga Johnston & Sully Empire Towse Ryan*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE MANDATORY
 5 MINIMUM PRISON SENTENCES FOR CERTAIN VIOLENT AND
 6 DRUG-RELATED CRIMES AND FOR ANY CRIME COMMITTED WITH A
 7 DANGEROUS WEAPON WITHOUT THE OPTION OF DEFERRED IMPOSITION
 8 OR SUSPENSION OF EXECUTION OF THE SENTENCE; TO PROVIDE FOR
 9 LIMITED EXCEPTIONS TO MANDATORY SENTENCES AND RESTRICTIONS
 10 ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE;
 11 AND TO REQUIRE A HEARING TO DETERMINE THE APPLICABILITY OF
 12 THE EXCEPTIONS; AMENDING SECTIONS 54-132, 54-133, 54-133.1,
 13 94-5-102, 94-5-103, 94-5-202, 94-5-302, 94-5-303, 94-5-401,
 14 94-5-503, 95-1507, and 95-2206, R.C.M. 1947."

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 Section 1. Section 54-132, R.C.M. 1947, is amended to
 18 read as follows:

19 "54-132. Criminal sale of dangerous drugs. ~~(a)~~(1) A
 20 person commits the offense of a criminal sale of dangerous
 21 drugs if he sells, barter, exchanges, gives away, or offers
 22 to sell, barter, exchange, or give away, manufactures,
 23 prepares, cultivates, compounds, or processes any dangerous
 24 drug as defined in this act.

25 (2) A person convicted of criminal sale of an opiate,

1 as defined in 54-301(18), shall be imprisoned in the state
 2 prison for a term of not less than 2 years or more than
 3 life, except as provided in [section 14 of this act].

4 ~~(b)~~(3) A person convicted of criminal sale of
 5 dangerous drugs not otherwise provided for in subsection (2)
 6 shall be imprisoned in the state prison for a term of not
 7 less than ~~one~~(1) year ~~or~~ or more than life.

8 ~~(c)~~(4) Practitioners and agents under their
 9 supervision acting in the course of a professional practice
 10 are exempt from this section."

11 Section 2. Section 54-133, R.C.M. 1947, is amended to
 12 read as follows:

13 "54-133. Criminal possession of dangerous drugs.
 14 ~~(a)~~(1) A person commits the offense of criminal possession
 15 of dangerous drugs if he possesses any dangerous drug as
 16 defined in this act.

17 ~~(b)~~(2) Any person convicted of a criminal possession
 18 of marihuana or its derivatives in an amount, the aggregate
 19 weight of which does not exceed ~~sixty~~(60) grams of
 20 marihuana, or ~~one~~(1) gram of hashish, shall, for the first
 21 offense, be guilty of a misdemeanor and is punishable by a
 22 fine not to exceed ~~one thousand dollars~~(\$1,000) or by
 23 imprisonment in the county jail not to exceed ~~one~~(1) year,
 24 or by both such fine and imprisonment. A person convicted of
 25 a second, or subsequent, offense under this subsection is

1 punishable by a fine not to exceed ~~one thousand dollars~~
 2 ~~(\$1,000)~~ or by imprisonment in the county jail not to exceed
 3 ~~one~~ ~~(1)~~ year or in the state prison not to exceed ~~three~~ ~~(3)~~
 4 years or by both such fine and imprisonment.

5 (3) A person convicted of criminal possession of an
 6 opiate, as defined in 54-301(18), shall be imprisoned in the
 7 state prison for a term of not less than 2 years or more
 8 than 5 years, except as provided in [section 14 of this
 9 act].

10 ~~(e)(4)~~ A person convicted of criminal possession of
 11 dangerous drugs not otherwise provided for in subsection ~~(b)~~
 12 (2) or (3) shall be imprisoned by imprisonment in the state
 13 prison not to exceed ~~five~~ ~~(5)~~ years.

14 ~~(d)(5)~~ A person of the age of ~~twenty-one~~ ~~(21)~~ years or
 15 under, convicted of a first violation under this section
 16 shall be presumed to be entitled to a deferred imposition of
 17 sentence. Jurisdiction under this section shall be
 18 exclusively in the district court."

19 Section 3. Section 54-133.1, R.C.A. 1947, is amended
 20 to read as follows:

21 "54-133.1. Criminal possession with intent to sell.
 22 (1) A person commits the offense of criminal possession with
 23 intent to sell if he possesses with intent to sell any
 24 dangerous drug as defined in ~~section~~ 54-301. No person
 25 commits the offense of criminal possession with intent to

1 sell marijuana unless he possesses one kilogram or more.

2 (2) A person convicted of criminal possession of an
 3 opiate, as defined in 54-301(18), with intent to sell shall
 4 be imprisoned in the state prison for a term of not less
 5 than 2 years or more than 20 years, except as provided in
 6 [section 14 of this act].

7 ~~(2)(3)~~ A person convicted of criminal possession with
 8 intent to sell not otherwise provided for in subsection (2)
 9 shall be imprisoned in the state prison for a term of not
 10 more than ~~twenty~~ ~~(20)~~ years.

11 ~~(2)(4)~~ Practitioners and agents under their
 12 supervision acting in the course of a professional practice
 13 as defined by ~~section~~ 54-301 are exempt from this section."

14 Section 4. Section 94-5-102, R.C.M. 1947, is amended
 15 to read as follows:

16 "94-5-102. Deliberate homicide. (1) Except as
 17 provided in ~~section~~ 94-5-103 (1) (a), criminal homicide
 18 constitutes deliberate homicide if:

19 (a) it is committed purposely or knowingly; or
 20 (b) it is committed while the offender is engaged in
 21 or is an accomplice in the commission of, or an attempt to
 22 commit, or flight after committing or attempting to commit
 23 robbery, sexual intercourse without consent, arson,
 24 burglary, kidnapping, felonious escape, or any other felony
 25 which involves the use or threat of physical force or

1 violence against any individual.

2 (2) A person convicted of the offense of deliberate
3 homicide shall be punished by death as provided in ~~section~~
4 94-5-105, or by imprisonment in the state prison for ~~any a~~
5 term not to exceed of not less than 2 years or more than one
6 hundred (100) years, except as provided in [section 14 of
7 this act]."

8 Section 5. Section 94-5-103, R.C.M. 1947, is amended
9 to read as follows:

10 "94-5-103. Mitigated deliberate homicide.
11 (1) Criminal homicide constitutes mitigated deliberate
12 homicide when a homicide which would otherwise be deliberate
13 homicide is committed under the influence of extreme mental
14 or emotional stress for which there is reasonable
15 explanation or excuse. The reasonableness of such
16 explanation or excuse shall be determined from the viewpoint
17 of a reasonable person in the actor's situation.

18 (2) A person convicted of mitigated deliberate
19 homicide shall be imprisoned in the state prison for ~~any a~~
20 term not to exceed of not less than 2 years or more than
21 forty (40) years, except as provided in [section 14 of this
22 act]."

23 Section 6. Section 94-5-202, R.C.M. 1947, is amended
24 to read as follows:

25 "94-5-202. Aggravated assault. (1) A person commits

1 the offense of aggravated assault if he purposely or
2 knowingly causes:

- 3 (a) serious bodily injury to another; ~~or~~
4 (b) bodily injury to another with a weapon; ~~or~~
5 (c) reasonable apprehension of serious bodily injury
6 in another by use of a weapon; or
7 (d) bodily injury to a peace officer.

8 (2) A person convicted of aggravated assault shall be
9 imprisoned in the state prison for ~~any a term not to exceed~~
10 of not less than 2 years or more than twenty (20) years,
11 except as provided in [section 14 of this act]."

12 Section 7. Section 94-5-302, R.C.M. 1947, is amended
13 to read as follows:

14 "94-5-302. Kidnapping. (1) A person commits the
15 offense of kidnapping if he knowingly or purposely and
16 without lawful authority restrains another person by either
17 secreting or holding him in a place of isolation, or by
18 using or threatening to use physical force.

19 (2) A person convicted of the offense of kidnapping
20 shall be imprisoned in the state prison for ~~any a term not~~
21 to exceed of not less than 2 years or more than ten (10)
22 years, except as provided in [section 14 of this act]."

23 Section 8. Section 94-5-303, R.C.M. 1947, is amended
24 to read as follows:

25 "94-5-303. Aggravated kidnapping. (1) A person

1 commits the offense of aggravated kidnapping if he knowingly
2 or purposely and without lawful authority restrains another
3 person by either secreting or holding him in a place of
4 isolation, or by using or threatening to use physical force,
5 with any of the following purposes:

6 (a) to hold for ransom or reward, or as a shield or
7 hostage; ~~or~~

8 (b) to facilitate commission of any felony or flight
9 thereafter; ~~or~~

10 (c) to inflict bodily injury on or to terrorize the
11 victim or another; ~~or~~

12 (d) to interfere with the performance of any
13 governmental or political function; or

14 (e) to hold another in a condition of involuntary
15 servitude.

16 (2) * Except as provided in [section 14 of this act],
17 a person convicted of the offense of aggravated kidnapping
18 shall be punished by death as provided in ~~section~~ 94-5-304,
19 or be imprisoned in the state prison for ~~any a term not to~~
20 ~~exceed of not less than 2 years or more than one hundred~~
21 ~~{100} years unless he has voluntarily released the victim,~~
22 alive, in a safe place, and not suffering from serious
23 bodily injury, in which event he shall be imprisoned in the
24 state prison for ~~any a term not to exceed of not less than 2~~
25 years or more than ~~ten~~ {10} years."

1 Section 9. Section 94-5-401, R.C.M. 1947, is amended
2 to read as follows:

3 "94-5-401. Robbery. (1) A person commits the offense
4 of robbery if, in the course of committing a theft, he:

5 (a) inflicts bodily injury upon another; ~~or~~

6 (b) threatens to inflict bodily injury upon any person
7 or purposely or knowingly puts any person in fear of
8 immediate bodily injury; or

9 (c) commits or threatens immediately to commit any
10 felony, other than theft.

11 (2) A person convicted of the offense of robbery shall
12 be imprisoned in the state prison for ~~any a term not to~~
13 ~~exceed of not less than 2 years or more than forty {40}~~
14 years, except as provided in [section 14 of this act].

15 (3) "In the course of committing a theft" as used in
16 this section includes acts which occur in an attempt to
17 commit or in the commission of theft, or in flight after the
18 attempt or commission."

19 Section 10. Section 94-5-503, R.C.M. 1947, is amended
20 to read as follows:

21 "94-5-503. Sexual intercourse without consent. (1) A
22 person who knowingly has sexual intercourse without consent
23 with a person not his spouse commits the offense of sexual
24 intercourse without consent.

25 (2) A person convicted of sexual intercourse without

1 consent shall be imprisoned in the state prison for ~~any a~~
 2 term ~~not to exceed~~ of not less than 2 years or more than
 3 ~~twenty (20) years, except as provided in [section 14 of this~~
 4 act].

5 (3) If the victim is less than ~~sixteen (16)~~ years old
 6 and the offender is ~~three (3)~~ or more years older than the
 7 victim, or if the offender inflicts bodily injury upon
 8 anyone in the course of committing sexual intercourse
 9 without consent, he shall be imprisoned in the state prison
 10 for any term ~~not to exceed~~ of not less than 2 years or more
 11 than forty (40) years, except as provided in [section 14 of
 12 this act].

13 (4) An act "in the course of committing sexual
 14 intercourse without consent" shall include an attempt to
 15 commit the offense or flight after the attempt or
 16 commission.

