

SENATE BILL NO. 1

Introduced: 1/3/83

Referred to Committee on Judiciary: 1/3/83

Hearing: 1/11/83

Report: 01/14/83, Do Not Pass. Report Adopted.

Bill Killed.

1                    SENATE    BILL NO.    1  
2    INTRODUCED BY MAZUREK  
3                    BY REQUEST OF THE JOINT SUBCOMMITTEE ON JUDICIARY  
4  
5    A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT A COUNTY  
6    ATTORNEY TO REQUEST THE SENTENCE REVIEW DIVISION OF THE  
7    MONTANA SUPREME COURT TO REVIEW A SENTENCE IN A CRIMINAL  
8    CASE FOLLOWING CONVICTION; AMENDING SECTIONS 46-18-901 AND  
9    46-18-903 THROUGH 46-18-905, MCA."  
10  
11    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12                    Section 1. Section 46-18-901, MCA, is amended to read:  
13                    "46-18-901. Review division of the supreme court for  
14    review of sentences. (1) For the purposes of this part,  
15    "sentence" means:  
16                    (a) imposition of imprisonment for a term of 1 year or  
17    more in the state prison, whether or not all or any portion  
18    of the sentence is suspended; or  
19                    (b) the deferred imposition of a sentence for an  
20    offense for which imprisonment for a term of 1 year or more  
21    in the state prison may be imposed.  
22                    ~~††~~121 The chief justice of the supreme court of  
23    Montana shall appoint three district court judges to act as  
24    a review division of the supreme court and shall designate  
25    one of such judges to act as chairman thereof. The clerk of

1    the Montana supreme court shall record such appointment and  
2    shall give notice thereof to the clerk of every district  
3    court.  
4                    ~~†2~~131 This review division shall meet at least four  
5    times a year or more as its business requires, as determined  
6    by the chairman. The review division shall hold its  
7    meetings at Deer Lodge.  
8                    ~~†3~~141 The decision of any two of such judges shall be  
9    sufficient to determine any matter before the review  
10    division.  
11                    ~~†4~~151 The review division may adopt any rules which  
12    will expedite its review of sentences. The division is also  
13    authorized to appoint a secretary and such clerical help as  
14    it deems adequate and fix their compensation."  
15                    Section 2. Section 46-18-903, MCA, is amended to read:  
16                    "46-18-903. Application for review. (1) ~~Any--person~~  
17    ~~sentenced--to--a--term--of--1--year--or--more--in--the--state--prison~~  
18    ~~Following conviction and sentencing as defined in 46-18-901~~  
19    by any court of competent jurisdiction, ~~a defendant or the~~  
20    ~~county attorney who prosecuted the defendant or the county~~  
21    ~~attorney's designated representative~~ may within 60 days from  
22    the date such sentence was imposed, except in any case in  
23    which a different sentence could not have been imposed, file  
24    with the clerk of the district court in the county in which  
25    judgment was rendered an application for review of the

1 sentence by the review division. Upon imposition of the  
2 sentence, the clerk shall give written notice to the person  
3 sentenced defendant of his right to make such a request.  
4 Such notice shall include a statement that review of the  
5 sentence may result in decrease or increase of the sentence  
6 within limits fixed by law.

7 (2) The clerk shall transmit such application to the  
8 review division and shall notify the judge who imposed the  
9 sentence, the defendant, and the county attorney of the  
10 county in which the sentence was imposed who prosecuted the  
11 defendant or the county attorney's designated  
12 representative. Such judge may transmit to the review  
13 division a statement of his reasons for imposing the  
14 sentence and shall transmit such a statement within 7 days  
15 if requested to do so by the review division.

16 (3) The review division may for cause shown consider  
17 any late request for review of sentence and may grant such  
18 request.

19 (4) The filing of an application for review shall not  
20 stay the execution of the sentence."

21 Section 3. Section 46-18-904, MCA, is amended to read:

22 "46-18-904. Procedure upon review. (1) In each case in  
23 which an application for review is filed in accordance with  
24 46-18-903, the review division shall review the judgment so  
25 far as it relates to the sentence imposed, either increasing

1 or decreasing the penalty, and any other sentence imposed on  
2 the person at the same time and may order such different  
3 sentence or sentences to be imposed as could have been  
4 imposed at the time of the imposition of the sentence under  
5 review or may decide that the sentence under review should  
6 stand.

7 (2) In reviewing any judgment, said division may  
8 ~~require the production of presentence reports and any other~~  
9 ~~records, documents, or exhibits relevant to such review~~  
10 ~~proceedings shall limit its review to the lower court~~  
11 ~~record, relevant sentencing data compiled under 46-18-604,~~  
12 ~~and, upon consent of the defendant, any information relevant~~  
13 ~~to the sentence under review that could have been made~~  
14 ~~available to the lower court prior to sentencing but was not~~  
15 ~~presented during the lower court proceedings.~~ The appellant  
16 defendant may appear and be represented by counsel, and the  
17 state may be represented by the county attorney of ~~the~~  
18 ~~county in which the sentence was imposed who prosecuted the~~  
19 ~~defendant or the county attorney's designated~~  
20 ~~representative~~.

21 (3) If the review division orders a different  
22 sentence, the court sitting in any convenient county shall  
23 resentence the defendant as ordered by the review division.  
24 Time served on the sentence reviewed shall be deemed to have  
25 been served on the sentence substituted."

1 Section 4. Section 46-18-905, MCA, is amended to read:

2 "46-18-905. Decision -- finality, report of. (1) The

3 decision of the review division in each case shall be final,

4 and the reasons for such decision shall be stated therein.

5 The original of each decision shall be sent to the clerk of

6 the court for the county in which the judgment was rendered,

7 and a copy shall be sent to the judge who imposed the

8 sentence reviewed, the person--sentenced defendant, the

9 county attorney who prosecuted the defendant or the county

10 attorney's designated representative, and the principal

11 officer of the institution in which he the defendant is

12 confined.

13 (2) The decision shall be reported in the Montana

14 Reports."

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