

HOUSE BILL 517

IN THE HOUSE

February 2, 1979

Introduced and referred to  
Committee on Judiciary.

February 9, 1979

Committee recommend bill,  
do not pass.

February 12, 1979

Report adopted.

HOUSE BILL NO. 517

INTRODUCED BY Kelly Hoyer, Jay Anderson, Courton Seifert, Jesse Albert, Daily Curtis, Roke

*Albert  
Seifert  
Roke*

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDUCE THE SENTENCING DISCRETION OF A JUDGE BY REMOVING THE AUTHORITY TO DEFER IMPOSITION OF SENTENCES; LIMITING CONSIDERATION OF THE DEFENDANT'S INDIVIDUAL CHARACTERISTICS OR CIRCUMSTANCES IN SENTENCING; RESTRICTING THE CIRCUMSTANCES UNDER WHICH A JUDGE MAY MAKE AN EXCEPTION TO A MANDATORY MINIMUM SENTENCE OR TO RESTRICTIONS ON SUSPENDED EXECUTION OF SENTENCE; AMENDING SECTIONS 45-9-102, 46-18-201, 46-18-203, 46-18-221, 46-18-222, 46-18-502, 61-8-714, 87-4-122, AND 87-4-141, MCA; AND REPEALING SECTIONS 46-18-101 AND 46-18-204, MCA."

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

Section 1. Section 46-18-201, MCA, is amended to read:

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

~~(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred~~

~~imposition. Such reasonable restrictions or conditions may include:~~

- ~~(i) jail base release;~~
- ~~(ii) jail time not exceeding 90 days;~~
- ~~(iii) conditions for probation;~~
- ~~(iv) restitution;~~
- ~~(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or~~
- ~~(vi) any combination of the above;~~

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

- ~~(i) jail base release;~~
- ~~(ii) jail time not exceeding 90 days;~~
- ~~(iii) conditions for probation;~~
- ~~(iv) restitution;~~
- ~~(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;~~
- ~~(vi) any combination of the above.~~

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

1       ~~(d)(C)~~ commit the defendant to a correctional  
2 institution with or without a fine as provided by law for  
3 the offense;

4       ~~(e)(d)~~ impose any combination of subsections  
5 (1)~~(b)(a)~~, (1)~~(e)(b)~~, and (1)~~(d)(C)~~.

6       (2) If any restrictions or conditions imposed under  
7 subsection (1)(a) or ~~(1)(b)~~ are violated, any elapsed time,  
8 except jail time, shall not be a credit against the sentence  
9 unless the court orders otherwise.

10       (3) Except as provided in 46-18-222, the ~~imposition or~~  
11 ~~execution of the first 2 years of a sentence of imprisonment~~  
12 ~~imposed under the following sections may not be deferred or~~  
13 suspended: 45-5-102(2), 45-5-103(2), 45-5-202(2),  
14 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3),  
15 45-9-101(2), 45-9-102(3), and 45-9-103(2)."

16       Section 2. Section 46-18-222, MCA, is amended to read:  
17       "~~46-18-222. Exceptions to mandatory minimum sentences~~  
18 ~~and restrictions on deferred imposition and suspended~~  
19 ~~execution of sentence. All mandatory minimum sentences~~  
20 ~~prescribed by the laws of this state and the restrictions on~~  
21 ~~deferred imposition and suspended execution of sentence~~  
22 ~~prescribed by 46-18-201(3), 46-18-221(3), and 46-18-502(2)~~  
23 ~~do not apply if:~~

24       (1) the defendant was less than 18 years of age at the  
25 time of the commission of the offense for which he is to be

1 sentenced;

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

6       ~~(3) the defendant, at the time of the commission of~~  
7 ~~the offense for which he is to be sentenced, was acting~~  
8 ~~under unusual and substantial duress, although not such~~  
9 ~~duress as would constitute a defense to the prosecution;~~

10       ~~(4) (2) the defendant was an accomplice, the conduct~~  
11 ~~constituting the offense was principally the conduct of~~  
12 ~~another, and the defendant's participation was relatively~~  
13 ~~minor; or~~

14       ~~(5) (3) where applicable, no serious bodily injury was~~  
15 ~~inflicted on the victim."~~

16       Section 3. Section 45-9-102, MCA, is amended to read:  
17       "~~45-9-102. Criminal possession of dangerous drugs. (1)~~  
18 ~~A person commits the offense of criminal possession of~~  
19 ~~dangerous drugs if he possesses any dangerous drug, as~~  
20 ~~defined in 50-32-101.~~

21       (2) Any person convicted of criminal possession of  
22 marijuana or its derivatives in an amount the aggregate  
23 weight of which does not exceed 60 grams of marijuana or 1  
24 gram of hashish is, for the first offense, guilty of a  
25 misdemeanor and punishable by a fine not to exceed \$1,000 or

1 education or treatment shall, at the commencement of the  
 2 education or treatment, notify the court that the defendant  
 3 has been accepted by the school or treatment program. If the  
 4 defendant fails to attend the school or the treatment  
 5 program, the school or institution shall notify the court of  
 6 the failure."

