

HOUSE BILL 445

Introduced by Bardanouve, et al.

1/26	Introduced
1/27	Referred to Judiciary
2/07	Hearing
2/09	Tabled in Committee

1 ~~HOUSE~~ BILL NO. 445  
2 INTRODUCED BY Barbara Vincent  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT CRIMINAL  
5 SALE OF, POSSESSION OF, OR POSSESSION WITH INTENT TO SELL  
6 DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY OR A SCHOOL BUS;  
7 CREATING AN AFFIRMATIVE DEFENSE; AND AMENDING SECTIONS  
8 46-18-201, 46-18-231, AND 46-23-201, MCA."  
9

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

11 NEW SECTION. **Section 1.** Criminal sale of, possession  
12 of, or possession with intent to sell dangerous drugs on or  
13 near school property or school bus -- affirmative defense.

14 (1) A person commits the offense of criminal sale of,  
15 possession of, or possession with intent to sell dangerous  
16 drugs on or near school property or a school bus if he  
17 violates 45-9-101, 45-9-102, or 45-9-103:

18 (a) while on any school property used for school  
19 purposes that is owned by any school district;

20 (b) within 1,000 feet of any school property or school  
21 bus; or

22 (c) while on any school bus.

23 (2) Except as provided in 45-9-101(3), 45-9-101(5), or  
24 45-9-102(5), a person convicted of criminal sale of,  
25 possession of, or possession with intent to sell dangerous

1 drugs on or near school property or a school bus:

2 (a) shall be imprisoned in the state prison for a term  
3 not less than 2 years or more than life;

4 (b) may be fined not more than \$50,000, except as  
5 provided in 46-18-222; and

6 (c) may not be paroled until he has served at least  
7 one-half of his full term, less the good time allowance  
8 provided for in 53-30-105.

9 (3) It is not a defense to prosecution under  
10 subsection (1) that the person was unaware the prohibited  
11 conduct took place while on or within 1,000 feet of any  
12 school property.

13 (4) It is an affirmative defense to prosecution for a  
14 violation of this section that:

15 (a) the prohibited conduct took place entirely within  
16 a private residence;

17 (b) no person 17 years of age or younger was present  
18 in the private residence at any time during the commission  
19 of the offense; and

20 (c) the person did not intend to profit from the  
21 prohibited conduct.

22 **Section 2.** 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:

1 (a) defer imposition of sentence, excepting sentences  
 2 for driving under the influence of alcohol or drugs, for a  
 3 period, except as otherwise provided, not exceeding 1 year  
 4 for any misdemeanor or for a period not exceeding 3 years  
 5 for any felony. The sentencing judge may impose upon the  
 6 defendant any reasonable restrictions or conditions during  
 7 the period of the deferred imposition. Such reasonable  
 8 restrictions or conditions may include:

- 9 (i) jail base release;
- 10 (ii) jail time not exceeding 180 days;
- 11 (iii) conditions for probation;
- 12 (iv) restitution;
- 13 (v) payment of the costs of confinement;
- 14 (vi) payment of a fine as provided in 46-18-231;
- 15 (vii) payment of costs as provided in 46-18-232 and
- 16 46-18-233;
- 17 (viii) payment of costs of court appointed counsel as
- 18 provided in 46-8-113;
- 19 (ix) community service;
- 20 (x) any other reasonable conditions considered
- 21 necessary for rehabilitation or for the protection of
- 22 society; or
- 23 (xi) any combination of the above.
- 24 (b) suspend execution of sentence up to the maximum
- 25 sentence allowed for each particular offense. The sentencing

1 judge may impose on the defendant any reasonable  
 2 restrictions or conditions during the period of suspended  
 3 sentence. Such reasonable restrictions or conditions may  
 4 include any of those listed in subsections (1)(a)(i) through  
 5 (1)(a)(xi).

- 6 (c) impose a fine as provided by law for the offense;
- 7 (d) require payment of costs as provided in 46-18-232
- 8 or payment of costs of court-appointed counsel as provided
- 9 in 46-8-113;
- 10 (e) commit the defendant to a correctional institution
- 11 with or without a fine as provided by law for the offense;
- 12 (f) impose any combination of subsections (1)(b)
- 13 through (1)(e).
- 14 (2) If any financial obligation is imposed as a
- 15 condition under subsection (1)(a), sentence may be deferred
- 16 for a period not exceeding 2 years for any misdemeanor or
- 17 for a period not exceeding 6 years for any felony,
- 18 regardless of whether any other conditions are imposed.
- 19 (3) If any restrictions or conditions imposed under
- 20 subsection (1)(a) or (1)(b) are violated, the court shall
- 21 consider any elapsed time and either expressly allow part or
- 22 all of it as a credit against the sentence or reject all or
- 23 part as a credit and state its reasons in the order. Credit,
- 24 however, must be allowed for jail time already served.
- 25 (4) Except as provided in 46-18-222, the imposition or

1 execution of the first 2 years of a sentence of imprisonment  
 2 imposed under the following sections may not be deferred or  
 3 suspended: 45-5-103, 45-5-202(3) relating to aggravated  
 4 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)  
 5 and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2),  
 6 and [section 1].

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

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

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

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

24 "46-18-231. Fines in felony and misdemeanor cases. (1)  
 25 Whenever, upon a verdict or a plea of guilty, a person has

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

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

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

21 (4) Any fine levied under this section in a felony  
 22 case shall be in an amount fixed by the court not to exceed  
 23 \$50,000."

24 **Section 4.** Section 46-23-201, MCA, is amended to read:

25 "46-23-201. Prisoners eligible for parole. (1) Subject

to the following restrictions, the board shall release on parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community:

(a) No convict serving a time sentence may be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 1/2 years.

(b) No convict serving a time sentence under [section 1] may be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105.

~~(b)~~(c) No convict serving a life sentence may be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(2) A parole shall be ordered only for the best

interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(3) If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility date provided for in subsection (1).

(4) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (3) do not apply."

NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 9, part 1, and the provisions of Title 45, chapter 9, part 1, apply to [section 1].

-End-