

Senate Bill 219

In The Senate

January 21, 1981	Introduced and referred to Committee on Judiciary. Fiscal note requested.
January 27, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass as amended.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading passed.

In The House

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 27, 1981	Committee recommend bill do pass as amended.
March 30, 1981	Second reading concurred as amended. On motion rules suspended and bill placed on third reading this day.
March 31, 1981	Third reading concurred as amended. On motion rules suspended and bill allowed to be transmitted on 71st day. Motion adopted.

In The Senate

April 1, 1981	Returned from House concurred as amended.
April 3, 1981	Second reading amendment not concurred.

Conference Committee Action

April 7, 1981	On motion Free Conference Committee requested and appointed.
---------------	--

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

*Senators* BILL NO. *219*  
*Steve Harman* *Tim Anderson*  
INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE SENTENCING LAWS; AMENDING SECTION 46-18-201, MCA."

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

NEW SECTION. Section 1. Sentence guidelines -- exceptions. (1) Except as provided in subsection (2), the court shall impose upon an offender convicted of the designated offense the presumptive sentence for such offense as provided for in [section 2].

(2) If the court finds that there are aggravating or mitigating circumstances, it may impose a sentence other than the sentence provided for in [section 2] but within the maximum sentence provided for that offense. Such aggravating or mitigating circumstances may include any of those listed in [section 4 or 5]. The court shall include in the judgment the specific circumstances and factors that constitute the reasons for the imposition of a sentence other than the sentence provided for in [section 2].

(3) Except as provided in subsection (2), a person previously convicted of a felony offense who is presently being sentenced for a second felony committed on a different occasion than the first shall be sentenced to a term of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

imprisonment that is the sentence provided for that offense in [section 2] increased by 30%.

(4) Except as provided in subsection (2), a person who has previously been convicted of a second felony offense who is presently being sentenced for a third or subsequent felony committed on a different occasion than any of his prior felonies shall be sentenced to a term of imprisonment that is the sentence provided for that offense in [section 2] increased by 50%. This sentence may not exceed the maximum range of the sentence provided for that offense in Title 45.

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

(a) the previous felony conviction was 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;

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

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

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a

1 postconviction hearing.

2 NEW SECTION. Section 2. Presumptive sentence. The  
3 Montana supreme court shall, upon consultation with the  
4 district judges of this state, establish a presumptive  
5 sentence for each felony offense set forth in Title 45. The  
6 supreme court shall publish the presumptive sentences on or  
7 before July 1, 1982. The Montana supreme court shall  
8 annually review the list of presumptive sentences and make  
9 such modifications as it considers necessary.

10 Section 3. Section 46-18-201, MCA, is amended to read:

11 "46-18-201. Sentences that may be imposed. (1)  
12 Whenever a person has been found guilty of an offense upon a  
13 verdict or a plea of guilty, the court may:

14 (a) defer imposition of sentence, excepting sentences  
15 for driving under the influence of alcohol or drugs, for a  
16 period not exceeding 1 year for any misdemeanor or for a  
17 period not exceeding 3 years for any felony. The sentencing  
18 judge may impose upon the defendant any reasonable  
19 restrictions or conditions during the period of the deferred  
20 imposition. Such reasonable restrictions or conditions may  
21 include:

- 22 (i) jail base release;  
23 (ii) jail time not exceeding 90 days;  
24 (iii) conditions for probation;  
25 (iv) restitution;

1 (v) any other reasonable conditions considered  
2 necessary for rehabilitation or for the protection of  
3 society; or

4 (vi) any combination of the above;

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

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

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

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

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

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

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

5 ~~(5) All sentences shall be imposed in accordance with~~  
6 ~~[section 1]."~~

7 NEW SECTION. Section 4. Aggravating circumstances for  
8 felonies. Aggravating circumstances may include but are not  
9 limited to the following circumstances found by the court to  
10 have existed at the time the offense was committed:

11 (1) The victim was mentally defective or  
12 incapacitated.

13 (2) The victim was physically helpless.

14 (3) The victim was less than 16 years old or 55 years  
15 of age or older.

16 (4) There were multiple victims.

17 (5) The defendant threatened to inflict bodily injury  
18 upon any person or knowingly put any person in fear of  
19 immediate bodily injury.

20 (6) The defendant took advantage of his fiduciary  
21 relationship with the victim to commit the offense.

22 (7) The defendant used or involved minors in the  
23 commission of the crime.

24 (8) The defendant, prior to age 18, had committed an  
25 act that would have been a felony if committed by an adult.

1 (9) The defendant inflicted bodily injury upon  
2 another.

3 (10) The defendant received compensation for committing  
4 the offense.

5 (11) Any other circumstances considered aggravating by  
6 the sentencing judge.

7 NEW SECTION. Section 5. Mitigating circumstances.  
8 Mitigating circumstances may include but are not limited to  
9 the following:

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

15 (2) The defendant was an accomplice, the conduct  
16 constituting the offense was principally the conduct of  
17 another, and the defendant's participation was relatively  
18 minor.

19 (3) No serious bodily injury was inflicted on the  
20 victim and no weapon was used in the commission of the  
21 offense.

22 (4) The defendant has fully compensated or can  
23 reasonably be expected to fully compensate the victim of his  
24 criminal conduct.

25 (5) The defendant assisted law enforcement authorities

1 in the performance of their duties.

2 (6) Any other circumstances considered mitigating by  
3 the sentencing judge.

4 Section 6. Applicability. The sentencing provisions in  
5 this act apply to all crimes committed after July 1, 1982.

-End-

Approved by Committee  
on Judiciary

1 SENATE BILL NO. 219

2 INTRODUCED BY TOWE, HUENNEKENS, M. ANDERSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE  
5 SENTENCING LAWS; AMENDING ~~SECTION~~ SECTIONS 46-18-201 AND  
6 46-20-103, MCA."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Sentence guidelines --  
10 exceptions. (1) Except as provided in subsection (2), the  
11 court shall impose upon an offender convicted of the  
12 designated offense the presumptive sentence for such offense  
13 as provided for in [section 2].