7 Section 8. Section 87-4-122, MCA, is amended to read:

8 "87-4-122. Outfitter's qualifications. Each applicant  
 9 for and holder of an outfitter's license or any renewal  
 10 thereof shall, in the opinion of the director, meet the  
 11 following qualifications:

12 (1) be a person of at least 18 years of age, in  
 13 possession of all natural faculties, of ordinary  
 14 intelligence, and in such physical condition as to be able  
 15 to perform his duties as an outfitter;

16 (2) be a citizen of the United States and a resident  
 17 of Montana for a full 2 years, unless the residency  
 18 requirement is waived by the department;

19 (3) own or hold under written lease or represent a  
 20 company, corporation, or partnership who owns or holds under  
 21 written lease the equipment and facilities as are necessary  
 22 to provide the services advertised, contracted for, or  
 23 agreed upon between the outfitter and his clients (all  
 24 equipment and facilities shall be subject to inspection at  
 25 all reasonable times and places by the department or its

1 designated agent);

2 (4) be a person who has demonstrated a respect for and  
 3 compliance with the laws of any state or of the United  
 4 States and all rules promulgated thereunder as to matters of  
 5 fish and game, conservation of natural resources, and  
 6 preservation of the natural ecosystem without pollution  
 7 thereof;

8 (5) have not been convicted or forfeited bond of \$100  
 9 or more on more than one violation of the fish and game laws  
 10 of any state or the United States within the past 5 years;

11 (6) have not, at any time, practiced fraud, deception,  
 12 or material misrepresentation in procuring any previous  
 13 outfitter's or guide's license from the state of Montana;

14 (7) have not, at any time, promulgated any false or  
 15 misleading advertising relating to the business of  
 16 outfitting;

17 (8) have not been finally adjudged by a court of law  
 18 guilty of any substantial breach of written or oral contract  
 19 with any person utilizing the applicant's services as an  
 20 outfitter or guide during the license year immediately  
 21 preceding that for which the application is made;

22 (9) have not committed any negligent act or misconduct  
 23 while acting as an outfitter or guide which negligence or  
 24 misconduct caused a danger or unreasonable risk of danger to  
 25 person or property of any client of such outfitter or guide

1 during the license year immediately preceding that for which  
2 the application is made;

3 (10) have not, at any time, been convicted of a felony,  
4 unless civil rights have been restored pursuant to law. No  
5 ~~person may apply for or hold an outfitter's license during~~  
6 ~~any period of time in which a deferred sentence has been~~  
7 ~~imposed for a felony;~~

8 (11) have substantially complied with all department  
9 regulations and state and federal laws concerning outfitters  
10 and guides, if the applicant has previously held a license  
11 as an outfitter or guide."

12 Section 9. Section 87-4-141, MCA, is amended to read:

13 "87-4-141. Grounds for suspension or revocation of  
14 license. Every license or right to apply for and hold such  
15 license may be suspended or revoked upon any of the  
16 following grounds:

17 (1) having ceased to meet all of the qualifications  
18 for holding a license;

19 (2) fraud or deception in procuring a license;

20 (3) fraudulent, untruthful, or misleading advertising;

21 (4) conviction of a felony, until civil rights are  
22 ~~restored or until time of any deferred sentence for a felony~~  
23 ~~has expired;~~

24 (5) two convictions or bond forfeitures of \$100 or  
25 more as to violations of the fish and game or outfitting

1 laws or regulations of the state of Montana or of the United  
2 States;

3 (6) a substantial breach of any contract with any  
4 person utilizing the services of the license holder provided  
5 that such breach is established as a matter of final  
6 judgment in a court of law;

7 (7) the willful employment of an unlicensed guide by  
8 an outfitter;

9 (8) negligence or misconduct while acting as an  
10 outfitter or guide which negligence or misconduct causes a  
11 danger or unreasonable risk of danger to person or property  
12 of any client of such outfitter or guide."

13 Section 10. Saving clause. This act applies only to  
14 offenses committed after the effective date of this act.

15 Section 11. Repealer. Sections 46-18-101 and  
16 46-18-204, MCA, are repealed.

-End-

1 imprisonment in the county jail for a term not to exceed 1  
2 year or both such fine and imprisonment. A person convicted  
3 of a second or subsequent offense under this subsection is  
4 punishable by a fine not to exceed \$1,000 or imprisonment in  
5 the county jail for a term not to exceed 1 year or in the  
6 state prison for a term not to exceed 3 years or both such  
7 fine and imprisonment.

