

HOUSE BILL 554

Introduced by Clark, et al.

2/10	Introduced
2/10	Referred to Judiciary
2/10	First Reading
2/10	Fiscal Note Requested
2/15	Hearing
2/15	Fiscal Note Received
2/17	Tabled in Committee

House BILL NO. 554

INTRODUCED BY

Clark F. Land *R. Lynn Monahan*
Bachini *Don* *Eric* *Hahn* *Slansky*
Tom Nelson *Storall*

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MINIMUM PRISON TERM FOR DELIBERATE HOMICIDE FROM 10 YEARS TO 50 YEARS; AND AMENDING SECTIONS 45-5-102 AND 46-18-201, MCA."

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

Section 1. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if the person:

(a) he purposely or knowingly causes the death of another human being; or

(b) he attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter after the felony, he the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than ~~10~~ 50 years

or more than 100 years, except as provided in 46-18-222."

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, except as provided in 61-8-714 and 61-8-722 for 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. 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) with the approval of the facility or program, order

1 the offender to be placed in a community corrections
2 facility or program as provided in 53-30-321;

3 (x) community service;

4 (xi) home arrest as provided in Title 46, chapter 18,
5 part 10;

6 (xii) any other reasonable conditions considered
7 necessary for rehabilitation or for the protection of
8 society; or

9 (xiii) any combination of the above conditions contained
10 in subsections (1)(a)(i) through (1)(a)(xii).

11 (b) suspend execution of sentence up to the maximum
12 sentence allowed for each particular offense. The sentencing
13 judge may impose on the defendant any reasonable
14 restrictions or conditions during the period of suspended
15 sentence. Reasonable restrictions or conditions may include
16 any of those listed in subsection (1)(a).

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

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

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

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

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

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

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

15 (4) Except as provided in 45-9-202 and 46-18-222, the
16 imposition or execution of the first 2 years of a sentence
17 of imprisonment imposed under the following sections may not
18 be deferred or suspended: 45-5-103, 45-5-202(3) relating to
19 aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
20 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and
21 (5)(d), 45-9-102(4), and 45-9-103(2).

22 (5) Except as provided in 46-18-222, the imposition or
23 execution of the first ~~10~~ 50 years of a sentence of
24 imprisonment imposed under 45-5-102 may not be deferred or
25 suspended.

1 (6) Except as provided in 46-18-222, imposition of
2 sentence in a felony case may not be deferred in the case of
3 a defendant who has been convicted of a felony on a prior
4 occasion, whether or not the sentence was imposed,
5 imposition of the sentence was deferred, or execution of the
6 sentence was suspended.

7 (7) If the victim was less than 16 years old, the
8 imposition or execution of the first 30 days of a sentence
9 of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505,
10 or 45-5-507 may not be deferred or suspended. Section
11 46-18-222 does not apply to the first 30 days of the
12 imprisonment.

13 (8) In imposing a sentence on a defendant convicted of
14 a sexual offense as defined in 46-23-502, the court may not
15 waive the registration requirement provided in 46-18-254,
16 46-18-255, and Title 46, chapter 23, part 5.

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

21 (10) In sentencing a nonviolent felony offender, the
22 court shall first consider alternatives to imprisonment of
23 the offender in the state prison, including placement of the
24 offender in a community corrections facility or program. In
25 considering alternatives to imprisonment, the court shall

1 examine the sentencing criteria contained in 46-18-225. If
2 the offender is subsequently sentenced to the state prison
3 or a women's correctional facility, the court shall state
4 its reasons why alternatives to imprisonment were not
5 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 HB0554, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act increasing the minimum prison term for deliberate homicide from 10 years to 50 years; and amending sections 45-5-102 and 46-18-201, MCA.

ASSUMPTIONS:

1. An annual average of 14 offenders convicted of deliberate homicide has been admitted to Montana State Prison (MSP) each year since 1988.
2. The average sentence imposed for deliberate homicide in the past five years has been 79 years.
3. Nearly 25% of offenders convicted of deliberate homicide since 1988 are serving sentences of less than 50 years.
4. At 22 days of good time per month, the average estimated time in prison for a 79 year sentence is about 42 years.
5. If these offenders had received sentences of 50 years, the average length of stay of those convicted solely of deliberate homicide would have been increased eight percent, or nearly 3.5 years.
6. The equivalent of 4 additional Average Daily Population (ADP) per year would be generated.
7. The FY93 average daily cost per inmate at MSP is \$47.00 or \$17,155 annually.
8. It is assumed if this bill passes, it will eliminate "plea bargaining" in homicide cases thereby increasing the case workload of prosecuting attorneys. Because the Attorney General's County Prosecutor Services Bureau (CPS) staff prosecutes or aids in many homicide cases, and the bureau currently must turn down additional cases, the potential burden of this bill, without added CPS staff, will fall on county attorneys.

FISCAL IMPACT:**Montana State Prison:**

	FY '94			FY '95		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	608.29	608.29	0.00	608.29	608.29	0.00
Personal Services	20,251,094	20,251,094	0	20,582,265	20,582,265	0
Operating Costs	12,063,339	12,131,959	68,620	12,476,565	12,545,185	68,620
Total	32,314,433	32,383,053	68,620	33,058,830	33,127,450	68,620

Funding:

General Fund	27,663,577	27,732,197	68,620	28,102,182	23,170,802	68,620
State Special	886,328	886,328	0	956,565	956,565	0
Federal Revenue	70,073	70,073	0	70,073	70,073	0
Proprietary	3,694,455	3,694,455	0	3,930,010	3,930,010	0
Total	32,314,433	32,383,053	68,620	33,058,830	33,127,450	68,620

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Potential increase in county attorney staff, which are 50% general fund.

David Lewis 2-13-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-15-93
ROBERT CLARK, PRIMARY SPONSOR DATE

Fiscal Note for HB0554, as introduced

HB554