

House Bill 10

In The House

January 6, 1981	Introduced and referred to Committee on Judiciary.
January 7, 1981	Fiscal note requested. On motion by Chief Sponsor 55 Representatives were added as authors to the pre-filed bill.
January 13, 1981	Fiscal note returned.
January 22, 1981	Committee recommend bill do pass as amended.
January 23, 1981	Bill printed and placed on members' desks.
January 24, 1981	Second reading do pass as amended.
January 26, 1981	Correctly engrossed. Third reading passed.

In The Senate

January 27, 1981	Introduced and referred to Committee on Judiciary.
April 23, 1981	Died in Committee.

1 HOUSE BILL NO. 10
 2 INTRODUCED BY KEEDY
 3 BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS POLICY
 4 AND FACILITY NEEDS WITH NO RECOMMENDATION

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 7 SENTENCING LAWS; AMENDING SECTIONS 45-5-102 THROUGH
 8 45-5-105, 45-5-201 THROUGH 45-5-204, 45-5-302 THROUGH
 9 45-5-304, 45-5-401, 45-5-502, 45-5-503, 45-5-505, 45-5-603,
 10 45-5-613, 45-5-621, 45-5-625, 45-6-101 THROUGH 45-6-103,
 11 45-6-204, 46-18-101, 46-18-201, 46-18-222, AND 46-18-223,
 12 MCA; AND REPEALING SECTIONS 46-18-111 THROUGH 46-18-113,
 13 46-18-221, AND 46-18-501 THROUGH 46-18-503, MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 Section 1. Section 46-18-101, MCA, is amended to read:
 17 "46-18-101. Policy -- ~~liberal~~ construction. This
 18 chapter shall be ~~liberally~~ construed to the end that persons
 19 a person convicted of a crime shall be dealt with in
 20 accordance with ~~their---individual---characteristics,~~
 21 ~~circumstances,--needs,--and--potentialities,--that-dangerous~~
 22 ~~offenders-shall-be-correctively-treated-in-custody-for--long~~
 23 ~~terms--as--needed,--and--that-other-offenders-shall-be-dealt~~
 24 ~~with-by-probation,--suspended-sentence,--or-fine-whenver-such~~
 25 ~~disposition-appears-practicable-and-not-detrimental--to--the~~

1 ~~needs-of-public-safety-and-the-welfare-of-the-individual the~~
 2 ~~seriousness of the crime committed and in accordance with~~
 3 ~~his prior record. A person convicted of a crime may be dealt~~
 4 ~~with by fine, when provided for by law, or by deferred~~
 5 ~~imposition or suspension of sentence if the age of the~~
 6 ~~person or the circumstances surrounding the crime warrant~~
 7 ~~such treatment as provided for in this chapter."~~

8 Section 2. Section 46-18-201, MCA, is amended to read:
 9 "46-18-201. Sentences that may be imposed. (1) Whenever
 10 a person has been found guilty of an offense upon a verdict
 11 or a plea of guilty, the court may:

- 12 (a) defer imposition of sentence for persons committing
 13 a first offense and who are eligible under 46-18-222,
 14 excepting sentences for driving under the influence of
 15 alcohol or drugs, for a period not exceeding 1 year for any
 16 misdemeanor or for a period not exceeding 3 years for any
 17 felony. The sentencing judge may impose upon the defendant
 18 any reasonable restrictions or conditions during the period
 19 of the deferred imposition. Such reasonable restrictions or
 20 conditions may include:
 21 (i) jail base release;
 22 (ii) jail time not exceeding 90 days;
 23 (iii) conditions for probation;
 24 (iv) restitution;
 25 (v) any other reasonable conditions considered

1 necessary for rehabilitation or for the protection of
2 society; or

3 (vi) any combination of the above;

4 (b) suspend execution of sentence for persons eligible
5 under 46-18-222 up to the maximum sentence allowed for the
6 particular offense. The sentencing judge may impose on the
7 defendant any reasonable restrictions during the period of
8 suspended sentence. Such reasonable restrictions may include
9 any of those listed in subsections (1)(a)(i) through
10 (1)(a)(vi).

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

12 (d) commit the defendant to a correctional institution
13 with or without a fine as provided by law for the offense;

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

16 (2) If any restrictions or conditions imposed under
17 subsection (1)(a) or (1)(b) are violated, any elapsed time,
18 except jail time, is not a credit against the sentence
19 unless the court orders otherwise.

20 ~~(3) Except as provided in 46-18-222, the imposition or~~
21 ~~execution of the first 2 years of a sentence of imprisonment~~
22 ~~imposed under the following sections may not be deferred or~~
23 ~~suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),~~
24 ~~45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)~~
25 ~~and (3), 45-9-102(3), and 45-9-103(2).~~

1 ~~(4) Except as provided in 46-18-222, the imposition or~~
2 ~~execution of the first 10 years of a sentence of~~
3 ~~imprisonment imposed under 45-5-102(2) may not be deferred~~
4 ~~or suspended.~~

5 NEW SECTION. Section 3. Mandatory sentences to be
6 imposed for felonies -- exceptions. Except as provided in
7 46-18-201, the court shall impose the mandatory sentence
8 provided by law for a felony offense unless the court finds
9 in accordance with [section 5] that aggravating
10 circumstances are present or in accordance with [section 6]
11 that mitigating circumstances are present.

12 NEW SECTION. Section 4. Hearing to determine
13 exceptions to mandatory sentences. (1) Upon request of
14 either the defendant or the prosecution, the court shall
15 grant a hearing prior to the imposition of sentence to
16 determine the existence of circumstances enumerated in
17 [section 5 or 6].

18 (2) The hearing shall be held before the court sitting
19 without a jury. The defendant and the prosecution are
20 entitled to the assistance of counsel, compulsory process,
21 and cross-examination of witnesses who appear at the
22 hearing.

23 (3) If it appears by a preponderance of the evidence
24 submitted during the trial and during the sentencing hearing
25 that none of the circumstances enumerated in [section 5 or

1 oj existed, the court shall impose the applicable mandatory
 2 sentence. If it appears by a preponderance of the evidence
 3 that one or more of the circumstances enumerated in [section
 4 5 or 6] existed, the court shall impose the applicable
 5 sentence as provided in [section 5 or 6].

6 (4) The court shall state the reasons for its decision
 7 in writing and shall include an identification of the facts
 8 relied upon in making its determination. The statement
 9 shall be included in the judgment.

10 NEW SECTION. Section 5. Aggravating circumstances for
 11 felonies -- increased penalties. (1) The court shall add to
 12 the mandatory sentence for a felony offense 25% of the
 13 mandatory sentence for each of the following aggravating
 14 circumstances found by the court to have existed at the time
 15 the offense was committed:

16 (a) the victim was mentally defective or incapacitated;

17 (b) the victim was physically helpless;

18 (c) The victim was less than 16 years old or 65 years
 19 of age or older;

20 (d) there were multiple victims;

21 (e) the defendant threatened to inflict bodily injury
 22 upon any person or knowingly put any person in fear of
 23 immediate bodily injury;

24 (f) the defendant took advantage of his fiduciary
 25 relationship with the victim to commit the offense;

1 (g) the defendant used or involved minors in the
 2 commission of the crime; or

3 (h) the defendant, prior to age 18, had committed an
 4 act that would have been a felony if committed by an adult.

5 (2) The court shall add to the mandatory sentence for a
 6 felony offense 50% of the mandatory sentence for each of the
 7 following aggravating circumstances found by the court to
 8 have existed at the time the offense was committed:

9 (a) the defendant inflicted bodily injury upon another;

10 (b) the defendant received compensation for committing
 11 the offense;

12 (c) the defendant, while engaged in the commission of
 13 the offense, knowingly displayed, brandished, or otherwise
 14 used a firearm, destructive device as defined in
 15 45-3-332(1), or other dangerous weapon;

16 (d) the defendant had previously been convicted of a
 17 felony.

18 (3) The court shall add to the mandatory sentence for a
 19 felony offense 100% of the mandatory sentence for each of
 20 the following aggravating circumstances found by the court
 21 to have existed at the time the offense was committed:

22 (a) the defendant is a person who had previously been
 23 convicted of an offense committed under 18 U.S.C. 924(c) on
 24 a different occasion than the present offense or who had
 25 previously been convicted of an offense in this or another

1 state, committed on a different occasion than the present
 2 offense, during the commission of which he knowingly
 3 displayed, brandished, or otherwise used a firearm,
 4 destructive device as defined in 45-8-332(1), or other
 5 dangerous weapon.

6 (b) the defendant is a person who had previously been
 7 convicted of a second felony offense and who is presently
 8 being sentenced for a third or subsequent felony committed
 9 on a different occasion than any of his prior felonies.

10 (4) for the purpose of this section, an offender is
 11 considered to have been previously convicted of a felony if:

12 (a) the previous felony conviction was for an offense
 13 committed in this state or any other jurisdiction for which
 14 a sentence to a term of imprisonment in excess of 1 year
 15 could have been imposed; and

16 (b) the offender has not been pardoned on the ground of
 17 innocence and the conviction has not been set aside in a
 18 postconviction hearing.

19 (5) A circumstance that constitutes a lesser included
 20 offense of the present offense or a circumstance that
 21 constitutes a necessary element of the present offense may
 22 not be found to be an aggravating circumstance for purposes
 23 of this section.

24 NEW SECTION. Section 6. Mitigating circumstances for
 25 felonies -- reduced penalties. If appropriate for the

1 offense, the court shall reduce the sentence for a felony
 2 offense by 10% for each of the following mitigating
 3 circumstances found to be present:

4 (1) The defendant, at the time of the commission of the
 5 offense for which he is to be sentenced, was acting under
 6 unusual and substantial duress. The duress need not be such
 7 that it would constitute a defense to the prosecution.

8 (2) The defendant was an accomplice, the conduct
 9 constituting the offense was principally the conduct of
 10 another, and the defendant's participation was relatively
 11 minor.

12 (3) No serious bodily injury was inflicted on the
 13 victim nor was a weapon used in the commission of the
 14 offense.

15 (4) The defendant has fully compensated or can
 16 reasonably be expected to fully compensate the victim of his
 17 criminal conduct.

18 (5) The defendant assisted law enforcement authorities
 19 in the performance of their duties.

20 Section 7. Section 46-18-222, MCA, is amended to read:
 21 "~~46-18-222. Exceptions to mandatory minimum sentences~~
 22 ~~and restrictions on deferred imposition and suspended~~
 23 ~~execution of sentence Eligibility for deferred or suspended~~
 24 ~~sentence. All mandatory minimum sentences prescribed by the~~
 25 ~~laws of this state and the restrictions on deferred~~

1 ~~imposition and suspended execution of sentence prescribed by~~
 2 ~~subsections (3) and (4) of 46-18-201, 46-18-221(3), and~~
 3 ~~46-18-502(2) do not apply if~~ A person is eligible for a
 4 deferred imposition or suspension of sentence as provided in
 5 46-18-201 if:

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

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

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

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

21 (5) where applicable, no serious bodily injury was
 22 inflicted on the victim unless a weapon was used in the
 23 commission of the offense."

24 Section 8. Section 46-18-223, MCA, is amended to read:

25 "46-18-223. Hearing to determine ~~applicability~~ of

1 ~~exceptions eligibility.~~ (1) When the ~~application of an~~
 2 ~~exception provided for in~~ eligibility for deferred
 3 imposition or suspension of sentence under 46-18-222 is an
 4 issue, upon request the court shall grant the defendant a
 5 hearing prior to the imposition of sentence to determine the
 6 ~~applicability of the exception~~ such eligibility.

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

11 (3) If it appears by a preponderance of the ~~information~~
 12 evidence, including information submitted during the trial
 13 ~~and during the sentencing hearing, and in so much of the~~
 14 ~~presentence report as the court relies on,~~ that none of the
 15 ~~exceptions at issue provisions for eligibility~~ apply, the
 16 court shall impose the ~~appropriate~~ applicable mandatory
 17 sentence with no deferred imposition or suspension thereof.

18 (4) The court shall state the reasons for its decision
 19 in writing and shall include an identification of the facts
 20 relied upon in making its determination. The statement shall
 21 be included in the judgment."

22 Section 9. Section 45-5-102, MCA, is amended to read:

23 "45-5-102. Deliberate homicide. (1) Except as provided
 24 in 45-5-103(1), criminal homicide constitutes deliberate
 25 homicide if:

1 (a) it is committed purposely or knowingly; or
 2 (b) it is committed while the offender is engaged in or
 3 is an accomplice in the commission of, an attempt to commit,
 4 or flight after committing or attempting to commit robbery,
 5 sexual intercourse without consent, arson, burglary,
 6 kidnapping, felonious escape, or any other felony which
 7 involves the use or threat of physical force or violence
 8 against any individual.