14 (2) If the court finds that there are aggravating or  
15 mitigating circumstances, it may impose a sentence other  
16 than the sentence provided for in [section 2] but within the  
17 maximum sentence provided for that offense. Such aggravating  
18 or mitigating circumstances may include any of those listed  
19 in [section 4 or 5]. The court shall include in the judgment  
20 the specific circumstances and factors that constitute the  
21 reasons for the imposition of a sentence other than the  
22 sentence provided for in [section 2].

23 (3) Except as provided in subsection (2), a person  
24 previously convicted of a felony offense who is presently  
25 being sentenced for a second felony committed on a different

1 occasion than the first shall be sentenced to a term of  
2 imprisonment that is the sentence provided for that offense  
3 in [section 2] increased by 30%.

4 (4) Except as provided in subsection (2), a person who  
5 has previously been convicted of a second felony offense who  
6 is presently being sentenced for a third or subsequent  
7 felony committed on a different occasion than any of his  
8 prior felonies shall be sentenced to a term of imprisonment  
9 that is the sentence provided for that offense in [section  
10 2] increased by 50%. This sentence may not exceed the  
11 maximum range of the sentence provided for that offense in  
12 Title 45.

13 (5) For the purpose of this section, an offender is  
14 considered to have been previously convicted of a felony if:  
15 (a) the previous felony conviction was for an offense  
16 committed in this state or any other jurisdiction for which  
17 a sentence to a term of imprisonment in excess of 1 year  
18 could have been imposed;

19 (b) less than 5 years have elapsed between the  
20 commission of the present offense and either:

21 (i) the previous felony conviction; or  
22 (ii) the offender's release on parole or otherwise from  
23 prison or other commitment imposed as a result of the  
24 previous felony conviction; and

25 (c) the offender has not been pardoned on the ground

1 of innocence and the conviction has not been set aside in a  
2 postconviction hearing.

3 NEW SECTION. Section 2. Presumptive sentence. The  
4 Montana supreme court shall, upon consultation with the  
5 district judges of this state, establish a presumptive  
6 sentence for each felony offense set forth in Title 45. The  
7 supreme court shall publish the presumptive sentences on or  
8 before July 1, 1982. The Montana supreme court shall  
9 annually review the list of presumptive sentences and make  
10 such modifications as it considers necessary.

11 Section 3. Section 46-18-201, MCA, is amended to read:

12 "46-18-201. Sentences that may be imposed. (1)  
13 Whenever a person has been found guilty of an offense upon a  
14 verdict or a plea of guilty, the court may:

15 (a) defer imposition of sentence, excepting sentences  
16 for driving under the influence of alcohol or drugs, for a  
17 period not exceeding 1 year for any misdemeanor or for a  
18 period not exceeding 3 years for any felony. The sentencing  
19 judge may impose upon the defendant any reasonable  
20 restrictions or conditions during the period of the deferred  
21 imposition. Such reasonable restrictions or conditions may  
22 include:

- 23 (i) jail base release;  
24 (ii) jail time not exceeding 90 days;  
25 (iii) conditions for probation;

1 (iv) restitution;

2 (v) any other reasonable conditions considered  
3 necessary for rehabilitation or for the protection of  
4 society; or

5 (vi) any combination of the above;

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

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

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

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

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

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

1 and (3), 45-9-102(3), and 45-9-103(2).

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

6 (5) All sentences shall be imposed in accordance with  
7 [section 1]."

8 NEW SECTION. Section 4. Aggravating circumstances for  
9 felonies. Aggravating circumstances may include but are not  
10 limited to the following circumstances found by the court to  
11 have existed at the time the offense was committed:

12 (1) The victim was mentally defective or  
13 incapacitated.

14 (2) The victim was physically helpless.

15 (3) The victim was less than 16 years old or 65 years  
16 of age or older.

17 (4) There were multiple victims.

18 (5) The defendant threatened to inflict bodily injury  
19 upon any person or knowingly put any person in fear of  
20 immediate bodily injury.

21 (6) The defendant took advantage of his fiduciary  
22 relationship with the victim to commit the offense.

23 (7) The defendant used or involved minors in the  
24 commission of the crime.

25 (8) The defendant, prior to age 18, had committed an

1 act that would have been a felony if committed by an adult.

2 (9) The defendant inflicted bodily injury upon  
3 another.

4 (10) The defendant received compensation for committing  
5 the offense.

6 (11) Any other circumstances considered aggravating by  
7 the sentencing judge.

8 NEW SECTION. Section 5. Mitigating circumstances.  
9 Mitigating circumstances may include but are not limited to  
10 the following:

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

16 (2) The defendant was an accomplice, the conduct  
17 constituting the offense was principally the conduct of  
18 another, and the defendant's participation was relatively  
19 minor.

20 (3) No serious bodily injury was inflicted on the  
21 victim and no weapon was used in the commission of the  
22 offense.

23 (4) The defendant has fully compensated or can  
24 reasonably be expected to fully compensate the victim of his  
25 criminal conduct.

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

3 (6) Any other circumstances considered mitigating by  
4 the sentencing judge.

5 SECTION 6. SECTION 46-20-103, MCA, IS AMENDED TO READ:

6 "46-20-103. Scope of appeal by state. (1) Except as  
7 otherwise specifically authorized, the state may not appeal  
8 in a criminal case.