8 (3) A person convicted of criminal possession of an  
9 opiate, as defined in 50-32-101(18), shall be imprisoned in  
10 the state prison for a term of not less than 2 years or more  
11 than 5 years, except as provided in 46-18-222.

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

16 ~~(5) A person of the age of 21 years or under convicted~~  
17 ~~of a first violation under this section shall be presumed to~~  
18 ~~be entitled to a deferred imposition of sentence.~~

19 ~~(6) Ultimate users and practitioners and agents~~  
20 ~~under their supervision acting in the course of a~~  
21 ~~professional practice, as defined by 50-32-101, are exempt~~  
22 ~~from this section."~~

23 Section 4. Section 46-18-203, MCA, is amended to read:

24 "46-18-203. Revocation of suspended ~~or--deferred~~  
25 sentence. A judge, magistrate, or justice of the peace who

1 has suspended the execution of a sentence ~~or--deferred--the~~  
2 ~~imposition-of-a-sentence~~ of imprisonment under 46-18-201 or  
3 his successor is authorized, during the period of the  
4 suspended sentence ~~or--deferred-imposition--of--sentence,~~ in  
5 his discretion, to revoke the suspension ~~or--impose--sentence~~  
6 and order the person committed. He may also, in his  
7 discretion, order the prisoner placed under the jurisdiction  
8 of the board of pardons as provided by law or retain such  
9 jurisdiction with his court. Prior to the revocation of an  
10 order suspending ~~or--deferring--the-imposition-of~~ sentence,  
11 the person affected shall be given a hearing."

12 Section 5. Section 46-18-221, MCA, is amended to read:

13 "46-18-221. Additional sentence for offenses committed  
14 with a dangerous weapon. (1) A person who has been found  
15 guilty of any offense and who, while engaged in the  
16 commission of the offense, knowingly displayed, brandished,  
17 or otherwise used a firearm, destructive device, as defined  
18 in 45-8-332(1), or other dangerous weapon shall, in addition  
19 to the punishment provided for the commission of such  
20 offense, be sentenced to a term of imprisonment in the state  
21 prison of not less than 2 years or more than 10 years,  
22 except as provided in 46-18-222.

23 (2) A person convicted of a second or subsequent  
24 offense under this section shall, in addition to the  
25 punishment provided for the commission of the present

1 offense, be sentenced to a term of imprisonment in the state  
 2 prison of not less than 4 years or more than 20 years,  
 3 except as provided in 46-18-222. For the purposes of this  
 4 subsection, the following persons shall be considered to  
 5 have been convicted of a previous offense under this  
 6 section:

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

10 (b) a person who has previously been convicted of an  
 11 offense in this or another state, committed on a different  
 12 occasion than the present offense, during the commission of  
 13 which he knowingly displayed, brandished, or otherwise used  
 14 a firearm, destructive device, as defined in 45-8-332(1), or  
 15 other dangerous weapon.

16 (3) The ~~imposition--or~~ execution of the minimum  
 17 sentences prescribed by this section may not be ~~deferred--or~~  
 18 suspended, except as provided in 46-18-222.\*

19 Section 6. Section 46-18-502, MCA, is amended to read:

20 \*46-18-502. Sentencing of persistent felony offender.

21 (1) A persistent felony offender shall be imprisoned in the  
 22 state prison for a term of not less than 5 years or more  
 23 than 100 years if he was 21 years of age or older at the  
 24 time of the commission of the present offense.

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

1 execution of the first 5 years of a sentence imposed under  
 2 subsection (1) may not be ~~deferred-or~~ suspended.\*

3 Section 7. Section 61-8-714, MCA, is amended to read:

4 \*61-8-714. Penalty for driving while intoxicated. (1)

5 every person who is convicted of a violation of 61-8-401  
 6 shall be punished by a fine of not less than \$100 or more  
 7 than \$500. On a second conviction, he shall be punished by a  
 8 fine of not less than \$300 or more than \$500. On the third  
 9 or subsequent conviction, he shall be punished by  
 10 imprisonment for a term of not less than 30 days or more  
 11 than 1 year, to which may be added, in the discretion of the  
 12 court, a fine of not less than \$500 or more than \$1,000.  
 13 Notwithstanding any provision to the contrary providing for  
 14 suspension of execution of a sentence imposed under this  
 15 subsection, the ~~imposition-or~~ execution of the first 10 days  
 16 of the jail sentence imposed for a third or subsequent  
 17 offense that occurred within 5 years of the first offense  
 18 may not be ~~deferred-or~~ suspended.

19 (2) Except as otherwise provided in this section, the  
 20 court may, in its discretion, suspend the execution of any  
 21 sentence imposed under subsection (1) on the condition that  
 22 the defendant successfully complete a course in a driver  
 23 improvement school approved by the court or an alcohol  
 24 treatment program approved by the department of  
 25 institutions. Each school or institution providing such