

HOUSE BILL NO. 583

Introduced: 01/31/83

Referred to Committee on Judiciary: 01/31/83

Hearing: 2/8/83

Report: 02/08/83, Do Not Pass

Bill Killed: 02/09/83

1 House BILL NO. 583
 2 INTRODUCED BY Danna Swift
 3 BY REQUEST OF THE TASK FORCE ON CORRECTIONS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 6 SENTENCING LAWS; PROVIDING MANDATORY SENTENCES; AMENDING
 7 SECTIONS 45-5-102, 45-5-103, 45-5-105, 45-5-201 THROUGH
 8 45-5-204, 45-5-302 THROUGH 45-5-304, 45-5-401, 45-5-502,
 9 45-5-503, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-5-625,
 10 45-6-102, 45-6-103, 45-6-204, 45-9-101, 45-9-103, 46-18-101,
 11 46-18-112, 46-18-201, 46-18-222, AND 46-18-223, MCA;
 12 REPEALING SECTIONS 46-18-221 AND 46-18-501 THROUGH
 13 46-18-503, MCA; AND PROVIDING AN EFFECTIVE DATE."
 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 46-18-112, MCA, is amended to read:
 9 "46-18-112. Content of investigation. Whenever an
 10 investigation is required, the probation officer shall
 11 promptly inquire into the ~~characteristics, circumstances,~~
 12 ~~needs, and potentialities of the defendant;~~ his defendant's
 13 criminal record ~~and social history;~~ the circumstances of the
 14 offense; the time the defendant has been in detention; and
 15 the harm to the victim, his immediate family, and the
 16 community. All local and state mental and correctional
 17 institutions, courts, and police agencies shall furnish the
 18 probation officer, on request, the defendant's criminal
 19 record and other relevant information. The investigation
 20 shall include a physical and mental examination of the
 21 defendant when it is desirable in the opinion of the court."

22 Section 3. Section 46-18-201, MCA, is amended to read:
 23 "46-18-201. Sentences that may be imposed. (1)
 24 Whenever a person has been found guilty of an offense upon a
 25 verdict or a plea of guilty, the court may:

(a) defer imposition of sentence for a person eligible under 46-18-222, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 10 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (i) jail base release;
 - (ii) jail time not exceeding 90 days;
 - (iii) conditions for probation;
 - (iv) restitution;
 - (v) payment of a fine as provided in 46-18-231;
 - (vi) payment of costs as provided in 46-18-232 and 46-18-233;
 - (vii) payment of costs of court appointed counsel as provided in 46-8-113;
 - (viii) community service;
 - (ix) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
 - (x) any combination of the above;
- (b) suspend execution of sentence for a person eligible under 46-18-222 up to the maximum sentence allowed for the particular offense. The sentencing judge may impose

on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(x).

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

(d) require payment of costs as provided in 46-18-232 or payment of costs of court appointed counsel as provided in 46-8-113;

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

(f) impose any combination of subsections (1)(b) through (1)(e).

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

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

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

1 ~~or suspended.~~

2 ~~(5)(3) Except as provided in 46-18-222, imposition~~
 3 Imposition of sentence in a felony case may not be deferred
 4 in the case of a defendant who has been convicted of a
 5 felony on a prior occasion whether or not the sentence was
 6 imposed, imposition of the sentence was deferred, or
 7 execution of the sentence was suspended."

8 NEW SECTION. Section 4. Mandatory sentences to be
 9 imposed for felonies -- exceptions. Except as provided in
 10 46-18-201, the court shall impose the mandatory sentence
 11 provided by law for a felony offense unless the court finds
 12 in accordance with [section 6] that aggravating
 13 circumstances are present or in accordance with [section 7]
 14 that mitigating circumstances are present.

15 NEW SECTION. Section 5. Hearing to determine
 16 exceptions to mandatory sentences. (1) Upon request of
 17 either the defendant or the prosecution, the court shall
 18 grant a hearing prior to the imposition of sentence to
 19 determine the existence of circumstances enumerated in
 20 [section 6 or 7].

21 (2) The hearing shall be held before the court sitting
 22 without a jury. The defendant and the prosecution are
 23 entitled to the assistance of counsel, compulsory process,
 24 and cross-examination of witnesses who appear at the
 25 hearing.

