

House BILL NO. 547

INTRODUCED BY

*Clark Cole*

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING, FOR THE REST OF THEIR LIVES, THE PURCHASE OR POSSESSION OF FIREARMS BY CERTAIN CRIMINALS; AMENDING SECTION 46-18-801, MCA; AND PROVIDING APPLICABILITY PROVISIONS."

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

**Section 1.** Section 46-18-801, MCA, is amended to read:

**"46-18-801. Effect of conviction -- civil disabilities.** (1) Conviction of ~~any an~~ offense ~~shall~~ does not deprive the offender of ~~any a~~ civil or constitutional ~~rights~~ right, except as provided in the Montana constitution or as they shall be specifically enumerated by the sentencing judge as a necessary conditions condition of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) ~~No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.~~

~~(3) When~~ Except as provided in the Montana constitution, if a person has been deprived of ~~any of his a~~ civil or constitutional ~~rights~~ right by reason of conviction for an offense and ~~his~~ the person's sentence has expired or ~~he~~ the person has been pardoned, ~~he shall be~~ the person is restored to all civil rights and full citizenship, the same as if ~~such~~ the conviction had not occurred."

**NEW SECTION. Section 2. Unlawful possession of firearm by convicted person.** (1) A person commits the offense of unlawful possession of a firearm by a convicted person if the person has been convicted of one of the following offenses, convicted of solicitation of one of the following offenses, or convicted of an attempt or conspiracy to commit one of the following offenses and if the person purposely or knowingly purchases or possesses a firearm:

- (a) deliberate homicide, 45-5-102;
- (b) mitigated deliberate homicide, 45-5-103;
- (c) aggravated assault or felony assault, 45-5-202;
- (d) intimidation, 45-5-203;

1 (e) a third or subsequent conviction of domestic abuse, 45-5-206;

2 (f) a second or subsequent conviction of stalking, 45-5-220;

3 (g) malicious intimidation or harassment, 45-5-221;

4 (h) kidnapping, 45-5-302;

5 (i) aggravated kidnapping, 45-5-303;

6 (j) robbery, 45-5-401;

7 (k) sexual intercourse without consent under 45-5-503(1) or (3)(b);

8 (l) aggravated burglary, 45-6-204;

9 (m) a felony not specifically listed in this subsection (1) for which the person received an additional  
10 sentence under 46-18-221; or

11 (n) an offense under the law of another state or of the United States that is equivalent to an offense  
12 specifically listed in this subsection (1).

13 (2) A person convicted of unlawful possession of a firearm by a convicted person shall be  
14 imprisoned in a state prison for not less than 2 years or more than 10 years.

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16 **NEW SECTION. Section 3. Lifetime firearms supervision of certain convicted persons.** (1) For the  
17 purposes of rehabilitation and public protection, a person convicted of an offense listed in [section 2] shall,  
18 as part of the sentence imposed, be sentenced to life supervision by the state for the purpose of restricting  
19 the person's right to purchase and possess firearms. Active supervision by a probation or parole officer  
20 is not required but may be imposed by the court. "Supervision" means that the person may not violate  
21 [section 2] and must comply with other state and federal law restrictions on the purchase and possession  
22 of firearms.

23 (2)(a) A person subject to subsection (1) may apply to the district court for the county in which  
24 the person resides for a permit to purchase and possess one or more firearms. The person shall show good  
25 cause for the possession of each firearm sought to be purchased and possessed. The grant or denial of  
26 the application does not prevent the person from making another application, except that if an application  
27 is denied, another application may not be made for the next 12 months.

28 (b) The application must contain the following information:

29 (i) the person's full name and any past or present aliases;

30 (ii) the person's date and place of birth;

1 (iii) the person's address;

2 (iv) the person's occupation;

3 (v) the make and model of each firearm sought to be purchased and possessed;

4 (vi) the date and place of each conviction of an offense listed in [section 2], the name of the  
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7 (vii) the name and business address of the person's last probation or parole officer; and

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9 (c) The person shall, at the time of filing the application with the court, mail a copy to the county  
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11 (d) The county attorney or county sheriff may file a written objection with the court. If no  
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27 **NEW SECTION. Section 6. Applicability.** (1) [Section 2(1)] does not apply to a person convicted  
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29 (2) [Section 3] applies only to sentences imposed after [the effective date of this act].

