

HOUSE BILL 865

IN THE HOUSE

February 17, 1979	Introduced and referred to Committee on Judiciary.
February 20, 1979	Committee recommend bill, do not pass.
February 21, 1979	Report adopted. Objection.
February 23, 1979	Second reading, as amended.  Considered correctly engrossed.  Third reading, passed.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 21, 1979	Committee recommend bill, not concurrent, as amended.

IN THE HOUSE

March 22, 1979	Returned from Senate, not concurrent, as amended.
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1 *House* BILL NO. *865*  
 2 INTRODUCED BY *Manning*  
 3 *Meyer* *Shurtal*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
 5 MANDATORY MINIMUM SENTENCES THAT MAY NOT BE DEFERRED OR  
 6 SUSPENDED EXCEPT UNDER LIMITED CIRCUMSTANCES FOR CRIMES  
 7 INVOLVING THE MOLESTING OR RAPING OF CHILDREN; PROVIDING  
 8 THAT THE OFFENDER IS NOT ELIGIBLE FOR PAROLE OR  
 9 PARTICIPATION IN THE PRISONER FURLOUGH PROGRAM WHILE SERVING  
 10 THE MANDATORY MINIMUM PART OF HIS SENTENCE; AMENDING  
 11 SECTIONS 45-5-502, 45-5-503, 45-5-505, 46-18-201, 46-18-202,  
 12 46-18-222, 46-23-201, AND 46-23-411, MCA."

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

15 Section 1. Section 45-5-502, MCA, is amended to read:  
 16 "45-5-502. Sexual assault. (1) A person who knowingly  
 17 subjects another not his spouse to any sexual contact  
 18 without consent commits the offense of sexual assault.

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

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

1 state prison for any term not to exceed 20 years.

2 ~~(4) If the victim is less than 13 years old and the~~  
 3 ~~offender is 5 or more years older than the victim or if the~~  
 4 ~~victim is less than 13 years old and the offender inflicts~~  
 5 ~~bodily injury upon the victim in the course of committing~~  
 6 ~~sexual assault, the offender shall be imprisoned in the~~  
 7 ~~state prison for any term of not less than 10 years or more~~  
 8 ~~than 40 years, except as provided in 46-18-222.~~

9 (4)(5) An act "in the course of committing sexual  
 10 assault" shall include an attempt to commit the offense or  
 11 flight after the attempt or commission.

12 ~~(6) As applied to subsection (4), the term "without~~  
 13 ~~consent" means that the victim is incapable of consent~~  
 14 ~~because he is less than 13 years old."~~

15 Section 2. Section 45-5-503, MCA, is amended to read:  
 16 "45-5-503. Sexual intercourse without consent. (1) A  
 17 person who knowingly has sexual intercourse without consent  
 18 with a person of the opposite sex not his spouse commits the  
 19 offense of sexual intercourse without consent.

20 (2) A person convicted of sexual intercourse without  
 21 consent shall be imprisoned in the state prison for a term  
 22 of not less than 2 years or more than 20 years, except as  
 23 provided in 46-18-222.

24 (3) If the victim is less than 16 years old and the  
 25 offender is 3 or more years older than the victim or if the

1 offender inflicts bodily injury upon anyone in the course of  
 2 committing sexual intercourse without consent, he shall be  
 3 imprisoned in the state prison for any term of not less than  
 4 2 years or more than 40 years, except as provided in  
 5 46-18-222.

6 ~~(4) If the victim is less than 13 years old and the~~  
 7 ~~offender is 5 or more years older than the victim or if the~~  
 8 ~~victim is less than 13 years old and the offender inflicts~~  
 9 ~~bodily injury upon the victim in the course of committing~~  
 10 ~~sexual intercourse without consent, the offender shall be~~  
 11 ~~imprisoned in the state prison for any term of not less than~~  
 12 ~~20 years or more than 80 years, except as provided in~~  
 13 ~~46-18-222.~~

14 (4)(5) An act "in the course of committing sexual  
 15 intercourse without consent" shall include an attempt to  
 16 commit the offense or flight after the attempt or  
 17 commission. .

18 (5)(6) No evidence concerning the sexual conduct of  
 19 the victim is admissible in prosecutions under this section,  
 20 except:

21 (a) evidence of the victim's past sexual conduct with  
 22 the offender;

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

1 section.