9 (2) The state may appeal from any court order or  
10 judgment the substantive effect of which results in:

11 (a) dismissing a case;

12 (b) modifying or changing the verdict as provided in  
13 46-16-702(3)(c);

14 (c) granting a new trial;

15 (d) quashing an arrest or search warrant;

16 (e) suppressing evidence;

17 (f) suppressing a confession or admission; or

18 (g) granting or denying change of venue; or

19 (h) application of or deviation from the presumptive  
20 sentence required by [section 1]."

21 Section 7. Applicability. The sentencing provisions in  
22 this act apply to all crimes committed after July 1, 1982.

-End-

## 1 SENATE BILL NO. 219

2 INTRODUCED BY TOWE, HUENNEKENS, M. ANDERSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE  
5 SENTENCING LAWS; AMENDING ~~SECTION~~ SECTIONS 46-18-201 AND  
6 46-20-103, MCA."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Sentence guidelines --  
10 exceptions. (1) Except as provided in subsection (2), the  
11 court shall impose upon an offender convicted of the  
12 designated offense the presumptive sentence for such offense  
13 as provided for in [section 2].

14 (2) If the court finds that there are aggravating or  
15 mitigating circumstances, it may impose a sentence other  
16 than the sentence provided for in [section 2] but within the  
17 maximum sentence provided for that offense. Such aggravating  
18 or mitigating circumstances may include any of those listed  
19 in [section 4 or 5]. The court shall include in the judgment  
20 the specific circumstances and factors that constitute the  
21 reasons for the imposition of a sentence other than the  
22 sentence provided for in [section 2].

23 (3) Except as provided in subsection (2), a person  
24 previously convicted of a felony offense who is presently  
25 being sentenced for a second felony committed on a different

1 occasion than the first shall be sentenced to a term of  
2 imprisonment that is the sentence provided for that offense  
3 in [section 2] increased by 30%.

4 (4) Except as provided in subsection (2), a person who  
5 has previously been convicted of a second felony offense who  
6 is presently being sentenced for a third or subsequent  
7 felony committed on a different occasion than any of his  
8 prior felonies shall be sentenced to a term of imprisonment  
9 that is the sentence provided for that offense in [section  
10 2] increased by 50%. This sentence may not exceed the  
11 maximum range of the sentence provided for that offense in  
12 Title 45.

13 (5) For the purpose of this section, an offender is  
14 considered to have been previously convicted of a felony if:

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

19 (b) less than 5 years have elapsed between the  
20 commission of the present offense and either:

21 (i) the previous felony conviction; or

22 (ii) the offender's release on parole or otherwise from  
23 prison or other commitment imposed as a result of the  
24 previous felony conviction; and

25 (c) the offender has not been pardoned on the ground

1 of innocence and the conviction has not been set aside in a  
2 postconviction hearing.

3 NEW SECTION. Section 2. Presumptive sentence. The  
4 Montana supreme court shall, upon consultation with the  
5 district judges of this state, establish a presumptive  
6 sentence for each felony offense set forth in Title 45. The  
7 supreme court shall publish the presumptive sentences on or  
8 before July 1, 1982. The Montana supreme court shall  
9 annually review the list of presumptive sentences and make  
10 such modifications as it considers necessary.

11 Section 3. Section 46-18-201, MCA, is amended to read:  
12 "46-18-201. Sentences that may be imposed. (1)  
13 Whenever a person has been found guilty of an offense upon a  
14 verdict or a plea of guilty, the court may:

15 (a) defer imposition of sentence, excepting sentences  
16 for driving under the influence of alcohol or drugs, for a  
17 period not exceeding 1 year for any misdemeanor or for a  
18 period not exceeding 3 years for any felony. The sentencing  
19 judge may impose upon the defendant any reasonable  
20 restrictions or conditions during the period of the deferred  
21 imposition. Such reasonable restrictions or conditions may  
22 include:

- 23 (i) jail base release;  
24 (ii) jail time not exceeding 90 days;  
25 (iii) conditions for probation;

1 (iv) restitution;  
2 (v) any other reasonable conditions considered  
3 necessary for rehabilitation or for the protection of  
4 society; or

5 (vi) any combination of the above;  
6 (b) suspend execution of sentence up to the maximum  
7 sentence allowed for the particular offense. The sentencing  
8 judge may impose on the defendant any reasonable  
9 restrictions during the period of suspended sentence. Such  
10 reasonable restrictions may include any of those listed in  
11 subsections (1)(a)(i) through (1)(a)(vi).

12 (c) impose a fine as provided by law for the offense;  
13 (d) commit the defendant to a correctional institution  
14 with or without a fine as provided by law for the offense;  
15 (e) impose any combination of subsections (1)(b),  
16 (1)(c), and (1)(d).

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

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

1 and (3), 45-9-102(3), and 45-9-103(2).

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

6 (5) All sentences shall be imposed in accordance with  
7 [section 1]."

8 NEW SECTION. Section 4. Aggravating circumstances for  
9 felonies. Aggravating circumstances may include but are not  
10 limited to the following circumstances found by the court to  
11 have existed at the time the offense was committed:

12 (1) The victim was mentally defective or  
13 incapacitated.

14 (2) The victim was physically helpless.

15 (3) The victim was less than 16 years old or 65 years  
16 of age or older.

17 (4) There were multiple victims.

18 (5) The defendant threatened to inflict bodily injury  
19 upon any person or knowingly put any person in fear of  
20 immediate bodily injury.

21 (6) The defendant took advantage of his fiduciary  
22 relationship with the victim to commit the offense.

23 (7) The defendant used or involved minors in the  
24 commission of the crime.

25 (8) The defendant, prior to age 18, had committed an

1 act that would have been a felony if committed by an adult.

2 (9) The defendant inflicted bodily injury upon  
3 another.

4 (10) The defendant received compensation for committing  
5 the offense.