1 (3) If it appears by a preponderance of the evidence
 2 submitted during the trial and during the sentencing hearing
 3 that none of the circumstances enumerated in [section 6 or
 4 7] existed, the court shall impose the applicable mandatory
 5 sentence. If it appears by a preponderance of the evidence
 6 that one or more of the circumstances enumerated in [section
 7 6 or 7] existed, the court shall impose the applicable
 8 sentence as provided in [section 6 or 7].

9 (4) The court shall state the reasons for its decision
 10 in writing and shall include an identification of the facts
 11 relied upon in making its determination. The statement
 12 shall be included in the judgment.

13 NEW SECTION. Section 6. Aggravating circumstances for
 14 felonies -- increased penalties. (1) The court shall add to
 15 the mandatory sentence for a felony offense 25% of the
 16 mandatory sentence for each of the following aggravating
 17 circumstances found by the court to have existed at the time
 18 the offense was committed, known by the defendant to exist,
 19 and considered by the defendant in the commission of the
 20 offense:

21 (a) the victim was mentally defective or
 22 incapacitated;

23 (b) the victim was physically helpless;

24 (c) the victim was less than 16 years of age or 65
 25 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 relationship with the victim to commit the offense;

(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; or

(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) 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; or

(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 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 7. 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; or

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

3 Section 8. Section 46-18-222, MCA, is amended to read:

4 ~~"46-18-222. Exceptions to mandatory minimum sentences~~
5 ~~and restrictions on deferred imposition and suspended~~
6 ~~execution of sentence~~ Eligibility for deferred or suspended
7 sentence. All mandatory minimum sentences prescribed by the
8 laws of this state and the restrictions on deferred
9 imposition and suspended execution of sentence prescribed by
10 subsections (3), (4), and (5) of 46-18-201, 46-18-221(3),
11 and 46-18-502(3) do not apply. A person is eligible for a
12 deferred imposition or suspension of sentence as provided in
13 46-18-201 if:

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

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

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

25 (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

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

~~(6) the defendant has not been under the supervision of any state or federal correctional institution or court for a period of 5 years immediately preceding commission of the present offense."~~

Section 9. Section 46-18-223, MCA, is amended to read:

"46-18-223. Hearing to determine application--of exceptions eligibility. (1) When the--application--of--an exception--provided--for--in eligibility for deferred imposition or suspension of sentence under 46-18-222 is an issue, upon request the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception such eligibility.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information evidence, including information submitted during the trial, and during the sentencing hearing, ~~and in so much~~

~~of the presentence report as the court relies on~~ that none of the ~~exceptions at issue~~ provisions for eligibility apply, the court shall impose the ~~appropriate~~ applicable mandatory sentence ~~with no deferred imposition or suspension thereof~~.

(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."

Section 10. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) Except as provided in 45-5-103(1), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or by imprisonment in the state prison for a term of ~~not less than 10 years or more than 100~~ 60 years, ~~except as provided in 46-18-222."~~

Section 11. Section 45-5-103, MCA, is amended to read:

"45-5-103. Mitigated deliberate homicide. (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of ~~not less than 2 years or more than 40~~ 30 years and may be fined not more than \$50,000, ~~except as provided in 46-10-222.~~"

Section 12. Section 45-5-105, MCA, is amended to read:

"45-5-105. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur, commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any a term ~~not to exceed~~ of 10 years or be fined an amount not to exceed \$50,000, or both."

Section 13. Section 45-5-201, MCA, is amended to read:

"45-5-201. Assault. (1) A person commits the offense

of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term ~~not to exceed 5~~ of 10 years, or both."

Section 14. Section 45-5-202, MCA, is amended to read:

"45-5-202. Aggravated assault. (1) A person commits

1 the offense of aggravated assault if he purposely or
2 knowingly causes:

- 3 (a) serious bodily injury to another;
- 4 (b) bodily injury to another with a weapon;
- 5 (c) reasonable apprehension of serious bodily injury
6 in another by use of a weapon; or
- 7 (d) bodily injury to a peace officer or a person who
8 is responsible for the care or custody of a prisoner.