2 (6)(7) If the defendant proposes for any purpose to  
 3 offer evidence described in subsection (5)(6)(a) or  
 4 (5)(6)(b), the trial judge shall order a hearing out of the  
 5 presence of the jury to determine whether the proposed  
 6 evidence is admissible under subsection (5)(6).

7 (7)(8) Evidence of failure to make a timely complaint  
 8 or immediate outcry does not raise any presumption as to the  
 9 credibility of the victim."

10 Section 3. Section 45-5-505, MCA, is amended to read:

11 "45-5-505. Deviate sexual conduct. (1) A person who  
 12 knowingly engages in deviate sexual relations or who causes  
 13 another to engage in deviate sexual relations commits the  
 14 offense of deviate sexual conduct.

15 (2) A person convicted of the offense of deviate  
 16 sexual conduct shall be imprisoned in the state prison for  
 17 any term not to exceed 10 years.

18 (3) A person convicted of deviate sexual conduct  
 19 without consent shall be imprisoned in the state prison for  
 20 any term not to exceed 20 years.

21 ~~(4) If the victim is a human being less than 13 years~~  
 22 ~~old and the offender is 5 or more years older than the~~  
 23 ~~victim or if the victim is a human being less than 13 years~~  
 24 ~~old and the offender inflicts bodily injury upon the victim~~  
 25 ~~in the course of committing such deviate sexual conduct, the~~

1 offender shall be imprisoned in the state prison for any  
 2 term of not less than 10 years or more than 40 years, except  
 3 as provided in 46-18-222.

4 (5) If the offense is deviate sexual conduct involving  
 5 sexual intercourse with a human being who is less than 13  
 6 years old and either the offender is 5 or more years older  
 7 than the victim or the offender inflicts bodily injury on  
 8 the victim in the course of committing such deviate sexual  
 9 conduct, the offender shall be imprisoned in the state  
 10 prison for any term of not less than 20 years or more than  
 11 80 years, except as provided in 46-18-222.

12 (6) An act "in the course of committing such deviate  
 13 sexual conduct" includes an attempt to commit the offense or  
 14 flight after the attempt or commission."

15 Section 4. Section 46-18-201, MCA, is amended to read:  
 16 "46-18-201. Sentences that may be imposed. (1)  
 17 Whenever a person has been found guilty of an offense upon a  
 18 verdict or a plea of guilty, the court may:

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

1 include:

- 2 (i) jail base release;  
 3 (ii) jail time not exceeding 90 days;  
 4 (iii) conditions for probation;  
 5 (iv) restitution;  
 6 (v) any other reasonable conditions considered  
 7 necessary for rehabilitation or for the protection of  
 8 society; or  
 9 (vi) any combination of the above.  
 10 (b) suspend execution of sentence up to the maximum  
 11 sentence allowed for the particular offense. The sentencing  
 12 judge may impose on the defendant any reasonable  
 13 restrictions during the period of suspended sentence. Such  
 14 reasonable restrictions may include:  
 15 (i) jail base release;  
 16 (ii) jail time not exceeding 90 days;  
 17 (iii) conditions for probation;  
 18 (iv) restitution;  
 19 (v) any other reasonable conditions considered  
 20 necessary for rehabilitation or for the protection of  
 21 society;  
 22 (vi) any combination of the above.  
 23 (c) impose a fine as provided by law for the offense;  
 24 (d) commit the defendant to a correctional institution  
 25 with or without a fine as provided by law for the offense;

1 (e) impose any combination of subsections (1)(b),  
2 (1)(c), and (1)(d).

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

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

13 ~~(4) Except as provided in 46-18-222, the imposition or~~  
14 ~~execution of the mandatory minimum sentence imposed under~~  
15 ~~the following sections may not be deferred or suspended:~~  
16 ~~45-5-502(4), 45-5-503(4), and 45-5-505(4) and 45-5-505(5)."~~

17 Section 5. Section 46-18-202, MCA, is amended to read:  
18 "46-18-202. Additional restrictions on sentence. (1)  
19 The district court may also impose any of the following  
20 restrictions or conditions on the sentence provided for in  
21 46-18-201 which it considers necessary to obtain the  
22 objectives of rehabilitation and the protection of society:

23 (a) prohibit the defendant the right to hold public  
24 office;

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

1 dangerous weapon;

2 (c) prohibit freedom of association;

3 (d) prohibit freedom of movement;

