

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.

1 *Senate* BILL NO. *170*
2 INTRODUCED BY *Jerguson*
3 *Bachini Bob Thomas McLean*
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 nondangerous 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 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
25 sentencing hearing, that the offender does not represent a

1 substantial danger to other persons or society.

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
11 not eligible to be designated as a nondangerous offender, it
12 shall make that determination a part of the sentence imposed
13 and shall state the determination in the judgment.

14 (b) Whenever Except as provided in subsection (4), if
15 the sentence and judgment do not contain such a
16 determination referred to in subsection (3)(a) as a
17 nondangerous offender, the offender is considered to have
18 been designated as a nondangerous offender for purposes of
19 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.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 170

INTRODUCED BY JERGESON, BACHINI, PECK, THOMAS, MCLANE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DESIGNATION OF DANGEROUS OR 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."

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

Section 1. Section 46-18-404, MCA, is amended to read:

"46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) The Except as provided in subsection (4), the sentencing court shall designate an 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) A conviction or incarceration may not be 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) ~~(a)~~ If the court determines that an offender is ~~not-eligible-to-be-designated-as-a-nondangerous--offender~~ A 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), if the sentence and judgment do not contain such a determination ~~referred--to--in--subsection--(3)(a)---as---a~~ nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

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

SB 0170/02

1 NONDANGEROUS OFFENDER at the time of the revocation
2 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.

-End-

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."
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 nondangerous 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 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
25 sentencing hearing, that the offender does not represent a

1 substantial danger to other persons or society.

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
11 ~~not-eligible-to-be-designated-as-a-nondangerous--offender~~ A
12 DANGEROUS OFFENDER, it shall make that determination a part
13 of the sentence imposed and shall state the determination in
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~~
18 nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the
19 offender is considered to have been designated as a
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 eligibility---for---designation---as---a
25 nondangerous WHETHER THE offender IS A DANGEROUS OR

SB 0170/02

1 NONDANGEROUS OFFENDER at the time of the revocation
2 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.

-End-

SENATE BILL NO. 170

INTRODUCED BY JERGESON, BACHINI, PECK, THOMAS, MCLANE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DESIGNATION OF DANGEROUS OR 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."

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

Section 1. Section 46-18-404, MCA, is amended to read:

"46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) The Except as provided in subsection (4), the sentencing court shall designate an 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) A conviction or incarceration may not be 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) ~~{a}~~ If the court determines that an offender is ~~not-eligible-to-be-designated-as-a-nondangerous--offender~~ A 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), if the sentence and judgment do not contain such a determination referred--to--in--subsection--(3){a}--as--a nondangerous THAT THE OFFENDER IS A DANGEROUS offender, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

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

SB 0170/02

1 NONDANGEROUS OFFENDER at the time of the revocation
2 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.

-End-