6 (11) Any other circumstances considered aggravating by  
7 the sentencing judge.

8 NEW SECTION. Section 5. Mitigating circumstances.  
9 Mitigating circumstances may include but are not limited to  
10 the following:

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

16 (2) The defendant was an accomplice, the conduct  
17 constituting the offense was principally the conduct of  
18 another, and the defendant's participation was relatively  
19 minor.

20 (3) No serious bodily injury was inflicted on the  
21 victim and no weapon was used in the commission of the  
22 offense.

23 (4) The defendant has fully compensated or can  
24 reasonably be expected to fully compensate the victim of his  
25 criminal conduct.

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

3 (6) Any other circumstances considered mitigating by  
4 the sentencing judge.

5 SECTION 6. SECTION 46-20-103, MCA, IS AMENDED TO READ:

6 "46-20-103. Scope of appeal by state. (1) Except as  
7 otherwise specifically authorized, the state may not appeal  
8 in a criminal case.

9 (2) The state may appeal from any court order or  
10 judgment the substantive effect of which results in:

11 (a) dismissing a case;

12 (b) modifying or changing the verdict as provided in  
13 46-16-702(3)(c);

14 (c) granting a new trial;

15 (d) quashing an arrest or search warrant;

16 (e) suppressing evidence;

17 (f) suppressing a confession or admission; or

18 (g) granting or denying change of venue; or

19 (h) application of or deviation from the presumptive  
20 sentence required by [section 1]."

21 Section 7. Applicability. The sentencing provisions in  
22 this act apply to all crimes committed after July 1, 1982.

-End-

SENATE BILL NO. 219

INTRODUCED BY TOME, HUENNEKENS, M. ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE SENTENCING LAWS; AMENDING SECTION SECTIONS 46-18-201 AND 46-20-103, MCA."

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

NEW SECTION. Section 1. Sentence guidelines —

exceptions. (1) Except as provided in subsection (2) 46-18-201, the court shall impose upon an offender convicted of the designated offense the presumptive sentence for such offense as provided for in [section 2] UNLESS THE COURT FINDS IN ACCORDANCE WITH [SECTION 5] THAT AGGRAVATING CIRCUMSTANCES ARE PRESENT OR IN ACCORDANCE WITH [SECTION 6] THAT MITIGATING CIRCUMSTANCES ARE PRESENT.

(2) If the court finds that there are aggravating or mitigating circumstances, it may impose a sentence other than the sentence provided for in [section 2] but within the maximum sentence provided for that offense. Such aggravating or mitigating circumstances may include any of those listed in [section 4 or 5]. The court shall include in the judgment the specific circumstances and factors that constitute the reasons for the imposition of a sentence other than the sentence provided for in [section 2].

(3) Except as provided in subsection (2) a person previously convicted of a felony offense who is presently being sentenced for a second felony committed on a different occasion than the first shall be sentenced to a term of imprisonment that is the sentence provided for that offense in [section 2] increased by 30%.

(4) Except as provided in subsection (2) a person who has previously been convicted of a second felony offense who is presently being sentenced for a third or subsequent felony committed on a different occasion than any of his prior felonies shall be sentenced to a term of imprisonment that is the sentence provided for that offense in [section 2] increased by 50%. This sentence may not exceed the maximum range of the sentence provided for that offense in Title 45.

(5) For the purpose of this section, an offender is considered to have been previously convicted of a felony if: (a) the previous felony conviction was 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;

(b) less than 5 years have elapsed between the commission of the present offense and either: (i) the previous felony conviction; or (ii) the offender's release on parole or otherwise from

~~1 prison or other commitment imposed as a result of the  
2 previous felony conviction and~~

~~3 (c) the offender has not been pardoned on the ground  
4 of innocence and the conviction has not been set aside in a  
5 postconviction hearing~~

6 NEW SECTION. Section 2. Presumptive sentence. The  
7 Montana supreme court shall, upon consultation with the  
8 district judges of this state, establish a presumptive  
9 sentence for each felony offense set forth in ~~title 45~~

10 [SECTION 7] WITHIN THE RANGES CONTAINED THEREIN AND FOR ALL  
11 OTHER FELONY OFFENSES SET FORTH IN THE MCA WITHIN THE  
12 SENTENCING RANGE, IF ANY, DESIGNATED FOR EACH SUCH OFFENSE.

13 The supreme court shall publish the presumptive sentences on  
14 or before July 1, 1982. The Montana supreme court shall  
15 annually review the list of presumptive sentences and make  
16 such modifications as it considers necessary CONSISTENT WITH  
17 THE RANGES SET FORTH IN [SECTION 7].

18 Section 3. Section 46-18-201, MCA, is amended to read:  
19 "46-18-201. Sentences that may be imposed. (1)  
20 Whenever a person has been found guilty of an offense upon a  
21 verdict or a plea of guilty, the court may:

22 (a) defer imposition of sentence, excepting sentences  
23 for driving under the influence of alcohol or drugs, for a  
24 period not exceeding 1 year for any misdemeanor or for a  
25 period not exceeding 3 years for any felony. The sentencing

1 judge may impose upon the defendant any reasonable  
2 restrictions or conditions during the period of the deferred  
3 imposition. Such reasonable restrictions or conditions may  
4 include:

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

12 (vi) any combination of the above;  
13 (b) suspend execution of sentence up to the maximum  
14 sentence allowed for the particular offense. The sentencing  
15 judge may impose on the defendant any reasonable  
16 restrictions during the period of suspended sentence. Such  
17 reasonable restrictions may include any of those listed in  
18 subsections (1)(a)(i) through (1)(a)(vi).

19 (c) impose a fine as provided by law for the offense;  
20 (d) commit the defendant to a correctional institution  
21 with or without a fine as provided by law for the offense;  
22 (e) impose any combination of subsections (1)(b),  
23 (1)(c), and (1)(d).