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

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

17 ~~(3) Whenever the district court imposes a sentence of~~  
18 ~~imprisonment under 45-5-502(4), 45-5-503(4), 45-5-505(4),~~  
19 ~~45-5-505(5), the court shall also impose the restriction~~  
20 ~~that the defendant is ineligible for parole and~~  
21 ~~participation in the prisoner furlough program while~~  
22 ~~serving in the case of a sentence imposed under 45-5-502(4)~~  
23 ~~or 45-5-505(4), the first 10 years of his term or, in the~~  
24 ~~case of a sentence imposed under 45-5-503(4) or 45-5-505(5),~~  
25 ~~the first 20 years of his term. The court shall impose the~~

1 ~~restriction as part of the sentence, and the judgment shall~~  
 2 ~~contain a statement that the restriction is required by~~  
 3 ~~statute.~~

4 ~~(3)(4)~~ The judge in a justice's, city, or municipal  
 5 court does not have the authority to restrict an  
 6 individual's rights as enumerated in subsections (1), and  
 7 (2), and (3)."

8 Section 6. Section 46-18-222, MCA, is amended to read:

9 "46-18-222. Exceptions to mandatory minimum sentences  
 10 and restrictions on deferred imposition and suspended  
 11 execution of sentence. All mandatory minimum sentences  
 12 prescribed by the laws of this state and the restrictions on  
 13 deferred imposition and suspended execution of sentence  
 14 prescribed by 46-18-201(3), ~~46-18-201(4)~~, 46-18-221(3), and  
 15 46-18-502(2) do not apply if:

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

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

23 (3) the defendant, at the time of the commission of  
 24 the offense for which he is to be sentenced, was acting  
 25 under unusual and substantial duress, although not such:

1 duress as would constitute a defense to the prosecution;

2 (4) the defendant was an accomplice, the conduct  
 3 constituting the offense was principally the conduct of  
 4 another, and the defendant's participation was relatively  
 5 minor; or

6 (5) where applicable, no serious bodily injury was  
 7 inflicted on the victim."

8 Section 7. Section 46-23-201, MCA, is amended to read:

9 "46-23-201. Prisoners eligible for parole. (1) Subject  
 10 to the following restrictions, the board shall release on  
 11 parole by appropriate order any person confined in the  
 12 Montana state prison, except persons under sentence of death  
 13 and persons serving sentences imposed under 46-18-202(2) ~~or~~  
 14 ~~46-18-202(3)~~, when in its opinion there is reasonable  
 15 probability that the prisoner can be released without  
 16 detriment to himself or to the community:

17 (a) No convict serving a time sentence may be paroled  
 18 until he has served at least one-half of his full term, less  
 19 the good time allowance provided for in 53-30-105; except  
 20 that a convict designated as a nondangerous offender under  
 21 46-18-404 may be paroled after he has served one-quarter of  
 22 his full term, less the good time allowance provided for in  
 23 53-30-105. Any offender serving a time sentence may be  
 24 paroled after he has served, upon his term of sentence,  
 25 17 1/2 years.

1 (b) No convict serving a life sentence may be paroled  
2 until he has served 30 years, less the good time allowance  
3 provided for in 53-30-105.

4 (2) A parole shall be ordered only for the best  
5 interests of society and not as an award of clemency or a  
6 reduction of sentence or pardon. A prisoner shall be placed  
7 on parole only when the board believes that he is able and  
8 willing to fulfill the obligations of a law-abiding  
9 citizen."

10 Section 8. Section 46-23-411, MCA, is amended to read:

11 "46-23-411. Application to participate. Any prisoner  
12 confined in the state prison, except a prisoner serving a  
13 sentence imposed under 46-18-202(2) or ~~46-18-202(1)~~, may  
14 make application to participate in the furlough program at  
15 least by the time the inmate has served one-half of the time  
16 required to be considered for parole."

-End-

HOUSE BILL NO. 865

INTRODUCED BY MANNING, HEMSTAD, MEYER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR MANDATORY MINIMUM SENTENCES THAT--MAY--NOT--BE--DEFERRED--OR--SUSPENDED--EXCEPT--UNDER--LIMITED--CIRCUMSTANCES FOR CRIMES INVOLVING THE MOLESTING OR RAPING OF CHILDREN; PROVIDING THAT--THE--OFFENDER--IS--NOT--ELIGIBLE--FOR--PAROLE--OR--PARTICIPATION--IN--THE--PRISONER--FURLOUGH--PROGRAM--WHILE--SERVING--THE--MANDATORY--MINIMUM--PART--OF--HIS--SENTENCE; AMENDING SECTIONS 45-5-502, AND 45-5-503, 45-5-505, 46-18-201, 46-18-202, 46-18-222, 46-23-201, AND 46-23-411, MCA."