9 (2) A person convicted of the offense of deliberate
 10 homicide shall be punished by death or life imprisonment as
 11 provided in 46-18-301 through 46-18-310 or by imprisonment
 12 in the state prison for a term of ~~not less than 10 years or~~
 13 ~~more than 100 years, except as provided in 46-18-222."~~

14 Section 10. Section 45-5-103, MCA, is amended to read:
 15 "45-5-103. Mitigated deliberate homicide. (1) Criminal
 16 homicide constitutes mitigated deliberate homicide when a
 17 homicide which would otherwise be deliberate homicide is
 18 committed under the influence of extreme mental or emotional
 19 stress for which there is reasonable explanation or excuse.
 20 The reasonableness of such explanation or excuse shall be
 21 determined from the viewpoint of a reasonable person in the
 22 actor's situation.

23 (2) A person convicted of mitigated deliberate homicide
 24 shall be imprisoned in the state prison for a term of ~~not~~
 25 ~~less than 2 years or more than 40~~ 20 years, ~~except as~~

1 ~~provided in 46-18-222."~~

2 Section 11. Section 45-5-104, MCA, is amended to read:
 3 "45-5-104. Negligent homicide. (1) Criminal homicide
 4 constitutes negligent homicide when it is committed
 5 negligently.

6 (2) A person convicted of negligent homicide shall be
 7 imprisoned in the state prison for ~~any a term not to exceed~~
 8 ~~10 of 20~~ years."

9 Section 12. Section 45-5-105, MCA, is amended to read:
 10 "45-5-105. Aiding or soliciting suicide. (1) A person
 11 who purposely aids or solicits another to commit suicide,
 12 but such suicide does not occur, commits the offense of
 13 aiding or soliciting suicide.

14 (2) A person convicted of the offense of aiding or
 15 soliciting a suicide shall be imprisoned in the state prison
 16 for ~~any a term not to exceed of~~ 10 years."

17 Section 13. Section 45-5-201, MCA, is amended to read:
 18 "45-5-201. Assault. (1) A person commits the offense of
 19 assault if he:

20 (a) purposely or knowingly causes bodily injury to
 21 another;

22 (b) negligently causes bodily injury to another with a
 23 weapon;

24 (c) purposely or knowingly makes physical contact of an
 25 insulting or provoking nature with any individual; or

1 (d) purposely or knowingly causes reasonable
2 apprehension of bodily injury in another. The purpose to
3 cause reasonable apprehension or the knowledge that
4 reasonable apprehension would be caused shall be presumed in
5 any case in which a person knowingly points a firearm at or
6 in the direction of another, whether or not the offender
7 believes the firearm to be loaded.

8 (2) Except as provided in subsection (3), a person
9 convicted of assault shall be fined not to exceed \$500 or be
10 imprisoned in the county jail for any term not to exceed 6
11 months, or both.

12 (3) If the victim is less than 14 years old and the
13 offender is 18 or more years old, the offender, upon
14 conviction under subsection (1)(a), shall be imprisoned in
15 the state prison for a term ~~not to exceed 5~~ of 10 years."

16 Section 14. Section 45-5-202, MCA, is amended to read:

17 "45-5-202. Aggravated assault. (1) A person commits the
18 offense of aggravated assault if he purposely or knowingly
19 causes:

- 20 (a) serious bodily injury to another;
21 (b) bodily injury to another with a weapon;
22 (c) reasonable apprehension of serious bodily injury in
23 another by use of a weapon; or
24 (d) bodily injury to a peace officer.
25 (2) A person convicted of aggravated assault shall be

1 imprisoned in the state prison for a term of ~~not less than 2~~
2 ~~years---or---more---than~~ 20 years, ~~except---as---provided---in~~
3 ~~46-10-222."~~

4 Section 15. Section 45-5-203, MCA, is amended to read:

5 "45-5-203. Intimidation. (1) A person commits the
6 offense of intimidation when, with the purpose to cause
7 another to perform or to omit the performance of any act, he
8 communicates to another a threat to perform without lawful
9 authority any of the following acts:

- 10 (a) inflict physical harm on the person threatened or
11 any other person or on property;
12 (b) subject any person to physical confinement or
13 restraint;
14 (c) commit any criminal offense;
15 (d) accuse any person of an offense;
16 (e) expose any person to hatred, contempt, or ridicule;
17 or
18 (f) take action as a public official against anyone or
19 anything, withhold official action, or cause such action or
20 withholding.
21 (2) A person commits the offense of intimidation if he
22 knowingly communicates a threat or false report of a pending
23 fire, explosion, or disaster which would endanger life or
24 property.
25 (3) A person convicted of the offense of intimidation

1 shall be imprisoned in the state prison for any a term not
2 to-exceed-10 of 2 years."

3 Section 16. Section 45-5-204, MCA, is amended to read:

4 "45-5-204. Mistreating prisoners. (1) A person commits
5 the offense of mistreating prisoners if, being responsible
6 for the care or custody of a prisoner, he purposely or
7 knowingly:

- 8 (a) assaults or otherwise injures a prisoner;
- 9 (b) intimidates, threatens, endangers, or withholds
10 reasonable necessities from the prisoner with the purpose to
11 obtain a confession from him or for any other purpose; or
- 12 (c) violates any civil right of a prisoner.

13 (2) A person convicted of the offense of mistreating
14 prisoners shall be removed from office or employment and
15 imprisoned in the state prison for a term ~~not-to-exceed-10~~
16 of 2 years."

17 Section 17. Section 45-5-302, MCA, is amended to read:

18 "45-5-302. Kidnapping. (1) A person commits the offense
19 of kidnapping if he knowingly or purposely and without
20 lawful authority restrains another person by either
21 secreting or holding him in a place of isolation or by using
22 or threatening to use physical force.

23 (2) A person convicted of the offense of kidnapping
24 shall be imprisoned in the state prison for a term of not
25 ~~less-than-2-years-or-more-than-10 20 years, except as~~

1 ~~provided-in-46-18-222."~~

2 Section 18. Section 45-5-303, MCA, is amended to read:

3 "45-5-303. Aggravated kidnapping. (1) A person commits
4 the offense of aggravated kidnapping if he knowingly or
5 purposely and without lawful authority restrains another
6 person by either secreting or holding him in a place of
7 isolation or by using or threatening to use physical force,
8 with any of the following purposes:

- 9 (a) to hold for ransom or reward or as a shield or
10 hostage;
- 11 (b) to facilitate commission of any felony or flight
12 thereafter;
- 13 (c) to inflict bodily injury on or to terrorize the
14 victim or another;
- 15 (d) to interfere with the performance of any
16 governmental or political function; or
- 17 (e) to hold another in a condition of involuntary
18 servitude.

19 (2) Except as provided in 46-18-222, a person convicted
20 of the offense of aggravated kidnapping shall be punished by
21 death or life imprisonment as provided in 46-18-301 through
22 46-18-310 or be imprisoned in the state prison for a term of
23 ~~not-less-than-2-years-or-more-than-100 10~~ years, unless he
24 has voluntarily released the victim alive, in a safe place,
25 and not suffering from serious bodily injury, in which event

1 he shall be imprisoned in the state prison for a term of not
2 ~~less than 2 years or more than 10~~ 6 years."

3 Section 19. Section 45-5-304, MCA, is amended to read:

4 "45-5-304. Custodial interference. (1) A person commits
5 the offense of custodial interference if, knowing that he
6 has no legal right to do so, he takes, entices, or withholds
7 from lawful custody any child, incompetent person, or other
8 person entrusted by authority of law to the custody of
9 another person or institution.

10 (2) A person convicted of the offense of custodial
11 interference shall be imprisoned in the state prison for any
12 a term ~~not to exceed 10~~ of 5 years.

13 (3) A person who has not left the state does not commit
14 an offense under this section if he voluntarily returns such
15 person to lawful custody prior to arraignment. A person who
16 has left the state does not commit an offense under this
17 section if he voluntarily returns such person to lawful
18 custody prior to arrest."

19 Section 20. Section 45-5-401, MCA, is amended to read:

20 "45-5-401. Robbery. (1) A person commits the offense of
21 robbery if in the course of committing a theft he:

22 (a) inflicts bodily injury upon another;

23 (b) threatens to inflict bodily injury upon any person
24 or purposely or knowingly puts any person in fear of
25 immediate bodily injury; or

1 (c) commits or threatens immediately to commit any
2 felony other than theft.

3 (2) A person convicted of the offense of robbery shall
4 be imprisoned in the state prison for a term of ~~not less~~
5 ~~than 2 years or more than 40~~ 20 years, ~~except as provided in~~
6 ~~46-10-222.~~

7 (3) "In the course of committing a theft" as used in
8 this section includes acts which occur in an attempt to
9 commit or in the commission of theft or in flight after the
10 attempt or commission."

11 Section 21. Section 45-5-502, MCA, is amended to read:

12 "45-5-502. Sexual assault. (1) A person who knowingly
13 subjects another not his spouse to any sexual contact
14 without consent commits the offense of sexual assault.

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

18 (3) If the victim is less than 16 years old and the
19 offender is 3 or more years older than the victim or if the
20 offender inflicts bodily injury upon anyone in the course of
21 committing sexual assault, he shall be imprisoned in the
22 state prison for any a term ~~not to exceed 20~~ of 10 years.

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

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

4 Section 22. Section 45-5-503, MCA, is amended to read:

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

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

13 (3) If the victim is less than 16 years old and the
14 offender is 3 or more years older than the victim or if the
15 offender inflicts bodily injury upon anyone in the course of
16 committing sexual intercourse without consent, he shall be
17 imprisoned in the state prison for any term of ~~not less than~~
18 ~~2 years or more than 40 30 years, except as provided in~~
19 ~~46-18-222.~~

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

24 (5) No evidence concerning the sexual conduct of the
25 victim is admissible in prosecutions under this section,

1 except:

2 (a) evidence of the victim's past sexual conduct with
3 the offender;

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

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

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

16 Section 23. Section 45-5-505, MCA, is amended to read:

17 "45-5-505. Deviate sexual conduct. (1) A person who
18 knowingly engages in deviate sexual relations or who causes
19 another to engage in deviate sexual relations commits the
20 offense of deviate sexual conduct.

21 (2) A person convicted of the offense of deviate sexual
22 conduct shall be imprisoned in the state prison for any a
23 term ~~not to exceed 10~~ of 2 years.

24 (3) A person convicted of deviate sexual conduct
25 without consent shall be imprisoned in the state prison for

1 any a term ~~not-to-exceed-20~~ of 10 years."

2 Section 24. Section 45-5-603, MCA, is amended to read:

3 "45-5-603. Aggravated promotion of prostitution. (1) A
4 person commits the offense of aggravated promotion of
5 prostitution if he purposely or knowingly commits any of the
6 following acts:

7 (a) compels another to engage in or promote
8 prostitution;

9 (b) promotes prostitution of a child under the age of
10 18 years, whether or not he is aware of the child's age;

11 (c) promotes the prostitution of one's spouse, child,
12 ward, or any person for whose care, protection, or support
13 he is responsible.

14 (2) A person convicted of aggravated promotion of
15 prostitution shall be imprisoned in the state prison for ~~any~~
16 a term ~~not-to-exceed-20~~ of 10 years."

17 Section 25. Section 45-5-613, MCA, is amended to read:

18 "45-5-613. Incest. (1) A person commits the offense of
19 incest if he knowingly marries or cohabits or has sexual
20 intercourse with an ancestor, a descendant, a brother or
21 sister of the whole or half blood. The relationships
22 referred to herein include blood relationships without
23 regard to legitimacy and relationships of parent and child
24 by adoption.

25 (2) A person convicted of incest shall be imprisoned in

1 the state prison for any a term ~~not-to-exceed-10~~ of 2
2 years."

3 Section 26. Section 45-5-621, MCA, is amended to read:

4 "45-5-621. Nonsupport. (1) A person commits the offense
5 of nonsupport if he fails to provide support which he can
6 provide and which he knows he is legally obliged to provide
7 to a spouse, child, or other dependent.

8 (2) A person commits the offense of aggravated
9 nonsupport if:

10 (a) the offender has left the state to avoid the duty
11 of support; or

12 (b) the offender has been previously convicted of the
13 offense of nonsupport.

14 (3) A person convicted of nonsupport shall be fined not
15 to exceed \$500 or be imprisoned in the county jail for any
16 term not to exceed 6 months, or both. A person convicted of
17 aggravated nonsupport shall be imprisoned in the state
18 prison for any a term ~~not-to-exceed-10~~ of 2 years.

