

1. *Calvin Prineas* *Don Hanson* *Ernest*
John *Ernest*
 SENATE BILL NO. *66* *Ernest* *Mark Lee*

2 INTRODUCED BY *Suzanne* *Beck* *Swygard* *Burnett* *Bishop*
 3 *John* *Decker* *Dan* *Jacobs* *Al* *Nelson* *Jack* *HARP*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON CONVICTED OF TWO MAJOR
 5 VIOLENT OFFENSES MUST BE SENTENCED TO LIFE IN A STATE PRISON UNLESS THE DEATH PENALTY
 6 IS APPLICABLE AND IMPOSED; PROVIDING THAT THE LIFE SENTENCE BE SERVED ONLY IN A STATE
 7 PRISON AND BE SERVED WITH NO POSSIBILITY OF PAROLE OR EARLY RELEASE ON ANY GROUNDS;
 8 AND AMENDING SECTIONS 45-5-102, 45-5-103, 45-5-302, 45-5-303, 45-5-401, 45-5-503, 45-6-103,
 9 46-18-111, 46-18-201, 46-18-222, 46-18-225, 46-18-502, 46-23-201, AND 46-23-411, MCA." *Activity*

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

13 **NEW SECTION. Section 1. Life sentence without possibility of release.** (1) Except as provided
 14 in 46-18-222, if a person convicted of one of the following offenses was previously convicted of one of
 15 the following offenses or of an offense under the laws of another state or of the United States that, if
 16 committed in this state, would be one of the following offenses, the person must be sentenced to life in
 17 a state prison, unless the death penalty is applicable and imposed:

- 18 (a) 45-5-102, deliberate homicide;
 - 19 (b) 45-5-103, mitigated deliberate homicide;
 - 20 (c) 45-5-302, kidnapping;
 - 21 (d) 45-5-303, aggravated kidnapping;
 - 22 (e) 45-5-401, robbery;
 - 23 (f) 45-5-503, sexual intercourse without consent; or
 - 24 (g) 45-6-103, arson.
- 25 (2) Except as provided in 46-18-222 and 46-23-210, a person sentenced under subsection (1):
- 26 (a) shall serve the entire sentence;
 - 27 (b) shall serve the sentence in a state prison;
 - 28 (c) may not for any reason be transferred for any length of time to another type of institution,
 29 facility, or program;
 - 30 (d) may not be paroled; and

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

3

4 **Section 2.** Section 45-5-102, MCA, is amended to read:

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

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

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

12 (2) A person convicted of the offense of deliberate homicide shall be punished by death as provided
13 in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term
14 of not less than 10 years or more than 100 years, except as provided in 46-18-222 and [section 1]."

15

16 **Section 3.** Section 45-5-103, MCA, is amended to read:

17 **"45-5-103. Mitigated deliberate homicide.** (1) A person commits the offense of mitigated
18 deliberate homicide when ~~he~~ the person purposely or knowingly causes the death of another human being
19 but does so under the influence of extreme mental or emotional stress for which there is reasonable
20 explanation or excuse. The reasonableness of ~~such~~ the explanation or excuse ~~shall~~ must be determined
21 from the viewpoint of a reasonable person in the actor's situation.

22 (2) It is an affirmative defense that the defendant acted under the influence of extreme mental or
23 emotional stress ~~for which there was reasonable explanation or excuse, the reasonableness of which shall~~
24 ~~be determined from the viewpoint of a reasonable person in the actor's situation~~ as provided in subsection
25 (1). This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate
26 homicide and must be proved by the defendant by a preponderance of the evidence.

27 (3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in
28 45-5-102(1)(b).

29 (4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for
30 a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except

1 as provided in 46-18-222 and [section 1]."

2

3 **Section 4.** Section 45-5-302, MCA, is amended to read:

4 **"45-5-302. Kidnapping.** (1) A person commits the offense of kidnapping if ~~he~~ the person
5 knowingly or purposely and without lawful authority restrains another person by either secreting or holding
6 ~~him~~ the other person in a place of isolation or by using or threatening to use physical force.

7 (2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a
8 term of not less than 2 years or more than 10 years and may be fined not more than \$50,000, except as
9 provided in 46-18-222 and [section 1]."

10

11 **Section 5.** Section 45-5-303, MCA, is amended to read:

12 **"45-5-303. Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping
13 if ~~he~~ the person knowingly or purposely and without lawful authority restrains another person by either
14 secreting or holding ~~him~~ the other person in a place of isolation or by using or threatening to use physical
15 force, with any of the following purposes:

16 (a) to hold for ransom or reward or as a shield or hostage;

17 (b) to facilitate commission of any felony or flight thereafter;

18 (c) to inflict bodily injury on or to terrorize the victim or another;

19 (d) to interfere with the performance of any governmental or political function; or

20 (e) to hold another in a condition of involuntary servitude.

21 (2) Except as provided in 46-18-222 and [section 1], a person convicted of the offense of
22 aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through
23 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years
24 and may be fined not more than \$50,000, unless ~~he~~ the person has voluntarily released the victim alive,
25 in a safe place, and ~~not suffering from~~ with no serious bodily injury, in which event ~~he~~ the person shall be
26 imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined
27 not more than \$50,000."

28

29 **Section 6.** Section 45-5-401, MCA, is amended to read:

30 **"45-5-401. Robbery.** (1) A person commits the offense of robbery if in the course of committing

1 a theft, ~~be~~ the person:

2 (a) inflicts bodily injury upon another;

3 (b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person
4 in fear of immediate bodily injury; or

5 (c) commits or threatens immediately to commit any felony other than theft.

6 (2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term
7 of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as
8 provided in 46-18-222 and [section 1].

9 (3) "In the course of committing a theft", as used in this section, includes acts ~~which~~ that occur
10 in an attempt to commit or in the commission of theft or in flight after the attempt or commission."
11

12 **Section 7.** Section 45-5-503, MCA, is amended to read:

13 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
14 intercourse without consent with another person commits the offense of sexual intercourse without
15 consent. A person may not be convicted under this section based on the age of the person's spouse, as
16 provided in 45-5-501(1)(b)(iii).

17 (2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison
18 for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except
19 as provided in 46-18-222 and [section 1].

20 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
21 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse
22 without consent, the offender shall be imprisoned in the state prison for any term of not less than 2 years
23 or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222 and
24 [section 1]. An act "in the course of committing sexual intercourse without consent" includes an attempt
25 to commit the offense or flight after the attempt or commission.

26 (b) If two or more persons are convicted of sexual intercourse without consent with the same
27 victim in an incident in which each offender was present at the location where another offender's offense
28 occurred during a time period in which each offender could have reasonably known of the other's offense,
29 each offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 40
30 years and may be fined not more than \$50,000, except as provided in 46-18-222 and [section 1].

1 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
2 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
3 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
4 the offense. The amount, method, and time of payment must be determined in the same manner as
5 provided for in 46-18-244."