17 (5) (a) No evidence concerning the sexual conduct of
 18 the victim is admissible in prosecutions under this section,
 19 except:

20 ~~(a)~~ (i) Evidence evidence of the victim's past sexual
 21 conduct with the offender;

22 ~~(b)~~ (ii) Evidence evidence of specific instances of the
 23 victim's sexual activity to show the origin of semen,
 24 pregnancy, or disease which is at issue in the prosecution
 25 under this section.

1 (b) If the defendant proposes, for any purpose, to
 2 offer evidence described in ~~(a) or (b)~~ subsection 5(a)(ii) or
 3 5(a)(iii), the trial judge shall order a hearing out of the
 4 presence of the jury to determine whether the proposed
 5 evidence is admissible under this subsection.

6 (6) If the issue of failure to make a timely complaint
 7 or immediate outcry is raised, the jury shall be informed
 8 that such fact, standing alone, may not bar conviction."

9 Section 11. Section 95-1507, R.C.M. 1947, is amended
 10 to read as follows:

11 "95-1507. Sentence of imprisonment for persistent
 12 felony offender. (1) A persistent felony offender is an
 13 offender who has been previously convicted of a felony and
 14 the present offense is a second felony committed on a
 15 different occasion than the first.

16 (2) A persistent felony offender shall be imprisoned
 17 in the state prison for a term of not less than ~~five (5)~~
 18 years ~~or~~ or more than ~~one hundred (100)~~ years providing:

19 (a) the previous felony conviction was for an offense
 20 committed in this state or any other jurisdiction for which
 21 a sentence to a term of imprisonment in excess of ~~one (1)~~
 22 year could have been imposed; ~~and~~

23 (b) less than ~~five (5)~~ years have elapsed between the
 24 commission of the present offense and either:

25 (i) the previous felony conviction; or

1 (ii) the ~~offenders—release~~ offender's release on
2 parole or otherwise from a prison or other commitment
3 imposed as a result of the previously felony conviction; and

4 (c) the offender was more than ~~twenty-one~~ (21) years
5 old at the time of the commission of the new offense.

6 (3) A previous felony conviction shall not be
7 considered for the purpose of sentencing under this section
8 if the offender has been pardoned on the grounds of
9 innocence, or if the conviction had been set aside in any
10 post conviction hearing.

11 (4) Except as provided in [section 14 of this act],
12 the imposition or execution of the first 5 years of a
13 sentence imposed under subsection (2) may not be deferred or
14 suspended."

15 Section 12. Section 95-2206, R.C.M. 1947, is amended
16 to read as follows:

17 "95-2206. Sentence. (1) Whenever any person has been
18 found guilty of a crime or offense upon a verdict or a plea
19 of guilty, the court may:

20 ~~(1)(a) Defer~~ defer imposition of sentence for a period
21 not to exceed ~~one~~ (1) year for any misdemeanor, for a
22 period not to exceed ~~three~~ (3) years for any felony. The
23 sentencing judge may impose upon the defendant any
24 reasonable restrictions or conditions during the period of
25 the deferred imposition. Such reasonable restrictions or

1 conditions may include:

2 ~~(a)(i)~~ jail base release;
3 ~~(b)(ii)~~ jail time not to exceed ~~ninety~~ (90) days;
4 ~~(c)(iii)~~ conditions for probation;
5 ~~(d)(iv)~~ restitution;
6 ~~(e)(v)~~ any other reasonable conditions deemed
7 necessary for rehabilitation or for the protection of
8 society;

9 ~~(f)(vi)~~ any combination of the above.

10 ~~(2)(b) Suspend~~ suspend execution of sentence up to the
11 maximum sentence allowed for the particular offense. The
12 sentencing judge may impose on the defendant any reasonable
13 restrictions during the period of suspended sentence. Such
14 reasonable restrictions may include:

15 ~~(a)(i)~~ jail base release;
16 ~~(b)(ii)~~ jail time not to exceed (90) days;
17 ~~(c)(iii)~~ conditions for probation;
18 ~~(d)(iv)~~ restitution;
19 ~~(e)(v)~~ any other reasonable conditions deemed
20 necessary for rehabilitation or for the protection of
21 society;

22 ~~(f)(vi)~~ any combination of the above.

23 If any restrictions or conditions are violated, any
24 elapsed time, except jail time, shall not be a credit
25 against the sentence, unless the court shall otherwise

1 order.

2 ~~(3) (c)~~ ~~Impose~~ impose a fine as provided by law for the

3 offense;

4 ~~(4) (d)~~ ~~Commit~~ commit the defendant to a correctional

5 institution with or without fine by law for the offense;

6 ~~(5) (e)~~ ~~Impose~~ impose any combination of subsections

7 ~~(2) (1) (b)~~, ~~(3) (1) (c)~~, or ~~(4) (1) (d)~~ above.

8 ~~(6) (2)~~ The district court may also impose any of the

9 following restrictions or conditions on the above sentence

10 which it deems necessary to obtain the objective of

11 rehabilitation and the protection of society:

12 (a) prohibit the defendant the right to hold public

13 office;

14 (b) prohibit the defendant the right to own or carry a

15 dangerous weapon;

16 (c) prohibit freedom of association;

17 (d) prohibit freedom of movement;

18 (e) any other limitation reasonably related to the

19 objectives of rehabilitation or the protection of society.

20 ~~(7) (3)~~ The judge in the justice court shall not have

21 the authority to restrict an individual's rights as

22 enumerated in subsection ~~(6) (2)~~.

23 (4) Except as provided in [section 14 of this act],

24 the imposition or execution of the first 2 years of a

25 sentence of imprisonment imposed under the following

1 sections may not be deferred or suspended: 54-132(2),

2 54-133(3), 54-133.1(2), 94-5-102(2), 94-5-103(2),

3 94-5-202(2), 94-5-302(2), 94-5-303(2), 94-5-401(2), and

4 94-5-503(2) and (3).

5 (5) Any judge who has suspended the execution of a

6 sentence or deferred the imposition of a sentence of

7 imprisonment under this section, or his successor, is

8 authorized thereafter, in his discretion, during the period

9 of such suspended sentence or deferred imposition of

10 sentence to revoke such suspension or impose sentence and

11 order such person committed, or may, in his discretion,

12 order the prisoner placed under the jurisdiction of the

13 state board of pardons as provided by law, or retain such

14 jurisdiction with this court. Prior to the revocation of an

15 order suspending or deferring the imposition of sentence,

16 the person affected shall be given a hearing."

17 Section 13. There is a new R.C.M. section that reads

18 as follows:

19 Additional sentence for offenses committed with a

20 dangerous weapon. (1) A person who has been found guilty of

21 any offense and who, while engaged in the commission of the

22 offense, knowingly displayed, brandished, or otherwise used

23 a firearm, destructive device, as defined in 69-1931(1), or

24 other dangerous weapon shall, in addition to the punishment

25 provided for the commission of such offense, be sentenced to

1 a term of imprisonment in the state prison of not less than
2 2 years or more than 10 years, except as provided in
3 [section 14 of this act].

4 (2) A person convicted of a second or subsequent
5 offense under this section shall, in addition to the
6 punishment provided for the commission of the present
7 offense, be sentenced to a term of imprisonment in the state
8 prison of not less than 4 years or more than 20 years,
9 except as provided in [section 14 of this act]. For the
10 purposes of this subsection, the following persons shall be
11 considered to have been convicted of a previous offense
12 under this section:

13 (a) a person who has previously been convicted of an
14 offense, committed on a different occasion than the present
15 offense, under 18 U.S.C. 924(c); and

16 (b) a person who has previously been convicted of an
17 offense in this or another state, committed on a different
18 occasion than the present offense, during the commission of
19 which he knowingly displayed, brandished, or otherwise used
20 a firearm, destructive device, as defined in 69-1931(1), or
21 other dangerous weapon.

22 (3) The imposition or execution of the minimum
23 sentences prescribed by this section may not be deferred or
24 suspended, except as provided in [section 14 of this act].

25 Section 14. There is a new R.C.M. section that reads

1 as follows:

2 Exceptions to mandatory minimum sentences and
3 restrictions on deferred imposition and suspended execution
4 of sentence. All mandatory minimum sentences prescribed by
5 the laws of this state and the restrictions on deferred
6 imposition and suspended execution of sentence prescribed by
7 95-1507(4), 95-2206(4), and subsection (3) of [section 13 of
8 this act] do not apply if:

9 (1) the defendant was less than 18 years of age at the
10 time of the commission of the offense for which he is to be
11 sentenced;

12 (2) the defendant's mental capacity, at the time of
13 the commission of the offense for which he is to be
14 sentenced, was significantly impaired, although not so
15 impaired as to constitute a defense to the prosecution;

16 (3) the defendant, at the time of the commission of
17 the offense for which he is to be sentenced, was acting
18 under unusual and substantial duress, although not such
19 duress as would constitute a defense to the prosecution;

20 (4) the defendant was an accomplice, the conduct
21 constituting the offense was principally the conduct of
22 another, and the defendant's participation was relatively
23 minor; or

24 (5) where applicable, no serious bodily injury was
25 inflicted on the victim.

1 Section 15. There is a new R.C.M. section that reads
2 as follows:

3 Hearing to determine application of exceptions. (1)
4 When the application of an exception provided for in
5 [section 14 of this act] is an issue, the court shall grant
6 the defendant a hearing prior to the imposition of sentence
7 to determine the applicability of the exception.

8 (2) The hearing shall be held before the court sitting
9 without a jury. The defendant and the prosecution ~~are~~
10 entitled to assistance of counsel, compulsory process, ~~and~~
11 cross-examination of witnesses who appear at the hearing.

12 (3) If it appears by a preponderance of the
13 information, including information submitted during the
14 trial, during the sentencing hearing, and in so much of the
15 presentence report as the court relies on, that none of the
16 exceptions at issue apply, the court shall impose the
17 appropriate mandatory sentence. The court shall state the
18 reasons for its decision in writing and shall include an
19 identification of the facts relied upon in making its
20 determination. The statement shall be included in the
21 judgment.

-End-

STATE OF MONTANA

REQUEST NO. 141-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 77, there is hereby submitted a Fiscal Note for House Bill 261 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 261 is an act to require mandatory minimum prison sentences for certain violent and drug related crimes and for any crime committed with a dangerous weapon without the option of deferred imposition or suspension of execution of the sentence.

ASSUMPTIONS:

1. Montana Board of Crime Control has 1975 data that shows approximately 75 persons convicted of violent and drug related crimes would receive deferred or suspended sentences under current law.
2. The 75 deferred or suspended sentences under current law would receive a two year sentence under the proposed law.
3. The average length of stay in the prison on a two year sentence is four months.
4. The average daily cost per person in the prison was \$27.52 for FY 76.
The average daily cost per person on probation was \$ 0.65 for FY 76.
The net increase in cost to the state would be \$26.87 per day.
5. Additional space could be provided to handle the increased population caused by House Bill 261.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Increased cost of proposed legislation	<u>\$241,830</u>	<u>\$241,830</u>

LONG-RANGE EFFECT:

Since existing prison facilities are already overcrowded, additional facilities may be required to accommodate the population increase due to the proposed legislation.

