

1                    HOUSE BILL NO. 12  
 2    INTRODUCED BY GOULD  
 3                    BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS  
 4                    POLICY AND FACILITY NEEDS  
 5  
 6    A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
 7    INCREASED PUNISHMENT OF PERSONS WHO HAVE BEEN CONVICTED OF  
 8    THREE SEPARATE FELONIES; AMENDING SECTIONS 46-18-222 AND  
 9    46-18-502, MCA."

10  
 11    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12            Section 1. Section 46-18-502, MCA, is amended to read:  
 13            "46-18-502. Sentencing of persistent felony offender.  
 14            (1) A ~~except as provided in subsection (2),~~ a persistent  
 15            felony offender shall be imprisoned in the state prison for  
 16            a term of not less than 5 years or more than 100 years if he  
 17            was 21 years of age or older at the time of the commission  
 18            of the present offense.

19            (2) If the offender was a persistent felony offender,  
 20            as defined in 46-18-501, at the time of his previous felony  
 21            conviction, less than 5 years have elapsed between his  
 22            previous felony conviction and the commission of the present  
 23            offense, and he was 21 years of age or older at the time of  
 24            the commission of the present offense, he shall be  
 25            imprisoned in the state prison for a term of not less than

1    10 years or more than 100 years.  
 2            ~~(2)~~(3) Except as provided in 46-18-222, the imposition  
 3            or execution of the first 5 years of a sentence imposed  
 4            under subsection (1) or the first 10 years of a sentence  
 5            imposed under subsection (2) may not be deferred or  
 6            suspended."

7            Section 2. Section 46-18-222, MCA, is amended to read:  
 8            "46-18-222. Exceptions to mandatory minimum sentences  
 9            and restrictions on deferred imposition and suspended  
 10            execution of sentence. All mandatory minimum sentences  
 11            prescribed by the laws of this state and the restrictions on  
 12            deferred imposition and suspended execution of sentence  
 13            prescribed by subsections (3) and (4) of 46-18-201,  
 14            46-18-221(3), and 46-18-502~~(2)~~(3) do not apply if:

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

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

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

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

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

-End-

STATE OF MONTANA

REQUEST NO. 438-81

FISCAL NOTE

Form BD-15

In compliance with a written request received March 17, 19 81, there is hereby submitted a Fiscal Note for House Bill 12 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.

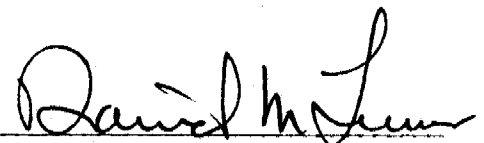
Description of Proposed Legislation: "An act to provide for increased punishment of persons who have been convicted of three separate felonies; amending sections 46-18-222 and 46-18-502, MCA."

Assumptions:

- 1) This legislation will affect only those felons designated as "persistent felons."
- 2) This legislation will have no effect on the judge's discretion in designating individuals as "persistent felons," and will therefore have no effect on the number of persons so designated.
- 3) Almost all of the persons currently designated as "persistent felons" are currently incarcerated.
- 4) This legislation will, therefore, have no significant impact on the population of the State Prison.

Fiscal Impact:

We do not expect this legislation to have any significant impact on the Department of Institutions' revenues or expenditures.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-20-81

Approved by Committee  
on Judiciary

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8 THREE SEPARATE FELONIES; AMENDING SECTIONS 46-18-222 AND  
9 46-18-502, MCA."

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

12 Section 1. Section 46-18-502, MCA, is amended to read:

13 "46-18-502. Sentencing of persistent felony offender.

14 (1) Except as provided in subsection (2), a persistent  
15 felony offender shall be imprisoned in the state prison for  
16 a term of not less than 5 years or more than 100 years if he  
17 was 21 years of age or older at the time of the commission  
18 of the present offense.