6
7 **Section 8.** Section 45-6-103, MCA, is amended to read:

8 "45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or
9 explosives, ~~he~~ the person knowingly or purposely:

10 (a) damages or destroys an occupied structure ~~which~~ that is property of another without consent;

11 or

12 (b) places another person in danger of death or bodily injury, including a firefighter responding to
13 or at the scene of a fire or explosion.

14 (2) A Except as provided in [section 1], a person convicted of the offense of arson shall be
15 imprisoned in the state prison for ~~any~~ a term not to exceed 20 years or be fined an amount not to exceed
16 \$50,000, or both."

17
18 **Section 9.** Section 46-18-111, MCA, is amended to read:

19 "46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or
20 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation
21 officer to make a presentence investigation and report. The district court shall consider the presentence
22 investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502,
23 45-5-503, 45-5-504, 45-5-505, or 45-5-507, or under 45-5-625 involving a victim who was less than 16
24 years of age when the offense was committed, the investigation must include an evaluation of the
25 defendant and a recommendation as to treatment of the offender in the least restrictive environment,
26 considering community safety and offender needs, unless the defendant was sentenced under [section 1].
27 The evaluation must be completed by a person who is determined to be qualified under guidelines
28 established by the department of corrections and human services. All costs related to the evaluation must
29 be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs
30 related to the evaluation are the responsibility of the district court and must be paid by the county or the

1 state, or both, under Title 3, chapter 5, part 9.

2 (2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any
3 offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be
4 sentenced before a written presentence investigation report by a probation officer is presented to and
5 considered by the district court. The district court may, in its discretion, order a presentence investigation
6 for a defendant convicted of a misdemeanor."

7

8 **Section 10.** Section 46-18-201, MCA, is amended to read:

9 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of
10 an offense upon a verdict or a plea of guilty, the court may:

11 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
12 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
13 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.

14 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
15 period of the deferred imposition. Reasonable restrictions or conditions may include:

16 (i) jail base release;

17 (ii) jail time not exceeding 180 days;

18 (iii) conditions for probation;

19 (iv) restitution;

20 (v) payment of the costs of confinement;

21 (vi) payment of a fine as provided in 46-18-231;

22 (vii) payment of costs as provided in 46-18-232 and 46-18-233;

23 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;

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

26 (x) community service;

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

28 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
29 of society; or

30 (xiii) any combination of the above.

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

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

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

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

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

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

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

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

21 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
22 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
23 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),
24 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

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

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

10 (10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
11 imprisonment of the offender in the state prison, including placement of the offender in a community
12 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
13 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
14 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
15 not selected, based on the criteria contained in 46-18-225.

16 (11) Except as provided in 46-18-222, a provision of this section that conflicts with [section 1] does
17 not apply to a person sentenced under [section 1]."

18
19 **Section 11.** Section 46-18-222, MCA, is amended to read:

20 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
21 **and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this
22 state, [section 1], and the restrictions on deferred imposition and suspended execution of sentence
23 prescribed by 46-18-201(4) through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

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

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

30 (3) the defendant, at the time of the commission of the offense for which the defendant is to be

1 sentenced, was acting under unusual and substantial duress, although not such duress as would constitute
2 a defense to the prosecution;

3 (4) the defendant was an accomplice, the conduct constituting the offense was principally the
4 conduct of another, and the defendant's participation was relatively minor;

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

8 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
9 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
10 ultimate protection of society, in which case the court shall include in its judgment a statement of the
11 reasons for its determination."
12

13 **Section 12.** Section 46-18-225, MCA, is amended to read:

14 **"46-18-225. Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent
15 felony offender to whom [section 1] does not apply to a term of imprisonment in the state prison or the
16 women's correctional center, the court shall take into account whether:

17 (1) the interests of justice and the needs of public safety truly require the level of security provided
18 by imprisonment of the offender in the state prison or the women's correctional center;

19 (2) the needs of the offender can be better served in the community or in a facility or program
20 other than the state prison or the women's correctional center;

21 (3) there are substantial grounds tending to excuse or justify the offense, though failing to establish
22 a defense;

23 (4) the offender acted under strong provocation;

24 (5) the offender has made restitution or will make restitution to the victim of the offender's criminal
25 conduct;

26 (6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for
27 a substantial period of time before the commission of the present crime;

28 (7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

29 (8) the character and attitude of the offender indicate that the offender is likely to commit another
30 crime;

1 (9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

2 (10) imprisonment of the offender would create an excessive hardship on the offender or the
3 offender's family."

4
5 **Section 13.** Section 46-18-502, MCA, is amended to read:

6 "**46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in [section 1] and
7 subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term
8 of not less than 5 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or
9 both, if ~~he~~ the offender was 21 years of age or older at the time of the commission of the present offense.

10 (2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of ~~his~~ the
11 offender's previous felony conviction, less than 5 years have elapsed between the commission of the
12 present offense and either the previous felony conviction or the offender's release on parole or otherwise
13 from prison or other commitment imposed as a result of the previous felony conviction, and ~~he~~ the offender
14 was 21 years of age or older at the time of the commission of the present offense, ~~he~~ the offender shall,
15 except as provided in [section 1], be imprisoned in the state prison for a term of not less than 10 years or
16 more than 100 years or shall be fined an amount not to exceed \$50,000, or both.

17 (3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence
18 imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be
19 deferred or suspended.

20 (4) Any sentence imposed under subsection (2) ~~shall~~ must run ~~consecutive~~ consecutively to any
21 other sentence imposed."

22
23 **Section 14.** Section 46-23-201, MCA, is amended to read:

24 "**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in
25 subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person
26 confined in the Montana state prison or the women's correctional center, except persons under sentence
27 of death and persons serving sentences imposed under 46-18-202(2) or [section 1], when in its opinion
28 there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the
29 community.

30 (2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has

1 served at least one-half of the prisoner's full term, less the good time allowance provided for in 53-30-105.
2 Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404
3 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time
4 allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the
5 prisoner has served 17 ½ years of the sentence.

6 (3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has
7 served at least one-half of the full term, less the good time allowance provided for in 53-30-105.

8 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has
9 served 30 years, less the good time allowance provided for in 53-30-105.

10 (5) A parole may be ordered under this section only for the best interests of society and not as an
11 award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when
12 the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

13 (6) Whenever the department of corrections and human services certifies to the board that the
14 population at either the male or female correctional facility has exceeded its designed capacity for 30
15 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction
16 of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2)
17 through (4).

18 (7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial
19 12 months of incarceration, the provisions of subsection (6) do not apply."

20

21 **Section 15.** Section 46-23-411, MCA, is amended to read:

22 **"46-23-411. Application to participate -- eligibility.** (1) Any prisoner, except a prisoner serving
23 a sentence imposed under 46-18-202(2) or [section 1], may ~~make application~~ apply to participate in the
24 supervised release program if ~~he~~ the prisoner has served at least one-half of the time required to be
25 considered for parole and not more than 24 months remain before ~~he~~ the person is eligible for parole.

26 (2) Prisoners serving sentences under [section 1] or with the restriction imposed under
27 46-18-202(2) are not eligible for participation in the program.

28 (3) In order to be accepted into the program, an applicant must qualify under the rules established
29 by the department."