24 (2) If any restrictions or conditions imposed under  
25 subsection (1)(a) or (1)(b) are violated, any elapsed time,

1 except jail time, is not a credit against the sentence  
2 unless the court orders otherwise.

3 (3) Except as provided in 46-18-222, the imposition or  
4 execution of the first 2 years of a sentence of imprisonment  
5 imposed under the following sections may not be deferred or  
6 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),  
7 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)  
8 and (3), 45-9-102(3), and 45-9-103(2).

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

13 (5) All sentences shall be imposed in accordance with  
14 [section 1]."

15 ~~NEW SECTION - Section 4 - Aggravating circumstances for~~  
16 ~~felonies - Aggravating circumstances may include but are not~~  
17 ~~limited to the following circumstances found by the court to~~  
18 ~~have existed at the time the offense was committed:~~

19 ~~(1) The victim was mentally defective or~~  
20 ~~incapacitated.~~

21 ~~(2) The victim was physically helpless.~~

22 ~~(3) The victim was less than 16 years old or 65 years~~  
23 ~~of age or older.~~

24 ~~(4) There were multiple victims.~~

25 ~~(5) The defendant threatened to inflict bodily injury~~

1 ~~upon any person or knowingly put any person in fear of~~  
2 ~~immediate bodily injury.~~

3 ~~(6) The defendant took advantage of his fiduciary~~  
4 ~~relationship with the victim to commit the offense.~~

5 ~~(7) The defendant used or involved minors in the~~  
6 ~~commission of the crime.~~

7 ~~(8) The defendant prior to age 18 had committed an~~  
8 ~~act that would have been a felony if committed by an adult.~~

9 ~~(9) The defendant inflicted bodily injury upon~~  
10 ~~another.~~

11 ~~(10) The defendant received compensation for committing~~  
12 ~~the offense.~~

13 ~~(11) Any other circumstances considered aggravating by~~  
14 ~~the sentencing judge.~~

15 ~~NEW SECTION - Section 5 - Mitigating circumstances~~  
16 ~~Mitigating circumstances may include but are not limited to~~  
17 ~~the following:~~

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

23 ~~(2) The defendant was an accomplice, the conduct~~  
24 ~~constituting the offense was principally the conduct of~~  
25 ~~another, and the defendant's participation was relatively~~

1 ~~minor.~~

2 ~~(3) No serious bodily injury was inflicted on the~~  
3 ~~victim and no weapon was used in the commission of the~~  
4 ~~offense.~~

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

8 ~~(5) The defendant assisted law enforcement authorities~~  
9 ~~in the performance of their duties.~~

10 ~~(6) Any other circumstances considered mitigating by~~  
11 ~~the sentencing judge.~~

12 NEW SECTION. SECTION 4. HEARING TO DETERMINE  
13 EXCEPTIONS TO PRESUMPTIVE 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 CROSS-  
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 6] EXISTED, THE COURT SHALL IMPOSE THE APPLICABLE MANDATORY  
2 PRESUMPTIVE SENTENCE. IF IT APPEARS BY A PREPONDERANCE OF  
3 THE EVIDENCE THAT ONE OR MORE OF THE CIRCUMSTANCES  
4 ENUMERATED IN [SECTION 5 OR 6] EXISTED, THE COURT SHALL  
5 IMPOSE THE APPLICABLE SENTENCE AS PROVIDED IN [SECTION 5 OR  
6 6].

7 (4) THE COURT SHALL STATE THE REASONS FOR ITS DECISION  
8 IN WRITING AND SHALL INCLUDE AN IDENTIFICATION OF THE FACTS  
9 RELIED UPON IN MAKING ITS DETERMINATION. THE STATEMENT  
10 SHALL BE INCLUDED IN THE JUDGMENT.

11 NEW SECTION. SECTION 5. AGGRAVATING CIRCUMSTANCES FOR  
12 FELONIES -- INCREASED PENALTIES. (1) THE COURT SHALL ADD TO  
13 THE MANDATORY PRESUMPTIVE SENTENCE FOR A FELONY OFFENSE 25%  
14 OF THE MANDATORY SENTENCE FOR EACH OF THE FOLLOWING  
15 AGGRAVATING CIRCUMSTANCES FOUND BY THE COURT TO HAVE EXISTED  
16 AT THE TIME THE OFFENSE WAS COMMITTED, KNOWN BY THE  
17 DEFENDANT TO EXIST, AND CONSIDERED BY THE DEFENDANT IN THE  
18 COMMISSION OF THE OFFENSE:

19 (A) THE VICTIM WAS MENTALLY DEFECTIVE OR  
20 INCAPACITATED;

21 (B) THE VICTIM WAS PHYSICALLY HELPLESS;

22 (C) THE VICTIM WAS LESS THAN 16 YEARS OLD OR 65 YEARS  
23 OF AGE OR OLDER;

24 (D) THERE WERE MULTIPLE VICTIMS;

25 (E) THE DEFENDANT THREATENED TO INFLICT BODILY INJURY

1 UPON ANY PERSON OR KNOWINGLY PUT ANY PERSON IN FEAR OF  
2 IMMEDIATE BODILY INJURY;

3 (F) THE DEFENDANT TOOK ADVANTAGE OF HIS FIDUCIARY  
4 RELATIONSHIP WITH THE VICTIM TO COMMIT THE OFFENSE;

5 (G) THE DEFENDANT USED OR INVOLVED MINORS IN THE  
6 COMMISSION OF THE CRIME; OR

7 (H) THE DEFENDANT, PRIOR TO AGE 18, HAD COMMITTED AN  
8 ACT THAT WOULD HAVE BEEN A FELONY IF COMMITTED BY AN ADULT.

