

HOUSE BILL NO. 390

INTRODUCED BY SPAETH, VINCENT, MERCER

IN THE HOUSE

JANUARY 24, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 25, 1989	FIRST READING.
FEBRUARY 10, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 11, 1989	PRINTING REPORT.
FEBRUARY 13, 1989	ON MOTION, TAKEN FROM ENGROSSING AND REREFERRED TO COMMITTEE ON APPROPRIATION.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 20, 1989	SECOND READING, DO PASS.
MARCH 21, 1989	ENGROSSING REPORT.
MARCH 22, 1989	THIRD READING, PASSED. AYES, 96; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 22, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON FINANCE & CLAIMS.
	FIRST READING.
APRIL 5, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 6, 1989	SECOND READING, CONCURRED IN.
APRIL 10, 1989	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 10, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. *390*

INTRODUCED BY

Spaeth Vincent Mada

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE CRIMINAL SALE OF DANGEROUS DRUGS; PROVIDING FOR A MANDATORY 2-YEAR PRISON SENTENCE FOR THE SALE OF COCAINE IN ANY OF ITS FORMS; PROVIDING THAT THE FIRST 2 YEARS OF A SENTENCE OF IMPRISONMENT FOR THE SALE OF CERTAIN DANGEROUS DRUGS TO MINORS MAY NOT BE DEFERRED OR SUSPENDED; AMENDING SECTIONS 45-9-101, 46-18-201, AND 46-18-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-9-101, MCA, is amended to read:

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

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided

in 46-18-222.

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

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) 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) A person who was an adult at the time of sale and who is convicted of criminal sale of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(6) 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 2. 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 Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(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 46-8-113;

(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

1 restrictions or conditions during the period of suspended
2 sentence. ~~Such---reasonable~~ Reasonable restrictions or
3 conditions may include any of those listed in subsections
4 (1)(a)(i) through (1)(a)(xi).

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

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

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

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

13 (2) If any financial obligation is imposed as a
14 condition under subsection (1)(a), sentence may be deferred
15 for a period not exceeding 2 years for any misdemeanor or
16 for a period not exceeding 6 years for any felony,
17 regardless of whether any other conditions are imposed.

18 (3) If any restrictions or conditions imposed under
19 subsection (1)(a) or (1)(b) are violated, the court shall
20 consider any elapsed time and either expressly allow part or
21 all of it as a credit against the sentence or reject all or
22 part as a credit and state its reasons in the order. Credit,
23 however, must be allowed for jail time already served.

24 (4) Except as provided in 46-18-222, the imposition or
25 execution of the first 2 years of a sentence of imprisonment

1 imposed under the following sections may not be deferred or
2 suspended: 45-5-103, 45-5-202(3) relating to aggravated
3 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
4 and (3), 45-9-101(2), and (3), and (5)(d), 45-9-102(3), and
5 45-9-103(2).

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

10 (6) Except as provided in 46-18-222, imposition of
11 sentence in a felony case may not be deferred in the case of
12 a defendant who has been convicted of a felony on a prior
13 occasion whether or not the sentence was imposed, imposition
14 of the sentence was deferred, or execution of the sentence
15 was suspended.

16 (7) If the victim was less than 16 years old, the
17 imposition or execution of the first 30 days of a sentence
18 of imprisonment imposed under 45-5-502(3), 45-5-503,
19 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
20 suspended. Section 46-18-222 does not apply to the first 30
21 days of such imprisonment."

22 **Section 3.** Section 46-18-231, MCA, is amended to read:
23 **"46-18-231. Fines in felony and misdemeanor cases.** (1)
24 Whenever, upon a verdict or a plea of guilty, a person has
25 been found guilty of an offense for which a felony penalty

1 of imprisonment could be imposed, the court may impose a
2 fine, only in accordance with subsection (3), and in lieu of
3 or in addition to a sentence of imprisonment. For those
4 crimes for which penalties are provided in 45-5-103,
5 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),
6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and, (3), and
7 (5)(d), 45-9-102(3), and 45-9-103(2), a fine may be imposed
8 in accordance with subsection (3) in addition to a sentence
9 of imprisonment.

10 (2) Whenever, upon a verdict or plea of guilty, a
11 person has been found guilty of an offense for which a
12 misdemeanor penalty of a fine could be imposed, the court
13 may impose a fine only in accordance with subsection (3).