19 (4) The court may order, in its discretion, any fine
20 levied or any bond forfeited upon a charge of nonsupport
21 paid to or for the benefit of any person that the defendant
22 has failed to support."

23 Section 27. Section 45-5-625, MCA, is amended to read:

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

1 knowingly:

2 (a) employs, uses, or permits the employment or use of
3 a child in an exhibition of sexual contact, actual or
4 simulated;

5 (b) photographs, films, videotapes, or records a child
6 engaging in sexual contact, actual or simulated;

7 (c) persuades, entices, counsels, or procures a child
8 to engage in sexual contact, actual or simulated, for use as
9 designated in (1)(a), (1)(b), or (1)(d);

10 (d) processes, develops, prints, publishes, transports,
11 distributes, sells, possesses with intent to sell, exhibits,
12 or advertises material consisting of or including a
13 photograph, photographic negative, undeveloped film,
14 videotape, or recording representing a child engaging in
15 sexual contact, actual or simulated; or

16 (e) finances any of the activities described in
17 subsections (1)(a) through (1)(d) knowing that the activity
18 is of the nature described in those subsections.

19 (2) A person convicted of the offense of sexual abuse
20 of children shall be fined not to exceed \$10,000 or be
21 imprisoned in the state prison for any a term ~~not to exceed~~
22 of 20 years, or both.

23 (3) For the purposes of this section, "child" means any
24 person less than 16 years old."

25 Section 28. Section 45-6-101, MCA, is amended to read:

1 "45-6-101. Criminal mischief. (1) A person commits the
2 offense of criminal mischief if he knowingly or purposely:

3 (a) injures, damages, or destroys any property of
4 another or public property without consent;

5 (b) without consent tampers with property of another or
6 public property so as to endanger or interfere with persons
7 or property or its use;

8 (c) damages or destroys property with the purpose to
9 defraud an insurer; or

10 (d) fails to close a gate previously unopened which he
11 has opened, leading in or out of any enclosed premises. This
12 does not apply to gates located in cities or towns.

13 (2) A person convicted of the offense of criminal
14 mischief shall be fined not to exceed \$500 or be imprisoned
15 in the county jail for any term not to exceed 6 months, or
16 both. If the offender commits the offense of criminal
17 mischief and causes pecuniary loss in excess of \$150,
18 injures or kills a commonly domesticated hoofed animal, or
19 causes a substantial interruption or impairment of public
20 communication, transportation, supply of water, gas, or
21 power, or other public services, he shall be imprisoned in
22 the state prison for any a term ~~not to exceed 10 of 4~~
23 years."

24 Section 29. Section 45-6-102, MCA, is amended to read:

25 "45-6-102. Negligent arson. (1) A person commits the

1 offense of negligent arson if he purposely or knowingly
2 starts a fire or causes an explosion, whether on his own
3 property or property of another, and thereby negligently:

4 (a) places another person in danger of death or bodily
5 injury; or

6 (b) places property of another in danger of damage or
7 destruction.

8 (2) A person convicted of the offense of negligent
9 arson shall be fined not to exceed \$500 or be imprisoned in
10 the county jail for any term not to exceed 5 months, or
11 both. If the offender places another person in danger of
12 death or bodily injury, he shall be imprisoned in the state
13 prison for any a term ~~not to exceed 10~~ of 5 years."

14 Section 30. Section 45-6-103, MCA, is amended to read:

15 "45-6-103. Arson. (1) A person commits the offense of
16 arson when, by means of fire or explosives, he knowingly or
17 purposely:

18 (a) damages or destroys an occupied structure which is
19 property of another without consent; or

20 (b) places another person in danger of death or bodily
21 injury.

22 (2) A person convicted of the offense of arson shall be
23 imprisoned in the state prison for any a term ~~not to--exceed~~
24 20 of 10 years."

25 Section 31. Section 45-6-204, MCA, is amended to read:

1 "45-6-204. Burglary. (1) A person commits the offense
2 of burglary if he knowingly enters or remains unlawfully in
3 an occupied structure with the purpose to commit an offense
4 therein.

5 (2) A person commits the offense of aggravated burglary
6 if he knowingly enters or remains unlawfully in an occupied
7 structure with the purpose to commit a felony therein and:

8 (a) in effecting entry or in the course of committing
9 the offense or in immediate flight thereafter, he or another
10 participant in the offense is armed with explosives or a
11 weapon; or

12 (b) in effecting entry or in the course of committing
13 the offense or in immediate flight thereafter, he purposely,
14 knowingly, or negligently inflicts or attempts to inflict
15 bodily injury upon anyone.

16 (3) A person convicted of the offense of burglary shall
17 be imprisoned in the state prison for any a term ~~not to~~
18 exceed of 10 years. A person convicted of the offense of
19 aggravated burglary shall be imprisoned in the state prison
20 for any a term ~~not to exceed 40~~ of 20 years."

21 Section 32. Codification. Sections 3 through 6 are
22 intended to be codified as an integral part of Title 46,
23 chapter 18, and the provisions contained in Title 46,
24 chapter 18, apply to sections 3 through 6.

25 Section 33. Repealer. Sections 46-18-111 through

LC 0054/01

- 1 46-18-113, 46-18-221, and 46-18-501 through 46-18-503, MCA,
- 2 are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 26-81 Revised

FISCAL NOTE

Form BD-15

In compliance with a written request received February 6, 19 81, there is hereby submitted a Fiscal Note for House Bill 10 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). 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

A proposal to implement manditory sentences for persons convicted of a certain crime.

Assumptions

1. The population of Montana State Prison will increase 25%*each year of the 1982-83 biennium from a current population of 643.
2. After the currently available 53 beds are filled, additional inmates will be contracted to other states or community programs.
3. A new 500 bed prison will be constructed with construction being completed by July 1, 1984.
4. Reduced plea bargaining will increase the number of cases that go to a jury trial.

Fiscal Impact

1. Construction cost of a new prison will be \$26,705,000
2. The costs of caring for additional inmates will be as follows:

	<u>FY 1982</u>	<u>FY 1983</u>
General Fund	\$1,213,710	\$4,755,575

3. In calendar year 1980, of 2,633 criminal filings in Montana, only 13% went to jury trial with a cost of \$2,000-\$10,000 per trial; the proposed legislation would cause more cases to go to trial, however, the number cannot be estimated.
4. The increased number of trials would also increase local costs for prosecution and public defender services.

*U.S. Department of Justice, Handbook for Decision Makers, July, 1980

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-9-81

STATE OF MONTANA

REQUEST NO. 26-81

FISCAL NOTE

Form BD-15

In compliance with a written request received _____, 19 _____, there is hereby submitted a Fiscal Note for House Bill 10 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

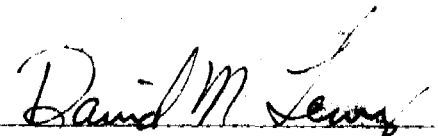
A proposal to implement mandatory sentences for persons convicted of certain crimes.

Assumptions

1. A 50% increase in prison population over the biennium with 25% increase each year.
2. The construction of a new 500 bed facility.

Fiscal Impact

Cost to state: 500 corrections beds at \$49,000 each = \$24,500,000.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-12-81

Approved by Committee
on Judiciary

HOUSE BILL NO. 10

INTRODUCED BY KEEDY, NILSON, STOBIE, NORDTVEDT, MOORE,
ANDERSON, SMITH, PISTORIA, SPILKER, MENAHAN, BRIGGS,
SEIFERT, KROPP, BENNETT, PHILLIPS, ELLISON, KITSelman,
COZZENS, O'HARA, SCHULTZ, ASAY, SHONTZ, ROTH, CONN,
THOFT, IVERSON, MANUEL, HEMSTAD, KANDUCH, MATSKO,
VINGER, ROBBINS, GOULD, JENSEN, ROUSH, BROWN, McLANE,
DAILY, HARP, SIVERTSEN, ELLERD, BURNETT, PAVLOVICH,
CURTISS, MANNING, KEYSER, CONROY, SALES, UNDERDAL,
O'CONNELL, ZABROCKI, WILLIAMS, TEAGUE, FEDA, EUDAILY

BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS POLICY
AND FACILITY NEEDS WITH NO RECOMMENDATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
SENTENCING LAWS; AMENDING SECTIONS 45-5-102 THROUGH
~~45-5-103~~, 45-5-105, 45-5-201 THROUGH 45-5-204, 45-5-302
THROUGH 45-5-304, 45-5-401, 45-5-502, 45-5-503, 45-5-505,
45-5-603, 45-5-613, 45-5-621, 45-5-625, ~~45-6-101~~ THROUGH
~~45-6-102~~, 45-6-103, 45-6-204, ~~45-9-101~~, ~~45-9-103~~, 46-18-101,
46-18-201, 46-18-222, AND 46-18-223, MCA; AND REPEALING
SECTIONS 46-18-111 THROUGH 46-18-113, 46-18-221, AND
46-18-501 THROUGH 46-18-503, MCA; AND PROVIDING AN EFFECTIVE
DATE."

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

Section 1. Section 46-18-101, MCA, is amended to read:
"46-18-101. Policy -- ~~liberal~~ construction. This
chapter shall be ~~liberally~~ construed to the end that persons
a person convicted of a crime shall be dealt with in
accordance with ~~their individual characteristics,~~
~~circumstances, needs, and potentialities, that dangerous~~
~~offenders shall be correctively treated in custody for long~~
~~terms as needed, and that other offenders shall be dealt~~
~~with by probation, suspended sentence, or fine whenever such~~
~~disposition appears practicable and not detrimental to the~~
~~needs of public safety and the welfare of the individual, the~~
~~seriousness of the crime committed and in accordance with~~
~~his prior record. A person convicted of a crime may be dealt~~
~~with by fine, when provided for by law, or by deferred~~
~~imposition or suspension of sentence if the age of the~~
~~person or the circumstances surrounding the crime warrant~~
~~such treatment as provided for in this chapter."~~

Section 2. 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 ~~for persons~~ A PERSON
committing a first-offense FELONY OR MISDEMEANOR, SO LONG AS
HE HAS NOT COMMITTED A PRIOR FELONY, and who are IS eligible

1 under 46-18-222, excepting sentences for driving under the
2 influence of alcohol or drugs, for a period not exceeding 1
3 year for any misdemeanor or for a period not exceeding 3 10
4 years for any felony. The sentencing judge may impose upon
5 the defendant any reasonable restrictions or conditions
6 during the period of the deferred imposition. Such
7 reasonable restrictions or conditions may include:

- 8 (i) jail base release;
- 9 (ii) jail time not exceeding 90 days;
- 10 (iii) conditions for probation;
- 11 (iv) restitution;
- 12 (v) any other reasonable conditions considered
13 necessary for rehabilitation or for the protection of
14 society; or

15 (vi) any combination of the above;

16 (b) suspend execution of sentence for persons eligible
17 under 46-18-222 up to the maximum sentence allowed for the
18 particular offense. The sentencing judge may impose on the
19 defendant any reasonable restrictions during the period of
20 suspended sentence. Such reasonable restrictions may include
21 any of those listed in subsections (1)(a)(i) through
22 (1)(a)(vi).

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, is not 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: 45-5-103(2), 45-5-202(2), 45-5-302(2),~~
11 ~~45-5-303(2), 45-5-401(2), 45-5-503(2) and {3}, 45-9-101(2)~~
12 ~~and {3}, 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 first 18 years of a sentence of~~
15 ~~imprisonment imposed under 45-5-102(2) may not be deferred~~
16 ~~or suspended.~~

17 **NEW SECTION.** Section 3. Mandatory sentences to be
18 imposed for felonies -- exceptions. Except as provided in
19 46-18-201, the court shall impose the mandatory sentence
20 provided by law for a felony offense unless the court finds
21 in accordance with [section 5] that aggravating
22 circumstances are present or in accordance with [section 6]
23 that mitigating circumstances are present.

24 **NEW SECTION.** Section 4. Hearing to determine
25 exceptions to mandatory sentences. (1) Upon request of

1 either the defendant or the prosecution, the court shall
 2 grant a hearing prior to the imposition of sentence to
 3 determine the existence of circumstances enumerated in
 4 [section 5 or 6].

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

10 (3) If it appears by a preponderance of the evidence
 11 submitted during the trial and during the sentencing hearing
 12 that none of the circumstances enumerated in [section 5 or
 13 6] existed, the court shall impose the applicable mandatory
 14 sentence. If it appears by a preponderance of the evidence
 15 that one or more of the circumstances enumerated in [section
 16 5 or 6] existed, the court shall impose the applicable
 17 sentence as provided in [section 5 or 6].

