SENATE BILL NO. 170

INTRODUCED BY JERGESON, BACHINI, PECK, THOMAS, MCLANE

IN THE SENATE

JANUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 26, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1989	PRINTING REPORT.
JANUARY 28, 1989	SECOND READING, DO PASS.
JANUARY 30, 1989	ENGROSSING REPORT.
JANUARY 31, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 31, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 1, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 4, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 91; NOES, 2.
	RETURNED TO SENATE.

IN THE SENATE

MARCH 7, 1989 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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1	Senste BILL NO. 170
2	INTRODUCED BY Ourgeon
3	Pachini God Thomes me Som
4	A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DESIGNATION
5	OF NONDANGEROUS OFFENDER TO BE MADE AT THE TIME OF
6	REVOCATION OF A PROBATIONARY SENTENCE; AMENDING SECTION
7	46-18-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY
8	DATE."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 46-18-404, MCA, is amended to read:
12	*46-18-404. Designation as mondangerous offender for
13	purposes of parole eligibility. (1) The Except as provided
14	in subsection (4), the sentencing court shall designate an
15	offender a nondangerous offender for purposes of eligibility
16	for parole under part 2 of chapter 23 if:
17	(a) during the 5 years preceding the commission of the
18	offense for which the offender is being sentenced, the
19	offender was neither convicted of nor incarcerated for an
20	offense committed in this state or any other jurisdiction
21	for which a sentence to a term of imprisonment in excess of
22	l year could have been imposed; and
23	(b) the court has determined, based on any presentence

report and the evidence presented at the trial and the

sentencing hearing, that the offender does not represent a

2	(2) A conviction or incarceration may not be
3	considered under subsection (1)(a) if:
4	(a) the offender was less than 18 years of age at the
5	time of the commission of the present offense; or
6	(b) the offender has been pardoned for the previous
7	offense on the grounds of innocence or the conviction for
8	such the offense has been set aside in a postconviction
9	hearing.
10	(3) (a) If the court determines that an offender is

not eligible to be designated as a nondangerous offender, it

shall make that determination a part of the sentence imposed

substantial danger to other persons or society.

- and shall state the determination in the judgment.

 (b) Whenever Except as provided in subsection (4), if
 the sentence and judgment do not contain such a
 determination referred to in subsection (3)(a) as a
 nondangerous offender, the offender is considered to have
 been designated as a nondangerous offender for purposes of
 eligibility for parole.
- 20 (4) If an offender is given a probationary sentence
 21 that is subsequently revoked, the court may make the
 22 determination of eligibility for designation as a
 23 nondangerous offender at the time of the revocation
 24 proceeding."
- 25 NEW SECTION. Section 2. Retroactive applicability.

LC 0678/01

- 1 [This act] applies to revocation proceedings begun on or
- 2 after [the effective date of this act]. To this extent,
- 3 [this act] applies retroactively, within the meaning of
- 4 1-2-109.

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APPROVED BY COMMITTEE ON JUDICIARY

1	SENATE BILL NO. 170
2	INTRODUCED BY JERGESON, BACHINI, PECK, THOMAS, MCLANE
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DESIGNATION
5	OF DANGEROUS OR NONDANGEROUS OFFENDER TO BE MADE AT THE TIME
6	OF REVOCATION OF A PROBATIONARY SENTENCE; AMENDING SECTION
7	46-18-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY
8	DATE."
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10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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13	purposes of parole eligibility. (1) The Except as provided
14	in subsection (4), the sentencing court shall designate an
15	offender a nondangerous offender for purposes of eligibility
16	for parole under part 2 of chapter 23 if:
17	(a) during the 5 years preceding the commission of the
18	offense for which the offender is being sentenced, the
19	offender was neither convicted of nor incarcerated for an
20	offense committed in this state or any other jurisdiction
21	for which a sentence to a term of imprisonment in excess of
22	1 year could have been imposed; and
23	(b) the court has determined, based on any presentence
24	report and the evidence presented at the trial and the