Richard L. Tranter
 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: 1-27-77

Approved by Committee on Judiciary

1 H BILL NO. ^{MULAR} 261 ^{Fanning}
 2 INTRODUCED BY ^{Raymond Mark Thorsen}
 3 ^{Farago Johnson & Scully Cooper} ^{Towse} ^{Ryan}
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 5 MINIMUM PRISON SENTENCES FOR CERTAIN VIOLENT AND
 6 DRUG-RELATED CRIMES AND FOR ANY CRIME COMMITTED WITH A
 7 DANGEROUS WEAPON WITHOUT THE OPTION OF DEFERRED IMPOSITION
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 9 LIMITED EXCEPTIONS TO MANDATORY SENTENCES AND RESTRICTIONS
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 18 read as follows:
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 20 person commits the offense of a criminal sale of dangerous
 21 drugs if he sells, barter, exchanges, gives away, or offers
 22 to sell, barter, exchange, or give away, manufactures,
 23 prepares, cultivates, compounds, or processes any dangerous
 24 drug as defined in this act.
 25 (2) A person convicted of criminal sale of an opiate,

1 as defined in 54-301(18), shall be imprisoned in the state
 2 prison for a term of not less than 2 years or more than
 3 life, except as provided in [section 14 of this act].
 4 ~~(b)~~ (3) A person convicted of criminal sale of
 5 dangerous drugs not otherwise provided for in subsection (2)
 6 shall be imprisoned in the state prison for a term of not
 7 less than ~~one~~ (1) year ~~or~~ or more than life.
 8 ~~(c)~~ (4) Practitioners and agents under their
 9 supervision acting in the course of a professional practice
 10 are exempt from this section."
 11 Section 2. Section 54-133, R.C.M. 1947, is amended to
 12 read as follows:
 13 "54-133. Criminal possession of dangerous drugs.
 14 ~~(a)~~ (1) A person commits the offense of criminal possession
 15 of dangerous drugs if he possesses any dangerous drug as
 16 defined in this act.
 17 ~~(b)~~ (2) Any person convicted of a criminal possession
 18 of marihuana or its derivatives in an amount, the aggregate
 19 weight of which does not exceed ~~sixty~~ (60) grams of
 20 marihuana, or ~~one~~ (1) gram of hashish, shall, for the first
 21 offense, be guilty of a misdemeanor and is punishable by a
 22 fine not to exceed ~~one thousand dollars~~ (\$1,000) or by
 23 imprisonment in the county jail not to exceed ~~one~~ (1) year,
 24 or by both such fine and imprisonment. A person convicted of
 25 a second, or subsequent, offense under this subsection is

There are no changes in HB 261, & will not be re-run.
 Please refer to white copy for complete text. SECOND READING

1 punishable by a fine not to exceed ~~one thousand dollars~~
 2 ~~(\$1,000)~~ or by imprisonment in the county jail not to exceed
 3 ~~one~~ (1) year or in the state prison not to exceed ~~three~~ (3)
 4 years or by both such fine and imprisonment.

5 (3) A person convicted of criminal possession of an
 6 opiate, as defined in 54-301(18), shall be imprisoned in the
 7 state prison for a term of not less than 2 years or more
 8 than 5 years, except as provided in [section 14 of this
 9 act].

10 ~~(c)~~ (4) A person convicted of criminal possession of
 11 dangerous drugs not otherwise provided for in subsection ~~(b)~~
 12 (2) or (3) shall be imprisoned by imprisonment in the state
 13 prison not to exceed ~~five~~ (5) years.

14 ~~(d)~~ (5) A person of the age of ~~twenty-one~~ (21) years or
 15 under, convicted of a first violation under this section
 16 shall be presumed to be entitled to a deferred imposition of
 17 sentence. Jurisdiction under this section shall be
 18 exclusively in the district court."

19 Section 3. Section 54-133.1, R.C.M. 1947, is amended
 20 to read as follows:

21 "54-133.1. Criminal possession with intent to sell.

22 (1) A person commits the offense of criminal possession with
 23 intent to sell if he possesses with intent to sell any
 24 dangerous drug as defined in ~~section~~ 54-301. No person
 25 commits the offense of criminal possession with intent to

1 sell marijuana unless he possesses one kilogram or more.

2 (2) A person convicted of criminal possession of an
 3 opiate, as defined in 54-301(18), with intent to sell shall
 4 be imprisoned in the state prison for a term of not less
 5 than 2 years or more than 20 years, except as provided in
 6 [section 14 of this act].

7 ~~(2)~~ (3) A person convicted of criminal possession with
 8 intent to sell not otherwise provided for in subsection (2)
 9 shall be imprisoned in the state prison for a term of not
 10 more than ~~twenty~~ (20) years.

11 ~~(2)~~ (4) Practitioners and agents under their
 12 supervision acting in the course of a professional practice
 13 as defined by ~~section~~ 54-301 are exempt from this section."

14 Section 4. Section 94-5-102, R.C.M. 1947, is amended
 15 to read as follows:

16 "94-5-102. Deliberate homicide. (1) Except as
 17 provided in ~~section~~ 94-5-103 (1) (a), criminal homicide
 18 constitutes deliberate homicide if:

19 (a) it is committed purposely or knowingly; or

20 (b) it is committed while the offender is engaged in
 21 or is an accomplice in the commission of, or an attempt to
 22 commit, or flight after committing or attempting to commit
 23 robbery, sexual intercourse without consent, arson,
 24 burglary, kidnapping, felonious escape, or any other felony
 25 which involves the use or threat of physical force or

H. BILL NO. 261
INTRODUCED BY Ramsey, Mark Thorne, Tolson, Johnson, & Sully, Engle

MULAR

Ryan

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE MANDATORY MINIMUM PRISON SENTENCES FOR CERTAIN VIOLENT AND DRUG-RELATED CRIMES AND FOR ANY CRIME COMMITTED WITH A DANGEROUS WEAPON WITHOUT THE OPTION OF DEFERRED IMPOSITION OR SUSPENSION OF EXECUTION OF THE SENTENCE; TO PROVIDE FOR LIMITED EXCEPTIONS TO MANDATORY SENTENCES AND RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE; AND TO REQUIRE A HEARING TO DETERMINE THE APPLICABILITY OF THE EXCEPTIONS; AMENDING SECTIONS 54-132, 54-133, 54-133.1, 94-5-102, 94-5-103, 94-5-202, 94-5-302, 94-5-303, 94-5-401, 94-5-503, 95-1507, and 95-2206, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 54-132, R.C.M. 1947, is amended to read as follows:

"54-132. Criminal sale of dangerous drugs. ~~(a)(1)~~ A person commits the offense of a criminal sale of dangerous drugs if he sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away, manufactures, prepares, cultivates, compounds, or processes any dangerous drug as defined in this act.

(2) A person convicted of criminal sale of an opiate,

as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in [section 14 of this act].

~~(b)(3)~~ A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not less than ~~one (1) year~~ or more than life.

~~(c)(4)~~ Practitioners and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 2. Section 54-133, R.C.M. 1947, is amended to read as follows:

"54-133. Criminal possession of dangerous drugs. ~~(a)(1)~~ A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act.

~~(b)(2)~~ Any person convicted of a criminal possession of marihuana or its derivatives in an amount, the aggregate weight of which does not exceed ~~sixty (60)~~ grams of marihuana, or ~~one (1)~~ gram of hashish, shall, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed ~~one thousand dollars (\$1,000)~~ or by imprisonment in the county jail not to exceed ~~one (1) year~~ or by both such fine and imprisonment. A person convicted of a second, or subsequent, offense under this subsection is

1 punishable by a fine not to exceed ~~one thousand dollars~~
 2 ~~(\$1,000)~~ or by imprisonment in the county jail not to exceed
 3 ~~one~~ ~~(1)~~ year or in the state prison not to exceed ~~three~~ ~~(3)~~
 4 years or by both such fine and imprisonment.

5 (3) A person convicted of criminal possession of an
 6 opiate, as defined in 54-301(18), shall be imprisoned in the
 7 state prison for a term of not less than 2 years or more
 8 than 5 years, except as provided in [section 14 of this
 9 act].

10 ~~(4)~~ (4) A person convicted of criminal possession of
 11 dangerous drugs not otherwise provided for in subsection ~~(b)~~
 12 (2) or (3) shall be imprisoned by imprisonment in the state
 13 prison not to exceed ~~five~~ ~~(5)~~ years.

14 ~~(4)~~ (5) A person of the age of ~~twenty-one~~ ~~(21)~~ years or
 15 under, convicted of a first violation under this section
 16 shall be presumed to be entitled to a deferred imposition of
 17 sentence. Jurisdiction under this section shall be
 18 exclusively in the district court."

19 Section 3. Section 54-133.1, R.C.M. 1947, is amended
 20 to read as follows:

21 "54-133.1. Criminal possession with intent to sell.
 22 (1) A person commits the offense of criminal possession with
 23 intent to sell if he possesses with intent to sell any
 24 dangerous drug as defined in ~~section~~ 54-301. No person
 25 commits the offense of criminal possession with intent to

1 sell marijuana unless he possesses one kilogram or more.

2 (2) A person convicted of criminal possession of an
 3 opiate, as defined in 54-301(18), with intent to sell shall
 4 be imprisoned in the state prison for a term of not less
 5 than 2 years or more than 20 years, except as provided in
 6 [section 14 of this act].

7 ~~(2)~~ (3) A person convicted of criminal possession with
 8 intent to sell not otherwise provided for in subsection (2)
 9 shall be imprisoned in the state prison for a term of not
 10 more than ~~twenty~~ ~~(20)~~ years.

11 ~~(2)~~ (3) Practitioners and agents under their
 12 supervision acting in the course of a professional practice
 13 as defined by ~~section~~ 54-301 are exempt from this section."

14 Section 4. Section 94-5-102, R.C.M. 1947, is amended
 15 to read as follows:

16 "94-5-102. Deliberate homicide. (1) Except as
 17 provided in ~~section~~ 94-5-103 (1) (a), criminal homicide
 18 constitutes deliberate homicide if:

19 (a) it is committed purposely or knowingly; or
 20 (b) it is committed while the offender is engaged in
 21 or is an accomplice in the commission of, or an attempt to
 22 commit, or flight after committing or attempting to commit
 23 robbery, sexual intercourse without consent, arson,
 24 burglary, kidnapping, felonious escape, or any other felony
 25 which involves the use or threat of physical force or

1 violence against any individual.

2 (2) A person convicted of the offense of deliberate
3 homicide shall be punished by death as provided in ~~section~~
4 ~~94-5-105~~, or by imprisonment in the state prison for ~~any a~~
5 ~~term not to exceed of not less than 2 years or more than one~~
6 ~~hundred (100) years, except as provided in [section 14 of~~
7 ~~this act]."~~

8 Section 5. Section 94-5-103, R.C.M. 1947, is amended
9 to read as follows:

10 "94-5-103. Mitigated deliberate homicide.
11 (1) Criminal homicide constitutes mitigated deliberate
12 homicide when a homicide which would otherwise be deliberate
13 homicide is committed under the influence of extreme mental
14 or emotional stress for which there is reasonable
15 explanation or excuse. The reasonableness of such
16 explanation or excuse shall be determined from the viewpoint
17 of a reasonable person in the actor's situation.

18 (2) A person convicted of mitigated deliberate
19 homicide shall be imprisoned in the state prison for ~~any a~~
20 ~~term not to exceed of not less than 2 years or more than~~
21 ~~forty (40) years, except as provided in [section 14 of this~~
22 ~~act]."~~

23 Section 6. Section 94-5-202, R.C.M. 1947, is amended
24 to read as follows:

25 "94-5-202. Aggravated assault. (1) A person commits

1 the offense of aggravated assault if he purposely or
2 knowingly causes:

- 3 (a) serious bodily injury to another; ~~or~~
- 4 (b) bodily injury to another with a weapon; ~~or~~
- 5 (c) reasonable apprehension of serious bodily injury
6 in another by use of a weapon; or
- 7 (d) bodily injury to a peace officer.

8 (2) A person convicted of aggravated assault shall be
9 imprisoned in the state prison for ~~any a term not to exceed~~
10 ~~of not less than 2 years or more than twenty (20) years,~~
11 ~~except as provided in [section 14 of this act]."~~

12 Section 7. Section 94-5-302, R.C.M. 1947, is amended
13 to read as follows:

14 "94-5-302. Kidnapping. (1) A person commits the
15 offense of kidnapping if he knowingly or purposely and
16 without lawful authority restrains another person by either
17 secreting or holding him in a place of isolation, or by
18 using or threatening to use physical force.