30

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0066, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing that a person convicted of two major violent offenses must be sentenced to life in a state prison unless the death penalty is applicable and imposed, and providing that the life sentence be served only in a state prison and be served with no possibility of parole or early release on any grounds.

ASSUMPTIONS:

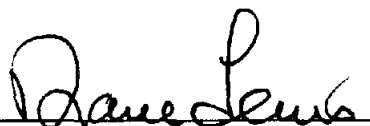
1. The Department of Corrections and Human Services (DCHS) will experience no fiscal impact for the 1997 biennium. Offenders with two separate convictions for the crimes defined in this bill are included in the DCHS proposed biennium Executive Budget. These offenders would be incarcerated within MSP without the passage of this bill during the 1997 biennium.
2. The FY90-FY94 average number of annual prison admissions of offenders with two separate convictions for the crimes defined in this bill is eight (8).
3. The average age of prison admissions over the past five years for persons with two or more court trials of the crimes defined in this bill is approximately 31 years of age.
4. Assuming that an inmate lives to the age of 70 years, Montana State Prison (MSP) will be responsible for offenders sentenced under the provisions of this bill for approximately 40 years each.


FISCAL IMPACT:

No fiscal impact in this biennium; however, there will be significant long-term financial impacts.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Assuming that DCHS is required to care for inmates sentenced under the provisions of this bill until they are approximately 70 years old, and with the addition of eight inmates per year under the condition of no possible parole, the average age of incarcerated inmates will increase. The average medical costs for older inmates is higher than the average medical costs for younger inmates, thus the average medical costs for inmates will increase considerably due to this age composition of the inmate population.
2. MSP is currently running close to its maximum capacity and well over its designed capacity. An additional eight admissions per year with no opportunity for parole will eventually require the premature movement of higher security profile inmates to the low security compound to free up the high security compound beds for the new admissions.
3. The increase in correctional system population due to this bill would require construction of an additional high security housing unit every 10-15 years at an estimated cost of \$4-\$5 million based on FY94 dollars.
4. A close custody unit would require an additional 26.00 FTE at a general fund cost of \$1,184,936 each year to operate based on FY94 dollars. (80 X \$40.58 X 365 days)
5. The nature of the life sentence as proposed in this bill means that an 80 bed high security housing unit will be needed within 10-15 years and would be occupied with permanent residents with no possible parole.

 1-13-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/13/95
JOHN J.D. LYNCH, PRIMARY SPONSOR DATE

Fiscal Note for SB0066, as introduced

SB 66

SENATE BILL NO. 66

INTRODUCED BY LYNCH, BECK, SWYSGOOD, BURNETT, BISHOP, EMERSON, SPRAGUE, COLE,
PIPINICH, BAER, HARGROVE, MESAROS, JENKINS, DEVLIN, GAGE, JACOBSON, STANG, L. NELSON,
VAN VALKENBURG, SHEA, HARDING, MILLER, MENAHAN, RYAN, KEATING, FORRESTER, HALLIGAN,
GROSFIELD, T. NELSON, PAVLOVICH, QUILICI, WILSON, HARP, FELAND

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON CONVICTED OF ~~TWO~~ A
SPECIFIED NUMBER OF MAJOR VIOLENT OFFENSES MUST BE SENTENCED TO LIFE IN ~~A STATE~~ PRISON
UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED; PROVIDING THAT THE LIFE SENTENCE
BE SERVED ONLY IN ~~A STATE~~ PRISON AND BE SERVED WITH NO POSSIBILITY OF PAROLE OR EARLY
RELEASE ON ANY GROUNDS; AND AMENDING SECTIONS 45-5-102, 45-5-103, ~~45-5-202~~, 45-5-302,
45-5-303, 45-5-401, 45-5-503, 45-6-103, 46-18-111, 46-18-201, 46-18-222, 46-18-225, 46-18-502,
46-23-201, AND 46-23-411, MCA."

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

NEW SECTION. Section 1. Life sentence without possibility of release. (1) (A) Except as provided
in ~~46-18-222~~ SUBSECTION (3), if a person convicted of one of the following offenses was previously
convicted of one of the following offenses or of an offense under the laws of another state or of the United
States that, if committed in this state, would be one of the following offenses, the person must be
sentenced to life in ~~a state~~ prison, unless the death penalty is applicable and imposed:

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

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

~~(c)~~ ~~45-5-302, kidnapping;~~

~~(d)(II)~~ 45-5-303, aggravated kidnapping; OR

~~(e)~~ ~~45-5-401, robbery;~~

~~(f)(III)~~ 45-5-503, sexual intercourse without consent; ~~or,~~

~~(g)~~ ~~45-6-103, arson.~~

(B) EXCEPT AS PROVIDED IN SUBSECTION (3), IF A PERSON CONVICTED OF ONE OF THE
FOLLOWING OFFENSES WAS PREVIOUSLY CONVICTED OF TWO OF THE FOLLOWING OFFENSES, TWO

1 OF ANY COMBINATION OF THE OFFENSES LISTED IN SUBSECTION (1)(A) OR THE FOLLOWING
 2 OFFENSES, OR TWO OF ANY OFFENSES UNDER THE LAWS OF ANOTHER STATE OR OF THE UNITED
 3 STATES THAT, IF COMMITTED IN THIS STATE, WOULD BE ONE OF THE OFFENSES LISTED IN
 4 SUBSECTION (1)(A) OR THIS SUBSECTION, THE PERSON MUST BE SENTENCED TO LIFE IN PRISON,
 5 UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED:

6 (I) 45-5-103, MITIGATED DELIBERATE HOMICIDE;

7 (II) 45-5-202(1), AGGRAVATED ASSAULT;

8 (III) 45-5-302, KIDNAPPING;

9 (IV) 45-5-401, ROBBERY;

10 (V) 45-6-103, ARSON.

11 (2) Except as provided in ~~46-18-222~~ and 46-23-210 AND SUBSECTION (3) OF THIS SECTION, a
 12 person sentenced under subsection (1):

13 (a) shall serve the entire sentence;

14 (b) shall serve the sentence in ~~a state~~ prison;

15 (c) may not for any reason, EXCEPT MEDICAL REASONS, be transferred for any length of time to
 16 another type of institution, facility, or program;

17 (d) may not be paroled; and

18 (e) may not be given time off for good behavior or otherwise be given an early release for any
 19 reason.

20 (3) IF THE PERSON WAS PREVIOUSLY SENTENCED FOR EITHER OF TWO OR THREE OFFENSES
 21 LISTED IN SUBSECTION (1), AS APPLICABLE, PURSUANT TO ANY OF THE EXCEPTIONS LISTED IN
 22 46-18-222, THEN THE PROVISIONS OF SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO
 23 THE PERSON'S PRESENT SENTENCE.

24 (4) (A) FOR PURPOSES OF THIS SECTION, "PRISON" MEANS A SECURE DETENTION FACILITY
 25 IN WHICH INMATES ARE LOCKED UP 24 HOURS A DAY AND THAT IS OPERATED BY THIS STATE,
 26 ANOTHER STATE, THE FEDERAL GOVERNMENT, OR A PRIVATE CONTRACTOR.