14 (3) The court may not sentence a defendant to pay a
15 fine unless the defendant is or will be able to pay the
16 fine. In determining the amount and method of payment, the
17 court shall take into account the nature of the crime
18 committed, the financial resources of the defendant, and the
19 nature of the burden that payment of the fine will impose.

20 (4) Any fine levied under this section in a felony
21 case shall be in an amount fixed by the court not to exceed
22 \$50,000."

23 NEW SECTION. **Section 4.** Effective date. [This act] is
24 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB390, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An Act generally revising the laws relating to the criminal sale of dangerous drugs; providing for a mandatory 2 year prison sentence for the sale of cocaine in any of its forms; providing that the first 2 years of a sentence of imprisonment for the sale of certain dangerous drugs to minors may not be deferred or suspended; amending Sections 45-9-101, 46-18-201, and 46-18-231, MCA; and providing an immediate effective date."

ASSUMPTIONS:

1. Assume a mandatory 2 year prison sentence for the sale of any form of cocaine.
2. Assume 24.6% of 60 arrests for criminal sale of dangerous drugs involves cocaine (actual percentage in FY87).
3. Projected probation admission rate in FY89 for criminal sale of dangerous drugs is 60.

<u>FISCAL IMPACT:</u>	<u>FY90</u>	<u>FY91</u>
<u>Expenditures:</u>	Proposed Law	Proposed Law
	\$25,457	\$28,410
<u>Funding:</u>		
General Fund	\$25,457	\$28,410

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

HB'S 168,404,127,390; if all pass, will necessitate additional housing units.

Ray Shackelford 11/31/89
RAY/SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Gary L. Spaeth
GARY L. SPAETH, PRIMARY SPONSOR DATE

Fiscal Note for HB390, as introduced

HB 390

APPROVED BY COMMITTEE
ON JUDICIARY1
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25*House* BILL NO. *390*

INTRODUCED BY

Spencer Vincent Mace

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE CRIMINAL SALE OF DANGEROUS DRUGS; PROVIDING FOR A MANDATORY 2-YEAR PRISON SENTENCE FOR THE SALE OF COCAINE IN ANY OF ITS FORMS; PROVIDING THAT THE FIRST 2 YEARS OF A SENTENCE OF IMPRISONMENT FOR THE SALE OF CERTAIN DANGEROUS DRUGS TO MINORS MAY NOT BE DEFERRED OR SUSPENDED; AMENDING SECTIONS 45-9-101, 46-18-201, AND 46-18-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-9-101, MCA, is amended to read:

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

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided

1 in 46-18-222.

2 (3) A person convicted of criminal sale of a dangerous
3 drug included in Schedule I or Schedule II pursuant to
4 50-32-222 or 50-32-224, except marijuana or
5 tetrahydrocannabinols, who has a prior conviction for
6 criminal sale of such a drug shall be imprisoned in the
7 state prison for a term of not less than 10 years or more
8 than life and may be fined not more than \$50,000, except as
9 provided in 46-18-222. Upon a third or subsequent conviction
10 for criminal sale of such a drug, he shall be imprisoned in
11 the state prison for a term of not less than 20 years or
12 more than life and may be fined not more than \$50,000,
13 except as provided in 46-18-222.

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

19 (5) A person who was an adult at the time of sale and
20 who is convicted of criminal sale of dangerous drugs to a
21 minor shall be sentenced as follows:

22 (a) If convicted pursuant to subsection (2), the
23 person shall be imprisoned in the state prison for not less
24 than 4 years or more than life and may be fined not more
25 than \$50,000, except as provided in 46-18-222.

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(6) 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 2. 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 Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

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(iv) restitution;

(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 46-8-113;

(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.

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1 restrictions or conditions during the period of suspended
 2 sentence. ~~Such---reasonable~~ Reasonable restrictions or
 3 conditions may include any of those listed in subsections
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 10 with or without a fine as provided by law for the offense;

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 12 through (1)(e).

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 14 condition under subsection (1)(a), sentence may be deferred
 15 for a period not exceeding 2 years for any misdemeanor or
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 17 regardless of whether any other conditions are imposed.