18 (4) The court shall state the reasons for its decision
 19 in writing and shall include an identification of the facts
 20 relied upon in making its determination. The statement
 21 shall be included in the judgment.

22 NEW SECTION. Section 5. Aggravating circumstances for
 23 felonies -- increased penalties. (1) The court shall add to
 24 the mandatory sentence for a felony offense 25% of the
 25 mandatory sentence for each of the following aggravating

1 circumstances found by the court to have existed at the time
 2 the offense was committed, KNOWN BY THE DEFENDANT TO EXIST,
 3 AND CONSIDERED BY THE DEFENDANT IN THE COMMISSION OF THE
 4 OFFENSE:

5 (a) the victim was mentally defective or
 6 incapacitated;

7 (b) the victim was physically helpless;

8 (c) The victim was less than 16 years old or 65 years
 9 of age or older;

10 (d) there were multiple victims;

11 (e) the defendant threatened to inflict bodily injury
 12 upon any person or knowingly put any person in fear of
 13 immediate bodily injury;

14 (f) the defendant took advantage of his fiduciary
 15 relationship with the victim to commit the offense;

16 (g) the defendant used or involved minors in the
 17 commission of the crime; or

18 (h) the defendant, prior to age 18, had committed an
 19 act that would have been a felony if committed by an adult.

20 (2) The court shall add to the mandatory sentence for
 21 a felony offense 50% of the mandatory sentence for each of
 22 the following aggravating circumstances found by the court
 23 to have existed at the time the offense was committed:

24 (a) the defendant inflicted bodily injury upon
 25 another;

1 (b) the defendant received compensation for committing
2 the offense;

3 (c) the defendant, while engaged in the commission of
4 the offense, knowingly displayed, brandished, or otherwise
5 used a firearm, destructive device as defined in
6 45-8-332(1), or other dangerous weapon;

7 (d) the defendant had previously been convicted of a
8 felony.

9 (3) The court shall add to the mandatory sentence for
10 a felony offense 100% of the mandatory sentence for each of
11 the following aggravating circumstances found by the court
12 to have existed at the time the offense was committed:

13 (a) the defendant is a person who had previously been
14 convicted of an offense committed under 18 U.S.C. 924(C) ~~AS~~
15 ~~AMENDED~~, on a different occasion than the present offense or
16 who had previously been convicted of an offense in this or
17 another state, committed on a different occasion than the
18 present offense, during the commission of which he knowingly
19 displayed, brandished, or otherwise used a firearm,
20 destructive device as defined in 45-8-332(1), or other
21 dangerous weapon.

22 (b) the defendant is a person who had previously been
23 convicted of a second felony offense and who is presently
24 being sentenced for a third or subsequent felony committed
25 on a different occasion than any of his prior felonies.

1 (4) For the purpose of this section, an offender is
2 considered to have been previously convicted of a felony if:

3 (a) the previous felony conviction was for an offense
4 committed in this state or any other jurisdiction for which
5 a sentence to a term of imprisonment in excess of 1 year
6 could have been imposed; and

7 (b) the offender has not been pardoned on the ground
8 of innocence and the conviction has not been set aside in a
9 postconviction hearing.

10 (5) A circumstance that constitutes a lesser included
11 offense of the present offense or a circumstance that
12 constitutes a necessary element of the present offense may
13 not be found to be an aggravating circumstance for purposes
14 of this section.

15 NEW SECTION. Section 6. Mitigating circumstances for
16 felonies -- reduced penalties. If appropriate for the
17 offense, the court shall reduce the sentence for a felony
18 offense by 10% for each of the following mitigating
19 circumstances found to be present:

20 (1) The defendant, at the time of the commission of
21 the offense for which he is to be sentenced, was acting
22 under unusual and substantial duress. The duress need not
23 be such that it would constitute a defense to the
24 prosecution.

25 (2) The defendant was an accomplice, the conduct

1 constituting the offense was principally the conduct of
2 another, and the defendant's participation was relatively
3 minor.

4 (3) No serious bodily injury was inflicted on the
5 victim nor was a weapon used in the commission of the
6 offense.

7 (4) The defendant has fully compensated or can
8 reasonably be expected to fully compensate the victim of his
9 criminal conduct.

10 (5) The defendant assisted law enforcement authorities
11 in the performance of their duties.

12 Section 7. Section 46-18-222, MCA, is amended to read:

13 ~~"46-18-222. Exceptions to mandatory minimum sentences~~
14 ~~and restrictions on deferred imposition and suspended~~
15 ~~execution of sentence~~ Eligibility for deferred or suspended
16 ~~sentence. All mandatory minimum sentences prescribed by the~~
17 ~~laws of this state and the restrictions on deferred~~
18 ~~imposition and suspended execution of sentence prescribed by~~
19 ~~subsections (3) and (4) of 46-18-201, 46-18-221(3), and~~
20 ~~46-18-502(2) do not apply if~~ A person is eligible for a
21 deferred imposition or suspension of sentence as provided in
22 46-18-201 if:

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

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

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

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

13 (5) where applicable, no serious bodily injury was
14 inflicted on the victim unless a weapon was used in the
15 commission of the offense; OR

16 (6) THE DEFENDANT HAS NOT BEEN UNDER THE SUPERVISION
17 OF ANY STATE OR FEDERAL CORRECTIONAL INSTITUTION OR COURT
18 FOR A PERIOD OF 5 YEARS IMMEDIATELY PRECEDING COMMISSION OF
19 THE PRESENT OFFENSE."

20 Section 8. Section 46-18-223, MCA, is amended to read:

21 "46-18-223. Hearing to determine application of
22 exceptions eligibility. (1) When the application of an
23 exception provided for in eligibility for deferred
24 imposition or suspension of sentence under 46-18-222 is an
25 issue, upon request the court shall grant the defendant a

1 hearing prior to the imposition of sentence to determine the
2 applicability of the exception such eligibility.

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

7 (3) If it appears by a preponderance of the
8 information evidence, including information submitted during
9 the trial, and during the sentencing hearing, and in so much
10 of the presentence report as the court relies on, that none
11 of the exceptions at issue provisions for eligibility apply,
12 the court shall impose the appropriate applicable mandatory
13 sentence with no deferred imposition or suspension thereof.

14 (4) The court shall state the reasons for its decision
15 in writing and shall include an identification of the facts
16 relied upon in making its determination. The statement shall
17 be included in the judgment."

18 Section 9. Section 45-5-102, MCA, is amended to read:

19 "45-5-102. Deliberate homicide. (1) Except as provided
20 in 45-5-103(1), criminal homicide constitutes deliberate
21 homicide if:

- 22 (a) it is committed purposely or knowingly; or
- 23 (b) it is committed while the offender is engaged in
- 24 or is an accomplice in the commission of, an attempt to
- 25 commit, or flight after committing or attempting to commit

1 robbery, sexual intercourse without consent, arson,
2 burglary, kidnapping, felonious escape, or any other felony
3 which involves the use or threat of physical force or
4 violence against any individual.

5 (2) A person convicted of the offense of deliberate
6 homicide shall be punished by death or life imprisonment as
7 provided in 46-18-301 through 46-18-310 or by imprisonment
8 in the state prison for a term of not less than 10 years or
9 more than 100 60 years, except as provided in 46-18-222."

10 Section 10. Section 45-5-103, MCA, is amended to read:

11 "45-5-103. Mitigated deliberate homicide. (1) Criminal
12 homicide constitutes mitigated deliberate homicide when a
13 homicide which would otherwise be deliberate homicide is
14 committed under the influence of extreme mental or emotional
15 stress for which there is reasonable explanation or excuse.
16 The reasonableness of such explanation or excuse shall be
17 determined from the viewpoint of a reasonable person in the
18 actor's situation.

19 (2) A person convicted of mitigated deliberate
20 homicide shall be imprisoned in the state prison for a term
21 of not less than 2 years or more than 40 30 years, except as
22 provided in 46-18-222."

23 Section 11. Section 45-5-104, MCA, is amended to read:

24 "45-5-104. Negligent homicide. (1) Criminal homicide
25 constitutes negligent homicide when it is committed

1 negligently.

2 ~~(2) -- A person convicted of negligent homicide shall be~~
 3 ~~imprisoned in the state prison for any term not to exceed~~
 4 ~~10 of 20 years."~~

5 Section 11. Section 45-5-105, MCA, is amended to read:

6 "45-5-105. Aiding or soliciting suicide. (1) A person
 7 who purposely aids or solicits another to commit suicide,
 8 but such suicide does not occur, commits the offense of
 9 aiding or soliciting suicide.

10 (2) A person convicted of the offense of aiding or
 11 soliciting a suicide shall be imprisoned in the state prison
 12 for any term not to exceed of 10 years."

13 Section 12. Section 45-5-201, MCA, is amended to read:

14 "45-5-201. Assault. (1) A person commits the offense
 15 of assault if he:

16 (a) purposely or knowingly causes bodily injury to
 17 another;

18 (b) negligently causes bodily injury to another with a
 19 weapon;

20 (c) purposely or knowingly makes physical contact of
 21 an insulting or provoking nature with any individual; or

22 (d) purposely or knowingly causes reasonable
 23 apprehension of bodily injury in another. The purpose to
 24 cause reasonable apprehension or the knowledge that
 25 reasonable apprehension would be caused shall be presumed in

1 any case in which a person knowingly points a firearm at or
 2 in the direction of another, whether or not the offender
 3 believes the firearm to be loaded.

4 (2) Except as provided in subsection (3), a person
 5 convicted of assault shall be fined not to exceed \$500 or be
 6 imprisoned in the county jail for any term not to exceed 6
 7 months, or both.

8 (3) If the victim is less than 14 years old and the
 9 offender is 18 or more years old, the offender, upon
 10 conviction under subsection (1)(a), shall be imprisoned in
 11 the state prison for a term not to exceed 5 of 10 years."

12 Section 13. Section 45-5-202, MCA, is amended to read:

13 "45-5-202. Aggravated assault. (1) A person commits
 14 the offense of aggravated assault if he purposely or
 15 knowingly causes:

16 (a) serious bodily injury to another;

17 (b) bodily injury to another with a weapon;

18 (c) reasonable apprehension of serious bodily injury
 19 in another by use of a weapon; or

20 (d) bodily injury to a peace officer.

21 (2) A person convicted of aggravated assault shall be
 22 imprisoned in the state prison for a term of not less than 2
 23 years or more than 20 years, except as provided in
 24 46-18-222."

25 Section 14. Section 45-5-203, MCA, is amended to read:

1 "45-5-203. Intimidation. (1) A person commits the
2 offense of intimidation when, with the purpose to cause
3 another to perform or to omit the performance of any act, he
4 communicates to another a threat to perform without lawful
5 authority any of the following acts:

6 (a) inflict physical harm on the person threatened or
7 any other person or on property;

8 (b) subject any person to physical confinement or
9 restraint;

10 (c) commit any criminal offense;

11 (d) accuse any person of an offense;

12 (e) expose any person to hatred, contempt, or
13 ridicule; or

14 (f) take action as a public official against anyone or
15 anything, withhold official action, or cause such action or
16 withholding.

17 (2) A person commits the offense of intimidation if he
18 knowingly communicates a threat or false report of a pending
19 fire, explosion, or disaster which would endanger life or
20 property.

21 (3) A person convicted of the offense of intimidation
22 shall be imprisoned in the state prison for any a term not
23 to-exceed-10 of 2 years."

24 Section 15. Section 45-5-204, MCA, is amended to read:

25 "45-5-204. Mistreating prisoners. (1) A person commits

1 the offense of mistreating prisoners if, being responsible
2 for the care or custody of a prisoner, he purposely or
3 knowingly:

4 (a) assaults or otherwise injures a prisoner;

5 (b) intimidates, threatens, endangers, or withholds
6 reasonable necessities from the prisoner with the purpose to
7 obtain a confession from him or for any other purpose; or

8 (c) violates any civil right of a prisoner.

9 (2) A person convicted of the offense of mistreating
10 prisoners shall be removed from office or employment and
11 imprisoned in the state prison for a term ~~not-to-exceed-10~~
12 of 2 years."