27 (B) PRISON DOES NOT INCLUDE A WORK RELEASE CENTER, PRERELEASE CENTER, BOOT CAMP,
 28 OR ANY OTHER TYPE OF FACILITY THAT DOES NOT PROVIDE SECURE DETENTION.

29
 30 **Section 2.** Section 45-5-102, MCA, is amended to read:

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

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

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

8 (2) A person convicted of the offense of deliberate homicide shall be punished by death as provided
9 in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term
10 of not less than 10 years or more than 100 years, except as provided in 46-18-222 and [section 1]."

11
12 **Section 3.** Section 45-5-103, MCA, is amended to read:

13 **"45-5-103. Mitigated deliberate homicide.** (1) A person commits the offense of mitigated
14 deliberate homicide when ~~he~~ the person purposely or knowingly causes the death of another human being
15 but does so under the influence of extreme mental or emotional stress for which there is reasonable
16 explanation or excuse. The reasonableness of ~~such~~ the explanation or excuse ~~shall~~ must be determined
17 from the viewpoint of a reasonable person in the actor's situation.

18 (2) It is an affirmative defense that the defendant acted under the influence of extreme mental or
19 emotional stress ~~for which there was reasonable explanation or excuse, the reasonableness of which shall~~
20 ~~be determined from the viewpoint of a reasonable person in the actor's situation~~ as provided in subsection
21 (1). This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate
22 homicide and must be proved by the defendant by a preponderance of the evidence.

23 (3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in
24 45-5-102(1)(b).

25 (4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for
26 a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except
27 as provided in 46-18-222 and [section 1]."

28
29 **SECTION 4. SECTION 45-5-202, MCA, IS AMENDED TO READ:**

30 **"45-5-202. Aggravated assault -- felony assault.** (1) A person commits the offense of aggravated

1 assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.

2 (2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly causes:

3 (a) bodily injury to another with a weapon;

4 (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

5 (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a
6 prisoner.

7 (3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of
8 not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided
9 in 46-18-222 and [section 1]. A person convicted of felony assault shall be imprisoned in the state prison
10 for a term not to exceed 10 years or be fined not more than \$50,000, or both."

11

12 **Section 5.** Section 45-5-302, MCA, is amended to read:

13 **"45-5-302. Kidnapping.** (1) A person commits the offense of kidnapping if ~~he~~ the person
14 knowingly or purposely and without lawful authority restrains another person by either secreting or holding
15 ~~him~~ the other person in a place of isolation or by using or threatening to use physical force.

16 (2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a
17 term of not less than 2 years or more than 10 years and may be fined not more than \$50,000, except as
18 provided in 46-18-222 and [section 1]."

19

20 **Section 6.** Section 45-5-303, MCA, is amended to read:

21 **"45-5-303. Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping
22 if ~~he~~ the person knowingly or purposely and without lawful authority restrains another person by either
23 secreting or holding ~~him~~ the other person in a place of isolation or by using or threatening to use physical
24 force, with any of the following purposes:

25 (a) to hold for ransom or reward or as a shield or hostage;

26 (b) to facilitate commission of any felony or flight thereafter;

27 (c) to inflict bodily injury on or to terrorize the victim or another;

28 (d) to interfere with the performance of any governmental or political function; or

29 (e) to hold another in a condition of involuntary servitude.

30 (2) Except as provided in 46-18-222 and [section 1], a person convicted of the offense of

1 aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through
 2 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years
 3 and may be fined not more than \$50,000, unless ~~he~~ the person has voluntarily released the victim alive,
 4 in a safe place, and ~~not suffering from~~ with no serious bodily injury, in which event ~~he~~ the person shall be
 5 imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined
 6 not more than \$50,000."

7

8 **Section 7.** Section 45-5-401, MCA, is amended to read:

9 **"45-5-401. Robbery.** (1) A person commits the offense of robbery if in the course of committing
 10 a theft, ~~he~~ the person:

11 (a) inflicts bodily injury upon another;

12 (b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person
 13 in fear of immediate bodily injury; or

14 (c) commits or threatens immediately to commit any felony other than theft.

15 (2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term
 16 of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as
 17 provided in 46-18-222 and [section 1].

18 (3) "In the course of committing a theft", as used in this section, includes acts ~~which~~ that occur
 19 in an attempt to commit or in the commission of theft or in flight after the attempt or commission."

20

21 **Section 8.** Section 45-5-503, MCA, is amended to read:

22 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
 23 intercourse without consent with another person commits the offense of sexual intercourse without
 24 consent. A person may not be convicted under this section based on the age of the person's spouse, as
 25 provided in 45-5-501(1)(b)(iii).

26 (2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison
 27 for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except
 28 as provided in 46-18-222 and [section 1].

29 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the
 30 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse

1 without consent, the offender shall be imprisoned in the state prison for any term of not less than 2 years
2 or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222 and
3 [section 1]. An act "in the course of committing sexual intercourse without consent" includes an attempt
4 to commit the offense or flight after the attempt or commission.

5 (b) If two or more persons are convicted of sexual intercourse without consent with the same
6 victim in an incident in which each offender was present at the location where another offender's offense
7 occurred during a time period in which each offender could have reasonably known of the other's offense,
8 each offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 40
9 years and may be fined not more than \$50,000, except as provided in 46-18-222 and [section 1].

10 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
11 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
12 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
13 the offense. The amount, method, and time of payment must be determined in the same manner as
14 provided for in 46-18-244."

15

16 **Section 9.** Section 45-6-103, MCA, is amended to read:

17 **"45-6-103. Arson.** (1) A person commits the offense of arson when, by means of fire or
18 explosives, ~~he~~ the person knowingly or purposely:

19 (a) damages or destroys an occupied structure ~~which~~ that is property of another without consent;
20 or

21 (b) places another person in danger of death or bodily injury, including a firefighter responding to
22 or at the scene of a fire or explosion.

23 (2) ~~A~~ Except as provided in [section 1], a person convicted of the offense of arson shall be
24 imprisoned in the state prison for ~~any~~ a term not to exceed 20 years or be fined an amount not to exceed
25 \$50,000, or both."

26

27 **Section 10.** Section 46-18-111, MCA, is amended to read:

28 **"46-18-111. Presentence investigation -- when required.** (1) Upon the acceptance of a plea or
29 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation
30 officer to make a presentence investigation and report. The district court shall consider the presentence

1 investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502,
2 45-5-503, 45-5-504, 45-5-505, or 45-5-507, or under 45-5-625 involving a victim who was less than 16
3 years of age when the offense was committed, the investigation must include an evaluation of the
4 defendant and a recommendation as to treatment of the offender in the least restrictive environment,
5 considering community safety and offender needs, unless the defendant was sentenced under [section 1].
6 The evaluation must be completed by a person who is determined to be qualified under guidelines
7 established by the department of corrections and human services. All costs related to the evaluation must
8 be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs
9 related to the evaluation are the responsibility of the district court and must be paid by the county or the
10 state, or both, under Title 3, chapter 5, part 9.