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 19 subsection (1)(a) or (1)(b) are violated, the court shall
 20 consider any elapsed time and either expressly allow part or
 21 all of it as a credit against the sentence or reject all or
 22 part as a credit and state its reasons in the order. Credit,
 23 however, must be allowed for jail time already served.

24 (4) Except as provided in 46-18-222, the imposition or
 25 execution of the first 2 years of a sentence of imprisonment

1 imposed under the following sections may not be deferred or
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 4 and (3), 45-9-101(2), and (3), and (5)(d), 45-9-102(3), and
 5 45-9-103(2).

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

10 (6) Except as provided in 46-18-222, imposition of
 11 sentence in a felony case may not be deferred in the case of
 12 a defendant who has been convicted of a felony on a prior
 13 occasion whether or not the sentence was imposed, imposition
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23 **"46-18-231. Fines in felony and misdemeanor cases. (1)**
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 25 been found guilty of an offense for which a felony penalty

1 of imprisonment could be imposed, the court may impose a
2 fine, only in accordance with subsection (3), and in lieu of
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4 crimes for which penalties are provided in 45-5-103,
5 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),
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20 (4) Any fine levied under this section in a felony
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22 \$50,000."

23 NEW SECTION. Section 4. Effective date. [This act] is
24 effective on passage and approval.

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1 *House* BILL NO. *390*
2 INTRODUCED BY *Spencer Vincent Mace*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAWS RELATING TO THE CRIMINAL SALE OF DANGEROUS DRUGS;
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7 SALE OF COCAINE IN ANY OF ITS FORMS; PROVIDING THAT THE
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7 Reasonable restrictions or conditions may include:

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- 14 (vii) payment of costs as provided in 46-18-232 and
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5 45-9-103(2).

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

10 (6) Except as provided in 46-18-222, imposition of
11 sentence in a felony case may not be deferred in the case of
12 a defendant who has been convicted of a felony on a prior
13 occasion whether or not the sentence was imposed, imposition
14 of the sentence was deferred, or execution of the sentence
15 was suspended.

16 (7) If the victim was less than 16 years old, the
17 imposition or execution of the first 30 days of a sentence
18 of imprisonment imposed under 45-5-502(3), 45-5-503,
19 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
20 suspended. Section 46-18-222 does not apply to the first 30
21 days of such imprisonment."

22 **Section 3.** Section 46-18-231, MCA, is amended to read:

23 "46-18-231. Fines in felony and misdemeanor cases. (1)
24 Whenever, upon a verdict or a plea of guilty, a person has
25 been found guilty of an offense for which a felony penalty

1 of imprisonment could be imposed, the court may impose a
2 fine, only in accordance with subsection (3), and in lieu of
3 or in addition to a sentence of imprisonment. For those
4 crimes for which penalties are provided in 45-5-103,
5 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),
6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and, (3), and
7 (5)(d), 45-9-102(3), and 45-9-103(2), a fine may be imposed
8 in accordance with subsection (3) in addition to a sentence
9 of imprisonment.

10 (2) Whenever, upon a verdict or plea of guilty, a
11 person has been found guilty of an offense for which a
12 misdemeanor penalty of a fine could be imposed, the court
13 may impose a fine only in accordance with subsection (3).

14 (3) The court may not sentence a defendant to pay a
15 fine unless the defendant is or will be able to pay the
16 fine. In determining the amount and method of payment, the
17 court shall take into account the nature of the crime
18 committed, the financial resources of the defendant, and the
19 nature of the burden that payment of the fine will impose.

20 (4) Any fine levied under this section in a felony
21 case shall be in an amount fixed by the court not to exceed
22 \$50,000."

23 NEW SECTION. **Section 4.** Effective date. [This act] is
24 effective on passage and approval.

-End-

1 HOUSE BILL NO. 390

2 INTRODUCED BY SPAETH, VINCENT, MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAWS RELATING TO THE CRIMINAL SALE OF DANGEROUS DRUGS;
6 PROVIDING FOR A MANDATORY 2-YEAR PRISON SENTENCE FOR THE
7 SALE OF COCAINE IN ANY OF ITS FORMS; PROVIDING THAT THE
8 FIRST 2 YEARS OF A SENTENCE OF IMPRISONMENT FOR THE SALE OF
9 CERTAIN DANGEROUS DRUGS TO MINORS MAY NOT BE DEFERRED OR
10 SUSPENDED; AMENDING SECTIONS 45-9-101, 46-18-201, AND
11 46-18-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 45-9-101, MCA, is amended to read:

15 "45-9-101. Criminal sale of dangerous drugs. (1) A
16 person commits the offense of criminal sale of dangerous
17 drugs if he sells, barter, exchanges, gives away, or offers
18 to sell, barter, exchange, or give away or manufactures,
19 prepares, cultivates, compounds, or processes any dangerous
20 drug, as defined in 50-32-101.