30 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0547, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

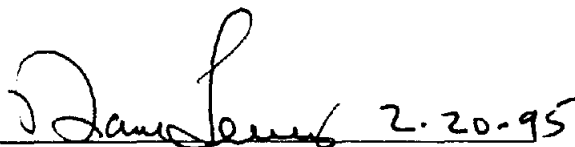
A bill prohibiting, for the rest of their lives, the purchase or possession of firearms by certain criminals.

ASSUMPTIONS:

1. A person convicted of unlawful possession of a firearm shall be imprisoned in a state prison for not less than 2 years or more than 10 years.
2. For the fiscal years 1990-1994, the average number of prison admissions for the offenses defined within this bill is over 220 per year. The average number of probation admissions for the same crimes in the same period is over 358 per year.
3. It is assumed that a conviction of the offense of "unlawful possession" by itself would be rare. In other words, the conviction would be in connection with another crime. Thus the prison population would generally not increase as a direct result of the passage of this bill.
4. If the prison population is affected by this bill, the approximate annual cost to the general fund per prisoner is \$15,000.

FISCAL IMPACT:

The fiscal impact of this bill is indeterminable, but presumed to be minimal.

  
DAVE LEWIS, BUDGET DIRECTOR      DATE 2-20-95  
Office of Budget and Program Planning

  
ROBERT CLARK, PRIMARY SPONSOR      DATE

Fiscal Note for HB0547, as introduced

HB 547

APPROVED BY COM  
ON JUDICIARY1  
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23 (2)(a) A person subject to subsection (1) may apply to the district court for the county in which  
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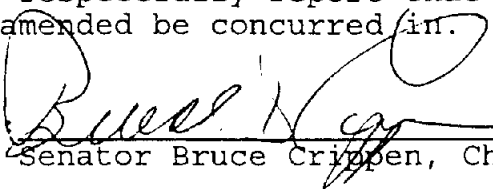
30 -END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 20, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 547 (third reading copy -- blue), respectfully report that HB 547 be amended as follows and as so amended be concurred in.

Signed:   
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.

Following: "CRIMINALS;"

Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE;"

2. Page 1, line 14.

Following: "society."

Insert: "If the sentencing judge incorporates by reference in the sentencing order rules of the department of corrections and human services or the board of pardons setting conditions of probation, parole, or supervised release with which the offender is required to comply, the incorporation by reference constitutes a specific enumeration of the conditions for purposes of this section."

3. Page 1, line 23.

Following: second "person"

Insert: "purposely or knowingly purchases or possesses a firearm after the person"

4. Page 1, lines 25 and 26.

Following: "offenses" on line 25

Strike: remainder of line 25 through "firearm" on line 26

5. Page 3, line 27.

Following: "Applicability"

Insert: "-- retroactive applicability"

6. Page 3, line 30.

Insert: "(3) [Section 1] applies retroactively, within the meaning of 1-2-109."

-END-



Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

HB 547  
SENATE

641412SC.SRF

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4 NEW SECTION. Section 6. Applicability -- RETROACTIVE APPLICABILITY. (1) [Section 2(1)] does  
5 not apply to a person convicted of an offense listed in [section 2(1)] before [the effective date of this act].

6 (2) [Section 3] applies only to sentences imposed after [the effective date of this act].

7 (3) [SECTION 1] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109.

8 -END-



## FREE CONFERENCE COMMITTEE

on House Bill 547  
Report No. 1 , April 7, 1995

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 547 and recommend the following amendments:

1. Page 2, lines 1 through 16.

Strike: line 1 in its entirety through "(m)" on line 16

Insert: ": (a)"

Renumber: subsequent subsection

2. Page 2, line 16.

Following: "felony"

Strike: "not specifically listed in this subsection (1)"

3. Page 2, line 19.

Strike: "specifically listed in this subsection (1)"

Insert: "that when committed in Montana is subject to an additional sentence under 46-18-221"

4. Page 2, line 22.

Following: line 21

Insert: "(3) A person who has been issued a permit under [section 3] may not be convicted of a violation of this section."

