

SENATE BILL 228

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Fiscal note requested.
January 31, 1979	Fiscal note returned.
February 19, 1979	Committee recommend bill, as amended.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 15, 1979	Committee recommend bill, not concurred.
March 17, 1979	Report adopted.

IN THE SENATE

March 19, 1979	Returned from House, not concurred.
March 20, 1979	On motion, request of House granted for return of Senate Bill 228 for further consideration. Motion. adopted.

IN THE HOUSE

March 21, 1979	On motion of March 19, 1979 bill requested returned from Senate to reconsider previous action.
March 22, 1979	Committee report adopted.

IN THE SENATE

March 23, 1979	Returned from House, not concurred.
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*O'Hara*

*Senate* BILL NO. 228  
 INTRODUCED BY *Goodman* *Kalweit* *Adkins*  
*Ryan*  
*Manly*

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE PERSISTENT  
 5 FELONY OFFENDERS INELIGIBLE FOR PAROLE OR TO PARTICIPATE IN  
 6 THE PRISONER FURLOUGH PROGRAM; AMENDING SECTIONS 46-18-202,  
 7 46-13-404, 46-18-502, 46-23-201, AND 46-23-411, MCA."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 "46-18-202. Additional restrictions on sentence. (1)

12 The district court may also impose any of the following  
 13 restrictions or conditions on the sentence provided for in  
 14 46-18-201 which it considers necessary to obtain the  
 15 objectives of rehabilitation and the protection of society:

16 (a) prohibit the defendant the right to hold public  
 17 office;

18 (b) prohibit the defendant the right to own or carry a  
 19 dangerous weapon;

20 (c) prohibit freedom of association;

21 (d) prohibit freedom of movement;

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

24 (2) Whenever the district court imposes a sentence of  
 25 imprisonment in the state prison for a term exceeding 1

1 year, the court may also impose the restriction that the  
 2 defendant be ineligible for parole and participation in the  
 3 prisoner furlough program while serving his term. If such a  
 4 restriction is to be imposed, the court shall state the  
 5 reasons for it in writing. If the court finds that the  
 6 restriction is necessary for the protection of society, it  
 7 shall impose the restriction as part of the sentence and the  
 8 judgment shall contain a statement of the reasons for the  
 9 restriction.

10 ~~(3) Whenever the district court sentences a defendant~~  
 11 ~~as a persistent felony offender, it shall restrict the~~  
 12 ~~sentence as provided in 46-18-502(3).~~

13 ~~(3)(4)~~ The judge in a justice's, city, or municipal  
 14 court does not have the authority to restrict an  
 15 individual's rights as enumerated in subsections (1) and ~~(2)~~  
 16 ~~through (3).~~"

17 Section 2. Section 46-18-404, MCA, is amended to read:

18 "46-18-404. Designation as nondangerous offender for  
 19 purposes of parole eligibility. (1) The sentencing court  
 20 shall designate an offender a nondangerous offender for  
 21 purposes of eligibility for parole under part 2 of chapter  
 22 23 if:

23 ~~(a)~~ during the 5 years preceding the commission of  
 24 the offense for which the offender is being sentenced, the  
 25 offender was neither convicted of nor incarcerated for an

1 offense committed in this state or any other jurisdiction  
2 for which a sentence to a term of imprisonment in excess of  
3 1 year could have been imposed ~~or a~~

4 ~~(b) the court has determined based on any presentence~~  
5 ~~report and the evidence presented at the trial and the~~  
6 ~~sentencing hearing that the offender does not represent a~~  
7 ~~substantial danger to other persons or society.~~

8 (2) A conviction or incarceration may not be  
9 considered under subsection (1) ~~if~~ if:

10 (a) the offender was less than 18 years of age at the  
11 time of the commission of the present offense; or

12 (b) the offender has been pardoned for the previous  
13 offense on the grounds of innocence or the conviction for  
14 such offense has been set aside in a postconviction  
15 hearing."