9 (2) A person convicted of aggravated assault shall be
10 imprisoned in the state prison for a term of ~~not less than 2~~
11 ~~years or more than 20 years~~ and may be fined not more than
12 \$50,000, ~~except as provided in 46-10-222.~~"

13 Section 15. Section 45-5-203, MCA, is amended to read:

14 "45-5-203. Intimidation. (1) A person commits the
15 offense of intimidation when, with the purpose to cause
16 another to perform or to omit the performance of any act, he
17 communicates to another a threat to perform without lawful
18 authority any of the following acts:

- 19 (a) inflict physical harm on the person threatened or
20 any other person or on property;
- 21 (b) subject any person to physical confinement or
22 restraint;
- 23 (c) commit any criminal offense;
- 24 (d) accuse any person of an offense;
- 25 (e) expose any person to hatred, contempt, or

1 ridicule; or

2 (f) take action as a public official against anyone or
3 anything, withhold official action, or cause such action or
4 withholding.

5 (2) A person commits the offense of intimidation if he
6 knowingly communicates a threat or false report of a pending
7 fire, explosion, or disaster which would endanger life or
8 property.

9 (3) A person convicted of the offense of intimidation
10 shall be imprisoned in the state prison for ~~any a term not~~
11 ~~to exceed 10 of 2 years~~ or be fined an amount not to exceed
12 \$50,000, or both."

13 Section 16. Section 45-5-204, MCA, is amended to read:

14 "45-5-204. Mistreating prisoners. (1) A person commits
15 the offense of mistreating prisoners if, being responsible
16 for the care or custody of a prisoner, he purposely or
17 knowingly:

- 18 (a) assaults or otherwise injures a prisoner;
- 19 (b) intimidates, threatens, endangers, or withholds
20 reasonable necessities from the prisoner with the purpose to
21 obtain a confession from him or for any other purpose; or
- 22 (c) violates any civil right of a prisoner.
- 23 (2) A person convicted of the offense of mistreating
24 prisoners shall be removed from office or employment and
25 shall be imprisoned in the state prison for a term ~~not to~~

1 ~~exceed 10~~ of 2 years or be fined an amount not to exceed
2 \$50,000, or both."

3 Section 17. Section 45-5-302, MCA, is amended to read:

4 "45-5-302. Kidnapping. (1) A person commits the
5 offense of kidnapping if he knowingly or purposely and
6 without lawful authority restrains another person by either
7 secreting or holding him in a place of isolation or by using
8 or threatening to use physical force.

9 (2) A person convicted of the offense of kidnapping
10 shall be imprisoned in the state prison for a term of not
11 ~~less than 2 years or more than 10~~ 5 years and may be fined
12 not more than \$50,000, ~~except as provided in 46-18-222.~~"

13 Section 18. Section 45-5-303, MCA, is amended to read:

14 "45-5-303. Aggravated kidnapping. (1) A person commits
15 the offense of aggravated kidnapping if he knowingly or
16 purposely and without lawful authority restrains another
17 person by either secreting or holding him in a place of
18 isolation or by using or threatening to use physical force,
19 with any of the following purposes:

20 (a) to hold for ransom or reward or as a shield or
21 hostage;

22 (b) to facilitate commission of any felony or flight
23 thereafter;

24 (c) to inflict bodily injury on or to terrorize the
25 victim or another;

1 (d) to interfere with the performance of any
2 governmental or political function; or

3 (e) to hold another in a condition of involuntary
4 servitude.

5 (2) Except as provided in 46-18-222, a person
6 convicted of the offense of aggravated kidnapping shall be
7 punished by death or life imprisonment as provided in
8 46-18-301 through 46-18-310 or be imprisoned in the state
9 prison for a term of ~~not less than 2 years or more than 10~~
10 5 years and may be fined not more than \$50,000, unless he
11 has voluntarily released the victim alive, in a safe place,
12 and not suffering from serious bodily injury, in which event
13 he shall be imprisoned in the state prison for a term of not
14 ~~less than 2 years or more than 10~~ 5 years and may be fined
15 not more than \$50,000."

16 Section 19. Section 45-5-304, MCA, is amended to read:

17 "45-5-304. Custodial interference. (1) A person
18 commits the offense of custodial interference if, knowing
19 that he has no legal right to do so, he takes, entices, or
20 withholds from lawful custody any child, incompetent person,
21 or other person entrusted by authority of law to the custody
22 of another person or institution.