5. Page 2, line 24.

Strike: "listed"

Insert: "referred to"

6. Page 3, line 11.

Strike: "listed"

Insert: "referred to"

7. Page 4, line 5.

Strike: "listed"

Insert: "referred to"

ADOPT

REJECT

HB 547  
FCCR#1

801639CC.Hbk



We recommend that the amendments considered above to House Bill 547 be acceded to by the senate.

And this FREE Conference Committee report be adopted.

For the House:

Clark

Bob Clark

Chair

Boharski

Wm E Boharski

McCulloch

Linda McCulloch

For the Senate:

Cole

Mack Cole

Chair

Bishop

Al Bishop

Bartlett

Sue Bartlett

## 1 HOUSE BILL NO. 547

2 INTRODUCED BY CLARK, COLE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING, FOR THE REST OF THEIR LIVES, THE PURCHASE  
5 OR POSSESSION OF FIREARMS BY CERTAIN CRIMINALS; ALLOWING THE SENTENCING ORDER TO  
6 INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED  
7 RELEASE; AMENDING SECTION 46-18-801, MCA; AND PROVIDING APPLICABILITY PROVISIONS."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 **Section 1.** Section 46-18-801, MCA, is amended to read:

12 **"46-18-801. Effect of conviction -- civil disabilities.** (1) Conviction of ~~any~~ an offense ~~shall~~ does  
13 not deprive the offender of ~~any~~ a civil or constitutional ~~rights~~ right, except as provided in the Montana  
14 constitution or as they shall be specifically enumerated by the sentencing judge as a necessary conditions  
15 condition of the sentence directed toward the objectives of rehabilitation and the protection of society. IF  
16 THE SENTENCING JUDGE INCORPORATES BY REFERENCE IN THE SENTENCING ORDER RULES OF THE  
17 DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES OR THE BOARD OF PARDONS SETTING  
18 CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE WITH WHICH THE OFFENDER IS  
19 REQUIRED TO COMPLY, THE INCORPORATION BY REFERENCE CONSTITUTES A SPECIFIC ENUMERATION  
20 OF THE CONDITIONS FOR PURPOSES OF THIS SECTION.

21 (2) ~~No person shall suffer any civil or constitutional disability not specifically included by the~~  
22 ~~sentencing judge in his order of sentence.~~

23 (3) ~~When~~ Except as provided in the Montana constitution, if a person has been deprived of any of  
24 ~~his~~ a civil or constitutional ~~rights~~ right by reason of conviction for an offense and ~~his~~ the person's sentence  
25 has expired or ~~he~~ the person has been pardoned, ~~he shall be~~ the person is restored to all civil rights and full  
26 citizenship, the same as if ~~such~~ the conviction had not occurred."

27  
28 **NEW SECTION.** **Section 2. Unlawful possession of firearm by convicted person.** (1) A person  
29 commits the offense of unlawful possession of a firearm by a convicted person if the person PURPOSELY  
30 OR KNOWINGLY PURCHASES OR POSSESSES A FIREARM AFTER THE PERSON has been convicted of

1 ~~one of the following offenses, convicted of solicitation of one of the following offenses, or convicted of~~  
 2 ~~an attempt or conspiracy to commit one of the following offenses and if the person purposely or knowingly~~  
 3 ~~purchases or possesses a firearm:~~

