

SENATE BILL NO. 412

INTRODUCED BY E. SMITH, NATHE, MILES, HARDING, KOLSTAD

IN THE SENATE

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| February 14, 1985 | Introduced and referred to Committee on Judiciary. |
| February 23, 1985 | Committee recommend bill do pass as amended. Report adopted. |
| February 25, 1985 | Bill printed and placed on members' desks. |
| February 26, 1985 | Second reading, do pass. Considered correctly engrossed. |
| February 27, 1985 | Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House. |

IN THE HOUSE

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| March 7, 1985 | Introduced and referred to Committee on Judiciary. |
| March 25, 1985 | Committee recommend bill be concurred in as amended. Report adopted. |
| March 30, 1985 | Second reading, concurred in. |
| April 1, 1985 | Third reading, concurred in. Returned to Senate with amendments. |

IN THE SENATE

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| April 1, 1985 | Received from House. |
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April 3, 1985

Second reading, amendments
concurrent in.

April 5, 1985

Third reading, amendments
concurrent in.

Ayes, 45; Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *412*
 2 INTRODUCED BY *E. Smith* *NATHAN* *Niles* *Whiting* *Kostal*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE 30 DAYS TO
 5 BE SERVED UNDER A SENTENCE FOR COMMITTING CERTAIN CRIMINAL
 6 OFFENSES AMOUNTING TO CHILD ABUSE; AMENDING SECTION
 7 46-18-201, MCA."

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

10 Section 1. 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, except as otherwise provided, not exceeding 1 year
 17 for any misdemeanor or for a period not exceeding 3 years
 18 for any felony. The sentencing judge may impose upon the
 19 defendant any reasonable restrictions or conditions during
 20 the period of the deferred imposition. Such reasonable
 21 restrictions or conditions may include:

- 22 (i) jail base release;
- 23 (ii) jail time not exceeding 180 days;
- 24 (iii) conditions for probation;
- 25 (iv) restitution, as provided in subsection (2);

- 1 (v) payment of the costs of confinement;
- 2 (vi) payment of a fine as provided in 46-18-231;
- 3 (vii) payment of costs as provided in 46-18-232 and
- 4 46-18-233;
- 5 (viii) payment of costs of court appointed counsel as
- 6 provided in 46-8-113;
- 7 (ix) community service;
- 8 (x) any other reasonable conditions considered
- 9 necessary for rehabilitation or for the protection of
- 10 society; or
- 11 (xi) any combination of the above.
- 12 (b) suspend execution of sentence up to the maximum
- 13 sentence allowed for each particular offense. The sentencing
- 14 judge may impose on the defendant any reasonable
- 15 restrictions or conditions during the period of suspended
- 16 sentence. Such reasonable restrictions or conditions may
- 17 include any of those listed in subsections (1)(a)(i) through
- 18 (1)(a)(xi).
- 19 (c) impose a fine as provided by law for the offense;
- 20 (d) require payment of costs as provided in 46-18-232
- 21 or payment of costs of court-appointed counsel as provided
- 22 in 46-8-113;
- 23 (e) commit the defendant to a correctional institution
- 24 with or without a fine as provided by law for the offense;
- 25 (f) impose any combination of subsections (1)(b)



-2- INTRODUCED BILL
 50 412

1 through (1)(e).

2 (2) If restitution is imposed as a condition under
3 subsection (1)(a) or (1)(b), sentence may be deferred for a
4 period not exceeding 2 years for any misdemeanor or for a
5 period not exceeding 6 years for any felony, regardless of
6 whether any other conditions are imposed.

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

11 (4) Except as provided in 46-18-222, the imposition or
12 execution of the first 2 years of a sentence of imprisonment
13 imposed under the following sections may not be deferred or
14 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),
15 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)
16 and (3), 45-9-102(3), and 45-9-103(2).

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

21 (6) Except as provided in 46-18-222, imposition of
22 sentence in a felony case may not be deferred in the case of
23 a defendant who has been convicted of a felony on a prior
24 occasion whether or not the sentence was imposed, imposition
25 of the sentence was deferred, or execution of the sentence

1 was suspended.

2 (7) Except as provided in 46-18-222, the imposition or
3 execution of the first 30 days of a sentence of imprisonment
4 imposed under 45-5-502(3), 45-5-504, or 45-5-505 if the
5 victim was less than 16 years old or 45-5-507 if the
6 intercourse was with a person less than 16 years old may not
7 be deferred or suspended."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 412

INTRODUCED BY E. SMITH, NATHE, MILES, HARDING, KOLSTAD

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE 30 DAYS TO BE SERVED UNDER A SENTENCE FOR COMMITTING CERTAIN CRIMINAL OFFENSES AMOUNTING TO CHILD ABUSE; AMENDING SECTION 46-18-201, MCA."