13 Section 16. Section 45-5-302, MCA, is amended to read:

14 "45-5-302. 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 using
18 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 a term of ~~not~~
21 ~~less-than-2-years-or-more-than-10~~ 20 years, ~~except-as~~
22 ~~provided-in-46-10-222."~~

23 Section 17. Section 45-5-303, MCA, is amended to read:

24 "45-5-303. Aggravated kidnapping. (1) A person commits
25 the offense of aggravated kidnapping if he knowingly or

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

5 (a) to hold for ransom or reward or as a shield or
6 hostage;

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

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

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

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

15 (2) Except as provided in 46-18-222, a person
16 convicted of the offense of aggravated kidnapping shall be
17 punished by death or life imprisonment as provided in
18 46-18-301 through 46-18-310 or be imprisoned in the state
19 prison for a term of ~~not less than 2 years or more than 10~~
20 ~~40~~ years, unless he has voluntarily released the victim
21 alive, in a safe place, and not suffering from serious
22 bodily injury, in which event he shall be imprisoned in the
23 state prison for a term of ~~not less than 2 years or more~~
24 ~~than 10~~ 6 years."

25 Section 18. Section 45-5-304, MCA, is amended to read:

1 "45-5-304. Custodial interference. (1) A person
2 commits the offense of custodial interference if, knowing
3 that he has no legal right to do so, he takes, entices, or
4 withholds from lawful custody any child, incompetent person,
5 or other person entrusted by authority of law to the custody
6 of another person or institution.

7 (2) A person convicted of the offense of custodial
8 interference shall be imprisoned in the state prison for any
9 a term ~~not to exceed 10~~ of 5 years.

10 (3) A person who has not left the state does not
11 commit an offense under this section if he voluntarily
12 returns such person to lawful custody prior to arraignment.
13 A person who has left the state does not commit an offense
14 under this section if he voluntarily returns such person to
15 lawful custody prior to arrest."

16 Section 19. Section 45-5-401, MCA, is amended to read:

17 "45-5-401. Robbery. (1) A person commits the offense
18 of robbery if in the course of committing a theft he:

19 (a) inflicts bodily injury upon another;

20 (b) threatens to inflict bodily injury upon any person
21 or purposely or knowingly puts any person in fear of
22 immediate bodily injury; or

23 (c) commits or threatens immediately to commit any
24 felony other than theft.

25 (2) A person convicted of the offense of robbery shall

1 be imprisoned in the state prison for a term of ~~not less~~
2 ~~than 2 years or more than 40~~ 20 years, ~~except as provided in~~
3 ~~46-10-222.~~

4 (3) "In the course of committing a theft" as used in
5 this section includes acts which occur in an attempt to
6 commit or in the commission of theft or in flight after the
7 attempt or commission."

8 Section 20. Section 45-5-502, MCA, is amended to read:

9 "45-5-502. Sexual assault. (1) A person who knowingly
10 subjects another not his spouse to any sexual contact
11 without consent commits the offense of sexual assault.

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

15 (3) If the victim is less than 16 years old and the
16 offender is 3 or more years older than the victim or if the
17 offender inflicts bodily injury upon anyone in the course of
18 committing sexual assault, he shall be imprisoned in the
19 state prison for any a term ~~not to exceed 20~~ of 10 years.

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

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

1 Section 21. Section 45-5-503, MCA, is amended to read:
2 "45-5-503. Sexual intercourse without consent. (1) A
3 person who knowingly has sexual intercourse without consent
4 with a person of the opposite sex not his spouse commits the
5 offense of sexual intercourse without consent.

6 (2) A person convicted of sexual intercourse without
7 consent shall be imprisoned in the state prison for a term
8 of ~~not less than 2 years or more than 20~~ 20 years, ~~except as~~
9 ~~provided in 46-10-222.~~

10 (3) If the victim is less than 16 years old and the
11 offender is 3 or more years older than the victim or if the
12 offender inflicts bodily injury upon anyone in the course of
13 committing sexual intercourse without consent, he shall be
14 imprisoned in the state prison for a any term of ~~not less~~
15 ~~than 2 years or more than 40~~ 20 years, ~~except as provided in~~
16 ~~46-10-222.~~

17 ~~(4) IF THE VICTIM'S LACK OF CONSENT IS BASED SOLELY~~
18 ~~UPON HIS INCAPACITY TO CONSENT BECAUSE HE WAS LESS THAN 16~~
19 ~~YEARS OF AGE, A PERSON CONVICTED OF SEXUAL INTERCOURSE~~
20 ~~WITHOUT CONSENT OF SUCH VICTIM SHALL BE IMPRISONED IN THE~~
21 ~~STATE PRISON FOR A TERM OF NOT LESS THAN 2 OR MORE THAN 20~~
22 ~~YEARS.~~

23 ~~(4)(5)~~ (5) An act "in the course of committing sexual
24 intercourse without consent" shall include an attempt to
25 commit the offense or flight after the attempt or

1 commission.

2 ~~{5}{6}~~ No evidence concerning the sexual conduct of
 3 the victim is admissible in prosecutions under this section,
 4 except:

5 (a) evidence of the victim's past sexual conduct with
 6 the offender;

7 (b) evidence of specific instances of the victim's
 8 sexual activity to show the origin of semen, pregnancy, or
 9 disease which is at issue in the prosecution under this
 10 section.

11 ~~{6}{7}~~ If the defendant proposes for any purpose to
 12 offer evidence described in subsection (5)(a) or (5)(b), the
 13 trial judge shall order a hearing out of the presence of the
 14 jury to determine whether the proposed evidence is
 15 admissible under subsection (5).

16 ~~{7}{8}~~ Evidence of failure to make a timely complaint
 17 or immediate outcry does not raise any presumption as to the
 18 credibility of the victim."

19 Section 22. Section 45-5-505, MCA, is amended to read:

20 "45-5-505. Deviate sexual conduct. (1) A person who
 21 knowingly engages in deviate sexual relations or who causes
 22 another to engage in deviate sexual relations commits the
 23 offense of deviate sexual conduct.

24 (2) A person convicted of the offense of deviate
 25 sexual conduct shall be imprisoned in the state prison for

1 ~~any a term not-to-exceed-10 of 2~~ years.

2 (3) A person convicted of deviate sexual conduct
 3 without consent shall be imprisoned in the state prison for
 4 ~~any a term not-to-exceed-20 of 10~~ years."

5 Section 23. Section 45-5-603, MCA, is amended to read:

6 "45-5-603. Aggravated promotion of prostitution. (1) A
 7 person commits the offense of aggravated promotion of
 8 prostitution if he purposely or knowingly commits any of the
 9 following acts:

10 (a) compels another to engage in or promote
 11 prostitution;

12 (b) promotes prostitution of a child under the age of
 13 18 years, whether or not he is aware of the child's age;

14 (c) promotes the prostitution of one's spouse, child,
 15 ward, or any person for whose care, protection, or support
 16 he is responsible.

17 (2) A person convicted of aggravated promotion of
 18 prostitution shall be imprisoned in the state prison for ~~any~~
 19 ~~a term not-to-exceed-20 of 10~~ years."

20 Section 24. Section 45-5-613, MCA, is amended to read:

21 "45-5-613. Incest. (1) A person commits the offense of
 22 incest if he knowingly marries or cohabits or has sexual
 23 intercourse with an ancestor, a descendant, a brother or
 24 sister of the whole or half blood. The relationships
 25 referred to herein include blood relationships without

1 regard to legitimacy and relationships of parent and child
2 by adoption.

3 (2) A person convicted of incest shall be imprisoned
4 in the state prison for any a term ~~not to exceed 10~~ of 2
5 years."

6 Section 25. Section 45-5-621, MCA, is amended to read:

7 "45-5-621. Nonsupport. (1) A person commits the
8 offense of nonsupport if he fails to provide support which
9 he can provide and which he knows he is legally obliged to
10 provide to a spouse, child, or other dependent.

11 (2) A person commits the offense of aggravated
12 nonsupport if:

13 (a) the offender has left the state to avoid the duty
14 of support; or

15 (b) the offender has been previously convicted of the
16 offense of nonsupport.

17 (3) A person convicted of nonsupport shall be fined
18 not to exceed \$500 or be imprisoned in the county jail for
19 any term not to exceed 6 months, or both. A person convicted
20 of aggravated nonsupport shall be imprisoned in the state
21 prison for any a term ~~not to exceed 10~~ of 2 years.

22 (4) The court may order, in its discretion, any fine
23 levied or any bond forfeited upon a charge of nonsupport
24 paid to or for the benefit of any person that the defendant
25 has failed to support."

1 Section 26. Section 45-5-625, MCA, is amended to read:

2 "45-5-625. Sexual abuse of children. (1) A person
3 commits the offense of sexual abuse of children if he
4 knowingly:

5 (a) employs, uses, or permits the employment or use of
6 a child in an exhibition of sexual contact, actual or
7 simulated;

8 (b) photographs, films, videotapes, or records a child
9 engaging in sexual contact, actual or simulated;

10 (c) persuades, entices, counsels, or procures a child
11 to engage in sexual contact, actual or simulated, for use as
12 designated in (1)(a), (1)(b), or (1)(d);

13 (d) processes, develops, prints, publishes,
14 transports, distributes, sells, possesses with intent to
15 sell, exhibits, or advertises material consisting of or
16 including a photograph, photographic negative, undeveloped
17 film, videotape, or recording representing a child engaging
18 in sexual contact, actual or simulated; or

19 (e) finances any of the activities described in
20 subsections (1)(a) through (1)(d) knowing that the activity
21 is of the nature described in those subsections.

22 (2) A person convicted of the offense of sexual abuse
23 of children shall be fined not to exceed \$10,000 or be
24 imprisoned in the state prison for any a term ~~not to exceed~~
25 of 20 years, or both.

1 (3) For the purposes of this section, "child" means
 2 any person less than 16 years old."

3 ~~Section 28. Section 45-6-101, MCA, is amended to read:~~
 4 ~~"45-6-101. Criminal mischief. (1) A person commits~~
 5 ~~the offense of criminal mischief if he knowingly or~~
 6 ~~purposely:~~

7 ~~(a) injures, damages, or destroys any property of~~
 8 ~~another or public property without consent;~~

9 ~~(b) without consent tampers with property of another~~
 10 ~~or public property so as to endanger or interfere with~~
 11 ~~persons or property or its use;~~

12 ~~(c) damages or destroys property with the purpose to~~
 13 ~~defraud an insurer; or~~

14 ~~(d) fails to close a gate previously unopened which he~~
 15 ~~has opened, leading in or out of any enclosed premises. This~~
 16 ~~does not apply to gates located in cities or towns.~~

17 ~~(2) A person convicted of the offense of criminal~~
 18 ~~mischief shall be fined not to exceed \$500 or be imprisoned~~
 19 ~~in the county jail for any term not to exceed 6 months, or~~
 20 ~~both. If the offender commits the offense of criminal~~
 21 ~~mischief and causes pecuniary loss in excess of \$150,~~
 22 ~~injures or kills a commonly domesticated hoofed animal, or~~
 23 ~~causes a substantial interruption or impairment of public~~
 24 ~~communications, transportation, supply of water, gas, or~~
 25 ~~power, or other public services, he shall be imprisoned in~~

1 ~~the state prison for any term not to exceed 10 or 4~~
 2 ~~years."~~

3 Section 27. Section 45-6-102, MCA, is amended to read:
 4 "45-6-102. Negligent arson. (1) A person commits the
 5 offense of negligent arson if he purposely or knowingly
 6 starts a fire or causes an explosion, whether on his own
 7 property or property of another, and thereby negligently:

8 (a) places another person in danger of death or bodily
 9 injury; or

10 (b) places property of another in danger of damage or
 11 destruction.

12 (2) A person convicted of the offense of negligent
 13 arson shall be fined not to exceed \$500 or be imprisoned in
 14 the county jail for any term not to exceed 6 months, or
 15 both. If the offender places another person in danger of
 16 death or bodily injury, he shall be imprisoned in the state
 17 prison for any term not to exceed 10 or 5 years."

18 Section 28. Section 45-6-103, MCA, is amended to read:
 19 "45-6-103. Arson. (1) A person commits the offense of
 20 arson when, by means of fire or explosives, he knowingly or
 21 purposely:

22 (a) damages or destroys an occupied structure which is
 23 property of another without consent; or

24 (b) places another person in danger of death or bodily
 25 injury.

1 (2) A person convicted of the offense of arson shall
2 be imprisoned in the state prison for any a term not-to
3 exceed-20 of 10 years."

4 Section 29. Section 45-6-204, MCA, is amended to read:

5 "45-6-204. Burglary. (1) A person commits the offense
6 of burglary if he knowingly enters or remains unlawfully in
7 an occupied structure with the purpose to commit an offense
8 therein.

