

HOUSE BILL 468

Introduced by J. Rice, et al.

2/04	Introduced
2/04	Referred to Judiciary
2/04	First Reading
2/04	Fiscal Note Requested
2/11	Hearing
2/11	Fiscal Note Received
2/12	Fiscal Note Printed
2/15	Committee Report--Bill Passed
2/16	2nd Reading Passed
2/18	3rd Reading Passed
	Transmitted to Senate
2/20	First Reading
2/20	Referred to Judiciary
3/15	Hearing
3/29	Committee Report--Bill Concurred as Amended
3/31	2nd Reading Concur Motion Failed
3/31	2nd Reading Indefinitely Postponed

1 *House* BILL NO. *468*
2 INTRODUCED BY *John Christopher Watkinson*
3 BY REQUEST OF THE DEPARTMENT OF
4 CORRECTIONS AND HUMAN SERVICES
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A
7 DEFENDANT WHO MAY BE SENTENCED TO COMMITMENT IN A
8 CORRECTIONAL INSTITUTION MUST BE COMMITTED TO THE DEPARTMENT
9 OF CORRECTIONS AND HUMAN SERVICES UNLESS, IN THE SENTENCING
10 ORDER, THE COURT STATES GOOD CAUSE FOR COMMITMENT TO A
11 CORRECTIONAL INSTITUTION; AND AMENDING SECTION 46-18-201,
12 MCA."
13

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

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

16 "46-18-201. Sentences that may be imposed. (1) Whenever
17 a person has been found guilty of an offense upon a verdict
18 or a plea of guilty, the court may:

19 (a) defer imposition of sentence, except as provided in
20 61-8-714 and 61-8-722 for sentences for driving under the
21 influence of alcohol or drugs, for a period, except as
22 otherwise provided, not exceeding 1 year for any misdemeanor
23 or for a period not exceeding 3 years for any felony. The
24 sentencing judge may impose upon the defendant any
25 reasonable restrictions or conditions during the period of

1 the deferred imposition. Reasonable restrictions or
2 conditions may include:

- 3 (i) jail base release;
4 (ii) jail time not exceeding 180 days;
5 (iii) conditions for probation;
6 (iv) restitution;
7 (v) payment of the costs of confinement;
8 (vi) payment of a fine as provided in 46-18-231;
9 (vii) payment of costs as provided in 46-18-232 and
10 46-18-233;
11 (viii) payment of costs of court-appointed counsel as
12 provided in 46-8-113;
13 (ix) with the approval of the facility or program, order
14 the offender to be placed in a community corrections
15 facility or program as provided in 53-30-321;
16 (x) community service;
17 (xi) home arrest as provided in Title 46, chapter 18,
18 part 10;
19 (xii) any other reasonable conditions considered
20 necessary for rehabilitation or for the protection of
21 society; or
22 (xiii) any combination of the above.

23 (b) suspend execution of sentence up to the maximum
24 sentence allowed for each particular offense. The sentencing
25 judge may impose on the defendant any reasonable

1 restrictions or conditions during the period of suspended
2 sentence. Reasonable restrictions or conditions may include
3 any of those listed in subsection (1)(a).

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

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

8 (e) impose a county jail or state prison sentence, as
9 provided in Title 45, for the offense or commit the
10 defendant to a the department of corrections and human
11 services for placement in an appropriate correctional
12 institution, with or without a fine as provided by law for
13 the offense or program. Unless the court specifically states
14 good cause in the sentencing order for commitment to a
15 correctional institution, commitment must be to the
16 department.

17 (f) with the approval of the facility or program, order
18 the offender to be placed in a community corrections
19 facility or program as provided in 53-30-321;

20 (g) impose any combination of subsections (1)(b)
21 through (1)(f).

22 (2) If a financial obligation is imposed as a condition
23 under subsection (1)(a), sentence may be deferred for a
24 period not exceeding 2 years for a misdemeanor or for a
25 period not exceeding 6 years for a felony, regardless of

1 whether any other conditions are imposed.