4 ~~(a) deliberate homicide, 45-5-102;~~

5 ~~(b) mitigated deliberate homicide, 45-5-103;~~

6 ~~(c) aggravated assault or felony assault, 45-5-202;~~

7 ~~(d) intimidation, 45-5-203;~~

8 ~~(e) a third or subsequent conviction of domestic abuse, 45-5-206;~~

9 ~~(f) a second or subsequent conviction of stalking, 45-5-220;~~

10 ~~(g) malicious intimidation or harassment, 45-5-221;~~

11 ~~(h) kidnapping, 45-5-302;~~

12 ~~(i) aggravated kidnapping, 45-5-303;~~

13 ~~(j) robbery, 45-5-401;~~

14 ~~(k) sexual intercourse without consent under 45-5-503(1) or (3)(b);~~

15 ~~(l) aggravated burglary, 45-5-204;~~

16 ~~(m): (A) a felony not specifically listed in this subsection (1) for which the person received an~~  
 17 ~~additional sentence under 46-18-221; or~~

18 ~~(n)(B) an offense under the law of another state or of the United States that is equivalent to an~~  
 19 ~~offense specifically listed in this subsection (1) THAT WHEN COMMITTED IN MONTANA IS SUBJECT TO~~  
 20 ~~AN ADDITIONAL SENTENCE UNDER 46-18-221.~~

21 (2) A person convicted of unlawful possession of a firearm by a convicted person shall be  
 22 imprisoned in a state prison for not less than 2 years or more than 10 years.

23 (3) A PERSON WHO HAS BEEN ISSUED A PERMIT UNDER [SECTION 3] MAY NOT BE CONVICTED  
 24 OF A VIOLATION OF THIS SECTION.

25  
 26 NEW SECTION. Section 3. Lifetime firearms supervision of certain convicted persons. (1) For the  
 27 purposes of rehabilitation and public protection, a person convicted of an offense listed REFERRED TO in  
 28 [section 2] shall, as part of the sentence imposed, be sentenced to life supervision by the state for the  
 29 purpose of restricting the person's right to purchase and possess firearms. Active supervision by a  
 30 probation or parole officer is not required but may be imposed by the court. "Supervision" means that the

1 person may not violate [section 2] and must comply with other state and federal law restrictions on the  
2 purchase and possession of firearms.

3 (2) (a) A person subject to subsection (1) may apply to the district court for the county in which  
4 the person resides for a permit to purchase and possess one or more firearms. The person shall show good  
5 cause for the possession of each firearm sought to be purchased and possessed. The grant or denial of  
6 the application does not prevent the person from making another application, except that if an application  
7 is denied, another application may not be made for the next 12 months.

8 (b) The application must contain the following information:

9 (i) the person's full name and any past or present aliases;

10 (ii) the person's date and place of birth;

11 (iii) the person's address;

12 (iv) the person's occupation;

13 (v) the make and model of each firearm sought to be purchased and possessed;

14 (vi) the date and place of each conviction of an offense ~~listed~~ REFERRED TO in [section 2], the  
15 name of the offense, the state and county in which the offense occurred, the sentence imposed, the place  
16 or places of incarceration, and the date of discharge from supervision for the last offense;

17 (vii) the name and business address of the person's last probation or parole officer; and

18 (viii) any other information considered necessary by the court.

19 (c) The person shall, at the time of filing the application with the court, mail a copy to the county  
20 attorney and county sheriff.

21 (d) The county attorney or county sheriff may file a written objection with the court. If no  
22 objection is filed, the court may grant the permit if it finds that the person has shown good cause to  
23 purchase and possess the firearm or firearms listed in the application. If an objection is filed, a hearing  
24 must be held within 60 days after the filing of the objection. If the court first finds that the person has  
25 shown good cause to purchase and possess the firearm or firearms listed in the application and that, but  
26 for the objection, the court would have granted a permit, the court shall decide whether the objection is  
27 valid and overrides the good cause showing and requires denial of the permit.

28  
29 **NEW SECTION. Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified  
30 as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45 apply to [sections 2 and 3].

1            NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are  
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
3 applications, the part remains in effect in all valid applications that are severable from the invalid  
4 applications.

5

6            NEW SECTION. Section 6. Applicability -- RETROACTIVE APPLICABILITY. (1) [Section 2(1)] does  
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8 date of this act].

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