23 (2) A person convicted of the offense of custodial
24 interference shall be imprisoned in the state prison for any
25 a term ~~not to exceed 10~~ of 5 years or be fined an amount not

1 to exceed \$50,000, or both.

2 (3) A person who has not left the state does not
3 commit an offense under this section if he voluntarily
4 returns such person to lawful custody prior to arraignment.
5 A person who has left the state does not commit an offense
6 under this section if he voluntarily returns such person to
7 lawful custody prior to arrest."

8 Section 20. Section 45-5-401, MCA, is amended to read:

9 "45-5-401. Robbery. (1) A person commits the offense
10 of robbery if in the course of committing a theft he:

11 (a) inflicts bodily injury upon another;

12 (b) threatens to inflict bodily injury upon any person
13 or purposely or knowingly puts any person in fear of
14 immediate bodily injury; or

15 (c) commits or threatens immediately to commit any
16 felony other than theft.

17 (2) A person convicted of the offense of robbery shall
18 be imprisoned in the state prison for a term of not less
19 than ~~2 years or more than 40~~ 20 years and may be fined not
20 more than \$50,000, ~~except as provided in 46-10-222.~~

21 (3) "In the course of committing a theft" as used in
22 this section includes acts which occur in an attempt to
23 commit or in the commission of theft or in flight after the
24 attempt or commission."

25 Section 21. Section 45-5-502, MCA, is amended to read:

1 "45-5-502. Sexual assault. (1) A person who knowingly
2 subjects another not his spouse to any sexual contact
3 without consent commits the offense of sexual assault.

4 (2) A person convicted of sexual assault shall be
5 fined not to exceed \$500 or be imprisoned in the county jail
6 for any term not to exceed 6 months.

7 (3) If the victim is less than 16 years old and the
8 offender is 3 or more years older than the victim or if the
9 offender inflicts bodily injury upon anyone in the course of
10 committing sexual assault, he shall be imprisoned in the
11 state prison for any ~~a term not to exceed 20~~ of 10 years and
12 may be fined not more than \$50,000.

13 (4) An act "in the course of committing sexual
14 assault" shall include an attempt to commit the offense or
15 flight after the attempt or commission.

16 (5) Consent is ineffective under this section if the
17 victim is less than 14 years old and the offender is 3 or
18 more years older than the victim."

19 Section 22. Section 45-5-503, MCA, is amended to read:

20 "45-5-503. Sexual intercourse without consent. (1) A
21 person who knowingly has sexual intercourse without consent
22 with a person of the opposite sex not his spouse commits the
23 offense of sexual intercourse without consent.

24 (2) A person convicted of sexual intercourse without
25 consent shall be imprisoned in the state prison for a term

1 of ~~not less than 2 years or more than 20 years~~ and may be
2 fined not more than \$50,000, ~~except as provided in~~
3 ~~46-10-222.~~

4 (3) If the victim is less than 16 years old and the
5 offender is 3 or more years older than the victim or if the
6 offender inflicts bodily injury upon anyone in the course of
7 committing sexual intercourse without consent, he shall be
8 imprisoned in the state prison for ~~any a~~ term of ~~not less~~
9 ~~than 2 years or more than 40~~ 30 years and may be fined not
10 more than \$50,000, ~~except as provided in 46-10-222.~~

11 (4) If the victim's lack of consent is based solely
12 upon his incapacity to consent because he was less than 16
13 years of age, a person convicted of sexual intercourse
14 without consent of the victim shall be imprisoned in the
15 state prison for a term of not less than 2 or more than 20
16 years.

17 (4)(5) An act "in the course of committing sexual
18 intercourse without consent" shall include an attempt to
19 commit the offense or flight after the attempt or
20 commission.

21 (5)(6) No evidence concerning the sexual conduct of
22 the victim is admissible in prosecutions under this section,
23 except:

24 (a) evidence of the victim's past sexual conduct with
25 the offender;

1 (b) evidence of specific instances of the victim's
2 sexual activity to show the origin of semen, pregnancy, or
3 disease which is at issue in the prosecution under this
4 section.

5 (6)(7) If the defendant proposes for any purpose to
6 offer evidence described in subsection (5)(a) (6)(a) or
7 (5)(b) (6)(b), the trial judge shall order a hearing out of
8 the presence of the jury to determine whether the proposed
9 evidence is admissible under subsection (5) (6).

