

House BILL NO. 93

INTRODUCED BY *Minabar*

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN ALTERNATIVE SENTENCE FOR CERTAIN SEX OFFENDERS; PROVIDING FOR A SEX OFFENDER TREATMENT PROGRAM IN THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; AND AMENDING SECTION 46-18-201, MCA."

## STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] grants rulemaking authority to the department of corrections and human services. It is intended that the rules set standards to allow an adequate determination of whether a sex offender sentenced under 46-18-201 is of limited intelligence or seriously mentally ill. It is also intended that the sex offender treatment program rules establish adequate criteria for placement in the program, evaluation, removal, and successful completion of the program.

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

**Section 1.** 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 or as provided in 61-6-304, 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~~ ordering the offender to be placed in a community corrections facility or program as provided in 53-30-321;
- (x) community service;
- (xi) home arrest as provided in Title 46, chapter 18, part 10;
- (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
- (xiii) any combination of the above.

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

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

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

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections and human services for placement in an appropriate correctional institution or program;

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

(g) if the offense is a sexual offense, as defined in 46-23-502, and the presentence investigation indicates that the person is of limited intelligence or is seriously mentally ill, as defined by rules adopted by the department of corrections and human services, commit the person to the department for appropriate placement by the department in a correctional or mental health facility or program, including the sex offender treatment program provided for in [section 2]. The department may at any time place the person in the sex offender treatment program for evaluation or treatment. The court retains jurisdiction of a person sentenced under this subsection. Upon the person's successful completion of the sex offender treatment program, the court may order a reduction of the sentence and the person is eligible for parole.

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

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

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

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

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

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

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

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

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

28           (10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to  
29 imprisonment of the offender in the state prison, including placement of the offender in a community  
30 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the

1 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison  
2 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were  
3 not selected, based on the criteria contained in 46-18-225."

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5 **NEW SECTION. Section 2. Sex offender treatment program.** There is a sex offender treatment  
6 program in the department of corrections and human services. The program is for the evaluation,  
7 treatment, and rehabilitation of persons sentenced under 46-18-201(1)(g). The department shall adopt rules  
8 to implement the program, including criteria for placement in and successful completion of the program.

9

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0093, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing an alternative sentence for certain sex offenders and providing for a sex offender treatment program in the Department of Corrections and Human Services (DCHS).

ASSUMPTIONS:

1. DCHS has included in its Executive Budget recommendation to the Legislature one new proposal related to limited contracted sex offender treatment programs. Control Variable #30-92012 includes \$105,534 in FY96 and \$114,202 in FY97 to provide for operational and equipment expenditures for a specialized program located at the Montana State Hospital (MSH) to serve developmentally disabled and seriously mentally ill sex offenders.
2. Four current vacant FTE will be converted to specialized treatment staff positions for the new program at MSH.

FISCAL IMPACT:

The only fiscal impact is already reflected in the Executive Budget.

*Dave Lewis* 1-10-95  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

*W. Menahan*  
WILLIAM MENAHAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0093, as introduced

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