11 (2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any
12 offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be
13 sentenced before a written presentence investigation report by a probation officer is presented to and
14 considered by the district court. The district court may, in its discretion, order a presentence investigation
15 for a defendant convicted of a misdemeanor."
16

17 **Section 11.** Section 46-18-201, MCA, is amended to read:

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

20 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
21 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
22 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
23 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
24 period of the deferred imposition. Reasonable restrictions or conditions may include:

- 25 (i) jail base release;
26 (ii) jail time not exceeding 180 days;
27 (iii) conditions for probation;
28 (iv) restitution;
29 (v) payment of the costs of confinement;
30 (vi) payment of a fine as provided in 46-18-231;

- 1 (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- 2 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 3 (ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a
4 community corrections facility or program as provided in 53-30-321;
- 5 (x) community service;
- 6 (xi) home arrest as provided in Title 46, chapter 18, part 10;
- 7 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
8 of society; or
- 9 (xiii) any combination of the above.
- 10 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
11 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
12 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
13 restrictions or conditions may include any of those listed in subsection (1)(a).
- 14 (c) impose a fine as provided by law for the offense;
- 15 (d) require payment of costs, as provided in 46-18-232, or payment of costs of court-appointed
16 counsel as provided in 46-8-113;
- 17 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
18 the defendant to the department of corrections and human services for placement in an appropriate
19 correctional institution or program;
- 20 (f) with the approval of the facility or program, order the offender to be placed in a community
21 corrections facility or program as provided in 53-30-321;
- 22 (g) impose any combination of subsections (1)(b) through (1)(f).
- 23 (2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
24 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
25 a felony, regardless of whether any other conditions are imposed.
- 26 (3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
27 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
28 or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail
29 or home arrest time already served.
- 30 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years

1 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
2 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),
3 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

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

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

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

25 (11) Except as provided in 46-18-222, a provision of this section that conflicts with [section 1] does
26 not apply to a person sentenced under [section 1]."

27

28 **Section 12.** Section 46-18-222, MCA, is amended to read:

29 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
30 **and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this

1 state, [section 1], and the restrictions on deferred imposition and suspended execution of sentence
 2 prescribed by 46-18-201(4) through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

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

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

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

12 (4) the defendant was an accomplice, the conduct constituting the offense was principally the
 13 conduct of another, and the defendant's participation was relatively minor;

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

17 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
 18 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
 19 ultimate protection of society, in which case the court shall include in its judgment a statement of the
 20 reasons for its determination."

21
 22 **Section 13.** Section 46-18-225, MCA, is amended to read:

23 **"46-18-225. Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent
 24 felony offender to whom [section 1] does not apply to a term of imprisonment in the state prison or the
 25 women's correctional center, the court shall take into account whether:

26 (1) the interests of justice and the needs of public safety truly require the level of security provided
 27 by imprisonment of the offender in the state prison or the women's correctional center;

28 (2) the needs of the offender can be better served in the community or in a facility or program
 29 other than the state prison or the women's correctional center;

30 (3) there are substantial grounds tending to excuse or justify the offense, though failing to establish

1 a defense;

2 (4) the offender acted under strong provocation;

3 (5) the offender has made restitution or will make restitution to the victim of the offender's criminal
4 conduct;

5 (6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for
6 a substantial period of time before the commission of the present crime;

7 (7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

8 (8) the character and attitude of the offender indicate that the offender is likely to commit another
9 crime;

10 (9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

11 (10) imprisonment of the offender would create an excessive hardship on the offender or the
12 offender's family."

13

14 **Section 14.** Section 46-18-502, MCA, is amended to read:

15 **"46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in [section 1] and
16 subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term
17 of not less than 5 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or
18 both, if ~~he~~ the offender was 21 years of age or older at the time of the commission of the present offense.

19 (2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of ~~his~~ the
20 offender's previous felony conviction, less than 5 years have elapsed between the commission of the
21 present offense and either the previous felony conviction or the offender's release on parole or otherwise
22 from prison or other commitment imposed as a result of the previous felony conviction, and ~~he~~ the offender
23 was 21 years of age or older at the time of the commission of the present offense, ~~he~~ the offender shall,
24 except as provided in [section 1], be imprisoned in the state prison for a term of not less than 10 years or
25 more than 100 years or shall be fined an amount not to exceed \$50,000, or both.

26 (3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence
27 imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be
28 deferred or suspended.

29 (4) Any sentence imposed under subsection (2) ~~shall~~ must run ~~consecutive~~ consecutively to any
30 other sentence imposed."

1 **Section 15.** Section 46-23-201, MCA, is amended to read:

2 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in
3 subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person
4 confined in the Montana state prison or the women's correctional center, except persons under sentence
5 of death and persons serving sentences imposed under 46-18-202(2) or [section 1], when in its opinion
6 there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the
7 community.

8 (2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has
9 served at least one-half of the prisoner's full term, less the good time allowance provided for in 53-30-105.
10 Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404
11 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time
12 allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the
13 prisoner has served 17½ years of the sentence.

14 (3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has
15 served at least one-half of the full term, less the good time allowance provided for in 53-30-105.

16 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has
17 served 30 years, less the good time allowance provided for in 53-30-105.

18 (5) A parole may be ordered under this section only for the best interests of society and not as an
19 award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when
20 the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

21 (6) Whenever the department of corrections and human services certifies to the board that the
22 population at either the male or female correctional facility has exceeded its designed capacity for 30
23 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction
24 of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2)
25 through (4).

26 (7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial
27 12 months of incarceration, the provisions of subsection (6) do not apply."

28

29 **Section 16.** Section 46-23-411, MCA, is amended to read:

30 **"46-23-411. Application to participate -- eligibility.** (1) Any prisoner, except a prisoner serving

1 a sentence imposed under 46-18-202(2) or [section 1], may ~~make application~~ apply to participate in the
2 supervised release program if ~~he~~ the prisoner has served at least one-half of the time required to be
3 considered for parole and not more than 24 months remain before ~~he~~ the person is eligible for parole.

4 (2) Prisoners serving sentences under [section 1] or with the restriction imposed under
5 46-18-202(2) are not eligible for participation in the program.

6 (3) In order to be accepted into the program, an applicant must qualify under the rules established
7 by the department."
8

9 **NEW SECTION. Section 17. Codification instruction.** [Section 1] is intended to be codified as an
10 integral part of Title 46, chapter 18, and the provisions of Title 46 apply to [section 1].