19 (2) A person convicted of the offense of kidnapping
20 shall be imprisoned in the state prison for ~~any a term not~~
21 ~~to exceed of not less than 2 years or more than ten (10)~~
22 ~~years, except as provided in [section 14 of this act]."~~

23 Section 8. Section 94-5-303, R.C.M. 1947, is amended
24 to read as follows:

25 "94-5-303. Aggravated kidnapping. (1) A person

1 commits the offense of aggravated kidnapping if he knowingly
 2 or purposely and without lawful authority restrains another
 3 person by either secreting or holding him in a place of
 4 isolation, or by using or threatening to use physical force,
 5 with any of the following purposes:

6 (a) to hold for ransom or reward, or as a shield or
 7 hostage; ~~or~~

8 (b) to facilitate commission of any felony or flight
 9 thereafter; ~~or~~

10 (c) to inflict bodily injury on or to terrorize the
 11 victim or another; ~~or~~

12 (d) to interfere with the performance of any
 13 governmental or political function; or

14 (e) to hold another in a condition of involuntary
 15 servitude.

16 (2) * Except as provided in [section 14 of this act],
 17 a person convicted of the offense of aggravated kidnapping
 18 shall be punished by death as provided in ~~section~~ 94-5-304,
 19 or be imprisoned in the state prison for ~~any~~ a term ~~not to~~
 20 ~~exceed of not less than 2 years or more than one hundred~~
 21 ~~{100} years unless he has voluntarily released the victim,~~
 22 alive, in a safe place, and not suffering from serious
 23 bodily injury, in which event he shall be imprisoned in the
 24 state prison for ~~any~~ a term ~~not to exceed of not less than 2~~
 25 years or more than ~~ten~~ {10} years."

1 Section 9. Section 94-5-401, R.C.M. 1947, is amended
 2 to read as follows:

3 "94-5-401. Robbery. (1) A person commits the offense
 4 of robbery if, in the course of committing a theft, he:

5 (a) inflicts bodily injury upon another; ~~or~~

6 (b) threatens to inflict bodily injury upon any person
 7 or purposely or knowingly puts any person in fear of
 8 immediate bodily injury; or

9 (c) commits or threatens immediately to commit any
 10 felony, other than theft.

11 (2) A person convicted of the offense of robbery shall
 12 be imprisoned in the state prison for ~~any~~ a term ~~not to~~
 13 ~~exceed of not less than 2 years or more than forty~~ {40}
 14 years, except as provided in [section 14 of this act].

15 (3) "In the course of committing a theft" as used in
 16 this section includes acts which occur in an attempt to
 17 commit or in the commission of theft, or in flight after the
 18 attempt or commission."

19 Section 10. Section 94-5-503, R.C.M. 1947, is amended
 20 to read as follows:

21 "94-5-503. Sexual intercourse without consent. (1) A
 22 person who knowingly has sexual intercourse without consent
 23 with a person not his spouse commits the offense of sexual
 24 intercourse without consent.

25 (2) A person convicted of sexual intercourse without

1 consent shall be imprisoned in the state prison for ~~any~~ a
2 term ~~not to exceed~~ of not less than 2 years or more than
3 ~~twenty (20) years, except as provided in [section 14 of this~~
4 act].

5 (3) If the victim is less than ~~sixteen (16)~~ years old
6 and the offender is ~~three (3)~~ or more years older than the
7 victim, or if the offender inflicts bodily injury upon
8 anyone in the course of committing sexual intercourse
9 without consent, he shall be imprisoned in the state prison
10 for any term ~~not to exceed~~ of not less than 2 years or more
11 than ~~forty (40) years, except as provided in [section 14 of~~
12 this act].

13 (4) An act "in the course of committing sexual
14 intercourse without consent" shall include an attempt to
15 commit the offense or flight after the attempt or
16 commission.

17 (5) (a) No evidence concerning the sexual conduct of
18 the victim is admissible in prosecutions under this section,
19 except:

20 ~~(a)(i) Evidence~~ evidence of the victim's past sexual
21 conduct with the offender;

22 ~~(b)(iii) Evidence~~ evidence of specific instances of the
23 victim's sexual activity to show the origin of semen,
24 pregnancy, or disease which is at issue in the prosecution
25 under this section.

1 (b) If the defendant proposes, for any purpose, to
2 offer evidence described in ~~(a) or (b)~~ subsection 5(a)(i) or
3 5(a)(ii), the trial judge shall order a hearing out of the
4 presence of the jury to determine whether the proposed
5 evidence is admissible under this subsection.

6 (6) If the issue of failure to make a timely complaint
7 or immediate outcry is raised, the jury shall be informed
8 that such fact, standing alone, may not bar conviction."

9 Section 11. Section 95-1507, R.C.M. 1947, is amended
10 to read as follows:

11 "95-1507. Sentence of imprisonment for persistent
12 felony offender. (1) A persistent felony offender is an
13 offender who has been previously convicted of a felony and
14 the present offense is a second felony committed on a
15 different occasion than the first.

16 (2) A persistent felony offender shall be imprisoned
17 in the state prison for a term of not less than ~~five (5)~~
18 years ~~or~~ or more than ~~one hundred (100)~~ years providing:

19 (a) the previous felony conviction was for an offense
20 committed in this state or any other jurisdiction for which
21 a sentence to a term of imprisonment in excess of ~~one (1)~~
22 year could have been imposed; and

23 (b) less than ~~five (5)~~ years have elapsed between the
24 commission of the present offense and either;

25 (i) the previous felony conviction; or

1 (ii) the ~~offenders release~~ offender's release on
2 parole or otherwise from a prison or other commitment
3 imposed as a result of the previously felony conviction; and

4 (c) the offender was more than ~~twenty-one~~ (21) years
5 old at the time of the commission of the new offense.

6 (3) A previous felony conviction shall not be
7 considered for the purpose of sentencing under this section
8 if the offender has been pardoned on the grounds of
9 innocence, or if the conviction had been set aside in any
10 post conviction hearing.

11 (4) Except as provided in [section 14 of this act],
12 the imposition or execution of the first 5 years of a
13 sentence imposed under subsection (2) may not be deferred or
14 suspended."

15 Section 12. Section 95-2206, R.C.M. 1947, is amended
16 to read as follows:

17 "95-2206. Sentence. (1) Whenever any person has been
18 found guilty of a crime or offense upon a verdict or a plea
19 of guilty, the court may:

20 ~~(1)(a)~~ Defer defer imposition of sentence for a period
21 not to exceed ~~one~~ (1) year for any misdemeanor, for a
22 period not to exceed ~~three~~ (3) years for any felony. The
23 sentencing judge may impose upon the defendant any
24 reasonable restrictions or conditions during the period of
25 the deferred imposition. Such reasonable restrictions or

1 conditions may include:

2 ~~(a)~~ (i) jail base release;

3 ~~(b)~~ (ii) jail time not to exceed ~~ninety~~ (90) days;

4 ~~(c)~~ (iii) conditions for probation;

5 ~~(d)~~ (iv) restitution;

6 ~~(e)~~ (v) any other reasonable conditions deemed
7 necessary for rehabilitation or for the protection of
8 society;

9 ~~(f)~~ (vi) any combination of the above.

10 ~~(2)(b)~~ Suspend suspend execution of sentence up to the
11 maximum sentence allowed for the particular offense. The
12 sentencing judge may impose on the defendant any reasonable
13 restrictions during the period of suspended sentence. Such
14 reasonable restrictions may include:

15 ~~(a)~~ (i) jail base release;

16 ~~(b)~~ (ii) jail time not to exceed (90) days;

17 ~~(c)~~ (iii) conditions for probation;

18 ~~(d)~~ (iv) restitution;

19 ~~(e)~~ (v) any other reasonable conditions deemed
20 necessary for rehabilitation or for the protection of
21 society;

22 ~~(f)~~ (vi) any combination of the above.

23 If any restrictions or conditions are violated, any
24 elapsed time, except jail time, shall not be a credit
25 against the sentence, unless the court shall otherwise

1 order.
2 ~~(3)~~ (c) ~~impose~~ impose a fine as provided by law for the
3 offense;

4 ~~(4)~~ (d) ~~Commit~~ commit the defendant to a correctional
5 institution with or without fine by law for the offense;

6 ~~(5)~~ (e) ~~impose~~ impose any combination of subsections
7 ~~(2)~~ (1)(b), ~~(3)~~ (1)(c), or ~~(4)~~ (1)(d) above.

8 ~~(6)~~ (2) The district court may also impose any of the
9 following restrictions or conditions on the above sentence
10 which it deems necessary to obtain the objective of
11 rehabilitation and the protection of society:

12 (a) prohibit the defendant the right to hold public
13 office;

14 (b) prohibit the defendant the right to own or carry a
15 dangerous weapon;

16 (c) prohibit freedom of association;

17 (d) prohibit freedom of movement;

18 (e) any other limitation reasonably related to the
19 objectives of rehabilitation or the protection of society.

20 ~~(7)~~ (3) The judge in the justice court shall not have
21 the authority to restrict an individual's rights as
22 enumerated in subsection ~~(6)~~ (2).

23 (4) Except as provided in [section 14 of this act],
24 the imposition or execution of the first 2 years of a
25 sentence of imprisonment imposed under the following

1 sections may not be deferred or suspended: 54-132(2),
2 54-133(3), 54-133.1(2), 94-5-102(2), 94-5-103(2),
3 94-5-202(2), 94-5-302(2), 94-5-303(2), 94-5-401(2), and
4 94-5-503(2) and (3).

5 (5) Any judge who has suspended the execution of a
6 sentence or deferred the imposition of a sentence of
7 imprisonment under this section, or his successor, is
8 authorized thereafter, in his discretion, during the period
9 of such suspended sentence or deferred imposition of
10 sentence to revoke such suspension or impose sentence and
11 order such person committed, or may, in his discretion,
12 order the prisoner placed under the jurisdiction of the
13 state board of pardons as provided by law, or retain such
14 jurisdiction with this court. Prior to the revocation of an
15 order suspending or deferring the imposition of sentence,
16 the person affected shall be given a hearing."

17 Section 13. There is a new R.C.M. section that reads
18 as follows:

19 Additional sentence for offenses committed with a
20 dangerous weapon. (1) A person who has been found guilty of
21 any offense and who, while engaged in the commission of the
22 offense, knowingly displayed, brandished, or otherwise used
23 a firearm, destructive device, as defined in 69-1931(1), or
24 other dangerous weapon shall, in addition to the punishment
25 provided for the commission of such offense, be sentenced to

1 a term of imprisonment in the state prison of not less than
2 2 years or more than 10 years, except as provided in
3 [section 14 of this act].

4 (2) A person convicted of a second or subsequent
5 offense under this section shall, in addition to the
6 punishment provided for the commission of the present
7 offense, be sentenced to a term of imprisonment in the state
8 prison of not less than 4 years or more than 20 years,
9 except as provided in [section 14 of this act]. For the
10 purposes of this subsection, the following persons shall be
11 considered to have been convicted of a previous offense
12 under this section:

13 (a) a person who has previously been convicted of an
14 offense, committed on a different occasion than the present
15 offense, under 18 U.S.C. 924(c); and

16 (b) a person who has previously been convicted of an
17 offense in this or another state, committed on a different
18 occasion than the present offense, during the commission of
19 which he knowingly displayed, brandished, or otherwise used
20 a firearm, destructive device, as defined in 69-1931(1), or
21 other dangerous weapon.

22 (3) The imposition or execution of the minimum
23 sentences prescribed by this section may not be deferred or
24 suspended, except as provided in [section 14 of this act].

