

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 whenever 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}v----45-5-202{2}v----45-5-302{2}v  
 24 45-5-303{2}v--45-5-401{2}v--45-5-503{2}v--and-{3}v-45-9-101{2}v  
 25 and-{3}v-45-9-102{3}v--and-45-9-103{2}v

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       if 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

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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--{37--end--{47--of--46-18-201v-46-18-222}{37v--end}~~  
 3 ~~46-18-502{27--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 application--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-reffes-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:

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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 60 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       ~~40 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 ~~45-5-202.~~"

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

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

3 Section 16. Section 45-5-204, MCA, is amended to read:  
 4 "45-5-204. Mistrating 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-to~~  
 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 40 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 withdraws  
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-20~~ 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.

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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-20 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-20 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

HB10

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 hooved 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-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 6 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

*H.B.10*

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, 1981, 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 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:

FY 1982      FY 1983

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

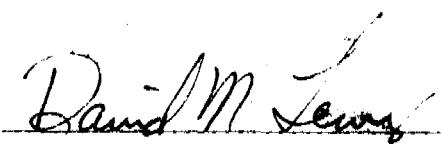
A proposal to implement mandatory sentences for persons convicted of certain crimes.

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

15 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE  
16 SENTENCING LAWS; AMENDING SECTIONS 45-5-102 THROUGH  
17 ~~45-5-102~~ 45-5-105, 45-5-201 THROUGH 45-5-204, 45-5-302  
18 THROUGH 45-5-304, 45-5-401, 45-5-502, 45-5-503, 45-5-505,  
19 45-5-603, 45-5-613, 45-5-621, 45-5-625, 45-6-~~101~~--~~THROU6H~~  
20 ~~45-6-102~~ 45-6-103, 45-6-204, ~~45-9-101~~, 45-9-103, 46-18-101,  
21 46-18-201, 46-18-222, AND 46-18-223, MCA; AND REPEALING  
22 SECTIONS 46-18-111 THROUGH 46-18-113, 46-18-221, AND  
23 46-18-501 THRCUGH 46-18-503, MCA, AND PROVIDING AN EFFECTIVE  
24 DATE."

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

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

3 "46-18-101. Policy -- liberet construction. This

4 chapter shall be liberet construed to the end that persons

5 a person convicted of a crime shall be dealt with in

6 accordance with their----individual---characteristics,

7 circumstances--needs--and--potentialities;--that--dangerous

8 offenders--shall--be--correctively--treated--in--custody--for--long

9 terms--as--needed;--and--that--other--offenders--shall--be--dealt

10 with--by--probation,--suspended--sentence,--or--fine--whenever--such

11 disposition--appears--practicable--and--not--detrimental--to--the

12 needs--of--public--safety--and--the--welfare--of--the--individual--the

13 seriousness--of--the--crime--committed--and--in--accordance--with

14 his--prior--record. A person convicted of a crime may be dealt

15 with by fine, when provided for by law, or by deferred

16 imposition or suspension of sentence if the age of the

17 person or the circumstances surrounding the crime warrant

18 such treatment as provided for in this chapter."

19 Section 2. Section 46-18-201, MCA, is amended to read:

20 "46-18-201. Sentences that may be imposed. (1)

21 Whenever a person has been found guilty of an offense upon a

22 verdict or a plea of guilty, the court may:

23 (a) defer imposition of sentence for persons A PERSON

24 committing a first--offense FELONY OR MISDEMEANOR, SO LONG AS

25 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       ~~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},45-5-403{2},45-5-503{2}--end--{3},--45-9-103{2},  
 12   end-{3},--45-9-102{3},--end-45-9-103{2},~~

13       ~~Except-as-provided-in-46-18-222, the imposition or  
 14   execution---of---the---first---2---years---of---a---sentence---of  
 15   imprisonment-imposed-under-45-5-102{2}-may-not--be--defered  
 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 DEFENSE:

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 end--restrictions--on--deferred--imposition--end--suspended  
 15 execution-of-sentence Eligibility for deferred or suspended  
 16 sentence. All-mandatory-minimum-sentences-prescribed-by-the  
 17 laws--of--this--state--end--the--restrictions--on--deferred  
 18 imposition--end--suspended--execution-of-sentence-prescribed-by  
 19 subsections--{3}--end--{4}--of--46-18-201--46-18-222{3}--end  
 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

16 161 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-settles-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        (f2)--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--then 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. Mistrating 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--16  
 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-46-18-222."

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--100~~  
 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 & 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  
 10 \*45-5-502. Sexual assault. (1) A person who knowingly  
 subjects another not his spouse to any sexual contact  
 without consent commits the offense of sexual assault.