21 (2) A person convicted of criminal sale of a narcotic
22 drug, as defined in 50-32-101(18)(d), or an opiate, as
23 defined in 50-32-101(19), shall be imprisoned in the state
24 prison for a term of not less than 2 years or more than life
25 and may be fined not more than \$50,000, except as provided

1 in 46-18-222.

2 (3) A person convicted of criminal sale of a dangerous
3 drug included in Schedule I or Schedule II pursuant to
4 50-32-222 or 50-32-224, except marijuana or
5 tetrahydrocannabinols, who has a prior conviction for
6 criminal sale of such a drug shall be imprisoned in the
7 state prison for a term of not less than 10 years or more
8 than life and may be fined not more than \$50,000, except as
9 provided in 46-18-222. Upon a third or subsequent conviction
10 for criminal sale of such a drug, he shall be imprisoned in
11 the state prison for a term of not less than 20 years or
12 more than life and may be fined not more than \$50,000,
13 except as provided in 46-18-222.

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

19 (5) A person who was an adult at the time of sale and
20 who is convicted of criminal sale of dangerous drugs to a
21 minor shall be sentenced as follows:

22 (a) If convicted pursuant to subsection (2), the
23 person shall be imprisoned in the state prison for not less
24 than 4 years or more than life and may be fined not more
25 than \$50,000, except as provided in 46-18-222.

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(6) 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 2. 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 Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(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 46-8-113;

(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

1 restrictions or conditions during the period of suspended
2 sentence. ~~Such---reasonable~~ Reasonable restrictions or
3 conditions may include any of those listed in subsections
4 (1)(a)(i) through (1)(a)(xi).

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

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

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

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

13 (2) If any financial obligation is imposed as a
14 condition under subsection (1)(a), sentence may be deferred
15 for a period not exceeding 2 years for any misdemeanor or
16 for a period not exceeding 6 years for any felony,
17 regardless of whether any other conditions are imposed.

18 (3) If any restrictions or conditions imposed under
19 subsection (1)(a) or (1)(b) are violated, the court shall
20 consider any elapsed time and either expressly allow part or
21 all of it as a credit against the sentence or reject all or
22 part as a credit and state its reasons in the order. Credit,
23 however, must be allowed for jail time already served.

24 (4) Except as provided in 46-18-222, the imposition or
25 execution of the first 2 years of a sentence of imprisonment

1 imposed under the following sections may not be deferred or
2 suspended: 45-5-103, 45-5-202(3) relating to aggravated
3 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
4 and (3), 45-9-101(2), and (3), and (5)(d), 45-9-102(3), and
5 45-9-103(2).

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

10 (6) Except as provided in 46-18-222, imposition of
11 sentence in a felony case may not be deferred in the case of
12 a defendant who has been convicted of a felony on a prior
13 occasion whether or not the sentence was imposed, imposition
14 of the sentence was deferred, or execution of the sentence
15 was suspended.

16 (7) If the victim was less than 16 years old, the
17 imposition or execution of the first 30 days of a sentence
18 of imprisonment imposed under 45-5-502(3), 45-5-503,
19 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
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1 of imprisonment could be imposed, the court may impose a
2 fine, only in accordance with subsection (3), and in lieu of
3 or in addition to a sentence of imprisonment. For those
4 crimes for which penalties are provided in 45-5-103,
5 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),
6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and, (3), and
7 (5)(d), 45-9-102(3), and 45-9-103(2), a fine may be imposed
8 in accordance with subsection (3) in addition to a sentence
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11 person has been found guilty of an offense for which a
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19 nature of the burden that payment of the fine will impose.

20 (4) Any fine levied under this section in a felony
21 case shall be in an amount fixed by the court not to exceed
22 \$50,000."

23 NEW SECTION. Section 4. Effective date. [This act] is
24 effective on passage and approval.

-End-