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

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

"45-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

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

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

state prison for any term not to exceed 20 years.

~~(4) If the victim is less than 13 years old and the offender is 5 or more years older than the victim or if the victim is less than 13 years old and the offender inflicts bodily injury upon the victim in the course of committing sexual assault, the offender shall be imprisoned in the state prison for any term of not less than 10 2 years or more than 20 years, except as provided in 46-18-222. ON A SECOND OR SUBSEQUENT OFFENSE, THE OFFENDER SHALL BE IMPRISONED IN THE STATE PRISON FOR A TERM OF NOT LESS THAN 10 YEARS OR MORE THAN 40.~~

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

~~(6) As applied to subsection (4), the term "without consent" means that the victim is incapable of consent because he is less than 13 years old.~~

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

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as



1 provided in 46-18-222.

2 (3) If the victim is less than 16 years old and the  
3 offender is 3 or more years older than the victim or if the  
4 offender inflicts bodily injury upon anyone in the course of  
5 committing sexual intercourse without consent, he shall be  
6 imprisoned in the state prison for any term of not less than  
7 2 years or more than 40 years, except as provided in  
8 46-18-222.

9 ~~(4) If the victim is less than 13 years old and the~~  
10 ~~offender is 5 or more years older than the victim or if the~~  
11 ~~victim is less than 13 years old and the offender inflicts~~  
12 ~~bodily injury upon the victim in the course of committing~~  
13 ~~sexual intercourse without consent, the offender shall be~~  
14 ~~imprisoned in the state prison for any term of not less than~~  
15 ~~10 years or more than 40 years, except as provided in~~  
16 ~~46-18-222.~~

17 (4)(5) An act "in the course of committing sexual  
18 intercourse without consent" shall include an attempt to  
19 commit the offense or flight after the attempt or  
20 commission.

21 (5)(6) No evidence concerning the sexual conduct of  
22 the victim is admissible in prosecutions under this section,  
23 except:

24 (a) evidence of the victim's past sexual conduct with  
25 the offender;

1 (b) evidence of specific instances of the victim's  
2 sexual activity to show the origin of semen, pregnancy, or  
3 disease which is at issue in the prosecution under this  
4 section.

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

10 (7)(8) Evidence of failure to make a timely complaint  
11 or immediate outcry does not raise any presumption as to the  
12 credibility of the victim."

13 ~~Section 3--Section--45-5-505v-HEAV-is-amended-to-read\*~~  
14 ~~"45-5-505v--Deviate-sexual-conduct--(1)-A--person--who~~  
15 ~~knowingly--engages-in-deviate-sexual-relations-or-who-causes~~  
16 ~~another-to-engage-in-deviate-sexual--relations--commits--the~~  
17 ~~offense-of-deviate-sexual-conduct\*~~

18 (2)--A--person--convicted--of--the--offense--of-deviate  
19 ~~sexual-conduct-shall-be-imprisoned-in-the-state-prison--for~~  
20 ~~any-term-not-to-exceed-10-years\*~~

21 (3)--A--person--convicted--of--deviate--sexual--conduct  
22 ~~without-consent-shall-be-imprisoned-in-the-state-prison--for~~  
23 ~~any-term-not-to-exceed-20-years\*~~

24 ~~(4)--if--the-victim-is-a-human-being-less-than-13-years~~  
25 ~~old-and-the-offender-is-5--or--more--years--older--than--the~~

1 ~~victim--or-if-the-victim-is-a-human-being-less-than-13-years~~  
 2 ~~old-and-the-offender-inflicts-bodily-injury-upon-the-victim~~  
 3 ~~in-the-course-of-committing-such-deviate-sexual-conductv-the~~  
 4 ~~offender--shall-be--imprisoned--in-the-state-prison-for-any~~  
 5 ~~term-of-not-less-than-10-years-or-more-than-40-yearsx--except~~  
 6 ~~as-provided-in-46-18-222x~~