10 (7)(8) Evidence of failure to make a timely complaint
11 or immediate outcry does not raise any presumption as to the
12 credibility of the victim."

13 Section 23. Section 45-5-505, MCA, is amended to read:

14 "45-5-505. Deviate sexual conduct. (1) A person who
15 knowingly engages in deviate sexual relations or who causes
16 another to engage in deviate sexual relations commits the
17 offense of deviate sexual conduct.

18 (2) A person convicted of the offense of deviate
19 sexual conduct shall be imprisoned in the state prison for
20 ~~any a term not to exceed 10 or~~ 2 years or be fined an amount
21 not to exceed \$50,000, or both.

22 (3) A person convicted of deviate sexual conduct
23 without consent shall be imprisoned in the state prison for
24 ~~any a term not to exceed 20 or~~ 10 years or be fined an
25 amount not to exceed \$50,000, or both."

Section 24. Section 45-5-603, MCA, is amended to read:

"45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not he is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support he is responsible.

(2) A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any a term ~~not to exceed 20~~ of 10 years or be fined an amount not to exceed \$50,000, or both."

Section 25. Section 45-5-613, MCA, is amended to read:

"45-5-613. Incest. (1) A person commits the offense of incest if he knowingly marries or cohabits or has sexual intercourse with an ancestor, a descendant, or a brother or sister of the whole or half blood. The relationships referred to herein include blood relationships without regard to legitimacy and relationships of parent and child by adoption.

(2) A person convicted of incest shall be imprisoned

in the state prison for any a term ~~not to exceed 10~~ of 2 years or be fined an amount not to exceed \$50,000, or both."

Section 26. Section 45-5-621, MCA, is amended to read:

"45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support; or

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any a term ~~not to exceed 10~~ of 2 years, or both.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support."

Section 27. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person

1 commits the offense of sexual abuse of children if he
2 knowingly:

3 (a) employs, uses, or permits the employment or use of
4 a child in an exhibition of sexual contact, actual or
5 simulated;

6 (b) photographs, films, videotapes, or records a child
7 engaging in sexual contact, actual or simulated;

8 (c) persuades, entices, counsels, or procures a child
9 to engage in sexual contact, actual or simulated, for use as
10 designated in (1)(a), (1)(b), or (1)(d);

11 (d) processes, develops, prints, publishes,
12 transports, distributes, sells, possesses with intent to
13 sell, exhibits, or advertises material consisting of or
14 including a photograph, photographic negative, undeveloped
15 film, videotape, or recording representing a child engaging
16 in sexual contact, actual or simulated; or

17 (e) finances any of the activities described in
18 subsections (1)(a) through (1)(d) knowing that the activity
19 is of the nature described in those subsections.

20 (2) A person convicted of the offense of sexual abuse
21 of children shall be fined not to exceed \$10,000 or be
22 imprisoned in the state prison for any a term ~~not-to-exceed~~
23 of 20 years, or both.

24 (3) For the purposes of this section, "child" means
25 any person less than 16 years old."

1 Section 28. Section 45-6-102, MCA, is amended to read:

2 "45-6-102. Negligent arson. (1) A person commits the
3 offense of negligent arson if he purposely or knowingly
4 starts a fire or causes an explosion, whether on his own
5 property or property of another, and thereby negligently:

6 (a) places another person in danger of death or bodily
7 injury; or

8 (b) places property of another in danger of damage or
9 destruction.

10 (2) A person convicted of the offense of negligent
11 arson shall be fined not to exceed \$500 or be imprisoned in
12 the county jail for any term not to exceed 6 months, or
13 both. If the offender places another person in danger of
14 death or bodily injury, he shall be fined not to exceed
15 \$50,000 or be imprisoned in the state prison for any a term
16 ~~not-to-exceed-10 of 5~~ years, or both."

17 Section 29. Section 45-6-103, MCA, is amended to read:

18 "45-6-103. Arson. (1) A person commits the offense of
19 arson when, by means of fire or explosives, he knowingly or
20 purposely:

21 (a) damages or destroys an occupied structure which is
22 property of another without consent; or

23 (b) places another person in danger of death or bodily
24 injury.