11 -END-

1 SENATE BILL NO. 66

2 INTRODUCED BY LYNCH, BECK, SWYSGOOD, BURNETT, BISHOP, EMERSON, SPRAGUE, COLE,
3 PIPINICH, BAER, HARGROVE, MESAROS, JENKINS, DEVLIN, GAGE, JACOBSON, STANG, L. NELSON,
4 VAN VALKENBURG, SHEA, HARDING, MILLER, MENAHAN, RYAN, KEATING, FORRESTER, HALLIGAN,
5 GROSSFIELD, T. NELSON, PAVLOVICH, QUILICI, WILSON, HARP, FELAND
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON CONVICTED OF ~~TWO~~ A
8 SPECIFIED NUMBER OF MAJOR VIOLENT OFFENSES MUST BE SENTENCED TO LIFE IN ~~A STATE~~ PRISON
9 UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED; PROVIDING THAT THE LIFE SENTENCE
10 BE SERVED ONLY IN ~~A STATE~~ PRISON AND BE SERVED WITH NO POSSIBILITY OF PAROLE OR EARLY
11 RELEASE ON ANY GROUNDS; AND AMENDING SECTIONS 45-5-102, 45-5-103, 45-5-202, 45-5-302,
12 45-5-303, 45-5-401, 45-5-503, 45-6-103, 46-18-111, 46-18-201, 46-18-222, 46-18-225, 46-18-502,
13 46-23-201, AND 46-23-411, MCA."
14

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 66 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Menahan

And, that such amendments read:

1. Title, line 12.

Following: "45-5-503,"

Insert: "45-5-625, 45-5-627,"

2. Page 1, line 25.

Strike: "OR"

3. Page 1, line 27.

Following: "~~or~~"

Insert: ";

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor"

4. Page 6, line 15.

Insert: "**Section 9.** Section 45-5-625, MCA, is amended to read:

"**45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) persuades, entices, counsels, or procures a child to

Committee Vote:
Yes 16, No 3.

SB 66

HOUSE

engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) possesses material referred to in subsection (1)(d); or

(f) finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is of the nature described in those subsections.

(2) (a) Except as provided in [section 1] and subsections (2)(b) and (2)(c) of this section, a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(b) ~~If~~ Except as provided in [section 1], if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) ~~A~~ Except as provided in [section 1], a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Section 10. Section 45-5-627, MCA, is amended to read:

"45-5-627. Ritual abuse of minor -- exceptions -- penalty.

(1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the

presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) A Except as provided in [section 1], a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Renumber: subsequent sections

5. Page 9, line 17.

Following: "enroll in"

Insert: "and complete"

6. Page 13, line 11.

Insert: "NEW SECTION. Section 20. Coordination instruction. If House Bill No. 46 is passed and approved, then the crime of arson, 45-6-103, is deleted from the crimes listed in [subsection (1)(b) of section 1 of this act]."

-END-



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 66
Representative Menahan

March 28, 1995 8:45 am
Page 1 of 1

Mr. Chairman: I move to amend **Senate Bill 66** (third reading copy -- blue).

Signed: Menahan
Representative Menahan

And, that such amendments to Senate Bill 66 read as follows:

March 28, 1995

1. Title, line 11.
Strike: "AND"

2. Title, line 13.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"

3. Page 13, line 11.
Insert: "

NEW SECTION. Section 21. Coordination -- effective dates. (1) If House Bill No. 357 and [this act] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void."

-END-

ADOPT

90-4

SB 66

REJECT

HOUSE

SENATE BILL NO. 66

INTRODUCED BY LYNCH, BECK, SWYSGOOD, BURNETT, BISHOP, EMERSON, SPRAGUE, COLE,
 PIPINICH, BAER, HARGROVE, MESAROS, JENKINS, DEVLIN, GAGE, JACOBSON, STANG, L. NELSON,
 VAN VALKENBURG, SHEA, HARDING, MILLER, MENAHAN, RYAN, KEATING, FORRESTER, HALLIGAN,
 GROSFIELD, T. NELSON, PAVLOVICH, QUILICI, WILSON, HARP, FELAND

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON CONVICTED OF ~~TWO~~ A
~~SPECIFIED NUMBER OF MAJOR VIOLENT OFFENSES MUST BE SENTENCED TO LIFE IN A STATE PRISON~~
 UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED; PROVIDING THAT THE LIFE SENTENCE
 BE SERVED ONLY IN ~~A STATE PRISON~~ AND BE SERVED WITH NO POSSIBILITY OF PAROLE OR EARLY
 RELEASE ON ANY GROUNDS; ~~AND~~ AMENDING SECTIONS 45-5-102, 45-5-103, 45-5-202, 45-5-302,
 45-5-303, 45-5-401, 45-5-503, 45-5-625, 45-5-627, 45-6-103, 46-18-111, 46-18-201, 46-18-222,
 46-18-225, 46-18-502, 46-23-201, AND 46-23-411, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Life sentence without possibility of release. (1) (A) Except as provided
 in ~~46-18-222~~ SUBSECTION (3), if a person convicted of one of the following offenses was previously
 convicted of one of the following offenses or of an offense under the laws of another state or of the United
 States that, if committed in this state, would be one of the following offenses, the person must be
 sentenced to life in ~~a state~~ prison, unless the death penalty is applicable and imposed:

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

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

~~(c) 45-5-302, kidnapping;~~

~~(d)(II)~~ 45-5-303, aggravated kidnapping; OR

~~(e) 45-5-401, robbery;~~

~~(f)(III)~~ 45-5-503, sexual intercourse without consent; ~~or;~~

(IV) 45-5-625, SEXUAL ABUSE OF CHILDREN; OR

(V) 45-5-627, EXCEPT SUBSECTION (1)(B), RITUAL ABUSE OF A MINOR.

~~(g) 45-6-103, arson.~~

1 (B) EXCEPT AS PROVIDED IN SUBSECTION (3), IF A PERSON CONVICTED OF ONE OF THE
 2 FOLLOWING OFFENSES WAS PREVIOUSLY CONVICTED OF TWO OF THE FOLLOWING OFFENSES, TWO
 3 OF ANY COMBINATION OF THE OFFENSES LISTED IN SUBSECTION (1)(A) OR THE FOLLOWING
 4 OFFENSES, OR TWO OF ANY OFFENSES UNDER THE LAWS OF ANOTHER STATE OR OF THE UNITED
 5 STATES THAT, IF COMMITTED IN THIS STATE, WOULD BE ONE OF THE OFFENSES LISTED IN
 6 SUBSECTION (1)(A) OR THIS SUBSECTION, THE PERSON MUST BE SENTENCED TO LIFE IN PRISON,
 7 UNLESS THE DEATH PENALTY IS APPLICABLE AND IMPOSED:

8 (I) 45-5-103, MITIGATED DELIBERATE HOMICIDE;

9 (II) 45-5-202(1), AGGRAVATED ASSAULT;

10 (III) 45-5-302, KIDNAPPING;

11 (IV) 45-5-401, ROBBERY;

12 (V) 45-6-103, ARSON.

13 (2) Except as provided in ~~46-18-222~~ and 46-23-210 AND SUBSECTION (3) OF THIS SECTION, a
 14 person sentenced under subsection (1):

15 (a) shall serve the entire sentence;

16 (b) shall serve the sentence in ~~a state~~ prison;

17 (c) may not for any reason, EXCEPT MEDICAL REASONS, be transferred for any length of time to
 18 another type of institution, facility, or program;

19 (d) may not be paroled; and

20 (e) may not be given time off for good behavior or otherwise be given an early release for any
 21 reason.