25 Section 14. There is a new R.C.M. section that reads

1 as follows:

2 Exceptions to mandatory minimum sentences and
3 restrictions on deferred imposition and suspended execution
4 of sentence. All mandatory minimum sentences prescribed by
5 the laws of this state and the restrictions on deferred
6 imposition and suspended execution of sentence prescribed by
7 95-1507(4), 95-2206(4), and subsection(3) of [section 13 of
8 this act] do not apply if:

9 (1) the defendant was less than 18 years of age at the
10 time of the commission of the offense for which he is to be
11 sentenced;

12 (2) the defendant's mental capacity, at the time of
13 the commission of the offense for which he is to be
14 sentenced, was significantly impaired, although not so
15 impaired as to constitute a defense to the prosecution;

16 (3) the defendant, at the time of the commission of
17 the offense for which he is to be sentenced, was acting
18 under unusual and substantial duress, although not such
19 duress as would constitute a defense to the prosecution;

20 (4) the defendant was an accomplice, the conduct
21 constituting the offense was principally the conduct of
22 another, and the defendant's participation was relatively
23 minor; or

24 (5) where applicable, no serious bodily injury was
25 inflicted on the victim.

1 Section 15. There is a new R.C.M. section that reads
2 as follows:

3 Hearing to determine application of exceptions. (1)
4 When the application of an exception provided for in
5 [section 14 of this act] is an issue, the court shall grant
6 the defendant a hearing prior to the imposition of sentence
7 to determine the applicability of the exception.

8 (2) The hearing shall be held before the court sitting
9 without a jury. The defendant and the prosecution are
10 entitled to assistance of counsel, compulsory process, and
11 cross-examination of witnesses who appear at the hearing.

12 (3) If it appears by a preponderance of the
13 information, including information submitted during the
14 trial, during the sentencing hearing, and in so much of the
15 presentence report as the court relies on, that none of the
16 exceptions at issue apply, the court shall impose the
17 appropriate mandatory sentence. The court shall state the
18 reasons for its decision in writing and shall include an
19 identification of the facts relied upon in making its
20 determination. The statement shall be included in the
21 judgment.

-End-

1 HOUSE BILL NO. 261
 2 INTRODUCED BY RAMIREZ, MARKS, MOORE, MULAR, RYAN,
 3 KENNY, GOULD, FABREGA, JOHNSTON, SCULLY, TROPILA, TURNER
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE MANDATORY
 6 MINIMUM PRISON SENTENCES FOR CERTAIN VIOLENT AND
 7 DRUG-RELATED CRIMES AND FOR ANY CRIME COMMITTED WITH A
 8 DANGEROUS WEAPON WITHOUT THE OPTION OF DEFERRED IMPOSITION
 9 OR SUSPENSION OF EXECUTION OF THE SENTENCE; TO PROVIDE FOR
 10 LIMITED EXCEPTIONS TO MANDATORY SENTENCES AND RESTRICTIONS
 11 ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE;
 12 AND TO REQUIRE A HEARING TO DETERMINE THE APPLICABILITY OF
 13 THE EXCEPTIONS; AMENDING SECTIONS 54-132, 54-133, 54-133.1,
 14 94-5-102, 94-5-103, 94-5-202, 94-5-302, 94-5-303, 94-5-401,
 15 94-5-503, 95-1507, and 95-2206, R.C.M. 1947; AND PROVIDING
 16 AN EFFECTIVE DATE."
 17

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

19 Section 1. Section 54-132, R.C.M. 1947, is amended to
 20 read as follows:

21 "54-132. Criminal sale of dangerous drugs. ~~(a)~~ A
 22 person commits the offense of a criminal sale of dangerous
 23 drugs if he sells, barter, exchanges, gives away, or offers
 24 to sell, barter, exchange, or give away, manufactures,
 25 prepares, cultivates, compounds, or processes any dangerous

1 drug as defined in this act.

2 ~~(2) A person convicted of criminal sale of an opiate,~~
 3 ~~as defined in 54-301(18), shall be imprisoned in the state~~
 4 ~~prison for a term of not less than 2 years or more than~~
 5 ~~life, except as provided in [section 14 of this act].~~

6 ~~(b)(3) A person convicted of criminal sale of~~
 7 ~~dangerous drugs not otherwise provided for in subsection (2)~~
 8 ~~shall be imprisoned in the state prison for a term of not~~
 9 ~~less than one-~~(1)~~ year nor or more than life.~~

10 ~~(c)(4) Practitioners and agents under their~~
 11 ~~supervision acting in the course of a professional practice~~
 12 ~~are exempt from this section."~~

13 Section 2. Section 54-133, R.C.M. 1947, is amended to
 14 read as follows:

15 "54-133. Criminal possession of dangerous drugs.

16 ~~(a)(1) A person commits the offense of criminal possession~~
 17 ~~of dangerous drugs if he possesses any dangerous drug as~~
 18 ~~defined in this act.~~

19 ~~(b)(2) Any person convicted of a criminal possession~~
 20 ~~of marihuana or its derivatives in an amount, the aggregate~~
 21 ~~weight of which does not exceed ~~sixty~~ ~~(60)~~ grams of~~
 22 ~~marihuana, or one-~~(1)~~ gram of hashish, shall, for the first~~
 23 ~~offense, be guilty of a misdemeanor and is punishable by a~~
 24 ~~fine not to exceed ~~one-thousand-dollars~~ ~~(\$1,000)~~ or by~~
 25 ~~imprisonment in the county jail not to exceed one-~~(1)~~ year.~~

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 THIRD READING

1 or by both such fine and imprisonment. A person convicted of
 2 a second or subsequent offense under this subsection is
 3 punishable by a fine not to exceed ~~one-thousand-dollars~~
 4 ~~{\$1,000}~~ or by imprisonment in the county jail not to exceed
 5 ~~one-{1} year~~ or in the state prison not to exceed ~~three--{3}~~
 6 years or by both such fine and imprisonment.

7 {3} A person convicted of criminal possession of an
 8 opiate, as defined in 54-301(18), shall be imprisoned in the
 9 state prison for a term of not less than 2 years or more
 10 than 5 years, except as provided in [section 14 of this
 11 act].

12 ~~{c}{4}~~ A person convicted of criminal possession of
 13 dangerous drugs not otherwise provided for in subsection ~~{b}~~
 14 ~~{2} or {3}~~ shall be imprisoned by imprisonment in the state
 15 prison not to exceed ~~five-{5}~~ years.

16 ~~{d}{5}~~ A person of the age of ~~twenty-one-{21}~~ years or
 17 under, convicted of a first violation under this section
 18 shall be presumed to be entitled to a deferred imposition of
 19 sentence. Jurisdiction under this section shall be
 20 exclusively in the district court."

21 Section 3. Section 54-133.1, R.C.M. 1947, is amended
 22 to read as follows:

23 "54-133.1. Criminal possession with intent to sell.
 24 (1) A person commits the offense of criminal possession with
 25 intent to sell if he possesses with intent to sell any

1 dangerous drug as defined in section 54-301. No person
 2 commits the offense of criminal possession with intent to
 3 sell marijuana unless he possesses one kilogram or more.

4 {2} A person convicted of criminal possession of an
 5 opiate, as defined in 54-301(18), with intent to sell shall
 6 be imprisoned in the state prison for a term of not less
 7 than 2 years or more than 20 years, except as provided in
 8 [section 14 of this act].

9 ~~{2}{3}~~ A person convicted of criminal possession with
 10 intent to sell not otherwise provided for in subsection {2}
 11 shall be imprisoned in the state prison for a term of not
 12 more than ~~twenty-{20}~~ years.

13 ~~{3}{4}~~ Practitioners and agents under their
 14 supervision acting in the course of a professional practice
 15 as defined by section 54-301 are exempt from this section."

16 Section 4. Section 94-5-102, R.C.M. 1947, is amended
 17 to read as follows:

18 "94-5-102. Deliberate homicide. (1) Except as
 19 provided in section 94-5-103 (1) (a), criminal homicide
 20 constitutes deliberate homicide if:

- 21 (a) it is committed purposely or knowingly; or
- 22 (b) it is committed while the offender is engaged in
- 23 or is an accomplice in the commission of or an attempt to
- 24 commit or flight after committing or attempting to commit
- 25 robbery, sexual intercourse without consent, arson,

1 burglary, kidnapping, felonious escape, or any other felony
 2 which involves the use or threat of physical force or
 3 violence against any individual.

4 (2) A person convicted of the offense of deliberate
 5 homicide shall be punished by death as provided in section
 6 94-5-105, or by imprisonment in the state prison for any a
 7 term ~~not to exceed of not less than 2 years or more than one~~
 8 ~~hundred--{100} years, except as provided in [section 14 of~~
 9 ~~this act]."~~

10 Section 5. Section 94-5-103, R.C.M. 1947, is amended
 11 to read as follows:

12 "94-5-103. Mitigated deliberate homicide.
 13 (1) Criminal homicide constitutes mitigated deliberate
 14 homicide when a homicide which would otherwise be deliberate
 15 homicide is committed under the influence of extreme mental
 16 or emotional stress for which there is reasonable
 17 explanation or excuse. The reasonableness of such
 18 explanation or excuse shall be determined from the viewpoint
 19 of a reasonable person in the actor's situation.

20 (2) A person convicted of mitigated deliberate
 21 homicide shall be imprisoned in the state prison for any a
 22 term ~~not to exceed of not less than 2 years or more than~~
 23 ~~forty--{40} years, except as provided in [section 14 of this~~
 24 ~~act]."~~

25 Section 6. Section 94-5-202, R.C.M. 1947, is amended

1 to read as follows:

2 "94-5-202. Aggravated assault. (1) A person commits
 3 the offense of aggravated assault if he purposely or
 4 knowingly causes:

- 5 (a) serious bodily injury to another; or
- 6 (b) bodily injury to another with a weapon; or
- 7 (c) reasonable apprehension of serious bodily injury
- 8 in another by use of a weapon; or
- 9 (d) bodily injury to a peace officer.

10 (2) A person convicted of aggravated assault shall be
 11 imprisoned in the state prison for any a term ~~not to exceed~~
 12 ~~of not less than 2 years or more than twenty--{20} years,~~
 13 ~~except as provided in [section 14 of this act]."~~

14 Section 7. Section 94-5-302, R.C.M. 1947, is amended
 15 to read as follows:

16 "94-5-302. Kidnapping. (1) A person commits the
 17 offense of kidnapping if he knowingly or purposely and
 18 without lawful authority restrains another person by either
 19 secreting or holding him in a place of isolation, or by
 20 using or threatening to use physical force.

21 (2) A person convicted of the offense of kidnapping
 22 shall be imprisoned in the state prison for any a term ~~not~~
 23 ~~to exceed of not less than 2 years or more than ten--{10}~~
 24 ~~years, except as provided in [section 14 of this act]."~~

25 Section 8. Section 94-5-303, R.C.M. 1947, is amended

1 to read as follows:

2 *94-5-303. Aggravated Kidnapping. (1) A person
3 commits the offense of aggravated kidnapping if he knowingly
4 or purposely and without lawful authority restrains another
5 person by either secreting or holding him in a place of
6 isolation or by using or threatening to use physical force,
7 with any of the following purposes:

8 (a) to hold for ransom or reward, or as a shield or
9 hostage; or

10 (b) to facilitate commission of any felony or flight
11 thereafter; or

12 (c) to inflict bodily injury on or to terrorize the
13 victim or another; or

14 (d) to interfere with the performance of any
15 governmental or political function; or

16 (e) to hold another in a condition of involuntary
17 servitude.

