

House BILL NO. 378

INTRODUCED BY Joe

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN A CRIMINAL PROCEEDING, IF BOTH THE PREVIOUS OFFENSE AND THE PRESENT OFFENSE WERE CRIMES OF VIOLENCE, THE JURY MAY RECOMMEND A SENTENCE IF THE CASE WAS TRIED BEFORE A JURY; PROVIDING THAT THE COURT MAY NOT DEFER OR SUSPEND THE IMPOSITION OR EXECUTION OF ANY PART OF A SENTENCE OF IMPRISONMENT IMPOSED ON A PERSISTENT FELONY OFFENDER; PROVIDING THAT THE OFFENDER SHALL SERVE THE ENTIRE SENTENCE AND MAY NOT BE PAROLED OR GIVEN TIME OFF FOR GOOD BEHAVIOR OR OTHERWISE BE GIVEN AN EARLY RELEASE FOR ANY REASON; AND AMENDING SECTIONS 46-18-222 AND 46-18-502, MCA."

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

Section 1. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition, and suspended execution, and service of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution and on service of sentence prescribed by 46-18-201(4) through (6), 46-18-221(3), 46-18-224, and 46-18-502~~(3)~~ do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which the defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which the defendant is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the

1 conduct of another, and the defendant's participation was relatively minor;

2 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual
3 element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the
4 commission of the offense; or

5 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
6 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
7 ultimate protection of society, in which case the court shall include in its judgment a statement of the
8 reasons for its determination."
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10 **Section 2.** Section 46-18-502, MCA, is amended to read:

11 **"46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in subsection (2),
12 a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or
13 more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if ~~he~~ the offender was
14 21 years of age or older at the time of the commission of the present offense.

15 (2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of ~~his~~ the
16 previous felony conviction, less than 5 years have elapsed between the commission of the present offense
17 and either the previous felony conviction or the offender's release on parole or otherwise from prison or
18 other commitment imposed as a result of the previous felony conviction, and ~~he~~ the offender was 21 years
19 of age or older at the time of the commission of the present offense, ~~he~~ the offender shall be imprisoned
20 in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount
21 not to exceed \$50,000, or both.

22 (3) Except as provided in 46-18-222 and subsection (4) of this section, the imposition or execution
23 of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed
24 under subsection (2) may not be deferred or suspended.

25 (4) Except as provided in 46-18-222, if both the previous offense and the present offense were
26 crimes of violence, as defined in 46-18-104:

27 (a) the jury may recommend a sentence if the case was tried before a jury; and

28 (b) (i) the court may not defer or suspend the imposition or execution of any part of a sentence
29 of imprisonment imposed under subsection (1) or (2);

30 (ii) the offender shall serve the entire sentence; and

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0378, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing that in a criminal proceeding, if both the previous offense and the present offense were crimes of violence, the jury may recommend a sentence if the case was tried before a jury. The offender shall serve the entire sentence and may not be paroled or given time off for good behavior or otherwise be given an early release for any reason.

ASSUMPTIONS:

1. A jury may recommend a sentence if the case was tried before the jury for offenders convicted of violent offenses on two separate occasions of offenses defined in 46-18-104, MCA.
2. An offender shall serve the entire sentence imposed by a jury and the offender may not be paroled or given time off for good behavior or otherwise be given an early release for any reason.
3. The Department of Corrections and Human Services (DCHS) had an average of 27 admissions a year in fiscal years 1990, 1992, and 1994 who could have been required to serve their entire sentences had this bill been in effect. The average length of those sentences was 20.7 years. Offenders defined in this bill released in fiscal years 1990, 1992, and 1994, served 35.2% of their sentences.
4. DCHS will have no fiscal impact for the 1997 biennium. Offenders defined in this bill are included in the DCHS proposed biennium budget. These offenders would be incarcerated within Montana State Prison (MSP) without the passage of this bill during the 1997 biennium.

FISCAL IMPACT:

No fiscal impact in the 1997 biennium, but significant long-term financial impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. DCHS would assume an estimated extra general fund cost of \$198,680 in care and custody costs for each offender sentenced under this bill over the course of the sentence. Average sentence = 20.7 years
Average sentence served today 35.2 %
 $20.7 \times 365 \text{ days} = 7,556 \text{ days};$
 $7,556 \text{ days} \times .352 = 2,660 \text{ days} \times \$40.58(\text{G.F./day costs}) = \$107,943 \text{ Present Law}$
 $7,556 \text{ days} \times \$40.58(\text{G.F./day costs}) = \$306,623 \text{ effects this bill}$
 $\$306,623 - \$107,943 = \$198,680 \text{ costs of this bill}$
2. MSP is currently near its maximum capacity and well over its designed capacity. Having 27 admissions per year with no opportunity for parole will eventually require an additional close custody housing unit every three years at an estimated costs of \$4-\$5 million based on FY94 dollars. To staff a close custody unit of this nature would require an additional 26.00 FTE and cost \$1,184,936 to operate based on FY94 dollars. ($80 \times \$40.58 \times 365 \text{ days}$) This long-range effect would be 7-8 years from now. ($20.7 \text{ years} \times .352\% - \text{current length of sentences today}$)
3. The nature of the no parole sentence as proposed in this bill would mean that an 80 bed close custody housing unit would be constructed and occupied with offenders every 3 years beginning 7-8 years after implementation of this bill.

Dave Lewis 2-4-95

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

Rick Jore

RICK JORE, PRIMARY SPONSOR DATE

Fiscal Note for HB0378, as introduced

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(1) the defendant was less than 18 years of age at the time of the commission of the offense for which the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which the defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which the defendant is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

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1 conduct of another, and the defendant's participation was relatively minor;

2 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual
3 element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the
4 commission of the offense; or

5 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
6 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
7 ultimate protection of society, in which case the court shall include in its judgment a statement of the
8 reasons for its determination."
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10 **Section 2.** Section 46-18-502, MCA, is amended to read:

11 **"46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in subsection (2),
12 a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or
13 more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if ~~he~~ the offender was
14 21 years of age or older at the time of the commission of the present offense.

15 (2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of ~~his~~ the
16 previous felony conviction, less than 5 years have elapsed between the commission of the present offense
17 and either the previous felony conviction or the offender's release on parole or otherwise from prison or
18 other commitment imposed as a result of the previous felony conviction, and ~~he~~ the offender was 21 years
19 of age or older at the time of the commission of the present offense, ~~he~~ the offender shall be imprisoned
20 in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount
21 not to exceed \$50,000, or both.

22 (3) Except as provided in 46-18-222 and subsection (4) of this section, the imposition or execution
23 of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed
24 under subsection (2) may not be deferred or suspended.

25 (4) Except as provided in 46-18-222, if both the previous offense and the present offense were
26 crimes of violence, as defined in 46-18-104:

27 (a) the jury may recommend a sentence if the case was tried before a jury; and

28 (b) (i) the court may not defer or suspend the imposition or execution of any part of a sentence
29 of imprisonment imposed under subsection (1) or (2);

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1 (iii) the offender may not be paroled or given time off for good behavior or otherwise be given an
2 early release for any reason.

3 ~~(4)(5)~~ Any sentence imposed under subsection (2) ~~shall~~ must run consecutive to any other
4 sentence imposed."

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-END-

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