9 (2) A person commits the offense of aggravated
10 burglary if he knowingly enters or remains unlawfully in an
11 occupied structure with the purpose to commit a felony
12 therein and:

13 (a) in effecting entry or in the course of committing
14 the offense or in immediate flight thereafter, he or another
15 participant in the offense is armed with explosives or a
16 weapon; or

17 (b) in effecting entry or in the course of committing
18 the offense or in immediate flight thereafter, he purposely,
19 knowingly, or negligently inflicts or attempts to inflict
20 bodily injury upon anyone.

21 (3) A person convicted of the offense of burglary
22 shall be imprisoned in the state prison for any a term not
23 to-exceed of 10 years. A person convicted of the offense of
24 aggravated burglary shall be imprisoned in the state prison
25 for any a term not-to-exceed-40 of 20 years."

1 ~~SECTION 30. SECTION 45-9-101, MCA, IS AMENDED TO READ:~~

2 "45-9-101. Criminal sale of dangerous drugs. (1) A
3 person commits the offense of criminal sale of dangerous
4 drugs if he sells, barter, exchanges, gives away, or offers
5 to sell, barter, exchange, or give away or manufactures,
6 prepares, cultivates, compounds, or processes any dangerous
7 drug, as defined in 50-32-101.

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

12 (3) A person convicted of criminal sale of a dangerous
13 drug included in Schedule I or Schedule II pursuant to
14 50-32-222 or 50-32-224, except marijuana or
15 tetrahydrocannabinols, who has a prior conviction for
16 criminal sale of such a drug shall be imprisoned in the
17 state prison for a term of not-less-than-5 20 years or--more
18 than-life, except as provided in 46-18-222. Upon a third or
19 subsequent conviction for criminal sale of such a drug, he
20 shall be imprisoned in the state prison for a term of not
21 less--than-10 40 years or--more-than-life, except as provided
22 in 46-18-222. Whenever a conviction under this subsection is
23 for criminal sale of such a drug to a minor of a person who
24 is mentally defective, the sentence shall be increased by 5
25 years and include the restriction that the defendant be

1 ineligible for parole and participation in the prisoner
 2 furlough program while serving his term. A sentence imposed
 3 under this section may not be increased by the aggravating
 4 circumstances listed in subsections (a) and (c) of [section
 5 5].

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

10 (5) Practitioners and agents under their supervision
 11 acting in the course of a professional practice, as defined
 12 by 50-32-101, are exempt from this section."

13 SECTION 31. SECTION 45-9-103, MCA, IS AMENDED TO READ:

14 "45-9-103. Criminal possession with intent to sell.

15 (1) A person commits the offense of criminal possession with
 16 intent to sell if he possesses with intent to sell any
 17 dangerous drug as defined in 50-32-101. No person commits
 18 the offense of criminal possession with intent to sell
 19 marijuana unless he possesses 1 kilogram or more.

20 (2) A person convicted of criminal possession of an
 21 opiate, as defined in 50-32-101(18), with intent to sell
 22 shall be imprisoned in the state prison for a term of not
 23 ~~less than 2 years--or--more--than--20~~ 5 years, except as
 24 provided in 46-18-222.

25 (3) A person convicted of criminal possession with

1 intent to sell not otherwise provided for in subsection (2)
 2 shall be imprisoned in the state prison for a term of not
 3 ~~more than 20~~ 5 years.

4 (4) Practitioners and agents under their supervision
 5 acting in the course of a professional practice as defined
 6 by 50-32-101 are exempt from this section."

7 Section 32. Codification. Sections 3 through 6 are
 8 intended to be codified as an integral part of Title 46,
 9 chapter 18, and the provisions contained in Title 46,
 10 chapter 18, apply to sections 3 through 6.

11 Section 33. Repealer. Sections 46-18-111 through
 12 46-18-113, 46-18-221, and 46-18-501 through 46-18-503, MCA,
 13 are repealed.

14 SECTION 34. EFFECTIVE DATE. THIS ACT IS EFFECTIVE
 15 JANUARY 1, 1982.

-End-

HOUSE BILL NO. 10

INTRODUCED BY KEEDY, NILSON, STOBIE, NORDTVEDT, MOORE,
 ANDERSON, SMITH, PISTORIA, SPILKER, MENAHAN, BRIGGS,
 SEIFERT, KROPP, BENNETT, PHILLIPS, ELLISON, KITSELMAN,
 COZZENS, O'HARA, SCHULTZ, ASAY, SHONTZ, ROTH, CONN, THOFT,
 DONALDSON, IVERSON, MANUEL, HEMSTAD, KANDUCH, MATSKO,
 VINGER, ROBBINS, GOULD, JENSEN, ROUSH, BROWN, McLANE,
 DAILY, HARP, SIVERTSEN, ELLERD, BURNETT, PAVLOVICH,
 CURTISS, MANNING, KEYSER, CONROY, SALES, UNDERDAL,
 O'CONNELL, ZABROCKI, WILLIAMS, TEAGUE, FEDA, EUDAILY

BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS POLICY
 AND FACILITY NEEDS WITH NO RECOMMENDATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 SENTENCING LAWS; AMENDING SECTIONS 45-5-102 THROUGH
~~45-5-103~~, 45-5-105, 45-5-201 THROUGH 45-5-204, 45-5-302
 THROUGH 45-5-304, 45-5-401, 45-5-502, 45-5-503, 45-5-505,
 45-5-603, 45-5-613, 45-5-621, 45-5-625, ~~45-6-101~~ THROUGH
~~45-6-102~~, 45-6-103, 45-6-204, ~~45-9-101~~, ~~45-9-103~~, 46-18-101,
 46-18-201, 46-18-222, AND 46-18-223, MCA; AND REPEALING
 SECTIONS 46-18-111 THROUGH 46-18-113, 46-18-221, AND
 46-18-501 THROUGH 46-18-503, MCA; AND PROVIDING AN EFFECTIVE
 DATE."

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

Section 1. Section 46-18-101, MCA, is amended to read:

"46-18-101. Policy -- ~~liberal~~ construction. This
 chapter shall be ~~liberally~~ construed to the end that persons
 a person convicted of a crime shall be dealt with in
 accordance with ~~their individual characteristics,~~
~~circumstances, needs, and potentialities that dangerous~~
~~offenders shall be correctively treated in custody for long~~
~~terms as needed; and that other offenders shall be dealt~~
~~with by probation, suspended sentence, or fine whenever such~~
~~disposition appears practicable and not detrimental to the~~
~~needs of public safety and the welfare of the individual the~~
seriousness of the crime committed and in accordance with
his prior record. A person convicted of a crime may be dealt
with by fine, when provided for by law, or by deferred
imposition or suspension of sentence if the age of the
person or the circumstances surrounding the crime warrant
such treatment as provided for in this chapter."

Section 2. 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 for persons A PERSON
committing a first-offense FELONY OR MISDEMEANOR, SO LONG AS
HE HAS NOT COMMITTED A PRIOR FELONY, and who are IS eligible

1 under 46-18-222, excepting sentences for driving under the
2 influence of alcohol or drugs, for a period not exceeding 1
3 year for any misdemeanor or for a period not exceeding 3 10
4 years for any felony. The sentencing judge may impose upon
5 the defendant any reasonable restrictions or conditions
6 during the period of the deferred imposition. Such
7 reasonable restrictions or conditions may include:

- 8 (i) jail base release;
- 9 (ii) jail time not exceeding 90 days;
- 10 (iii) conditions for probation;
- 11 (iv) restitution;
- 12 (v) any other reasonable conditions considered
13 necessary for rehabilitation or for the protection of
14 society; or

15 (vi) any combination of the above;

16 (b) suspend execution of sentence for persons eligible
17 under 46-18-222 up to the maximum sentence allowed for the
18 particular offense. The sentencing judge may impose on the
19 defendant any reasonable restrictions during the period of
20 suspended sentence. Such reasonable restrictions may include
21 any of those listed in subsections (1)(a)(i) through
22 (1)(a)(vi).

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, is not 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:-----45-5-103(2),-----45-5-202(2),-----45-5-302(2),~~
11 ~~45-5-303(2),45-5-401(2),45-5-503(2) and--(3),--45-9-101(2)~~
12 ~~and--(3),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--first--10--years--of--a--sentence--of~~
15 ~~imprisonment imposed under 45-5-102(2) may not--be--deferred~~
16 ~~or suspended."~~

17 NEW SECTION. Section 3. Mandatory sentences to be
18 imposed for felonies -- exceptions. Except as provided in
19 46-18-201, the court shall impose the mandatory sentence
20 provided by law for a felony offense unless the court finds
21 in accordance with [section 5] that aggravating
22 circumstances are present or in accordance with [section 6]
23 that mitigating circumstances are present.

24 NEW SECTION. Section 4. Hearing to determine
25 exceptions to mandatory sentences. (1) Upon request of

1 either the defendant or the prosecution, the court shall
2 grant a hearing prior to the imposition of sentence to
3 determine the existence of circumstances enumerated in
4 [section 5 or 6].

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

10 (3) If it appears by a preponderance of the evidence
11 submitted during the trial and during the sentencing hearing
12 that none of the circumstances enumerated in [section 5 or
13 6] existed, the court shall impose the applicable mandatory
14 sentence. If it appears by a preponderance of the evidence
15 that one or more of the circumstances enumerated in [section
16 5 or 6] existed, the court shall impose the applicable
17 sentence as provided in [section 5 or 6].

18 (4) The court shall state the reasons for its decision
19 in writing and shall include an identification of the facts
20 relied upon in making its determination. The statement
21 shall be included in the judgment.

22 NEW SECTION. Section 5. Aggravating circumstances for
23 felonies -- increased penalties. (1) The court shall add to
24 the mandatory sentence for a felony offense 25% of the
25 mandatory sentence for each of the following aggravating

1 circumstances found by the court to have existed at the time
2 the offense was committed, KNOWN BY THE DEFENDANT TO EXIST,
3 AND CONSIDERED BY THE DEFENDANT IN THE COMMISSION OF THE
4 OFFENSE:

5 (a) the victim was mentally defective or
6 incapacitated;

7 (b) the victim was physically helpless;

8 (c) The victim was less than 16 years old or 65 years
9 of age or older;

10 (d) there were multiple victims;

11 (e) the defendant threatened to inflict bodily injury
12 upon any person or knowingly put any person in fear of
13 immediate bodily injury;

14 (f) the defendant took advantage of his fiduciary
15 relationship with the victim to commit the offense;

16 (g) the defendant used or involved minors in the
17 commission of the crime; or

18 (h) the defendant, prior to age 18, had committed an
19 act that would have been a felony if committed by an adult.

20 (2) The court shall add to the mandatory sentence for
21 a felony offense 50% of the mandatory sentence for each of
22 the following aggravating circumstances found by the court
23 to have existed at the time the offense was committed:

24 (a) the defendant inflicted bodily injury upon
25 another;

1 (b) the defendant received compensation for committing
2 the offense;

3 (c) the defendant, while engaged in the commission of
4 the offense, knowingly displayed, brandished, or otherwise
5 used a firearm, destructive device as defined in
6 45-8-332(1), or other dangerous weapon;

7 (d) the defendant had previously been convicted of a
8 felony.

9 (3) The court shall add to the mandatory sentence for
10 a felony offense 100% of the mandatory sentence for each of
11 the following aggravating circumstances found by the court
12 to have existed at the time the offense was committed:

13 (a) the defendant is a person who had previously been
14 convicted of an offense committed under 18 U.S.C. 924(c), ~~AS~~
15 ~~AMENDED~~, on a different occasion than the present offense or
16 who had previously been convicted of an offense in this or
17 another state, committed on a different occasion than the
18 present offense, during the commission of which he knowingly
19 displayed, brandished, or otherwise used a firearm,
20 destructive device as defined in 45-8-332(1), or other
21 dangerous weapon.

22 (b) the defendant is a person who had previously been
23 convicted of a second felony offense and who is presently
24 being sentenced for a third or subsequent felony committed
25 on a different occasion than any of his prior felonies.

1 (4) For the purpose of this section, an offender is
2 considered to have been previously convicted of a felony if:

3 (a) the previous felony conviction was for an offense
4 committed in this state or any other jurisdiction for which
5 a sentence to a term of imprisonment in excess of 1 year
6 could have been imposed; and

7 (b) the offender has not been pardoned on the ground
8 of innocence and the conviction has not been set aside in a
9 postconviction hearing.

10 (5) A circumstance that constitutes a lesser included
11 offense of the present offense or a circumstance that
12 constitutes a necessary element of the present offense may
13 not be found to be an aggravating circumstance for purposes
14 of this section.