9 (2) THE COURT SHALL ADD TO THE MANDATORY PRESUMPTIVE  
10 SENTENCE FOR A FELONY OFFENSE 50% OF THE MANDATORY SENTENCE  
11 FOR EACH OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES FOUND BY  
12 THE COURT TO HAVE EXISTED AT THE TIME THE OFFENSE WAS  
13 COMMITTED:

14 (A) THE DEFENDANT INFLICTED BODILY INJURY UPON  
15 ANOTHER;

16 (B) THE DEFENDANT RECEIVED COMPENSATION FOR COMMITTING  
17 THE OFFENSE;

18 (C) THE DEFENDANT, WHILE ENGAGED IN THE COMMISSION OF  
19 THE OFFENSE, KNOWINGLY DISPLAYED, BRANDISHED, OR OTHERWISE  
20 USED A FIREARM, DESTRUCTIVE DEVICE AS DEFINED IN  
21 45-8-332(1), OR OTHER DANGEROUS WEAPON;

22 (D) THE DEFENDANT HAD PREVIOUSLY BEEN CONVICTED OF A  
23 FELONY.

24 (3) THE COURT SHALL ADD TO THE MANDATORY PRESUMPTIVE  
25 SENTENCE FOR A FELONY OFFENSE 100% OF THE MANDATORY SENTENCE

1 FOR EACH OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES FOUND BY  
2 THE COURT TO HAVE EXISTED AT THE TIME THE OFFENSE WAS  
3 COMMITTED:

4 (A) THE DEFENDANT IS A PERSON WHO HAD PREVIOUSLY BEEN  
5 CONVICTED OF AN OFFENSE COMMITTED UNDER 18 U.S.C. 924(C), AS  
6 AMENDED, ON A DIFFERENT OCCASION THAN THE PRESENT OFFENSE OR  
7 WHO HAD PREVIOUSLY BEEN CONVICTED OF AN OFFENSE IN THIS OR  
8 ANOTHER STATE, COMMITTED ON A DIFFERENT OCCASION THAN THE  
9 PRESENT OFFENSE, DURING THE COMMISSION OF WHICH HE KNOWINGLY  
10 DISPLAYED, BRANDISHED, OR OTHERWISE USED A FIREARM,  
11 DESTRUCTIVE DEVICE AS DEFINED IN 45-8-332(1), OR OTHER  
12 DANGEROUS WEAPON;

13 (B) THE DEFENDANT IS A PERSON WHO HAD PREVIOUSLY BEEN  
14 CONVICTED OF A SECOND FELONY OFFENSE AND WHO IS PRESENTLY  
15 BEING SENTENCED FOR A THIRD OR SUBSEQUENT FELONY COMMITTED  
16 ON A DIFFERENT OCCASION THAN ANY OF HIS PRIOR FELONIES.

17 (4) FOR THE PURPOSE OF THIS SECTION, AN OFFENDER IS  
18 CONSIDERED TO HAVE BEEN PREVIOUSLY CONVICTED OF A FELONY IF:

19 (A) THE PREVIOUS FELONY CONVICTION WAS FOR AN OFFENSE  
20 COMMITTED IN THIS STATE OR ANY OTHER JURISDICTION FOR WHICH  
21 A SENTENCE TO A TERM OF IMPRISONMENT IN EXCESS OF 1 YEAR  
22 COULD HAVE BEEN IMPOSED; AND

23 (B) THE OFFENDER HAS NOT BEEN PARDONED ON THE GROUND  
24 OF INNOCENCE AND THE CONVICTION HAS NOT BEEN SET ASIDE IN A  
25 POSTCONVICTION HEARING.

1 (5) A CIRCUMSTANCE THAT CONSTITUTES A LESSER INCLUDED  
 2 OFFENSE OF THE PRESENT OFFENSE OR A CIRCUMSTANCE THAT  
 3 CONSTITUTES A NECESSARY ELEMENT OF THE PRESENT OFFENSE MAY  
 4 NOT BE FOUND TO BE AN AGGRAVATING CIRCUMSTANCE FOR PURPOSES  
 5 OF THIS SECTION.

6 NEW SECTION. SECTION 6. MITIGATING CIRCUMSTANCES FOR  
 7 FELONIES -- REDUCED PENALTIES. IF APPROPRIATE FOR THE  
 8 OFFENSE, THE COURT SHALL REDUCE THE SENTENCE FOR A FELONY  
 9 OFFENSE BY 10% FOR EACH OF THE FOLLOWING MITIGATING  
 10 CIRCUMSTANCES FOUND TO BE PRESENT:

11 (1) THE DEFENDANT, AT THE TIME OF THE COMMISSION OF  
 12 THE OFFENSE FOR WHICH HE IS TO BE SENTENCED, WAS ACTING  
 13 UNDER UNUSUAL AND SUBSTANTIAL DURESS. THE DURESS NEED NOT  
 14 BE SUCH THAT IT WOULD CONSTITUTE A DEFENSE TO THE  
 15 PROSECUTION.

16 (2) THE DEFENDANT WAS AN ACCOMPLICE, THE CONDUCT  
 17 CONSTITUTING THE OFFENSE WAS PRINCIPALLY THE CONDUCT OF  
 18 ANOTHER, AND THE DEFENDANT'S PARTICIPATION WAS RELATIVELY  
 19 MINOR.

20 (3) NO SERIOUS BODILY INJURY WAS INFLICTED ON THE  
 21 VICTIM NOR WAS A WEAPON USED IN THE COMMISSION OF THE  
 22 OFFENSE.

23 (4) THE DEFENDANT HAS FULLY COMPENSATED OR CAN  
 24 REASONABLY BE EXPECTED TO FULLY COMPENSATE THE VICTIM OF HIS  
 25 CRIMINAL CONDUCT.