sentencing hearing, that the offender does not represent a

considered under subsection (1)(a) if: (a) the offender was less than 18 years of age at the time of the commission of the present offense; or (b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such the offense has been set aside in a postconviction hearing. (3) far If the court determines that an offender is not-eligible-to-be-designated-as-a-nondangerouseffender is of the sentence imposed and shall state the determination a part of the sentence imposed and shall state the determination in the judgment. (b) Whenever Except as provided in subsection (4), in the sentence and judgment do not contain such a determination referred-to-in-subsection-(3)(a)as	_	
(a) the offender was less than 18 years of age at the time of the commission of the present offense; or (b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such the offense has been set aside in a postconviction hearing. (3) tat If the court determines that an offender is not-eligible-to-be-designated-as-a-nondangerousoffender to pangerous of the sentence imposed and shall state the determination a part the judgment. (b) Whenever Except as provided in subsection (4), in the sentence and judgment do not contain such determination referred-to-in-subsection-(3)(a)as	2	(2) A conviction or incarceration may not be
time of the commission of the present offense; or (b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such the offense has been set aside in a postconviction hearing. (3) (a) If the court determines that an offender is not-eligible-to-be-designated-as-a-nondangerouseffender is DANGEROUS OFFENDER, it shall make that determination a part of the sentence imposed and shall state the determination in the judgment. (b) Whenever Except as provided in subsection (4), is determination referredtoinsubsection(3)(a)as nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the offender is considered to have been designated as nondangerous offender for purposes of eligibility for parole.	3	considered under subsection (1)(a) if:
offense on the grounds of innocence or the conviction for such the offense has been set aside in a postconviction hearing. (3) (a) If the court determines that an offender is not-eligible-to-be-designated-as-a-nondangerousoffender is of the sentence imposed and shall state the determination a part the judgment. (b) Whenever Except as provided in subsection (4), is the sentence and judgment do not contain such determination referred-to-in-subsection-(3)(a)as	4	(a) the offender was less than 18 years of age at the
offense on the grounds of innocence or the conviction for such the offense has been set aside in a postconviction hearing. (3) fat If the court determines that an offender is not-eligible-to-be-designated-as-a-nondangerouseffender to DANGEROUS OFFENDER, it shall make that determination a part of the sentence imposed and shall state the determination is the judgment. the judgment. the whenever Except as provided in subsection (4), is the sentence and judgment do not contain such a determination referred-to-in-subsection-(3)(a)as	5	time of the commission of the present offense; or
hearing. (3) faj If the court determines that an offender is not-eligible-to-be-designated-as-a-nondangerouseffender is DANGEROUS OFFENDER, it shall make that determination a part of the sentence imposed and shall state the determination is the judgment. fbj Whenever Except as provided in subsection (4), is the sentence and judgment do not contain such determination referred-to-in-subsection-(3)(a)as	6	(b) the offender has been pardoned for the previous
9 hearing. 10 (3) <u>fa}</u> If the court determines that an offender is not-eligible-to-be-designated-as-a-nondangerouseffender is DANGEROUS OFFENDER, it shall make that determination a part of the sentence imposed and shall state the determination is the judgment. 15 <u>fb</u> Whenever Except as provided in subsection (4), is the sentence and judgment do not contain such a determination referredtoinsubsection-(3)(a)as	7	offense on the grounds of innocence or the conviction for
10 (3) faj If the court determines that an offender is not-eligible-to-be-designated-as-a-nondangerouseffender is DANGEROUS OFFENDER, it shall make that determination a part of the sentence imposed and shall state the determination is the judgment. 15 fbj Whenever Except as provided in subsection (4), is the sentence and judgment do not contain such determination referred-to-in-subsection-(3)(a)as	8	such the offense has been set aside in a postconviction
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of the sentence imposed and shall state the determination is the judgment. 15	11	not-eligible-to-be-designated-as-a-nondangerousoffender $\underline{\mathtt{A}}$
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15 <u>fbj</u> Whenever Except as provided in subsection (4), is 16 the sentence and judgment do not contain such a 17 determination referred—to—in—subsection—(3)(a)——as——18 18 nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the 19 offender is considered to have been designated as 20 nondangerous offender for purposes of eligibility fo 21 parole.	13	of the sentence imposed and shall state the determination in
the sentence and judgment do not contain such a determination referred—to—in—subsection—(3)(a)——as——subsection—(3)(a)—as—as——subsection—(3)(a)—as—as—as—as—as—as—as—as—as—as—as—as—as—	14	the judgment.
determination referred—to—in—subsection—(3)(a)——as——18 nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the offender is considered to have been designated as nondangerous offender for purposes of eligibility for parole.	15	tb) Whenever Except as provided in subsection (4), if
nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the offender is considered to have been designated as nondangerous offender for purposes of eligibility for parole.	16	the sentence and judgment do not contain such a
offender is considered to have been designated as one nondangerous offender for purposes of eligibility for parole.	17	determination referredtoinsubsection(3)(a)asa
20 nondangerous offender for purposes of eligibility fo 21 parole.	18	nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the
21 parole.	19	offender is considered to have been designated as a
	20	nondangerous offender for purposes of eligibility for
22 (4) If an offender is given a probationary sentence	21	parole.
	22	(4) If an offender is given a probationary sentence