16 Section 3. Section 46-18-502, MCA, is amended to read:

17 "46-18-502. Sentencing of persistent felony offender.

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

22 (2) Except as provided in 46-18-222, the imposition or  
23 execution of the first 5 years of a sentence imposed under  
24 subsection (1) may not be deferred or suspended.

25 (3) An offender sentenced under subsection (1) is

1 ineligible for parole and participation in the prisoner  
2 furlough program while serving his term. The sentencing  
3 court shall impose this restriction as part of the sentence,  
4 and the judgment shall contain a statement that the  
5 restriction is required by statute."

6 Section 4. Section 46-23-201, MCA, is amended to read:

7 "46-23-201. Prisoners eligible for parole. (1) Subject  
8 to the following restrictions, the board shall release on  
9 parole by appropriate order any person confined in the  
10 Montana state prison, except persons under sentence of death  
11 and persons serving sentences imposed under 46-18-202(2) or  
12 46-18-502, when in its opinion there is reasonable  
13 probability that the prisoner can be released without  
14 detriment to himself or to the community:

15 (a) No convict serving a time sentence may be paroled  
16 until he has served at least one-half of his full term, less  
17 the good time allowance provided for in 53-30-105; except  
18 that a convict designated as a nondangerous offender under  
19 46-18-404 may be paroled after he has served one-quarter of  
20 his full term, less the good time allowance provided for in  
21 53-30-105. Any offender serving a time sentence who is not  
22 ineligible for parole may be paroled after he has served,  
23 upon his term of sentence, 17 1/2 years.

24 (b) No convict serving a life sentence may be paroled  
25 until he has served 30 years, less the good time allowance

1 provided for in 53-30-105.

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

8 Section 5. Section 46-23-411, MCA, is amended to read:

9 "46-23-411. Application to participate. Any prisoner  
10 confined in the state prison, except a prisoner serving a  
11 sentence imposed under 46-18-202(2) or 46-18-502, may make  
12 application to participate in the furlough program at least  
13 by the time the inmate has served one-half of the time  
14 required to be considered for parole."

-End-

STATE OF MONTANA

Request No. 116-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 1979, there is hereby submitted a Fiscal Note for Senate Bill 228 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:

"An act to make persistent felony offenders ineligible for parole or to participate in the Prisoner Furlough Program."

ASSUMPTIONS:

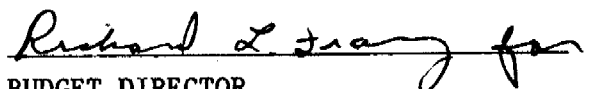
The current population of inmates with the persistent offender conviction is ten. There would be no anticipated increase in this number.

FISCAL IMPACT:

None.

LONG-RANGE IMPACT:

Should there be a marked increase in this type of conviction, the Prison population could escalate beyond current projection forcing the state into more costs for Prison facilities.

  
BUDGET DIRECTOR  
Office of Budget and Program Planning  
Date: 1/31/79

SENATE BILL NO. 228

INTRODUCED BY GODDOVER, KOLSTAD, AKLESTAD, RYAN,  
MANLEY, O'HARA

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MAKE  
PERSISTENT FELONY OFFENDERS---~~INELIGIBLE~~ OFFENDERS  
ELIGIBILITY FOR PAROLE OR ~~TO~~--PARTICIPATE PARTICIPATION IN  
THE PRISONER FURLOUGH PROGRAM; AMENDING SECTIONS 46-18-202,  
46-18-404, 46-18-502, 46-23-201, AND 46-23-411, MCA."

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

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

"46-18-202. Additional restrictions on sentence. (1)

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

- (a) prohibit the defendant the right to hold public office;
- (b) prohibit the defendant the right to own or carry a dangerous weapon;
- (c) prohibit freedom of association;
- (d) prohibit freedom of movement;
- (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

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

~~(3) Whenever the district court sentences a defendant as a persistent felony offender, it shall~~ MAY restrict the sentence as provided in 46-18-502(3).