1 (5) THE DEFENDANT ASSISTED LAW ENFORCEMENT AUTHORITIES  
 2 IN THE PERFORMANCE OF THEIR DUTIES.

3 NEW SECTION. SECTION 7. PRESUMPTIVE SENTENCING RANGES  
 4 FOR SPECIFIED FELONIES. PURSUANT TO [SECTION 2] THE MONTANA  
 5 SUPREME COURT SHALL ESTABLISH A PRESUMPTIVE SENTENCE FOR  
 6 EACH OF THE FOLLOWING FELONY OFFENSES WITHIN THE DESIGNATED  
 7 RANGE:

- 8 (1) 55 TO 75 YEARS FOR DELIBERATE HOMICIDE;  
 9 (2) 25 TO 35 YEARS FOR MITIGATED DELIBERATE HOMICIDE;  
 10 (3) 5 TO 10 YEARS FOR AIDING OR SOLICITING SUICIDE;  
 11 (4) 2 TO 5 YEARS FOR ASSAULT UNDER 45-5-201(3);  
 12 (5) 10 TO 20 YEARS FOR AGGRAVATED ASSAULT;  
 13 (6) 1 TO 5 YEARS FOR INTIMIDATION;  
 14 (7) 1 TO 5 YEARS FOR MISTREATING PRISONERS;  
 15 (8) 5 TO 10 YEARS FOR KIDNAPPING;  
 16 (9) 40 TO 50 YEARS FOR AGGRAVATED KIDNAPPING WITHOUT  
 17 VOLUNTARY RELEASE OF VICTIM;  
 18 (10) 5 TO 10 YEARS FOR AGGRAVATED KIDNAPPING WITH  
 19 VOLUNTARY RELEASE OF VICTIM;  
 20 (11) 3 TO 7 YEARS FOR CUSTODIAL INTERFERENCE;  
 21 (12) 15 TO 25 YEARS FOR ROBBERY;  
 22 (13) 5 TO 15 YEARS FOR SEXUAL ASSAULT UNDER  
 23 45-5-502(3);  
 24 (14) 15 TO 20 YEARS FOR SEXUAL INTERCOURSE WITHOUT  
 25 CONSENT UNDER 45-5-503(2);

1       (15) 25 TO 35 YEARS FOR SEXUAL INTERCOURSE WITHOUT  
 2 CONSENT UNDER 45-5-503(3);  
 3       (16) 1 TO 5 YEARS FOR DEVIATE SEXUAL CONDUCT UNDER  
 4 45-5-505(2);  
 5       (17) 5 TO 15 YEARS FOR DEVIATE SEXUAL CONDUCT UNDER  
 6 45-5-505(3);  
 7       (18) 5 TO 15 YEARS FOR AGGRAVATED PROMOTION OF  
 8 PROSTITUTION;  
 9       (19) 1 TO 5 YEARS FOR INCEST;  
 10       (20) 1 TO 5 YEARS FOR NONSUPPORT;  
 11       (21) 10 TO 20 YEARS FOR SEXUAL ABUSE OF CHILDREN;  
 12       (22) 5 TO 10 YEARS FOR NEGLIGENT ARSON;  
 13       (23) 10 TO 20 YEARS FOR ARSON;  
 14       (24) 5 TO 10 YEARS FOR BURGLARY;  
 15       (25) 15 TO 25 YEARS FOR AGGRAVATED BURGLARY;  
 16       (26) 5 TO 15 YEARS FOR CRIMINAL SALE OF DANGEROUS DRUGS  
 17 UNDER 45-9-101(2);  
 18       (27) 15 TO 25 YEARS FOR CRIMINAL SALE OF DANGEROUS  
 19 DRUGS UNDER 45-9-101(3) WITH A PRIOR CONVICTION;  
 20       (28) 35 TO 45 YEARS FOR CRIMINAL SALE OF DANGEROUS  
 21 DRUGS UNDER 45-9-101(3) UPON A THIRD OR SUBSEQUENT  
 22 CONVICTION;  
 23       (29) 5 TO 10 YEARS FOR CRIMINAL POSSESSION OF DANGEROUS  
 24 DRUGS WITH INTENT TO SELL.  
 25       SECTION 8. SECTION 46-20-103, MCA, IS AMENDED TO READ:

1       "46-20-103. Scope of appeal by state. (1) Except as  
 2 otherwise specifically authorized, the state may not appeal  
 3 in a criminal case.  
 4       (2) The state may appeal from any court order or  
 5 judgment the substantive effect of which results in:  
 6       (a) dismissing a case;  
 7       (b) modifying or changing the verdict as provided in  
 8 46-16-702(3)(c);  
 9       (c) granting a new trial;  
 10       (d) quashing an arrest or search warrant;  
 11       (e) suppressing evidence;  
 12       (f) suppressing a confession or admission; or  
 13       (g) granting or denying change of venue; or  
 14       

### (h) ~~application of or deviation from~~ MISAPPLICATION OF

  
 15 the presumptive sentence required by [section 1] OR THE  
 16 EXCEPTIONS ENUMERATED IN [SECTION 5 OR 6]."  
 17       Section 9. Applicability. The sentencing provisions in  
 18 this act apply to all crimes committed after July 1, 1982.

-End-

SENATE

Bill No. 219

Respectfully report as follows: That.....  
BE AMENDED AS FOLLOWS:

1. Page 1, line 10.

Following: "."