substantial danger to other persons or society. (2) A conviction or incarceration not idered under subsection (1)(a) if: (a) the offender was less than 18 years of age at the of the commission of the present offense; or (b) the offender has been pardoned for the previous ense on the grounds of innocence or the conviction for the offense has been set aside in a postconviction ing. (3) (a) If the court determines that an offender is -eligible-to-be-designated-as-a-nondangerous--offender A SEROUS OFFENDER, it shall make that determination a part the sentence imposed and shall state the determination in judgment. (b) Whenever Except as provided in subsection (4), if sentence and judgment do not contain such a

ole. (4) If an offender is given a probationary sentence 23 that is subsequently revoked, the court may make the 24 eligibility---for---designation---as---a determination of 25 nondangerous WHETHER THE offender IS A DANGEROUS OR

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SB 0170/02

- 1 NONDANGEROUS OFFENDER at the time of the revocation
- proceeding."
- 3 NEW SECTION. Section 2. Retroactive applicability.
- 4 [This act] applies to revocation proceedings begun on or
- 5 after [the effective date of this act]. To this extent,
- 6 [this act] applies retroactively, within the meaning of
- 7 1-2-109.

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1	SENATE BILL NO. 170
2	INTRODUCED BY JERGESON, BACHINI, PECK, THOMAS, MCLANE
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4	A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DESIGNATION
5	OF DANGEROUS OR NONDANGEROUS OFFENDER TO BE MADE AT THE TIME
6	OF REVOCATION OF A PROBATIONARY SENTENCE; AMENDING SECTION
7	46-18-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY
8	DATE."
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA;

Section 1. Section 46-18-404, MCA, is amended to read: 12 "46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) The Except as provided 13 14 in subsection (4), the sentencing court shall designate an 15 offender a nondangerous offender for purposes of eligibility

for parole under part 2 of chapter 23 if:

- (a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated 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 court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a

- substantial danger to other persons or society.
- 2 (2) A conviction or incarceration not may considered under subsection (1)(a) if:
- (a) the offender was less than 18 years of age at the time of the commission of the present offense; or
- (b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such the offense has been set aside in a postconviction 9 hearing.
- 10 (3) (a) If the court determines that an offender is 11 not-eligible-to-be-designated-as-a-nondangerous--offender A DANGEROUS OFFENDER, it shall make that determination a part 12 of the sentence imposed and shall state the determination in 13 14 the judgment.
- 15 (b) Whenever Except as provided in subsection (4), if 16 the sentence and judgment do not contain such a 17 determination referred--to--in--subsection--(3)(a)---as---a nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the 18 offender is considered to have been designated as 19 20 nondangerous offender for purposes of eligibility for 21 parole.
- 22 (4) If an offender is given a probationary sentence 23 that is subsequently revoked, the court may make the 24 determination of eliqibility---for---designation---as---a WHETHER THE offender IS A DANGEROUS OR 25 nondangerous

SB 0170/02

- 1 NONDANGEROUS OFFENDER at the time of the revocation
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1	SENATE	BILL	NO.	170	

INTRODUCED BY JERGESON, BACHINI, PECK, THOMAS, MCLANE

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DESIGNATION OF DANGEROUS OF NONDANGEROUS OFFENDER TO BE MADE AT THE TIME OF REVOCATION OF A PROBATIONARY SENTENCE; AMENDING SECTION 46-18-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated 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 court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a

1	substantial	danger	to	other	persons	or	society
_			~~	0	P4.00		,

- (2) A conviction or incarceration may not be considered under subsection (1)(a) if:
- 4 (a) the offender was less than 10 years of age at the time of the commission of the present offense; or
- (b) the offender has been pardoned for the previous
 offense on the grounds of innocence or the conviction for
 such the offense has been set aside in a postconviction
 hearing.
- 10 (3) <u>fat</u> If the court determines that an offender is
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 12 DANGEROUS OFFENDER, it shall make that determination a part
 13 of the sentence imposed and shall state the determination in
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SB 0170/02

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