2 (3) If any restrictions or conditions imposed under
3 subsection (1)(a) or (1)(b) are violated, the court shall
4 consider any elapsed time and either expressly allow part or
5 all of it as a credit against the sentence or reject all or
6 part as a credit and state its reasons in the order. Credit,
7 however, must be allowed for jail or home arrest time
8 already served.

9 (4) Except as provided in 45-9-202 and 46-18-222, the
10 imposition or execution of the first 2 years of a sentence
11 of imprisonment imposed under the following sections may not
12 be deferred or suspended: 45-5-103, 45-5-202(3) relating to
13 aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
14 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and
15 (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

7 (8) In imposing a sentence on a defendant convicted of
8 a sexual offense as defined in 46-23-502, the court may not
9 waive the registration requirement provided in 46-18-254,
10 46-18-255, and Title 46, chapter 23, part 5.

11 (9) A person convicted of a sexual offense, as defined
12 in 46-23-502, and sentenced to imprisonment in the state
13 prison shall enroll in the educational phase of the prison's
14 sexual offender program.

15 ~~{18}-In-sentencing-a-nonviolent-felony-offender,-the~~
16 ~~court-shall-first-consider-alternatives-to-imprisonment-of~~
17 ~~the-offender-in-the-state-prison,-including-placement-of-the~~
18 ~~offender-in-a-community-corrections-facility-or-program,-in~~
19 ~~considering-alternatives-to-imprisonment,-the-court-shall~~
20 ~~examine-the-sentencing-criteria-contained-in-46-18-225.-If~~
21 ~~the-offender-is-subsequently-sentenced-to-the-state-prison~~
22 ~~or-a-women's-correctional-facility,-the-court-shall-state~~
23 ~~its-reasons-why-alternatives-to-imprisonment-were-not~~
24 ~~selected,-based-on-the-criteria-contained-in-46-18-225."~~

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

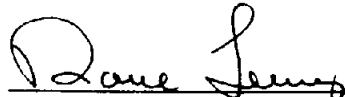
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0468, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act providing that a defendant who may be sentenced to commitment in a correctional institution must be committed to the Department of Corrections and Human Services unless, in the sentencing order, the court states good cause for commitment to a correctional institution; and amending section 46-18-201, MCA.

ASSUMPTIONS:

1. Commitment to the department will allow the department to classify and appropriately place offenders.
2. Additional legislative authority will be required to develop alternative placements.
3. If legislative authority is granted, the department will be able to place some offenders in alternative settings.
4. This act alone will not result in measurable fiscal impact.

FISCAL IMPACT: No direct fiscal impact from this act.

 2-10-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-12-93
JIM RICE, PRIMARY SPONSOR DATE

Fiscal Note for HB0468, as introduced

HB 468

APPROVED BY COMMITTEE
ON JUDICIARY

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2 INTRODUCED BY *J. R. Chapman Watson*
3 BY REQUEST OF THE DEPARTMENT OF
4 CORRECTIONS AND HUMAN SERVICES

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

16 "46-18-201. Sentences that may be imposed. (1) Whenever
17 a person has been found guilty of an offense upon a verdict
18 or a plea of guilty, the court may:

19 (a) defer imposition of sentence, except as provided in
20 61-8-714 and 61-8-722 for sentences for driving under the
21 influence of alcohol or drugs, for a period, except as
22 otherwise provided, not exceeding 1 year for any misdemeanor
23 or for a period not exceeding 3 years for any felony. The
24 sentencing judge may impose upon the defendant any
25 reasonable restrictions or conditions during the period of

1 the deferred imposition. Reasonable restrictions or
2 conditions may include:

- 3 (i) jail base release;
4 (ii) jail time not exceeding 180 days;
5 (iii) conditions for probation;
6 (iv) restitution;
7 (v) payment of the costs of confinement;
8 (vi) payment of a fine as provided in 46-18-231;
9 (vii) payment of costs as provided in 46-18-232 and
10 46-18-233;
11 (viii) payment of costs of court-appointed counsel as
12 provided in 46-8-113;
13 (ix) with the approval of the facility or program, order
14 the offender to be placed in a community corrections
15 facility or program as provided in 53-30-321;
16 (x) community service;
17 (xi) home arrest as provided in Title 46, chapter 18,
18 part 10;
19 (xii) any other reasonable conditions considered
20 necessary for rehabilitation or for the protection of
21 society; or
22 (xiii) any combination of the above.