18 (2) * Except as provided in [section 14 of this act],
19 a person convicted of the offense of aggravated kidnapping
20 shall be punished by death as provided in section 94-5-304
21 or be imprisoned in the state prison for any a term not-to
22 exceed of not less than 2 years or more than one--hundred
23 f100 years unless he has voluntarily released the victim,
24 alive, in a safe place, and not suffering from serious
25 bodily injury, in which event he shall be imprisoned in the

1 state prison for any a term not-to-exceed of not less than 2
2 years or more than ten-f10 years."

3 Section 9. Section 94-5-401, R.C.M. 1947, is amended
4 to read as follows:

5 *94-5-401. Robbery. (1) A person commits the offense
6 of robbery if, in the course of committing a theft, he:

7 (a) inflicts bodily injury upon another; or

8 (b) threatens to inflict bodily injury upon any person
9 or purposely or knowingly puts any person in fear of
10 immediate bodily injury; or

11 (c) commits or threatens immediately to commit any
12 felony other than theft.

13 (2) A person convicted of the offense of robbery shall
14 be imprisoned in the state prison for any a term not--to
15 exceed of not less than 2 years or more than forty-f40
16 years, except as provided in [section 14 of this act].

17 (3) "In the course of committing a theft" as used in
18 this section includes acts which occur in an attempt to
19 commit or in the commission of theft, or in flight after the
20 attempt or commission."

21 Section 10. Section 94-5-503, R.C.M. 1947, is amended
22 to read as follows:

23 *94-5-503. Sexual intercourse without consent. (1) A
24 person who knowingly has sexual intercourse without consent
25 with a person not his spouse commits the offense of sexual

1 intercourse without consent.

2 (2) A person convicted of sexual intercourse without
3 consent shall be imprisoned in the state prison for any a
4 term ~~not to exceed of not less than 2 years or more than~~
5 ~~twenty-(20) years, except as provided in [section 14 of this~~
6 ~~act].~~

7 (3) If the victim is less than ~~sixteen-(16)~~ years old
8 and the offender is ~~three-(3)~~ or more years older than the
9 victim, or if the offender inflicts bodily injury upon
10 anyone in the course of committing sexual intercourse
11 without consent, he shall be imprisoned in the state prison
12 for any term ~~not to exceed of not less than 2 years or more~~
13 ~~than forty-(40) years, except as provided in [section 14 of~~
14 ~~this act].~~

15 (4) An act "in the course of committing sexual
16 intercourse without consent" shall include an attempt to
17 commit the offense or flight after the attempt or
18 commission.

19 (5) ~~(a)~~ No evidence concerning the sexual conduct of
20 the victim is admissible in prosecutions under this section,
21 except:

22 ~~(a)(i)~~ Evidence ~~evidence~~ of the victim's past sexual
23 conduct with the offender;

24 ~~(b)(iii)~~ Evidence ~~evidence~~ of specific instances of the
25 victim's sexual activity to show the origin of semen,

1 pregnancy, or disease which is at issue in the prosecution
2 under this section.

3 (b) If the defendant proposes, for any purpose, to
4 offer evidence described in ~~(a) or (b)~~ subsection 5(a)(i) or
5 5(a)(iii), the trial judge shall order a hearing out of the
6 presence of the jury to determine whether the proposed
7 evidence is admissible under this subsection.

8 (6) If the issue of failure to make a timely complaint
9 or immediate outcry is raised, the jury shall be informed
10 that such fact, standing alone, may not bar conviction."

11 Section 11. Section 95-1507, R.C.M. 1947, is amended
12 to read as follows:

13 "95-1507. Sentence of imprisonment for persistent
14 felony offender. (1) A persistent felony offender is an
15 offender who has been previously convicted of a felony and
16 the present offense is a second felony committed on a
17 different occasion than the first.

18 (2) A persistent felony offender shall be imprisoned
19 in the state prison for a term of not less than ~~five-(5)~~
20 years ~~nor or~~ more than ~~one-hundred-(100)~~ years providing:

21 (a) the previous felony conviction was for an offense
22 committed in this state or any other jurisdiction for which
23 a sentence to a term of imprisonment in excess of ~~one-(1)~~
24 year could have been imposed; and

25 (b) less than ~~five-(5)~~ years have elapsed between the

1 commission of the present offense and either:

2 (i) the previous felony conviction; or

3 (ii) the ~~offenders--release~~ offender's release on

4 parole or otherwise from a prison or other commitment

5 imposed as a result of the previously felony conviction; and

6 (c) the offender was more than ~~twenty-one--(21)~~ years

7 old at the time of the commission of the new offense.

8 (3) A previous felony conviction shall not be

9 considered for the purpose of sentencing under this section

10 if the offender has been pardoned on the grounds of

11 innocence, or if the conviction had been set aside in any

12 post conviction hearing.

13 (4) Except as provided in [section 14 of this act],

14 the imposition or execution of the first 5 years of a

15 sentence imposed under subsection (2) may not be deferred or

16 suspended."

17 Section 12. Section 95-2206, R.C.M. 1947, is amended

18 to read as follows:

19 "95-2206. Sentence. (1) Whenever any person has been

20 found guilty of a crime or offense upon a verdict or a plea

21 of guilty, the court may:

22 ~~(1)(a)~~ (1)(a) Defer ~~defer~~ imposition of sentence for a period

23 not to exceed ~~one--(1)~~ year for any misdemeanor, ~~1~~ for a

24 period not to exceed ~~three--(3)~~ years for any felony. The

25 sentencing judge may impose upon the defendant any

1 reasonable restrictions or conditions during the period of

2 the deferred imposition. Such reasonable restrictions or

3 conditions may include:

4 ~~(e)(i)~~ jail base release;

5 ~~(b)(ii)~~ jail time not to exceed ~~ninety--(90)~~ days;

6 ~~(e)(iii)~~ conditions for probation;

7 ~~(d)(iv)~~ restitution;

8 ~~(e)(v)~~ any other reasonable conditions deemed

9 necessary for rehabilitation or for the protection of

10 society;

11 ~~(f)(vi)~~ any combination of the above.

12 ~~(2)(b)~~ Suspend ~~suspend~~ execution of sentence up to the

13 maximum sentence allowed for the particular offense. The

14 sentencing judge may impose on the defendant any reasonable

15 restrictions during the period of suspended sentence. Such

16 reasonable restrictions may include:

17 ~~(e)(i)~~ jail base release;

18 ~~(b)(ii)~~ jail time not to exceed ~~(90)~~ days;

19 ~~(e)(iii)~~ conditions for probation;

20 ~~(d)(iv)~~ restitution;

21 ~~(e)(v)~~ any other reasonable conditions deemed

22 necessary for rehabilitation or for the protection of

23 society;

24 ~~(f)(vi)~~ any combination of the above.

25 If any restrictions or conditions are violated, any

1 elapsed time, except jail time, shall not be a credit
2 against the sentence, unless the court shall otherwise
3 order.

4 ~~(3)(c)~~ ~~Impose~~ impose a fine as provided by law for the
5 offense;

6 ~~(4)(d)~~ ~~Commit~~ commit the defendant to a correctional
7 institution with or without fine by law for the offense;

8 ~~(5)(e)~~ ~~Impose~~ impose any combination of subsections
9 ~~(2)(b)~~, ~~(3)(c)~~, or ~~(4)(d)~~ above.

10 ~~(6)(2)~~ The district court ~~may~~ also impose any of the
11 following restrictions or conditions on the above sentence
12 which it deems necessary to obtain the objective of
13 rehabilitation and the protection of society:

14 (a) prohibit the defendant the right to hold public
15 office;

16 (b) prohibit the defendant the right to own or carry a
17 dangerous weapon;

18 (c) prohibit freedom of association;

19 (d) prohibit freedom of movement;

20 (e) any other limitation reasonably related to the
21 objectives of rehabilitation or the protection of society.

22 ~~(7)(3)~~ The judge in the justice court shall not have
23 the authority to restrict an individual's rights as
24 enumerated in subsection ~~(6)(2)~~.

25 ~~(4) Except as provided in [section 14 of this act],~~

1 ~~the imposition or execution of the first 2 years of a~~
2 ~~sentence of imprisonment imposed under the following~~
3 ~~sections may not be deferred or suspended: 54-132(2),~~
4 ~~54-133(3), 54-133.1(2), 94-5-102(2), 94-5-103(2),~~
5 ~~94-5-202(2), 94-5-302(2), 94-5-303(2), 94-5-401(2), and~~
6 ~~94-5-503(2) and (3).~~

7 (5) Any judge who has suspended the execution of a
8 sentence or deferred the imposition of a sentence of
9 imprisonment under this section, or his successor, is
10 authorized thereafter, in his discretion, during the period
11 of such suspended sentence or deferred imposition of
12 sentence to revoke such suspension or impose sentence and
13 order such person committed, or may, in his discretion,
14 order the prisoner placed under the jurisdiction of the
15 state board of pardons as provided by law, or retain such
16 jurisdiction with this court. Prior to the revocation of an
17 order suspending or deferring the imposition of sentence,
18 the person affected shall be given a hearing."

19 Section 13. There is a new R.C.M. section that reads
20 as follows:

21 Additional sentence for offenses committed with a
22 dangerous weapon. (1) A person who has been found guilty of
23 any offense and who, while engaged in the commission of the
24 offense, knowingly displayed, brandished, or otherwise used
25 a firearm, destructive device, as defined in 69-1931(1), or

1 other dangerous weapon shall, in addition to the punishment
2 provided for the commission of such offense, be sentenced to
3 a term of imprisonment in the state prison of not less than
4 2 years or more than 10 years, except as provided in
5 [section 14 of this act].

6 (2) A person convicted of a second or subsequent
7 offense under this section shall, in addition to the
8 punishment provided for the commission of the present
9 offense, be sentenced to a term of imprisonment in the state
10 prison of not less than 4 years or more than 20 years,
11 except as provided in [section 14 of this act]. For the
12 purposes of this subsection, the following persons shall be
13 considered to have been convicted of a previous offense
14 under this section:

15 (a) a person who has previously been convicted of an
16 offense, committed on a different occasion than the present
17 offense, under 18 U.S.C. 924(c); and

18 (b) a person who has previously been convicted of an
19 offense in this or another state, committed on a different
20 occasion than the present offense, during the commission of
21 which he knowingly displayed, brandished, or otherwise used
22 a firearm, destructive device, as defined in 69-1931(1), or
23 other dangerous weapon.

24 (3) The imposition or execution of the minimum
25 sentences prescribed by this section may not be deferred or

1 suspended, except as provided in [section 14 of this act].

2 Section 14. There is a new R.C.M. section that reads
3 as follows:

4 Exceptions to mandatory minimum sentences and
5 restrictions on deferred imposition and suspended execution
6 of sentence. All mandatory minimum sentences prescribed by
7 the laws of this state and the restrictions on deferred
8 imposition and suspended execution of sentence prescribed by
9 95-1507(4), 95-2206(4), and subsection(3) of [section 13 of
10 this act] do not apply if:

11 (1) the defendant was less than 18 years of age at the
12 time of the commission of the offense for which he is to be
13 sentenced;

14 (2) the defendant's mental capacity, at the time of
15 the commission of the offense for which he is to be
16 sentenced, was significantly impaired, although not so
17 impaired as to constitute a defense to the prosecution;

18 (3) the defendant, at the time of the commission of
19 the offense for which he is to be sentenced, was acting
20 under unusual and substantial duress, although not such
21 duress as would constitute a defense to the prosecution;

22 (4) the defendant was an accomplice, the conduct
23 constituting the offense was principally the conduct of
24 another, and the defendant's participation was relatively
25 minor; or

1 (5) where applicable, no serious bodily injury was
2 inflicted on the victim.