15 NEW SECTION. Section 6. Mitigating circumstances for
16 felonies -- reduced penalties. If appropriate for the
17 offense, the court shall reduce the sentence for a felony
18 offense by 10% for each of the following mitigating
19 circumstances found to be present:

20 (1) The defendant, at the time of the commission of
21 the offense for which he is to be sentenced, was acting
22 under unusual and substantial duress. The duress need not
23 be such that it would constitute a defense to the
24 prosecution.

25 (2) The defendant was an accomplice, the conduct

1 constituting the offense was principally the conduct of
2 another, and the defendant's participation was relatively
3 minor.

4 (3) No serious bodily injury was inflicted on the
5 victim nor was a weapon used in the commission of the
6 offense.

7 (4) The defendant has fully compensated or can
8 reasonably be expected to fully compensate the victim of his
9 criminal conduct.

10 (5) The defendant assisted law enforcement authorities
11 in the performance of their duties.

12 Section 7. Section 46-18-222, MCA, is amended to read:

13 ~~"46-18-222. Exceptions to mandatory minimum sentences~~
14 ~~and restrictions on deferred imposition and suspended~~
15 ~~execution of sentence~~ Eligibility for deferred or suspended
16 sentence. All mandatory minimum sentences prescribed by the
17 laws of this state and the restrictions on deferred
18 imposition and suspended execution of sentence prescribed by
19 subsections (3) and (4) of 46-18-201, 46-18-221(3), and
20 46-18-502(2) do not apply if a person is eligible for a
21 deferred imposition or suspension of sentence as provided in
22 46-18-201 if:

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

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

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

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

13 (5) where applicable, no serious bodily injury was
14 inflicted on the victim unless a weapon was used in the
15 commission of the offense; OR

16 (6) THE DEFENDANT HAS NOT BEEN UNDER THE SUPERVISION
17 OF ANY STATE OR FEDERAL CORRECTIONAL INSTITUTION OR COURT
18 FOR A PERIOD OF 5 YEARS IMMEDIATELY PRECEDING COMMISSION OF
19 THE PRESENT OFFENSE."

20 Section 8. Section 46-18-223, MCA, is amended to read:

21 "46-18-223. Hearing to determine ~~application~~ of
22 exceptions eligibility. (1) ~~When the application of an~~
23 ~~exception provided for in~~ eligibility for deferred
24 imposition or suspension of sentence under 46-18-222 is an
25 issue, upon request, the court shall grant the defendant a

1 hearing prior to the imposition of sentence to determine the
2 applicability-of-the-exception such eligibility.

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

7 (3) If it appears by a preponderance of the
8 information evidence, including information submitted during
9 the trial, and during the sentencing hearing, and-in-so-much
10 of-the-presentence-report-as-the-court-relies-on, that none
11 of the exceptions-at-issue provisions for eligibility apply,
12 the court shall impose the appropriate applicable mandatory
13 sentence with no deferred imposition or suspension thereof.

14 (4) The court shall state the reasons for its decision
15 in writing and shall include an identification of the facts
16 relied upon in making its determination. The statement shall
17 be included in the judgment."

18 Section 9. Section 45-5-102, MCA, is amended to read:

19 "45-5-102. Deliberate homicide. (1) Except as provided
20 in 45-5-103(1), criminal homicide constitutes deliberate
21 homicide if:

- 22 (a) it is committed purposely or knowingly; or
- 23 (b) it is committed while the offender is engaged in
- 24 or is an accomplice in the commission of, an attempt to
- 25 commit, or flight after committing or attempting to commit

1 robbery, sexual intercourse without consent, arson,
2 burglary, kidnapping, felonious escape, or any other felony
3 which involves the use or threat of physical force or
4 violence against any individual.

5 (2) A person convicted of the offense of deliberate
6 homicide shall be punished by death or life imprisonment as
7 provided in 46-18-301 through 46-18-310 or by imprisonment
8 in the state prison for a term of not-less-than-10-years-or
9 more-than-100 60 years, except-as-provided-in-46-18-222."

10 Section 10. Section 45-5-103, MCA, is amended to read:

11 "45-5-103. Mitigated deliberate homicide. (1) Criminal
12 homicide constitutes mitigated deliberate homicide when a
13 homicide which would otherwise be deliberate homicide is
14 committed under the influence of extreme mental or emotional
15 stress for which there is reasonable explanation or excuse.
16 The reasonableness of such explanation or excuse shall be
17 determined from the viewpoint of a reasonable person in the
18 actor's situation.

19 (2) A person convicted of mitigated deliberate
20 homicide shall be imprisoned in the state prison for a term
21 of not-less-than-2-years-or-more-than-40 30 years, except-as
22 provided-in-46-18-222."

23 Section-11--Section-45-5-104, MCA, is amended to read:

24 "45-5-104--Negligent--homicide--(1)--Criminal-homicide
25 constitutes--negligent--homicide--when--it--is--committed

1 negligently.

2 ~~{2}--A person convicted of negligent homicide shall be~~
3 ~~imprisoned in the state prison for any a term not to exceed~~
4 ~~10 of 20 years."~~

5 Section 11. Section 45-5-105, MCA, is amended to read:

6 "45-5-105. Aiding or soliciting suicide. (1) A person
7 who purposely aids or solicits another to commit suicide,
8 but such suicide does not occur, commits the offense of
9 aiding or soliciting suicide.

10 (2) A person convicted of the offense of aiding or
11 soliciting a suicide shall be imprisoned in the state prison
12 for any a term not-to-exceed of 10 years."

13 Section 12. Section 45-5-201, MCA, is amended to read:

14 "45-5-201. Assault. (1) A person commits the offense
15 of assault if he:

16 (a) purposely or knowingly causes bodily injury to
17 another;

18 (b) negligently causes bodily injury to another with a
19 weapon;

20 (c) purposely or knowingly makes physical contact of
21 an insulting or provoking nature with any individual; or

22 (d) purposely or knowingly causes reasonable
23 apprehension of bodily injury in another. The purpose to
24 cause reasonable apprehension or the knowledge that
25 reasonable apprehension would be caused shall be presumed in

1 any case in which a person knowingly points a firearm at or
2 in the direction of another, whether or not the offender
3 believes the firearm to be loaded.

4 (2) Except as provided in subsection (3), a person
5 convicted of assault shall be fined not to exceed \$500 or be
6 imprisoned in the county jail for any term not to exceed 6
7 months, or both.

8 (3) If the victim is less than 14 years old and the
9 offender is 18 or more years old, the offender, upon
10 conviction under subsection (1)(a), shall be imprisoned in
11 the state prison for a term not-to-exceed-5 of 10 years."

12 Section 13. Section 45-5-202, MCA, is amended to read:

13 "45-5-202. Aggravated assault. (1) A person commits
14 the offense of aggravated assault if he purposely or
15 knowingly causes:

16 (a) serious bodily injury to another;

17 (b) bodily injury to another with a weapon;

18 (c) reasonable apprehension of serious bodily injury
19 in another by use of a weapon; or

20 (d) bodily injury to a peace officer.

21 (2) A person convicted of aggravated assault shall be
22 imprisoned in the state prison for a term of not-less-than-2
23 years--or--more--than 20 years,--except--as--provided--in
24 46-18-222."

25 Section 14. Section 45-5-203, MCA, is amended to read:

1 "45-5-203. Intimidation. (1) A person commits the
2 offense of intimidation when, with the purpose to cause
3 another to perform or to omit the performance of any act, he
4 communicates to another a threat to perform without lawful
5 authority any of the following acts:

6 (a) inflict physical harm on the person threatened or
7 any other person or on property;

8 (b) subject any person to physical confinement or
9 restraint;

10 (c) commit any criminal offense;

11 (d) accuse any person of an offense;

12 (e) expose any person to hatred, contempt, or
13 ridicule; or

14 (f) take action as a public official against anyone or
15 anything, withhold official action, or cause such action or
16 withholding.

17 (2) A person commits the offense of intimidation if he
18 knowingly communicates a threat or false report of a pending
19 fire, explosion, or disaster which would endanger life or
20 property.

21 (3) A person convicted of the offense of intimidation
22 shall be imprisoned in the state prison for any a term not
23 to-exceed-10 of 2 years."

24 Section 15. Section 45-5-204, MCA, is amended to read:

25 "45-5-204. Mistreating prisoners. (1) A person commits

1 the offense of mistreating prisoners if, being responsible
2 for the care or custody of a prisoner, he purposely or
3 knowingly:

4 (a) assaults or otherwise injures a prisoner;

5 (b) intimidates, threatens, endangers, or withholds
6 reasonable necessities from the prisoner with the purpose to
7 obtain a confession from him or for any other purpose; or

8 (c) violates any civil right of a prisoner.

9 (2) A person convicted of the offense of mistreating
10 prisoners shall be removed from office or employment and
11 imprisoned in the state prison for a term ~~not-to-exceed-10~~
12 of 2 years."

13 Section 16. Section 45-5-302, MCA, is amended to read:

14 "45-5-302. 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 using
18 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 a term of not
21 ~~less-than-2-years-or-more-than-10~~ 20 6 years, ~~--except--as~~
22 ~~provided-in-46-10-222."~~

23 Section 17. Section 45-5-303, MCA, is amended to read:

24 "45-5-303. Aggravated kidnapping. (1) A person commits
25 the offense of aggravated kidnapping if he knowingly or

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

5 (a) to hold for ransom or reward or as a shield or
6 hostage;

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

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

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

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

15 (2) Except as provided in 46-18-222, a person
16 convicted of the offense of aggravated kidnapping shall be
17 punished by death or life imprisonment as provided in
18 46-18-301 through 46-18-310 or be imprisoned in the state
19 prison for a term of ~~not less than 2 years or more than 10~~
20 40 years, unless he has voluntarily released the victim
21 alive, in a safe place, and not suffering from serious
22 bodily injury, in which event he shall be imprisoned in the
23 state prison for a term of ~~not less than 2 years or more~~
24 than 10 1/2 years."

25 Section 18. Section 45-5-304, MCA, is amended to read:

1 "45-5-304. Custodial interference. (1) A person
2 commits the offense of custodial interference if, knowing
3 that he has no legal right to do so, he takes, entices, or
4 withholds from lawful custody any child, incompetent person,
5 or other person entrusted by authority of law to the custody
6 of another person or institution.

7 (2) A person convicted of the offense of custodial
8 interference shall be imprisoned in the state prison for ~~any~~
9 a term not to exceed 10 of 5 years.

10 (3) A person who has not left the state does not
11 commit an offense under this section if he voluntarily
12 returns such person to lawful custody prior to arraignment.
13 A person who has left the state does not commit an offense
14 under this section if he voluntarily returns such person to
15 lawful custody prior to arrest."

16 Section 19. Section 45-5-401, MCA, is amended to read:

17 "45-5-401. Robbery. (1) A person commits the offense
18 of robbery if in the course of committing a theft he:

19 (a) inflicts bodily injury upon another;

20 (b) threatens to inflict bodily injury upon any person
21 or purposely or knowingly puts any person in fear of
22 immediate bodily injury; or

23 (c) commits or threatens immediately to commit any
24 felony other than theft.

25 (2) A person convicted of the offense of robbery shall

1 be imprisoned in the state prison for a term of ~~not less~~
2 ~~than 2 years or more than 40~~ 20 years, ~~except as provided in~~
3 ~~46-10-222.~~

4 (3) "In the course of committing a theft" as used in
5 this section includes acts which occur in an attempt to
6 commit or in the commission of theft or in flight after the
7 attempt or commission."

8 Section 20. Section 45-5-502, MCA, is amended to read:
9 "45-5-502. Sexual assault. (1) A person who knowingly
10 subjects another not his spouse to any sexual contact
11 without consent commits the offense of sexual assault.

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

15 (3) If the victim is less than 16 years old and the
16 offender is 3 or more years older than the victim or if the
17 offender inflicts bodily injury upon anyone in the course of
18 committing sexual assault, he shall be imprisoned in the
19 state prison for any a term ~~not to exceed 20~~ of 10 years.

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

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

1 Section 21. Section 45-5-503, MCA, is amended to read:
2 "45-5-503. Sexual intercourse without consent. (1) A
3 person who knowingly has sexual intercourse without consent
4 with a person of the opposite sex not his spouse commits the
5 offense of sexual intercourse without consent.