25 (2) A person convicted of the offense of arson shall

1 be imprisoned in the state prison for any a term not--to
2 exceed--20 of 10 years or be fined an amount not to exceed
3 \$50,000, or both."

4 Section 30. 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 or be fined an amount not to exceed
24 \$50,000, or both. A person convicted of the offense of
25 aggravated burglary shall be imprisoned in the state prison

1 for any a term not-to-exceed-40 of 20 years or be fined an
2 amount not to exceed \$50,000, or both."

3 Section 31. Section 45-9-101, MCA, is amended to read:

4 "45-9-101. Criminal sale of dangerous drugs. (1) A
5 person commits the offense of criminal sale of dangerous
6 drugs if he sells, barter, exchanges, gives away, or offers
7 to sell, barter, exchange, or give away or manufactures,
8 prepares, cultivates, compounds, or processes any dangerous
9 drug, as defined in 50-32-101.

10 (2) A person convicted of criminal sale of an opiate,
11 as defined in 50-32-101(18), shall be imprisoned in the
12 state prison for a term of not-less-than-2 10 years or--more
13 than--life and may be fined not more than \$50,000--except-as
14 provided-in-46-10-222.

15 (3) A person convicted of criminal sale of a dangerous
16 drug included in Schedule I or Schedule II pursuant to
17 50-32-222 or 50-32-224, except marijuana or
18 tetrahydrocannabinols, who has a prior conviction for
19 criminal sale of such a drug shall be imprisoned in the
20 state prison for a term of not-less-than-5 20 years or--more
21 than--life and may be fined not more than \$50,000--except-as
22 provided-in-46-10-222. Upon a third or subsequent conviction
23 for criminal sale of such a drug, he shall be imprisoned in
24 the state prison for a term of not-less-than-10 40 years or
25 more-than-life and may be fined not more than \$50,000--

~~except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor or a person who is mentally defective, the sentence shall be increased by 5 years and include the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term. A sentence imposed under this section may not be increased by the aggravating circumstances listed in subsections (1)(a) and (1)(c) of [section 6].~~

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 32. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to sell.

(1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an

opiate, as defined in 50-32-101(18), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 2 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 2 years or be fined an amount not to exceed \$50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

NEW SECTION. Section 33. Codification instruction. Sections 4 through 7 are intended to be codified as an integral part of Title 46, chapter 18, and the provisions contained in Title 46, chapter 18, apply to sections 4 through 7.

NEW SECTION. Section 34. Repealer. Sections 46-18-221 and 46-18-501 through 46-18-503, MCA, are repealed.

NEW SECTION. Section 35. Coordination instruction. If LC 145, including the section of that bill amending 46-18-101, is passed and approved, sections 1 and 2 of this act are void.

NEW SECTION. Section 36. Effective date. This act is effective January 1, 1984.

STATE OF MONTANA

REQUEST NO. 308-83

FISCAL NOTE

Form BD 15

In compliance with a written request received February 1, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 583 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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:

House Bill 583 generally revises sentencing laws to provide mandatory sentences.

ASSUMPTIONS:

- 1) Use Prison actual admissions of 1980-82 as base for projecting number of admissions which would be affected by this bill.
- 2) Use Correction's Division admissions projections for 1984 and 1985.
- 3) Use 1982 admissions as a base for "Dangerous" and "Non Dangerous" designations.
- 4) Length of stay for "Dangerous" is 37% of sentence and "Non-Dangerous" is 20% of sentence.
- 5) Average difference in sentences under House Bill 583 is 4.1 years or 49 months. Additional time served over what is the average sentencing pattern by DCJ by category of crime effected by this bill.

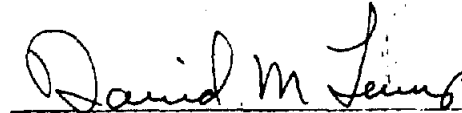
FISCAL IMPACT:

With the assumptions used above, the Department of Institutions project a 381 inmate population increase. The current facilities cannot handle this much population increase and it will be two years plus before any new construction (either Old Prison or New Construction for 192 Bed) will be completed.

LOCAL IMPACT:

There would most likely be a fiscal impact in the district courts at the local or county level. That impact will involve the increased cost of conducting more extensive sentencing hearings that are associated with mandatory sentences. No cost estimate is available, though.

FISCAL NOTE 11:D/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2 - 8 - 83