

House Bill 361

In The House

January 20, 1981	Introduced and referred to Committee on Judiciary.
January 22, 1981	Fiscal note requested.
January 27, 1981	Fiscal note returned.
February 2, 1981	Rereferred to Committee on Judiciary.
April 23, 1981	Died in Committee.

HOUSE BILL NO. 361

INTRODUCED BY Brand

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR PERMANENT INCARCERATION OF THIRD FELONY OFFENDERS; AMENDING SECTIONS 46-18-222, 46-18-502, 46-23-201, AND 46-23-411, MCA."

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

Section 1. Section 46-18-502, 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 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 life imprisonment without eligibility for parole.~~

~~(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) may not be deferred or suspended."

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 impaired as to constitute a defense to the prosecution;

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

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

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

4 Section 3. Section 46-23-201, MCA, is amended to read:

5 "46-23-201. Prisoners eligible for parole. (1) Subject
6 to the following restrictions, the board shall release on
7 parole by appropriate order any person confined in the
8 Montana state prison, except persons under sentence of death
9 and persons ~~servng-sentences-imposed-under~~ ineligible for
10 consideration pursuant to 46-18-202(2) or 46-18-502, when in
11 its opinion there is reasonable probability that the
12 prisoner can be released without detriment to himself or to
13 the community:

14 (a) No convict serving a time sentence may be paroled
15 until he has served at least one-half of his full term, less
16 the good time allowance provided for in 53-30-105; except
17 that a convict designated as a nondangerous offender under
18 46-18-404 may be paroled after he has served one-quarter of
19 his full term, less the good time allowance provided for in
20 53-30-105. Any offender serving a time sentence may be
21 paroled after he has served, upon his term of sentence,
22 17 1/2 years.

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

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

7 Section 4. Section 46-23-411, MCA, is amended to read:

8 "46-23-411. Application to participate -- eligibility.
9 Any prisoner confined in the state prison, except a prisoner
10 ~~servng---a---sentence---imposed---under~~ ineligible for
11 consideration pursuant to 46-18-202(2) or 46-18-502, may
12 make application to participate in the furlough program if
13 he has served at least one-half of the time required to be
14 considered for parole and qualifies under the rules
15 established by the department."

-End-

STATE OF MONTANA

REQUEST NO. 184-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 23, , 19 81 , there is hereby submitted a Fiscal Note for HB 361 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 bill for an act entitled: An act to provide for permanent incarceration of third felony offenders; amending sections 46-18-222, 46-18-502, 46-23-201, and 46-23-411, MCA."

Assumptions:

- 1) 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.
- 2) Almost all of the persons currently designated as "persistent felons" are currently incarcerated.
- 3) This legislation, therefore, would 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: 1-27-81