3 Section 15. There is a new R.C.M. section that reads
4 as follows:

5 hearing to determine application of exceptions. (1)
6 When the application of an exception provided for in
7 [section 14 of this act] is an issue, the court shall grant
8 the defendant a hearing prior to the imposition of sentence
9 to determine the applicability of the exception.

10 (2) The hearing shall be held before the court sitting
11 without a jury. The defendant and the prosecution are
12 entitled to assistance of counsel, compulsory process, and
13 cross-examination of witnesses who appear at the hearing.

14 (3) If it appears by a preponderance of the
15 information, including information submitted during the
16 trial, during the sentencing hearing, and in so much of the
17 presentence report as the court relies on, that none of the
18 exceptions at issue apply, the court shall impose the
19 appropriate mandatory sentence. The court shall state the
20 reasons for its decision in writing and shall include an
21 identification of the facts relied upon in making its
22 determination. The statement shall be included in the
23 judgment.

24 SECTION 16. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
25 JANUARY 1, 1978.

-End-

-17-

1 HOUSE BILL NO. 261

2 INTRODUCED BY RAMIREZ, MARKS, MOORE, MULAR, RYAN,
3 KENNY, GOULD, FABREGA, JOHNSTON, SCULLY, TROPILA, TURNER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE MANDATORY
6 MINIMUM PRISON SENTENCES FOR CERTAIN VIOLENT AND
7 DRUG-RELATED CRIMES AND FOR ANY CRIME COMMITTED WITH A
8 DANGEROUS WEAPON WITHOUT THE OPTION OF DEFERRED IMPOSITION
9 OR SUSPENSION OF EXECUTION OF THE SENTENCE; TO PROVIDE FOR
10 LIMITED EXCEPTIONS TO MANDATORY SENTENCES AND RESTRICTIONS
11 ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE;
12 AND TO REQUIRE A HEARING TO DETERMINE THE APPLICABILITY OF
13 THE EXCEPTIONS; AMENDING SECTIONS 54-132, 54-133, 54-133.1,
14 94-5-102, 94-5-103, 94-5-202, 94-5-302, 94-5-303, 94-5-401,
15 94-5-503, 95-1507, and 95-2206, R.C.M. 1947; AND PROVIDING
16 AN EFFECTIVE DATE."

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

19 Section 1. Section 54-132, R.C.M. 1947, is amended to
20 read as follows:

21 "54-132. Criminal sale of dangerous drugs. ~~(a)~~(1) A
22 person commits the offense of a criminal sale of dangerous
23 drugs if he sells, barter, exchange, gives away, or offers
24 to sell, barter, exchange, or give away, manufactures,
25 prepares, cultivates, compounds, or processes any dangerous

1 drug as defined in this act.

2 ~~(2) A person convicted of criminal sale of an opiate,~~
3 ~~as defined in 54-301(18), shall be imprisoned in the state~~
4 ~~prison for a term of not less than 2 years or more than~~
5 ~~life, except as provided in (section 14 of this act).~~

6 ~~(b)(3) A person convicted of criminal sale of~~
7 ~~dangerous drugs not otherwise provided for in subsection (2)~~
8 ~~shall be imprisoned in the state prison for a term of not~~
9 ~~less than one-(1) year nor or more than life.~~

10 ~~(c)(4) Practitioners and agents under their~~
11 ~~supervision acting in the course of a professional practice~~
12 ~~are exempt from this section."~~

13 Section 2. Section 54-133, R.C.M. 1947, is amended to
14 read as follows:

15 "54-133. Criminal possession of dangerous drugs.
16 ~~(a)~~(1) A person commits the offense of criminal possession
17 of dangerous drugs if he possesses any dangerous drug as
18 defined in this act.

19 ~~(b)~~(2) Any person convicted of a criminal possession
20 of marihuana or its derivatives in an amount, the aggregate
21 weight of which does not exceed ~~sixty--(60)~~ grams of
22 marihuana, or ~~one-(1)~~ gram of hashish, shall, for the first
23 offense, be guilty of a misdemeanor and is punishable by a
24 fine not to exceed ~~one--thousand--dollars--(\$1,000)~~ or by
25 imprisonment in the county jail not to exceed ~~one-(1) year~~

Second Printing
THIRD READING

1 or by both such fine and imprisonment. A person convicted of
 2 a second or subsequent offense under this subsection is
 3 punishable by a fine not to exceed ~~one-thousand-dollars~~
 4 ~~(\$1,000)~~ or by imprisonment in the county jail not to exceed
 5 ~~one-(1)~~ year or in the state prison not to exceed ~~three--(3)~~
 6 years or by both such fine and imprisonment.

7 ~~(3) A person convicted of criminal possession of an~~
 8 ~~opiate, as defined in 54-301(18), shall be imprisoned in the~~
 9 ~~state prison for a term of not less than 2 years or more~~
 10 ~~than 5 years, except as provided in [section 14 of this~~
 11 ~~act].~~

12 ~~(4) A person convicted of criminal possession of~~
 13 ~~dangerous drugs not otherwise provided for in subsection (b)~~
 14 ~~(2) or (3) shall be imprisoned by imprisonment in the state~~
 15 ~~prison not to exceed five-(5) years.~~

16 ~~(5) A person of the age of twenty-one-(21) years or~~
 17 ~~under, convicted of a first violation under this section~~
 18 ~~shall be presumed to be entitled to a deferred imposition of~~
 19 ~~sentence. Jurisdiction under this section shall be~~
 20 ~~exclusively in the district court."~~

21 Section 3. Section 54-133.1, R.C.M. 1947, is amended
 22 to read as follows:

23 "54-133.1. Criminal possession with intent to sell.
 24 (1) A person commits the offense of criminal possession with
 25 intent to sell if he possesses with intent to sell any

1 dangerous drug as defined in section 54-301. No person
 2 commits the offense of criminal possession with intent to
 3 sell marijuana unless he possesses one kilogram or more.

4 ~~(2) A person convicted of criminal possession of an~~
 5 ~~opiate, as defined in 54-301(18), with intent to sell shall~~
 6 ~~be imprisoned in the state prison for a term of not less~~
 7 ~~than 2 years or more than 20 years, except as provided in~~
 8 ~~[section 14 of this act].~~

9 ~~(3) A person convicted of criminal possession with~~
 10 ~~intent to sell not otherwise provided for in subsection (2)~~
 11 ~~shall be imprisoned in the state prison for a term of not~~
 12 ~~more than twenty-(20) years.~~

13 ~~(4) Practitioners and agents under their~~
 14 ~~supervision acting in the course of a professional practice~~
 15 ~~as defined by section 54-301 are exempt from this section."~~

16 Section 4. Section 94-5-102, R.C.M. 1947, is amended
 17 to read as follows:

18 "94-5-102. Deliberate homicide. (1) Except as
 19 provided in section 94-5-103 (1) (a), criminal homicide
 20 constitutes deliberate homicide if:

- 21 (a) it is committed purposely or knowingly; or
- 22 (b) it is committed while the offender is engaged in
- 23 or is an accomplice in the commission of or an attempt to
- 24 commit or flight after committing or attempting to commit
- 25 robbery, sexual intercourse without consent, arson,

1 burglary, kidnapping, felonious escape, or any other felony
 2 which involves the use or threat of physical force or
 3 violence against any individual.

4 (2) A person convicted of the offense of deliberate
 5 homicide shall be punished by death as provided in section
 6 94-5-105, or by imprisonment in the state prison for any a
 7 term ~~not to exceed of not less than 2 years or more than one~~
 8 ~~hundred--{100} years, except as provided in [section 14 of~~
 9 ~~this act]."~~

10 Section 5. Section 94-5-103, R.C.M. 1947, is amended
 11 to read as follows:

12 "94-5-103. Mitigated deliberate homicide.
 13 (1) Criminal homicide constitutes mitigated deliberate
 14 homicide when a homicide which would otherwise be deliberate
 15 homicide is committed under the influence of extreme mental
 16 or emotional stress for which there is reasonable
 17 explanation or excuse. The reasonableness of such
 18 explanation or excuse shall be determined from the viewpoint
 19 of a reasonable person in the actor's situation.

20 (2) A person convicted of mitigated deliberate
 21 homicide shall be imprisoned in the state prison for any a
 22 term ~~not to exceed of not less than 2 years or more than~~
 23 ~~forty--{40} years, except as provided in [section 14 of this~~
 24 ~~act]."~~

25 Section 6. Section 94-5-202, R.C.M. 1947, is amended

1 to read as follows:

2 "94-5-202. Aggravated assault. (1) A person commits
 3 the offense of aggravated assault if he purposely or
 4 knowingly causes:

- 5 (a) serious bodily injury to another; or
- 6 (b) bodily injury to another with a weapon; or
- 7 (c) reasonable apprehension of serious bodily injury
- 8 in another by use of a weapon; or
- 9 (d) bodily injury to a peace officer.

10 (2) A person convicted of aggravated assault shall be
 11 imprisoned in the state prison for any a term ~~not to exceed~~
 12 ~~of not less than 2 years or more than twenty--{20} years,~~
 13 ~~except as provided in [section 14 of this act]."~~

14 Section 7. Section 94-5-302, R.C.M. 1947, is amended
 15 to read as follows:

16 "94-5-302. Kidnapping. (1) A person commits the
 17 offense of kidnapping if he knowingly or purposely and
 18 without lawful authority restrains another person by either
 19 secreting or holding him in a place of isolation, or by
 20 using or threatening to use physical force.

21 (2) A person convicted of the offense of kidnapping
 22 shall be imprisoned in the state prison for any a term ~~not~~
 23 ~~to exceed of not less than 2 years or more than ten--{10}~~
 24 ~~years, except as provided in [section 14 of this act]."~~

25 Section 8. Section 94-5-303, R.C.M. 1947, is amended

1 to read as follows:

2 *94-5-303. Aggravated kidnapping. (1) A person
3 commits the offense of aggravated kidnapping if he knowingly
4 or purposely and without lawful authority restrains another
5 person by either secreting or holding him in a place of
6 isolation or by using or threatening to use physical force,
7 with any of the following purposes:

8 (a) to hold for ransom or reward or as a shield or
9 hostage; or

10 (b) to facilitate commission of any felony or flight
11 thereafter; or

12 (c) to inflict bodily injury on or to terrorize the
13 victim or another; or

14 (d) to interfere with the performance of any
15 governmental or political function; or

16 (e) to hold another in a condition of involuntary
17 servitude.

18 (2) * Except as provided in [section 14 of this act],
19 a person convicted of the offense of aggravated kidnapping
20 shall be punished by death as provided in section 94-5-304
21 or be imprisoned in the state prison for any a term not-to
22 exceed of not less than 2 years or more than one--hundred
23 †100† years unless he has voluntarily released the victim,
24 alive, in a safe place, and not suffering from serious
25 bodily injury, in which event he shall be imprisoned in the

1 state prison for any a term not-to-exceed of not less than 2
2 years or more than ten-†10† years."

3 Section 9. Section 94-5-401, R.C.M. 1947, is amended
4 to read as follows:

5 *94-5-401. Robbery. (1) A person commits the offense
6 of robbery if, in the course of committing a theft, he:

7 (a) inflicts bodily injury upon another; or

8 (b) threatens to inflict bodily injury upon any person
9 or purposely or knowingly puts any person in fear of
10 immediate bodily injury; or

11 (c) commits or threatens immediately to commit any
12 felony other than theft.

13 (2) A person convicted of the offense of robbery shall
14 be imprisoned in the state prison for any a term not-to
15 exceed of not less than 2 years or more than forty-†40†
16 years, except as provided in [section 14 of this act].

17 (3) "In the course of committing a theft" as used in
18 this section includes acts which occur in an attempt to
19 commit or in the commission of theft or in flight after the
20 attempt or commission."