22 (3) IF THE PERSON WAS PREVIOUSLY SENTENCED FOR EITHER OF TWO OR THREE OFFENSES
 23 LISTED IN SUBSECTION (1), AS APPLICABLE, PURSUANT TO ANY OF THE EXCEPTIONS LISTED IN
 24 46-18-222, THEN THE PROVISIONS OF SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO
 25 THE PERSON'S PRESENT SENTENCE.

26 (4) (A) FOR PURPOSES OF THIS SECTION, "PRISON" MEANS A SECURE DETENTION FACILITY
 27 IN WHICH INMATES ARE LOCKED UP 24 HOURS A DAY AND THAT IS OPERATED BY THIS STATE,
 28 ANOTHER STATE, THE FEDERAL GOVERNMENT, OR A PRIVATE CONTRACTOR.

29 (B) PRISON DOES NOT INCLUDE A WORK RELEASE CENTER, PRERELEASE CENTER, BOOT CAMP,
 30 OR ANY OTHER TYPE OF FACILITY THAT DOES NOT PROVIDE SECURE DETENTION.

1 **Section 2.** Section 45-5-102, MCA, is amended to read:

2 **"45-5-102. Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

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

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

9 (2) A person convicted of the offense of deliberate homicide shall be punished by death as provided
10 in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term
11 of not less than 10 years or more than 100 years, except as provided in 46-18-222 and [section 1]."

12

13 **Section 3.** Section 45-5-103, MCA, is amended to read:

14 **"45-5-103. Mitigated deliberate homicide.** (1) A person commits the offense of mitigated
15 deliberate homicide when ~~he~~ the person purposely or knowingly causes the death of another human being
16 but does so under the influence of extreme mental or emotional stress for which there is reasonable
17 explanation or excuse. The reasonableness of ~~such~~ the explanation or excuse ~~shall~~ must be determined
18 from the viewpoint of a reasonable person in the actor's situation.

19 (2) It is an affirmative defense that the defendant acted under the influence of extreme mental or
20 emotional stress ~~for which there was reasonable explanation or excuse, the reasonableness of which shall~~
21 ~~be determined from the viewpoint of a reasonable person in the actor's situation~~ as provided in subsection
22 (1). This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate
23 homicide and must be proved by the defendant by a preponderance of the evidence.

24 (3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in
25 45-5-102(1)(b).

26 (4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for
27 a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except
28 as provided in 46-18-222 and [section 1]."

29

30 **SECTION 4. SECTION 45-5-202, MCA, IS AMENDED TO READ:**

1 **"45-5-202. Aggravated assault -- felony assault.** (1) A person commits the offense of aggravated
2 assault if ~~he~~ the person purposely or knowingly causes serious bodily injury to another.

3 (2) A person commits the offense of felony assault if ~~he~~ the person purposely or knowingly causes:

4 (a) bodily injury to another with a weapon;

5 (b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

6 (c) bodily injury to a peace officer or a person who is responsible for the care or custody of a
7 prisoner.

8 (3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of
9 not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided
10 in 46-18-222 and [section 1]. A person convicted of felony assault shall be imprisoned in the state prison
11 for a term not to exceed 10 years or be fined not more than \$50,000, or both."

12
13 **Section 5.** Section 45-5-302, MCA, is amended to read:

14 **"45-5-302. Kidnapping.** (1) A person commits the offense of kidnapping if ~~he~~ the person
15 knowingly or purposely and without lawful authority restrains another person by either secreting or holding
16 ~~him~~ the other person in a place of isolation or by using or threatening to use physical force.

17 (2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a
18 term of not less than 2 years or more than 10 years and may be fined not more than \$50,000, except as
19 provided in 46-18-222 and [section 1]."

20
21 **Section 6.** Section 45-5-303, MCA, is amended to read:

22 **"45-5-303. Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping
23 if ~~he~~ the person knowingly or purposely and without lawful authority restrains another person by either
24 secreting or holding ~~him~~ the other person in a place of isolation or by using or threatening to use physical
25 force, with any of the following purposes:

26 (a) to hold for ransom or reward or as a shield or hostage;

27 (b) to facilitate commission of any felony or flight thereafter;

28 (c) to inflict bodily injury on or to terrorize the victim or another;

29 (d) to interfere with the performance of any governmental or political function; or

30 (e) to hold another in a condition of involuntary servitude.

1 (2) Except as provided in 46-18-222 and [section 1], a person convicted of the offense of
 2 aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through
 3 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years
 4 and may be fined not more than \$50,000, unless ~~he~~ the person has voluntarily released the victim alive,
 5 in a safe place, and ~~not suffering from~~ with no serious bodily injury, in which event ~~he~~ the person shall be
 6 imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined
 7 not more than \$50,000."

8
 9 **Section 7.** Section 45-5-401, MCA, is amended to read:

10 **"45-5-401. Robbery.** (1) A person commits the offense of robbery if in the course of committing
 11 a theft, ~~he~~ the person:

12 (a) inflicts bodily injury upon another;

13 (b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person
 14 in fear of immediate bodily injury; or

15 (c) commits or threatens immediately to commit any felony other than theft.

16 (2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term
 17 of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as
 18 provided in 46-18-222 and [section 1].

19 (3) "In the course of committing a theft", as used in this section, includes acts ~~which~~ that occur
 20 in an attempt to commit or in the commission of theft or in flight after the attempt or commission."

21
 22 **Section 8.** Section 45-5-503, MCA, is amended to read:

23 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual
 24 intercourse without consent with another person commits the offense of sexual intercourse without
 25 consent. A person may not be convicted under this section based on the age of the person's spouse, as
 26 provided in 45-5-501(1)(b)(iii).

27 (2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison
 28 for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except
 29 as provided in 46-18-222 and [section 1].

30 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the

1 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse
 2 without consent, the offender shall be imprisoned in the state prison for any term of not less than 2 years
 3 or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222 and
 4 [section 1]. An act "in the course of committing sexual intercourse without consent" includes an attempt
 5 to commit the offense or flight after the attempt or commission.

6 (b) If two or more persons are convicted of sexual intercourse without consent with the same
 7 victim in an incident in which each offender was present at the location where another offender's offense
 8 occurred during a time period in which each offender could have reasonably known of the other's offense,
 9 each offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 40
 10 years and may be fined not more than \$50,000, except as provided in 46-18-222 and [section 1].

11 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
 12 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall
 13 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from
 14 the offense. The amount, method, and time of payment must be determined in the same manner as
 15 provided for in 46-18-244."

16
 17 **SECTION 9. SECTION 45-5-625, MCA, IS AMENDED TO READ:**

18 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of
 19 children if the person knowingly:

20 (a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct,
 21 actual or simulated;

22 (b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes,
 23 or records a child engaging in sexual conduct, actual or simulated;

24 (c) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or
 25 simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

26 (d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to
 27 sell, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct,
 28 actual or simulated;

29 (e) possesses material referred to in subsection (1)(d); or

30 (f) finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the

1 activity is of the nature described in those subsections.

2 (2) (a) Except as provided in [section 1] and subsections (2)(b) and (2)(c) of this section, a person
3 convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned
4 in the state prison for any term not to exceed 20 years, or both.

