

House Bill 207

In The House

January 14, 1981	Introduced and referred to Committee on Judiciary.
January 22, 1981	Committee recommend bill do pass.
January 23, 1981	Bill printed and placed on members' desks.
January 24, 1981	Second reading do pass.
January 26, 1981	Considered correctly engrossed.
	Third reading passed.

In The Senate

January 27, 1981	Introduced and referred to Committee on Judiciary.
March 16, 1981	Committee recommend bill not concurred.

In The House

March 17, 1981	Returned from Senate not concurred.
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HOUSE BILL NO. 207

INTRODUCED BY

Keedy

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE "CONVICTED" AS USED IN NONDANGEROUS OFFENDER AND PERSISTENT FELONY OFFENDER DESIGNATIONS; AMENDING SECTIONS 46-18-404 AND 46-18-501, MCA."

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

Section 1. Section 46-18-404, MCA, is amended to read:

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

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

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

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

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

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

(3) If the court determines that an offender is not eligible to be designated as a nondangerous offender, it shall make that determination a part of the sentence imposed and shall state the determination in the judgment. Whenever the sentence and judgment do not contain such a determination, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

~~(4) For the purposes of this section, "convicted" means the defendant is found guilty of the offense in question upon trial or a plea of guilty, whether or not a formal judgment has been entered thereon.~~

Section 2. Section 46-18-501, MCA, is amended to read:

"46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have

1 been previously convicted of a felony if:

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

6 (2) less than 5 years have elapsed between the
7 commission of the present offense and either:

8 (a) the previous felony conviction; or

9 (b) the offender's release on parole or otherwise from
10 prison or other commitment imposed as a result of the
11 previous felony conviction; and

12 (3) the offender has not been pardoned on the ground
13 of innocence and the conviction has not been set aside in a
14 postconviction hearing.

15 ~~(4) For the purposes of this section, "convicted"~~
16 ~~means the defendant is found guilty of the offense in~~
17 ~~question upon trial or a plea of guilty, whether or not a~~
18 ~~formal judgment has been entered thereon."~~

-End-

Approved by Committee
on Judiciary

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