21 Section 10. Section 94-5-503, R.C.M. 1947, is amended
22 to read as follows:

23 *94-5-503. Sexual intercourse without consent. (1) A
24 person who knowingly has sexual intercourse without consent
25 with a person not his spouse commits the offense of sexual

1 intercourse without consent.

2 (2) A person convicted of sexual intercourse without
3 consent shall be imprisoned in the state prison for any a
4 term ~~not to exceed of not less than 2 years or more than~~
5 ~~twenty-(20) years, except as provided in [section 14 of this~~
6 ~~act].~~

7 (3) If the victim is less than ~~sixteen-(16)~~ years old
8 and the offender is ~~three-(3)~~ or more years older than the
9 victim, or if the offender inflicts bodily injury upon
10 anyone in the course of committing sexual intercourse
11 without consent, he shall be imprisoned in the state prison
12 for any term ~~not to exceed of not less than 2 years or more~~
13 ~~than forty-(40) years, except as provided in [section 14 of~~
14 ~~this act].~~

15 (4) An act "in the course of committing sexual
16 intercourse without consent" shall include an attempt to
17 commit the offense or flight after the attempt or
18 commission.

19 (5) ~~(a)~~ No evidence concerning the sexual conduct of
20 the victim is admissible in prosecutions under this section,
21 except:

22 ~~(a)(i)~~ Evidence ~~evidence~~ of the victim's past sexual
23 conduct with the offender;

24 ~~(b)(ii)~~ Evidence ~~evidence~~ of specific instances of the
25 victim's sexual activity to show the origin of semen,

1 pregnancy, or disease which is at issue in the prosecution
2 under this section.

3 ~~(b)~~ If the defendant proposes, for any purpose, to
4 offer evidence described in ~~(a) or (b)~~ subsection 5(a)(i) or
5 5(a)(ii), the trial judge shall order a hearing out of the
6 presence of the jury to determine whether the proposed
7 evidence is admissible under this subsection.

8 (6) If the issue of failure to make a timely complaint
9 or immediate outcry is raised, the jury shall be informed
10 that such fact, standing alone, may not bar conviction."

11 Section 11. Section 95-1507, R.C.M. 1947, is amended
12 to read as follows:

13 "95-1507. Sentence of imprisonment for persistent
14 felony offender. (1) A persistent felony offender is an
15 offender who has been previously convicted of a felony and
16 the present offense is a second felony committed on a
17 different occasion than the first.

18 (2) A persistent felony offender shall be imprisoned
19 in the state prison for a term of not less than ~~five-(5)~~
20 years ~~nor~~ ~~or~~ more than ~~one-hundred-(100)~~ years providing:

21 (a) the previous felony conviction was for an offense
22 committed in this state or any other jurisdiction for which
23 a sentence to a term of imprisonment in excess of ~~one-(1)~~
24 year could have been imposed; and

25 (b) less than ~~five-(5)~~ years have elapsed between the

1 commission of the present offense and either:

2 (i) the previous felony conviction; or

3 (ii) the offenders--~~release~~ offender's release on

4 parole or otherwise from a prison or other commitment

5 imposed as a result of the previously felony conviction; and

6 (c) the offender was more than ~~twenty-one--~~21 years

7 old at the time of the commission of the new offense.

8 (3) A previous felony conviction shall not be

9 considered for the purpose of sentencing under this section

10 if the offender has been pardoned on the grounds of

11 innocence or if the conviction had been set aside in any

12 post conviction hearing.

13 (4) Except as provided in [section 14 of this act],

14 the imposition or execution of the first 5 years of a

15 sentence imposed under subsection (2) may not be deferred or

16 suspended."

17 Section 12. Section 95-2206, R.C.M. 1947, is amended

18 to read as follows:

19 "95-2206. Sentence. (1) Whenever any person has been

20 found guilty of a crime or offense upon a verdict or a plea

21 of guilty, the court may:

22 ~~1) (a)~~ 1) (a) Defer ~~defer~~ imposition of sentence for a period

23 not to exceed one-~~1~~ year for any misdemeanor, for a

24 period not to exceed three-~~3~~ years for any felony. The

25 sentencing judge may impose upon the defendant any

1 reasonable restrictions or conditions during the period of

2 the deferred imposition. Such reasonable restrictions or

3 conditions may include:

- 4 ~~(a)(i)~~ jail base release;
- 5 ~~(b)(iii)~~ jail time not to exceed ~~ninety--~~90 days;
- 6 ~~(c)(iii)~~ conditions for probation;
- 7 ~~(d)(iv)~~ restitution;
- 8 ~~(e)(v)~~ any other reasonable conditions deemed
- 9 necessary for rehabilitation or for the protection of
- 10 society;

11 ~~(f)(vi)~~ any combination of the above.

12 ~~(2)(b)~~ 2)(b) Suspend ~~suspend~~ execution of sentence up to the

13 maximum sentence allowed for the particular offense. The

14 sentencing judge may impose on the defendant any reasonable

15 restrictions during the period of suspended sentence. Such

16 reasonable restrictions may include:

- 17 ~~(a)(i)~~ jail base release;
- 18 ~~(b)(iii)~~ jail time not to exceed ~~90~~ days;
- 19 ~~(c)(iii)~~ conditions for probation;
- 20 ~~(d)(iv)~~ restitution;
- 21 ~~(e)(v)~~ any other reasonable conditions deemed
- 22 necessary for rehabilitation or for the protection of
- 23 society;

24 ~~(f)(vi)~~ any combination of the above.

25 If any restrictions or conditions are violated, any

1 elapsed time, except jail time, shall not be a credit
 2 against the sentence, unless the court shall otherwise
 3 order.

4 ~~f3)(c)~~ ~~impose~~ ~~impose~~ a fine as provided by law for the
 5 offense;

6 ~~f4)(d)~~ ~~Commit~~ ~~commit~~ the defendant to a correctional
 7 institution with or without fine by law for the offense;

8 ~~f5)(e)~~ ~~impose~~ ~~impose~~ any combination of subsections
 9 ~~f2)~~ ~~1)(b)~~, ~~f3)~~ ~~1)(c)~~, or ~~f4)~~ ~~1)(d)~~ above.

10 ~~f6)(2)~~ The district court may also impose any of the
 11 following restrictions or conditions on the above sentence
 12 which it deems necessary to obtain the objective of
 13 rehabilitation and the protection of society:

14 (a) prohibit the defendant the right to hold public
 15 office;

16 (b) prohibit the defendant the right to own or carry a
 17 dangerous weapon;

18 (c) prohibit freedom of association;

19 (d) prohibit freedom of movement;

20 (e) any other limitation reasonably related to the
 21 objectives of rehabilitation or the protection of society.

22 ~~f7)(3)~~ The judge in the justice court shall not have
 23 the authority to restrict an individual's rights as
 24 enumerated in subsection ~~f6)~~ (2).

25 ~~(4) Except as provided in [section 14 of this act],~~

1 ~~the imposition or execution of the first 2 years of a~~
 2 ~~sentence of imprisonment imposed under the following~~
 3 ~~sections may not be deferred or suspended: 54-132(2),~~
 4 ~~54-133(3), 54-133.1(2), 94-5-102(2), 94-5-103(2),~~
 5 ~~94-5-202(2), 94-5-302(2), 94-5-303(2), 94-5-401(2), and~~
 6 ~~94-5-503(2) and (3).~~

7 (5) Any judge who has suspended the execution of a
 8 sentence or deferred the imposition of a sentence of
 9 imprisonment under this section or his successor is
 10 authorized thereafter, in his discretion, during the period
 11 of such suspended sentence or deferred imposition of
 12 sentence to revoke such suspension or impose sentence and
 13 order such person committed or may, in his discretion,
 14 order the prisoner placed under the jurisdiction of the
 15 state board of pardons as provided by law or retain such
 16 jurisdiction with this court. Prior to the revocation of an
 17 order suspending or deferring the imposition of sentence,
 18 the person affected shall be given a hearing."

19 Section 13. There is a new R.C.M. section that reads
 20 as follows:

21 Additional sentence for offenses committed with a
 22 dangerous weapon. (1) A person who has been found guilty of
 23 any offense and who, while engaged in the commission of the
 24 offense, knowingly displayed, brandished, or otherwise used
 25 a firearm, destructive device, as defined in 69-1931(1), or

1 other dangerous weapon shall, in addition to the punishment
 2 provided for the commission of such offense, be sentenced to
 3 a term of imprisonment in the state prison of not less than
 4 2 years or more than 10 years, except as provided in
 5 [section 14 of this act].

6 (2) A person convicted of a second or subsequent
 7 offense under this section shall, in addition to the
 8 punishment provided for the commission of the present
 9 offense, be sentenced to a term of imprisonment in the state
 10 prison of not less than 4 years or more than 20 years,
 11 except as provided in [section 14 of this act]. For the
 12 purposes of this subsection, the following persons shall be
 13 considered to have been convicted of a previous offense
 14 under this section:

15 (a) a person who has previously been convicted of an
 16 offense, committed on a different occasion than the present
 17 offense, under 18 U.S.C. 924(c); and

18 (b) a person who has previously been convicted of an
 19 offense in this or another state, committed on a different
 20 occasion than the present offense, during the commission of
 21 which he knowingly displayed, brandished, or otherwise used
 22 a firearm, destructive device, as defined in 69-1931(1), or
 23 other dangerous weapon.

24 (3) The imposition or execution of the minimum
 25 sentences prescribed by this section may not be deferred or

1 suspended, except as provided in [section 14 of this act].

2 Section 14. There is a new R.C.M. section that reads
 3 as follows:

4 Exceptions to mandatory minimum sentences and
 5 restrictions on deferred imposition and suspended execution
 6 of sentence. All mandatory minimum sentences prescribed by
 7 the laws of this state and the restrictions on deferred
 8 imposition and suspended execution of sentence prescribed by
 9 95-1507(4), 95-2206(4), and subsection(3) of [section 13 of
 10 this act] do not apply if:

11 (1) the defendant was less than 18 years of age at the
 12 time of the commission of the offense for which he is to be
 13 sentenced;

14 (2) the defendant's mental capacity, at the time of
 15 the commission of the offense for which he is to be
 16 sentenced, was significantly impaired, although not so
 17 impaired as to constitute a defense to the prosecution;

18 (3) the defendant, at the time of the commission of
 19 the offense for which he is to be sentenced, was acting
 20 under unusual and substantial duress, although not such
 21 duress as would constitute a defense to the prosecution;

22 (4) the defendant was an accomplice, the conduct
 23 constituting the offense was principally the conduct of
 24 another, and the defendant's participation was relatively
 25 minor; or

1 (5) where applicable, no serious bodily injury was
2 inflicted on the victim.

3 Section 15. There is a new R.C.M. section that reads
4 as follows:

5 Hearing to determine application of exceptions. (1)
6 When the application of an exception provided for in
7 [section 14 of this act] is an issue, the court shall grant
8 the defendant a hearing prior to the imposition of sentence
9 to determine the applicability of the exception.

10 (2) The hearing shall be held before the court sitting
11 without a jury. The defendant and the prosecution are
12 entitled to assistance of counsel, compulsory process, and
13 cross-examination of witnesses who appear at the hearing.

14 (3) If it appears by a preponderance of the
15 information, including information submitted during the
16 trial, during the sentencing hearing, and in so much of the
17 presentence report as the court relies on, that none of the
18 exceptions at issue apply, the court shall impose the
19 appropriate mandatory sentence. The court shall state the
20 reasons for its decision in writing and shall include an
21 identification of the facts relied upon in making its
22 determination. The statement shall be included in the
23 judgment.

24 ~~SECTION 16. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON~~
25 ~~JANUARY 1, 1978.~~

-End-

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