7 ~~(5i)--if-the-offense-is-deviate-sexual-conduct-involving~~  
 8 ~~sexual-intercourse-with-a-human-being-who-is-less-than-13~~  
 9 ~~years--old--and-either-the-offender-is-5-or-more-years-older~~  
 10 ~~than-the-victim-or-the-offender-inflicts--bodily--injury--on~~  
 11 ~~the--victim--in-the-course-of-committing-such-deviate-sexual~~  
 12 ~~conductv-the-offender--shall-be--imprisoned--in--the--state~~  
 13 ~~prison--for--any-term-of-not-less-than-20-years-or-more-than~~  
 14 ~~90-yearsx--except--as-provided-in-46-18-222x~~

15 ~~(6i)--An-act--"in-the-course-of-committing--such--deviate~~  
 16 ~~sexual-conduct"--includes-an-attempt-to-commit-the-offense-or~~  
 17 ~~flight-after-the-attempt-or-commissionx"~~

18 ~~Section-4v--Section-46-18-201v-M6Av-is-amended-to-read+~~  
 19 ~~"46-18-201v--Sentences--that--may--be--imposedv--(1)~~  
 20 ~~Whenever-a-person-has-been-found-guilty-of-an-offense-upon-a~~  
 21 ~~verdict-or-a-plea-of-guiltyv-the-court-may+~~

22 ~~(a)--defer-imposition-of-sentencev--excepting--sentences~~  
 23 ~~for--driving--under-the-influence-of-alcohol-or-drugsv--for-a~~  
 24 ~~period-not-exceeding-1-year-for-any--misdemeanor--or--for--a~~  
 25 ~~period--not-exceeding-3-years-for-any-felonyv--the-sentencing~~

1 judge--may--impose--upon--the--defendant--any--reasonable  
 2 restrictions-or-conditions-during-the-period-of-the-deferred  
 3 impositionv--Such--reasonable-restrictions-or-conditions-may  
 4 include+

- 5 (i)--jail-base-release+
- 6 (ii)--jail-time-not-exceeding-90-days+
- 7 (iii)--conditions-for-probation+
- 8 (iv)--restitution+
- 9 (v)--any--other--reasonable--conditions--considered
- 10 necessary--for--rehabilitation--or--for--the--protection--of
- 11 society+
- 12 (vi)--any-combination-of-the-abovev
- 13 (b)--suspend-execution-of-sentence-up--to--the--maximum
- 14 sentence--allowed-for-the-particular-offensev--the-sentencing
- 15 judge--may--impose--on--the--defendant--any--reasonable
- 16 restrictions--during--the-period-of-suspended-sentencev--Such
- 17 reasonable-restrictions-may-include+

- 18 (i)--jail-base-release+
- 19 (ii)--jail-time-not-exceeding-90-days+
- 20 (iii)--conditions-for-probation+
- 21 (iv)--restitution+
- 22 (v)--any--other--reasonable--conditions--considered
- 23 necessary--for--rehabilitation--or--for--the--protection--of
- 24 society+
- 25 (vi)--any-combination-of-the-abovev

1       (c)--impose a fine as provided by law for the offense†  
 2       (d)--commit the defendant to a correctional institution  
 3 with--or--without a fine as provided by law for the offense†  
 4       (e)--impose--any--combination--of--subsections--(1)(b)†  
 5 (1)(c)†--and--(1)(d)†  
 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       ~~(4)--Except--as--provided--in--46-18-222†--the--imposition--or~~  
 17 ~~execution--of--the--mandatory--minimum--sentence--imposed--under~~  
 18 ~~the--following--sections--may--not--be--deferred--or--suspended†~~  
 19 ~~45-5-502(4)†--45-5-503(4)†--and--45-5-505(4)†--and--45-5-505(5)†"~~  
 20       Section 5--Section 46-18-202--HEA--is--amended--to--read†  
 21       "46-18-202--Additional--restrictions--on--sentence†--(1)†  
 22 The--district--court--may--also--impose--any--of--the--following  
 23 restrictions--or--conditions--on--the--sentence--provided--for--in  
 24 46-18-201--which--it--considers--necessary--to--obtain--the  
 25 objectives--of--rehabilitation--and--the--protection--of--society†