6 (2) A person convicted of sexual intercourse without
7 consent shall be imprisoned in the state prison for a term
8 of ~~not less than 2 years or more than 20 years, except as~~
9 ~~provided in 46-10-222.~~

10 (3) If the victim is less than 16 years old and the
11 offender is 3 or more years older than the victim or if the
12 offender inflicts bodily injury upon anyone in the course of
13 committing sexual intercourse without consent, he shall be
14 imprisoned in the state prison for a any term of ~~not less~~
15 ~~than 2 years or more than 40~~ 20 years, ~~except as provided in~~
16 ~~46-10-222.~~

17 (4) IF THE VICTIM'S LACK OF CONSENT IS BASED SOLELY
18 UPON HIS INCAPACITY TO CONSENT BECAUSE HE WAS LESS THAN 16
19 YEARS OF AGE, A PERSON CONVICTED OF SEXUAL INTERCOURSE
20 WITHOUT CONSENT OF SUCH VICTIM SHALL BE IMPRISONED IN THE
21 STATE PRISON FOR A TERM OF NOT LESS THAN 2 OR MORE THAN 20
22 YEARS.

23 ~~(4)~~(5) An act "in the course of committing sexual
24 intercourse without consent" shall include an attempt to
25 commit the offense or flight after the attempt or

1 commission.

2 ~~(5)(6)~~ No evidence concerning the sexual conduct of
3 the victim is admissible in prosecutions under this section,
4 except:

5 (a) evidence of the victim's past sexual conduct with
6 the offender;

7 (b) evidence of specific instances of the victim's
8 sexual activity to show the origin of semen, pregnancy, or
9 disease which is at issue in the prosecution under this
10 section.

11 ~~(6)(7)~~ If the defendant proposes for any purpose to
12 offer evidence described in subsection (5)(a) or (5)(b), the
13 trial judge shall order a hearing out of the presence of the
14 jury to determine whether the proposed evidence is
15 admissible under subsection (5).

16 ~~(7)(8)~~ Evidence of failure to make a timely complaint
17 or immediate outcry does not raise any presumption as to the
18 credibility of the victim."

19 Section 22. Section 45-5-505, MCA, is amended to read:

20 "45-5-505. Deviate sexual conduct. (1) A person who
21 knowingly engages in deviate sexual relations or who causes
22 another to engage in deviate sexual relations commits the
23 offense of deviate sexual conduct.

24 (2) A person convicted of the offense of deviate
25 sexual conduct shall be imprisoned in the state prison for

1 any a term not-to-exceed-10 of 2 years.

2 (3) A person convicted of deviate sexual conduct
3 without consent shall be imprisoned in the state prison for
4 any a term not-to-exceed-20 of 10 years."

5 Section 23. Section 45-5-603, MCA, is amended to read:

6 "45-5-603. Aggravated promotion of prostitution. (1) A
7 person commits the offense of aggravated promotion of
8 prostitution if he purposely or knowingly commits any of the
9 following acts:

10 (a) compels another to engage in or promote
11 prostitution;

12 (b) promotes prostitution of a child under the age of
13 18 years, whether or not he is aware of the child's age;

14 (c) promotes the prostitution of one's spouse, child,
15 ward, or any person for whose care, protection, or support
16 he is responsible.

17 (2) A person convicted of aggravated promotion of
18 prostitution shall be imprisoned in the state prison for any
19 a term not-to-exceed-20 of 10 years."

20 Section 24. Section 45-5-613, MCA, is amended to read:

21 "45-5-613. Incest. (1) A person commits the offense of
22 incest if he knowingly marries or cohabits or has sexual
23 intercourse with an ancestor, a descendant, a brother or
24 sister of the whole or half blood. The relationships
25 referred to herein include blood relationships without

1 regard to legitimacy and relationships of parent and child
2 by adoption.

3 (2) A person convicted of incest shall be imprisoned
4 in the state prison for any a term ~~not-to-exceed-10~~ of 2
5 years."

6 Section 25. Section 45-5-621, MCA, is amended to read:
7 "45-5-621. Nonsupport. (1) A person commits the
8 offense of nonsupport if he fails to provide support which
9 he can provide and which he knows he is legally obliged to
10 provide to a spouse, child, or other dependent.

11 (2) A person commits the offense of aggravated
12 nonsupport if:

13 (a) the offender has left the state to avoid the duty
14 of support; or

15 (b) the offender has been previously convicted of the
16 offense of nonsupport.

17 (3) A person convicted of nonsupport shall be fined
18 not to exceed \$500 or be imprisoned in the county jail for
19 any term not to exceed 6 months, or both. A person convicted
20 of aggravated nonsupport shall be imprisoned in the state
21 prison for any a term ~~not-to-exceed-10~~ of 2 years.

22 (4) The court may order, in its discretion, any fine
23 levied or any bond forfeited upon a charge of nonsupport
24 paid to or for the benefit of any person that the defendant
25 has failed to support."

1 Section 26. Section 45-5-625, MCA, is amended to read:

2 "45-5-625. Sexual abuse of children. (1) A person
3 commits the offense of sexual abuse of children if he
4 knowingly:

5 (a) employs, uses, or permits the employment or use of
6 a child in an exhibition of sexual contact, actual or
7 simulated;

8 (b) photographs, films, videotapes, or records a child
9 engaging in sexual contact, actual or simulated;

10 (c) persuades, entices, counsels, or procures a child
11 to engage in sexual contact, actual or simulated, for use as
12 designated in (1)(a), (1)(b), or (1)(d);

13 (d) processes, develops, prints, publishes,
14 transports, distributes, sells, possesses with intent to
15 sell, exhibits, or advertises material consisting of or
16 including a photograph, photographic negative, undeveloped
17 film, videotape, or recording representing a child engaging
18 in sexual contact, actual or simulated; or

19 (e) finances any of the activities described in
20 subsections (1)(a) through (1)(d) knowing that the activity
21 is of the nature described in those subsections.

22 (2) A person convicted of the offense of sexual abuse
23 of children shall be fined not to exceed \$10,000 or be
24 imprisoned in the state prison for any a term ~~not-to-exceed~~
25 of 20 years, or both.

1 (3) For the purposes of this section, "child" means
2 any person less than 16 years old."

3 ~~Section 28. Section 45-6-101, MCA, is amended to read:~~
4 ~~"45-6-101. Criminal mischief. (1) A person commits~~
5 ~~the offense of criminal mischief if he knowingly or~~
6 ~~purposely:~~

7 ~~(a) injures, damages, or destroys any property of~~
8 ~~another or public property without consent;~~

9 ~~(b) without consent tampers with property of another~~
10 ~~or public property so as to endanger or interfere with~~
11 ~~persons or property or its use;~~

12 ~~(c) damages or destroys property with the purpose to~~
13 ~~defraud an insurer; or~~

14 ~~(d) fails to close a gate previously unopened which he~~
15 ~~has opened leading in or out of any enclosed premises. This~~
16 ~~does not apply to gates located in cities or towns.~~

17 ~~(2) A person convicted of the offense of criminal~~
18 ~~mischief shall be fined not to exceed \$500 or be imprisoned~~
19 ~~in the county jail for any term not to exceed 6 months, or~~
20 ~~both, if the offender commits the offense of criminal~~
21 ~~mischief and causes pecuniary loss in excess of \$150,~~
22 ~~injures or kills a commonly domesticated hoofed animal, or~~
23 ~~causes a substantial interruption or impairment of public~~
24 ~~communication, transportation, supply of water, gas, or~~
25 ~~power, or other public services, he shall be imprisoned in~~

1 ~~the state prison for any term not to exceed 10 of 4~~
2 ~~years."~~

3 Section 27. Section 45-6-102, MCA, is amended to read:
4 "45-6-102. Negligent arson. (1) A person commits the
5 offense of negligent arson if he purposely or knowingly
6 starts a fire or causes an explosion, whether on his own
7 property or property of another, and thereby negligently:

8 (a) places another person in danger of death or bodily
9 injury; or

10 (b) places property of another in danger of damage or
11 destruction.

12 (2) A person convicted of the offense of negligent
13 arson shall be fined not to exceed \$500 or be imprisoned in
14 the county jail for any term not to exceed 6 months, or
15 both. If the offender places another person in danger of
16 death or bodily injury, he shall be imprisoned in the state
17 prison for any term not to exceed 10 of 5 years."

18 Section 28. Section 45-6-103, MCA, is amended to read:

19 "45-6-103. Arson. (1) A person commits the offense of
20 arson when, by means of fire or explosives, he knowingly or
21 purposely:

22 (a) damages or destroys an occupied structure which is
23 property of another without consent; or

24 (b) places another person in danger of death or bodily
25 injury.

1 (2) A person convicted of the offense of arson shall
2 be imprisoned in the state prison for any a term not-to
3 exceed-20 of 10 years."

4 Section 29. Section 45-6-204, MCA, is amended to read:
5 "45-6-204. Burglary. (1) A person commits the offense
6 of burglary if he knowingly enters or remains unlawfully in
7 an occupied structure with the purpose to commit an offense
8 therein.

9 (2) A person commits the offense of aggravated
10 burglary if he knowingly enters or remains unlawfully in an
11 occupied structure with the purpose to commit a felony
12 therein and:

13 (a) in effecting entry or in the course of committing
14 the offense or in immediate flight thereafter, he or another
15 participant in the offense is armed with explosives or a
16 weapon; or

17 (b) in effecting entry or in the course of committing
18 the offense or in immediate flight thereafter, he purposely,
19 knowingly, or negligently inflicts or attempts to inflict
20 bodily injury upon anyone.

21 (3) A person convicted of the offense of burglary
22 shall be imprisoned in the state prison for any a term not
23 to-exceed of 10 years. A person convicted of the offense of
24 aggravated burglary shall be imprisoned in the state prison
25 for any a term not-to-exceed-40 of 20 years."

1 ~~SECTION 30. SECTION 45-9-101, MCA, IS AMENDED TO READ:~~

2 "45-9-101. Criminal sale of dangerous drugs. (1) A
3 person commits the offense of criminal sale of dangerous
4 drugs if he sells, barter, exchanges, gives away, or offers
5 to sell, barter, exchange, or give away or manufactures,
6 prepares, cultivates, compounds, or processes any dangerous
7 drug, as defined in 50-32-101.

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

12 (3) A person convicted of criminal sale of a dangerous
13 drug included in Schedule I or Schedule II pursuant to
14 50-32-222 or 50-32-224, except marijuana or
15 tetrahydrocannabinols, who has a prior conviction for
16 criminal sale of such a drug shall be imprisoned in the
17 state prison for a term of not-less-than-5 20 years or-more
18 than--life, except as provided in 46-18-222. Upon a third or
19 subsequent conviction for criminal sale of such a drug, he
20 shall be imprisoned in the state prison for a term of not
21 less--than-10 40 years or-more-than--life, except as provided
22 in 46-18-222. Whenever a conviction under this subsection is
23 for criminal sale of such a drug to a minor or a person who
24 is mentally defective, the sentence shall be increased by 5
25 years and include the restriction that the defendant be

1 ineligible for parole and participation in the prisoner
 2 furlough program while serving his term. A sentence imposed
 3 under this section may not be increased by the aggravating
 4 circumstances listed in subsections (1)(a) and (1)(c) of
 5 [section 5].

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

10 (5) Practitioners and agents under their supervision
 11 acting in the course of a professional practice, as defined
 12 by 50-32-101, are exempt from this section."

13 SECTION 31. SECTION 45-9-103, MCA, IS AMENDED TO READ:

14 "45-9-103. Criminal possession with intent to sell.

15 (1) A person commits the offense of criminal possession with
 16 intent to sell if he possesses with intent to sell any
 17 dangerous drug as defined in 50-32-101. No person commits
 18 the offense of criminal possession with intent to sell
 19 marijuana unless he possesses 1 kilogram or more.

20 (2) A person convicted of criminal possession of an
 21 opiate, as defined in 50-32-101(18), with intent to sell
 22 shall be imprisoned in the state prison for a term of ~~not~~
 23 ~~less than 2 years--or--more--than--20~~ 2 years, except as
 24 provided in 46-18-222.

25 (3) A person convicted of criminal possession with

1 intent to sell not otherwise provided for in subsection (2)
 2 shall be imprisoned in the state prison for a term of ~~not~~
 3 ~~more than 20~~ 2 years.

4 (4) Practitioners and agents under their supervision
 5 acting in the course of a professional practice as defined
 6 by 50-32-101 are exempt from this section."

7 Section 32. Codification. Sections 3 through 6 are
 8 intended to be codified as an integral part of Title 46,
 9 chapter 18, and the provisions contained in Title 46,
 10 chapter 18, apply to sections 3 through 6.

11 Section 33. Repealer. Sections 46-18-111 through
 12 46-18-113, 46-18-221, and 46-18-501 through 46-18-503, MCA,
 13 are repealed.

14 SECTION 34. EFFECTIVE DATE. THIS ACT IS EFFECTIVE
 15 JANUARY 1, 1982.

-End-