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  
 3 \*45-5-503. Sexual intercourse without consent. (1) A  
 person who knowingly has sexual intercourse without consent  
 with a person of the opposite sex not his spouse commits the  
 offense of sexual intercourse without consent.

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 HAS 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. Criminel--mischief--(1)--A person commits  
 5       the offense of criminel--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--tempers--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        (e)--A--person--convicted--of--the--offense--of--criminel  
 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--ef--criminel  
 21      mischief--and--causes--pecuntry--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      communicatory--transportation--supply--of--water--gas--or  
 25      power--or--other--public--services--he--shall--be--imprisoned--in

1       the--state--prison--for--any--g--term--not--to--exceed--10--of--  
 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 a 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 45-9-101a, 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, barters, 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 (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 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 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,  
OZZENS, 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, EU DAILY

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

15 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE  
16 SENTENCING LAWS; AMENDING SECTIONS 45-5-102 THROUGH  
17 ~~45-5-103~~ 45-5-105, 45-5-201 THROUGH 45-5-204, 45-5-302  
18 THROUGH 45-5-304, 45-5-401, 45-5-502, 45-5-503, 45-5-505,  
19 45-5-603, 45-5-613, 45-5-621, 45-5-625, 45-6-101--THRU 46-18-101,  
20 ~~45-6-102~~ 45-6-103, 45-6-204, ~~45-9-101, 45-9-103~~, 46-18-101,  
21 46-18-201, 46-18-222, AND 46-18-223, MCA; AND REPEALING  
22 SECTIONS 46-18-111 THROUGH 46-18-113, 46-18-221, AND  
23 46-18-501 THROUGH 46-18-503, MCA; AND PROVIDING AN EFFECTIVE  
24 DATE.\*

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

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

3 "46-18-101. Policy -- liberal construction. This

4 chapter shall be liberally construed to the end that persons

5 a person convicted of a crime shall be dealt with in

6 accordance with their individual characteristics,

7 circumstances, needs, and potentialities that dangerous

8 offenders shall be correctively treated in custody for long

9 terms as needed; and that other offenders shall be dealt

10 with by probation, suspended sentence, or fine whenever such

11 disposition appears practicable and not detrimental to the

12 needs of public safety and the welfare of the individual the

13 seriousness of the crime committed and in accordance with

14 his prior record. A person convicted of a crime may be dealt

15 with by fine, when provided for by law, or by deferred

16 imposition or suspension of sentence if the age of the

17 person or the circumstances surrounding the crime warrant

18 such treatment as provided for in this chapter."

19 Section 2. Section 46-18-201, MCA, is amended to read:

20 "46-18-201. Sentences that may be imposed. (1)

21 Whenever a person has been found guilty of an offense upon a

22 verdict or a plea of guilty, the court may:

23 (a) defer imposition of sentence for persons A PERSON

24 committing a first-offense FELONY OR MISDEMEANOR, SO LONG AS

25 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 1/2  
 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        +37--Except-as-provided-in-46-18-222v-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}v-----45-5-202{2}v-----45-5-302{2}v  
 11      45-5-303{2}v-45-5-401{2}v-45-5-503{2}v-and--{37}v--45-9-101{2}v  
 12      and-{37}v-45-9-102{3}v-and-45-9-103{2}v  
 13      +47--Except-as-provided-in-46-18-222v-the-imposition-or  
 14      execution---of---the---first---10---years---of---a---sentence---of  
 15      imprisonment-imposed-under-45-5-102{2}v-may-not--be--defered  
 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 DEFENSE:

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-sentenced~~ 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

16 161. 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-remits-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-22--Section-45-5-104--MCA--is-amended-to-read--~~  
 24 ~~"45-5-104--Negligent--homicide--is--a--crime--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       ~~to 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-to 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--to  
 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 28 6 years--except--as  
 22 provided-in-46-18-222."

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--100  
 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 & 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 withdraws 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 46-18-222.

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-46-18-222.

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 30 years-except-as-provided-in  
 16 46-18-222.

17 (4) IF THE VICTIM'S LACK OF CONSENT IS BASED SOLELY  
 18 UPON HIS INCAPACITY TO CONSENT BECAUSE HE HAS 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) 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)(a)~~ 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)(a)~~ 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)(a)~~ 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. Criminel mischiefe. (1) A person commits  
 5 the offense of criminel mischiefe 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 by 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 criminel  
 18 mischiefe 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 criminel  
 21 mischiefe and causes pecuniary loss in excess of \$150,  
 22 injures or kills a commonly domesticated hooved 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 a 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 a 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, barters, 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 111(a) and 111(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-