1       (f)--prohibit the defendant the right--to--hold--public  
 2 office†  
 3       (b)--prohibit the defendant the right to own or carry a  
 4 dangerous weapon†  
 5       (c)--prohibit freedom of association†  
 6       (d)--prohibit freedom of movement†  
 7       (e)--any--other--limitation--reasonably--related--to--the  
 8 objectives--of--rehabilitation--and--the--protection--of--society†  
 9       (2)--Whenever--the--district--court--imposes--a--sentence--of  
 10 imprisonment--in--the--state--prison--for--a--term--exceeding--1  
 11 year†--the--court--may--also--impose--the--restriction--that--the  
 12 defendant--be--ineligible--for--parole--and--participation--in--the  
 13 prisoner--furlough--program--while--serving--his--term†--if--such--a  
 14 restriction--is--to--be--imposed†--the--court--shall--state--the  
 15 reasons--for--it--in--writing†--if--the--court--finds--that--the  
 16 restriction--is--necessary--for--the--protection--of--society†--it  
 17 shall--impose--the--restriction--as--part--of--the--sentence--and--the  
 18 judgment--shall--contain--a--statement--of--the--reasons--for--the  
 19 restriction†  
 20       ~~(3)--Whenever--the--district--court--imposes--a--sentence--of~~  
 21 ~~imprisonment--under--45-5-502(4)†--45-5-503(4)†--45-5-505(4)†--or~~  
 22 ~~45-5-505(5)†--the--court--shall--also--impose--the--restriction~~  
 23 ~~that--the--defendant--is--ineligible--for--parole--and~~  
 24 ~~participation--in--the--prisoner--furlough--program--while~~  
 25 ~~serving--in--the--case--of--a--sentence--imposed--under--45-5-502(4)†~~

1 ~~of 45-5-505(4) the first 10 years of his term or in the~~  
 2 ~~case of a sentence imposed under 45-5-503(4) or 45-5-505(5)~~  
 3 ~~the first 20 years of his term. The court shall impose the~~  
 4 ~~restriction as part of the sentence and the judgment shall~~  
 5 ~~contain a statement that the restriction is required by~~  
 6 ~~statute.~~

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

11 Section 6, Section 46-10-222, MCA, is amended to read:  
 12 "46-10-222. Exceptions to mandatory minimum sentences  
 13 and restrictions on deferred imposition and suspended  
 14 execution of sentences. A) mandatory minimum sentences  
 15 prescribed by the laws of this state and the restrictions on  
 16 deferred imposition and suspended execution of sentence  
 17 prescribed by 46-10-201(3), ~~46-10-201(4)~~, 46-10-221(3), and  
 18 46-10-502(2) do not apply if:

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

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

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

5 (4) the defendant was an accomplice, the conduct  
 6 constituting the offense was principally the conduct of  
 7 another, and the defendant's participation was relatively  
 8 minor; or

9 (5) where applicable, no serious bodily injury was  
 10 inflicted on the victim."

11 Section 7, Section 46-23-201, MCA, is amended to read:  
 12 "46-23-201. Prisoners eligible for parole. (1)  
 13 Subject to the following restrictions, the board shall  
 14 release on parole by appropriate order any person confined  
 15 in the Montana state prison, except persons under sentence  
 16 of death and persons serving sentences imposed under  
 17 46-10-202(2) or ~~46-10-202(3)~~, when in its opinion there is  
 18 reasonable probability that the prisoner can be released  
 19 without detriment to himself or to the community:

20 (a) No convict serving a time sentence may be paroled  
 21 until he has served at least one-half of his full term, less  
 22 the good-time allowance provided for in 53-30-105, except  
 23 that a convict designated as a nondangerous offender under  
 24 46-10-404 may be paroled after he has served one-quarter of  
 25 his full term, less the good-time allowance provided for in

1 53-30-105. Any offender serving a time sentence may be  
2 paroled after he has served upon his term of sentence  
3 at least 1/2 years.

4 (b) No convict serving a life sentence may be paroled  
5 until he has served 30 years, less the good time allowance  
6 provided for in 53-30-105.

7 (2) A parole shall be ordered only for the best  
8 interests of society and not as an award of clemency or a  
9 reduction of sentence or pardon. A prisoner shall be placed  
10 on parole only when the board believes that he is able and  
11 willing to fulfill the obligations of a law-abiding  
12 citizen.

13 Section 8. Section 46-23-411, MCA, is amended to read:

14 "46-23-411. Application to participate. Any prisoner  
15 confined in the state prison, except a prisoner serving a  
16 sentence imposed under 46-10-202(2) or 46-10-202(3), may  
17 make application to participate in the furlough program at  
18 least by the time the inmate has served one-half of the time  
19 required to be considered for parole."

-End-