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

Section 1. Section 46-18-201, MCA, is amended to read:

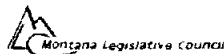
"46-18-201. Sentences that may be imposed. (1)

Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 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 180 days;
- (iii) conditions for probation;
- (iv) restitution, as provided in subsection (2);

- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- (viii) payment of costs of court appointed counsel as provided in 46-8-110;
- (ix) community service;
- (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
- (xi) any combination of the above.
- (b) suspend execution of sentence up to the maximum sentence allowed for each 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)(xi).
- (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)



1 through (1)(e).

2 (2) If restitution is imposed as a condition under
3 subsection (1)(a) or (1)(b), sentence may be deferred for a
4 period not exceeding 2 years for any misdemeanor or for a
5 period not exceeding 6 years for any felony, regardless of
6 whether any other conditions are imposed.

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

11 (4) Except as provided in 46-18-222, the imposition or
12 execution of the first 2 years of a sentence of imprisonment
13 imposed under the following sections may not be deferred or
14 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),
15 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)
16 and (3), 45-9-102(3), and 45-9-103(2).

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

21 (6) Except as provided in 46-18-222, imposition of
22 sentence in a felony case may not be deferred in the case of
23 a defendant who has been convicted of a felony on a prior
24 occasion whether or not the sentence was imposed, imposition
25 of the sentence was deferred, or execution of the sentence

1 was suspended.

2 (7) Except as provided in 46-18-222, IF THE VICTIM WAS
3 LESS THAN 16 YEARS OLD, the imposition or execution of the
4 first 30 days of a sentence of imprisonment imposed under
5 45-5-502(3), 45-5-504, or 45-5-505, if the victim was less
6 than 16 years old or 45-5-507 if the intercourse was with a
7 person less than 16 years old may not be deferred or
8 suspended."

-End-

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17 for any misdemeanor or for a period not exceeding 3 years
18 for any felony. The sentencing judge may impose upon the
19 defendant any reasonable restrictions or conditions during
20 the period of the deferred imposition. Such reasonable
21 restrictions or conditions may include:

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4 46-18-233;

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6 provided in 46-8-113;

7 (ix) community service;

8 (x) any other reasonable conditions considered
9 necessary for rehabilitation or for the protection of
10 society; or

11 (xi) any combination of the above.

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

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

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

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

25 (f) impose any combination of subsections (1)(b)

1 through (1)(e).

2 (2) If restitution is imposed as a condition under
3 subsection (1)(a) or (1)(b), sentence may be deferred for a
4 period not exceeding 2 years for any misdemeanor or for a
5 period not exceeding 6 years for any felony, regardless of
6 whether any other conditions are imposed.

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8 subsection (1)(a) or (1)(b) are violated, any elapsed time,
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17 (5) Except as provided in 46-18-222, the imposition or
18 execution of the first 10 years of a sentence of
19 imprisonment imposed under 45-5-102(2) may not be deferred
20 or suspended.

21 (6) Except as provided in 46-18-222, imposition of
22 sentence in a felony case may not be deferred in the case of
23 a defendant who has been convicted of a felony on a prior
24 occasion whether or not the sentence was imposed, imposition
25 of the sentence was deferred, or execution of the sentence

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2 (7) Except as provided in 46-18-222, IF THE VICTIM WAS
3 LESS THAN 16 YEARS OLD, the imposition or execution of the
4 first 30 days of a sentence of imprisonment imposed under
5 45-5-502(3), 45-5-504, or 45-5-505, if the victim was less
6 than 16 years old or 45-5-507 if the intercourse was with a
7 person less than 16 years old may not be deferred or
8 suspended."

-End-

STANDING COMMITTEE REPORT

HOUSE

March 25 1985

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 412

Third reading copy (Blue color)

MANDATORY 30 DAYS IN JAIL FOR CERTAIN CHILD ABUSE OFFENSES

Respectfully report as follows: That Bill No. be amended as follows:

1. Page 4, line 2.
Following: "(7)"
Strike: "Except" through "IF"
Insert: "If"
2. Page 4, line 5.
Following: "45-5-502(3),"
Insert: "45-5-503,"
3. Page 4, line 6.
Following: "45-5-507"
Strike: "if" through "old" on line 7.
4. Page 4, line 8.
Following: "suspended."
Insert: "Section 46-18-222 does not apply to the first 30 days of such imprisonment."

~~EXCESS~~
AND AS AMENDED,
BE CONCURRED IN

SW 3/25

Tom Dammal
Chairman

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2 (7) Except--as-provided-in-46-18-222, IF IF THE VICTIM
3 WAS LESS THAN 16 YEARS OLD, the imposition or execution of
4 the first 30 days of a sentence of imprisonment imposed
5 under 45-5-502(3), 45-5-503, 45-5-504, or 45-5-505, if--the
6 victim--was--less--than--16--years--old or 45-5-507 if--the
7 intercourse--was--with--a--person--less--than--16--years--old may not
8 be deferred or suspended. SECTION 46-18-222 DOES NOT APPLY
9 TO THE FIRST 30 DAYS OF SUCH IMPRISONMENT."

-End-