Strike: "(1)"

Following: "in"

Strike: "subsection (2)"

Insert: "46-18-201"

2. Page 1, line 13.

Following: "[section 2]"

Insert: "unless the court finds in accordance with [section 5] that  
aggravating circumstances are present or in accordance with [section  
6] that mitigating circumstances are present"

3. Page 1, line 14 through line 2, page 3.

Strike: subsections (2) through (5) in their entirety

(Continued)

4. Page 3, line 6.

Following: "in"

Strike: "Title 45"

Insert: "[section 7] within the ranges contained therein and for all  
other felony offenses set forth in the MCA within the sentencing  
range, if any, designated for each such offense"

5. Page 3, line 10.

Following: "necessary"

Insert: "consistent with the ranges set forth in [section 7]"

6. Page 5, line 8 through line 4, page 7.

Strike: sections 4 and 5 in their entirety

Insert: "NEW SECTION. Section 4. Hearing to determine exceptions  
to presumptive sentences. (1) Upon request of either the defendant  
or the prosecution, the court shall grant a hearing prior to the  
imposition of sentence to determine the existence of circumstances  
enumerated in [section 5 or 6].(2) The hearing shall be held before the court sitting  
without a jury. The defendant and the prosecution are entitled  
to the assistance of counsel, compulsory process, and cross-  
examination of witnesses who appear at the hearing.(3) If it appears by a preponderance of the evidence  
submitted during the trial and during the sentencing hearing  
that none of the circumstances enumerated in [section 5 or 6]  
existed, the court shall impose the applicable mandatory sentence.  
If it appears by a preponderance of the evidence that one or more  
of the circumstances enumerated in [section 5 or 6] existed, the  
court shall impose the applicable sentence as provided in [section  
5 or 6].(4) The court shall state the reasons for its decision in  
writing and shall include an identification of the facts relied  
upon in making its determination. The statement shall be included  
in the judgment.NEW SECTION. Section 5. Aggravating circumstances for  
felonies -- increased penalties. (1) The court shall add to the  
mandatory sentence for a felony offense 25% of the mandatory  
sentence for each of the following aggravating circumstances found  
by the court to have existed at the time the offense was committed,  
known by the defendant to exist, and considered by the defendant in  
the commission of the offense:

(a) the victim was mentally defective or incapacitated;

(b) the victim was physically helpless;

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

(d) there were multiple victims;

(e) the defendant threatened to inflict bodily injury upon  
any person or knowingly put any person in fear of immediate bodily  
injury;(f) the defendant took advantage of his fiduciary relation-  
ship with the victim to commit the offense;

March 26, 1981

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

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

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

(a) the defendant inflicted bodily injury upon another;

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

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

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

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

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

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

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

(a) the previous felony conviction was 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 offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a post-conviction hearing.

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

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

(1) 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. The duress need not be such that it would

constitute a defense to the prosecution.

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

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

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

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

**NEW SECTION.** Section 7. Presumptive sentencing ranges for specified felonies. Pursuant to [section 2] the Montana supreme court shall establish a presumptive sentence for each of the following felony offenses within the designated range:

(1) 55 - 75 years for deliberate homicide;

(2) 25 - 35 years for mitigated deliberate homicide;

(3) 5 - 10 years for aiding or soliciting suicide;

(4) 2 - 5 years for assault under 45-5-201(3);

(5) 10 - 20 years for aggravated assault;

(6) 1 - 5 years for intimidation;

(7) 1 - 5 years for mistreating prisoners;

(8) 5 - 10 years for kidnapping;

(9) 40 - 50 years for aggravated kidnapping without voluntary release of victim;

(10) 5 - 10 years for aggravated kidnapping with voluntary release of victim;

(11) 3 - 7 years for custodial interference;

(12) 15 - 25 years for robbery;

(13) 5 - 15 years for sexual assault under 45-5-502(3);

(14) 15 - 20 years for sexual intercourse without consent under 45-5-503(2);

(15) 25 - 35 years for sexual intercourse without consent under 45-5-503(3);

(16) 1 - 5 years for deviate sexual conduct under 45-5-505(2)

(17) 5 - 15 years for deviate sexual conduct under 45-5-505(3)

(18) 5 - 15 years for aggravated promotion of prostitution;

(19) 1 - 5 years for incest;

(20) 1 - 5 years for nonsupport;

(21) 10 - 20 years for sexual abuse of children;

(22) 5 - 10 years for negligent arson;

(23) 10 - 20 years for arson;

(24) 5 - 10 years for burglary;

(25) 15 - 25 years for aggravated burglary;

(26) 5 - 15 years for criminal sale of dangerous drugs under 45-9-101(2);

(27) 15 - 25 years for criminal sale of dangerous drugs under 45-9-101(3) with a prior conviction;

(28) 35 - 45 years for criminal sale of dangerous drugs under 45-9-101(3) upon a third or subsequent conviction;

(29) 5 - 10 years for criminal possession of dangerous drugs with intent to sell.

Renumber: subsequent section.

7. Page 7, line 19.

Following: "(h)"

Strike: "application of or deviation from"

Insert: "misapplication of"

8. Page 7, line 20.

Following: "[section 1]"

Insert: "or the exceptions enumerated in [sections 5 or 6]"

House amendments to House Judiciary amendments of 3/26/81 to  
SENATE BILL 219:

All amendments are to Amendment #6 on green sheet:

1. Section 4, subsection 3, line 4.  
Following: "applicable"  
Strike: "mandatory"  
Insert: "presumptive"

2. Section 5, subsection 1, line 2.  
Following: line 2  
Strike: "mandatory"  
Insert: "presumptive"  
Following: "the"  
Strike: "mandatory"

3. Section 5, subsection 2, line 1.  
Following: "to the"  
Strike: "mandatory"  
Insert: "presumptive"

4. Section 5, subsection 2, line 2.  
Following: "50% of the"  
Strike: "mandatory"

5. Section 5, subsection 3, line 1.  
Following: "to the"  
Strike: "mandatory"  
Insert: "presumptive"

6. Section 5, subsection 3, line 2.  
Following: "100% of the"  
Strike: "mandatory"