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

Section 2. Section 46-18-404, MCA, is amended to read:

"46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) The sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:

~~(a)~~ during the 5 years preceding the commission of

1 the offense for which the offender is being sentenced, the  
 2 offender was neither convicted of nor incarcerated for an  
 3 offense committed in this state or any other jurisdiction  
 4 for which a sentence to a term of imprisonment in excess of  
 5 1 year could have been imposed; or; AND

6 ~~(B) THE COURT HAS DETERMINED, BASED ON ANY PRESENTENCE~~  
 7 ~~REPORT AND THE EVIDENCE PRESENTED AT THE TRIAL AND THE~~  
 8 ~~SENTENCING HEARING, THAT THE OFFENDER DOES NOT REPRESENT A~~  
 9 ~~SUBSTANTIAL DANGER TO OTHER PERSONS OR SOCIETY.~~

10 ~~(b)--the-court-has-determined--based-on-any-presentence~~  
 11 ~~report-and-the-evidence--presented--at--the--trial--and--the~~  
 12 ~~sentencing--hearing--that-the-offender-does-not-represent-a~~  
 13 ~~substantial-danger-to-other-persons-or-society.~~

14 (2) A conviction or incarceration may not be  
 15 considered under subsection (1) ~~(a)~~ (A) if:

16 (a) the offender was less than 18 years of age at the  
 17 time of the commission of the present offense; or

18 (b) the offender has been pardoned for the previous  
 19 offense on the grounds of innocence or the conviction for  
 20 such offense has been set aside in a postconviction  
 21 hearing."

22 Section 3. Section 46-18-502, MCA, is amended to read:

23 "46-18-502. Sentencing of persistent felony offender.

24 (1) A persistent felony offender shall be imprisoned in the  
 25 state prison for a term of not less than 5 years or more

1 than 100 years if he was 21 years of age or older at the  
 2 time of the commission of the present offense.

3 (2) Except as provided in 46-18-222, the imposition or  
 4 execution of the first 5 years of a sentence imposed under  
 5 subsection (1) may not be deferred or suspended.

6 ~~(3) An offender sentenced under subsection (1) is~~  
 7 ~~ineligible for parole and participation in the prisoner~~  
 8 ~~furlough program while serving his term IF THE COURT SO~~  
 9 ~~RESTRICTS HIS SENTENCE. The sentencing court shall impose~~  
 10 ~~this restriction as part of the sentence, and the judgment~~  
 11 ~~shall contain a statement that OF THE REASONS FOR the~~  
 12 ~~restriction is required by statute."~~

13 Section 4. Section 46-23-201, MCA, is amended to read:

14 "46-23-201. Prisoners eligible for parole. (1) Subject  
 15 to the following restrictions, the board shall release on  
 16 parole by appropriate order any person confined in the  
 17 Montana state prison, except persons under sentence of death  
 18 and persons serving sentences imposed under 46-18-202(2) or  
 19 ~~46-18-502(3)~~, when in its opinion there is reasonable  
 20 probability that the prisoner can be released without  
 21 detriment to himself or to the community:

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

1 46-18-404 may be paroled after he has served one-quarter of  
2 his full term, less the good time allowance provided for in  
3 53-30-105. Any offender serving a time sentence who is not  
4 ineligible for parole may be paroled after he has served,  
5 upon his term of sentence, 17 1/2 years.

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

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

15 Section 5. Section 46-23-411, MCA, is amended to read:

16 "46-23-411. Application to participate. Any prisoner  
17 confined in the state prison, except a prisoner serving a  
18 sentence imposed under 46-18-202(2) or 46-18-502(3), may  
19 make application to participate in the furlough program at  
20 least by the time the inmate has served one-half of the time  
21 required to be considered for parole."

-End-