23 (b) suspend execution of sentence up to the maximum
24 sentence allowed for each particular offense. The sentencing
25 judge may impose on the defendant any reasonable

1 restrictions or conditions during the period of suspended
2 sentence. Reasonable restrictions or conditions may include
3 any of those listed in subsection (1)(a).

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

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6 or payment of costs of court-appointed counsel as provided
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8 (e) impose a county jail or state prison sentence, as
9 provided in Title 45, for the offense or commit the
10 defendant to a the department of corrections and human
11 services for placement in an appropriate correctional
12 institution, with or without a fine as provided by law for
13 the offense or program. Unless the court specifically states
14 good cause in the sentencing order for commitment to a
15 correctional institution, commitment must be to the
16 department.

17 (f) with the approval of the facility or program, order
18 the offender to be placed in a community corrections
19 facility or program as provided in 53-30-321;

20 (g) impose any combination of subsections (1)(b)
21 through (1)(f).

22 (2) If a financial obligation is imposed as a condition
23 under subsection (1)(a), sentence may be deferred for a
24 period not exceeding 2 years for a misdemeanor or for a
25 period not exceeding 6 years for a felony, regardless of

1 whether any other conditions are imposed.

2 (3) If any restrictions or conditions imposed under
3 subsection (1)(a) or (1)(b) are violated, the court shall
4 consider any elapsed time and either expressly allow part or
5 all of it as a credit against the sentence or reject all or
6 part as a credit and state its reasons in the order. Credit,
7 however, must be allowed for jail or home arrest time
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16 (5) Except as provided in 46-18-222, the imposition or
17 execution of the first 10 years of a sentence of
18 imprisonment imposed under 45-5-102 may not be deferred or
19 suspended.

20 (6) Except as provided in 46-18-222, imposition of
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22 a defendant who has been convicted of a felony on a prior
23 occasion, whether or not the sentence was imposed,
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6 imprisonment.

7 (8) In imposing a sentence on a defendant convicted of
8 a sexual offense as defined in 46-23-502, the court may not
9 waive the registration requirement provided in 46-18-254,
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11 (9) A person convicted of a sexual offense, as defined
12 in 46-23-502, and sentenced to imprisonment in the state
13 prison shall enroll in the educational phase of the prison's
14 sexual offender program.

15 ~~{10} In sentencing a nonviolent felony offender, the~~
16 ~~court shall first consider alternatives to imprisonment of~~
17 ~~the offender in the state prison, including placement of the~~
18 ~~offender in a community corrections facility or program, in~~
19 ~~considering alternatives to imprisonment, the court shall~~
20 ~~examine the sentencing criteria contained in 46-18-225. If~~
21 ~~the offender is subsequently sentenced to the state prison~~
22 ~~or a women's correctional facility, the court shall state~~
23 ~~its reasons why alternatives to imprisonment were not~~
24 ~~selected, based on the criteria contained in 46-18-225."~~

-End-

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21 ~~the offender is subsequently sentenced to the state prison~~
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23 ~~its reasons why alternatives to imprisonment were not~~
24 ~~selected, based on the criteria contained in 46-18-225."~~

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 468 (third reading copy -- blue), respectfully report that House Bill No. 468 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 5, line 25.

Following: line 24

Insert: "(10) In determining where to place a felony offender, the department shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the department shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently placed in the state prison or a women's correctional facility, the department shall maintain records indicating why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

-END-

M - Amd. Coord.
M Sec. of Senate

Christiaens
Senator Carrying Bill

SENATE
HB 468
691305SC.Sma