19 (2) If the offender was a persistent felony offender,  
20 as defined in 46-18-501, at the time of his previous felony  
21 conviction, less than 5 years have elapsed between his  
22 previous-felony-conviction-and the commission of the present  
23 offense AND EITHER THE PREVIOUS FELONY CONVICTION OR THE  
24 OFFENDER'S RELEASE ON PAROLE OR OTHERWISE FROM PRISON OR  
25 OTHER COMMITMENT IMPOSED AS A RESULT OF THE PREVIOUS FELONY

1 CONVICTION, and he was 21 years of age or older at the time  
2 of the commission of the present offense, he shall be  
3 imprisoned in the state prison for a term of not less than  
4 10 years or more than 100 years.

5 ~~(2)~~(3) Except as provided in 46-18-222, the imposition  
6 or execution of the first 5 years of a sentence imposed  
7 under subsection (1) or the first 10 years of a sentence  
8 imposed under subsection (2) may not be deferred or  
9 suspended.

10 (4) ANY SENTENCE IMPOSED UNDER SUBSECTION (2) SHALL  
11 RUN CONSECUTIVE TO ANY OTHER SENTENCE IMPOSED."

12 Section 2. Section 46-18-222, MCA, is amended to read:

13 "46-18-222. Exceptions to mandatory minimum sentences  
14 and restrictions on deferred imposition and suspended  
15 execution of sentence. All mandatory minimum sentences  
16 prescribed by the laws of this state and the restrictions on  
17 deferred imposition and suspended execution of sentence  
18 prescribed by subsections (3) and (4) of 46-18-201,  
19 46-18-221(3), and 46-18-502~~(2)~~(3) do not apply if:

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

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

1 impaired as to constitute a defense to the prosecution;

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

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

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

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17 was 21 years of age or older at the time of the commission  
18 of the present offense.

19 (2) If the offender was a persistent felony offender,  
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21 conviction, less than 5 years have elapsed between his  
22 previous-felony-conviction-and the commission of the present  
23 offense AND EITHER THE PREVIOUS FELONY CONVICTION OR THE  
24 OFFENDER'S RELEASE ON PAROLE OR OTHERWISE FROM PRISON OR  
25 OTHER COMMITMENT IMPOSED AS A RESULT OF THE PREVIOUS FELONY

1 CONVICTION, and he was 21 years of age or older at the time  
2 of the commission of the present offense, he shall be  
3 imprisoned in the state prison for a term of not less than  
4 10 years or more than 100 years.

5 ~~(2)~~(3) Except as provided in 46-18-222, the imposition  
6 or execution of the first 5 years of a sentence imposed  
7 under subsection (1) or the first 10 years of a sentence  
8 imposed under subsection (2) may not be deferred or  
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19 46-18-221(3), and 46-18-502~~(2)~~(3) do not apply if:

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

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

1 impaired as to constitute a defense to the prosecution;  
2 (3) the defendant, at the time of the commission of  
3 the offense for which he is to be sentenced, was acting  
4 under unusual and substantial duress, although not such  
5 duress as would constitute a defense to the prosecution;  
6 (4) the defendant was an accomplice, the conduct  
7 constituting the offense was principally the conduct of  
8 another, and the defendant's participation was relatively  
9 minor; or  
10 (5) where applicable, no serious bodily injury was  
11 inflicted on the victim unless a weapon was used in the  
12 commission of the offense."

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POLICY AND FACILITY NEEDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR INCREASED PUNISHMENT OF PERSONS WHO HAVE BEEN CONVICTED OF THREE SEPARATE FELONIES; AMENDING SECTIONS 46-18-222 AND 46-18-502, MCA."

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

Section 1. Section 46-18-502, MCA, is amended to read:

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

(1) ~~Except as provided in subsection (2),~~ a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years if he was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his previous felony conviction, less than 5 years have elapsed between his previous-felony-conviction-and the commission of the present offense AND EITHER THE PREVIOUS FELONY CONVICTION OR THE OFFENDER'S RELEASE ON PAROLE OR OTHERWISE FROM PRISON OR OTHER COMMITMENT IMPOSED AS A RESULT OF THE PREVIOUS FELONY

CONVICTION, and he was 21 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years.

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

(4) ANY SENTENCE IMPOSED UNDER SUBSECTION (2) SHALL RUN CONSECUTIVE TO ANY OTHER SENTENCE IMPOSED."

Section 2. Section 46-18-222, MCA, is amended to read:

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

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

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so



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