5 (b) ~~¶~~ Except as provided in [section 1], if the victim is under 16 years of age, a person convicted
6 of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the
7 state prison for any term not to exceed 50 years, or both.

8 (c) ~~A~~ Except as provided in [section 1], a person convicted of the offense of sexual abuse of
9 children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$500
10 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

11 (3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium
12 is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with
13 intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course
14 or program conducted or approved by the department of corrections and human services."
15

16 **SECTION 10. SECTION 45-5-627, MCA, IS AMENDED TO READ:**

17 **"45-5-627. Ritual abuse of minor -- exceptions -- penalty.** (1) A person commits the offense of
18 ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or
19 of any training or practice for any ceremony, rite, or ritual:

20 (a) has sexual intercourse without consent with a person less than 16 years of age; commits
21 assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person
22 less than 16 years of age;

23 (b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence
24 of the minor;

25 (c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

26 (d) forces upon the minor or upon another person in the presence of a minor the ingestion or the
27 external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs
28 or chemical compounds;

29 (e) places a living minor or another living person in the presence of a minor in a coffin or open
30 grave that is empty or that contains a human corpse or remains; or

1 (f) threatens the minor or, in the presence of the minor, threatens any person or animal with death
2 or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

3 (2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

4 (3) ~~A~~ Except as provided in [section 1], a person convicted of ritual abuse of a minor shall:

5 (a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or
6 more than 20 years and may be fined not more than \$50,000, or both; and

7 (b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less
8 than 2 years or more than 40 years and may be fined not more than \$50,000, or both.

9 (4) In addition to any sentence imposed under subsection (3), after determining pursuant to
10 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require
11 the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The
12 amount, method, and time of payment must be determined in the same manner as provided for in
13 46-18-244."

14
15 **Section 11.** Section 45-6-103, MCA, is amended to read:

16 **"45-6-103. Arson.** (1) A person commits the offense of arson when, by means of fire or
17 explosives, ~~he~~ the person knowingly or purposely:

18 (a) damages or destroys an occupied structure ~~which~~ that is property of another without consent;
19 or

20 (b) places another person in danger of death or bodily injury, including a firefighter responding to
21 or at the scene of a fire or explosion.

22 (2) ~~A~~ Except as provided in [section 1], a person convicted of the offense of arson shall be
23 imprisoned in the state prison for ~~any~~ a term not to exceed 20 years or be fined an amount not to exceed
24 \$50,000, or both."

25
26 **Section 12.** Section 46-18-111, MCA, is amended to read:

27 **"46-18-111. Presentence investigation -- when required.** (1) Upon the acceptance of a plea or
28 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation
29 officer to make a presentence investigation and report. The district court shall consider the presentence
30 investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502,

1 45-5-503, 45-5-504, 45-5-505, or 45-5-507, or under 45-5-625 involving a victim who was less than 16
 2 years of age when the offense was committed, the investigation must include an evaluation of the
 3 defendant and a recommendation as to treatment of the offender in the least restrictive environment,
 4 considering community safety and offender needs, unless the defendant was sentenced under [section 1].
 5 The evaluation must be completed by a person who is determined to be qualified under guidelines
 6 established by the department of corrections and human services. All costs related to the evaluation must
 7 be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs
 8 related to the evaluation are the responsibility of the district court and must be paid by the county or the
 9 state, or both, under Title 3, chapter 5, part 9.

10 (2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any
 11 offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be
 12 sentenced before a written presentence investigation report by a probation officer is presented to and
 13 considered by the district court. The district court may, in its discretion, order a presentence investigation
 14 for a defendant convicted of a misdemeanor."

15
 16 **Section 13.** Section 46-18-201, MCA, is amended to read:

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

19 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
 20 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
 21 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
 22 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
 23 period of the deferred imposition. Reasonable restrictions or conditions may include:

- 24 (i) jail base release;
- 25 (ii) jail time not exceeding 180 days;
- 26 (iii) conditions for probation;
- 27 (iv) restitution;
- 28 (v) payment of the costs of confinement;
- 29 (vi) payment of a fine as provided in 46-18-231;
- 30 (vii) payment of costs as provided in 46-18-232 and 46-18-233;

1 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;

2 (ix) with the approval of the facility or program, an order that the offender ~~to~~ be placed in a
3 community corrections facility or program as provided in 53-30-321;

4 (x) community service;

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

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

8 (xiii) any combination of the above.

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

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

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

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

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

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

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

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

29 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
30 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

1 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),
2 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

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

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

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

24 (11) Except as provided in 46-18-222, a provision of this section that conflicts with [section 1] does
25 not apply to a person sentenced under [section 1]."

26

27 **Section 14.** Section 46-18-222, MCA, is amended to read:

28 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
29 **and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this
30 state, [section 1], and the restrictions on deferred imposition and suspended execution of sentence

1 prescribed by 46-18-201(4) through (6), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

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

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

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

11 (4) the defendant was an accomplice, the conduct constituting the offense was principally the
12 conduct of another, and the defendant's participation was relatively minor;

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

16 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
17 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
18 ultimate protection of society, in which case the court shall include in its judgment a statement of the
19 reasons for its determination."
20

21 **Section 15.** Section 46-18-225, MCA, is amended to read:

22 **"46-18-225. Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent
23 felony offender to whom [section 1] does not apply to a term of imprisonment in the state prison or the
24 women's correctional center, the court shall take into account whether:

25 (1) the interests of justice and the needs of public safety truly require the level of security provided
26 by imprisonment of the offender in the state prison or the women's correctional center;

27 (2) the needs of the offender can be better served in the community or in a facility or program
28 other than the state prison or the women's correctional center;

29 (3) there are substantial grounds tending to excuse or justify the offense, though failing to establish
30 a defense;

1 (4) the offender acted under strong provocation;

2 (5) the offender has made restitution or will make restitution to the victim of the offender's criminal
3 conduct;

4 (6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for
5 a substantial period of time before the commission of the present crime;

6 (7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

7 (8) the character and attitude of the offender indicate that the offender is likely to commit another
8 crime;

9 (9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

10 (10) imprisonment of the offender would create an excessive hardship on the offender or the
11 offender's family."

12
13 **Section 16.** Section 46-18-502, MCA, is amended to read:

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

18 (2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of ~~his~~ the
19 offender's previous felony conviction, less than 5 years have elapsed between the commission of the
20 present offense and either the previous felony conviction or the offender's release on parole or otherwise
21 from prison or other commitment imposed as a result of the previous felony conviction, and ~~he~~ the offender
22 was 21 years of age or older at the time of the commission of the present offense, ~~he~~ the offender shall,
23 except as provided in [section 1], be imprisoned in the state prison for a term of not less than 10 years or
24 more than 100 years or shall be fined an amount not to exceed \$50,000, or both.

25 (3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence
26 imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be
27 deferred or suspended.

28 (4) Any sentence imposed under subsection (2) ~~shall~~ must run ~~consecutive~~ consecutively to any
29 other sentence imposed."

30

1 **Section 17.** Section 46-23-201, MCA, is amended to read:

2 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in
3 subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person
4 confined in the Montana state prison or the women's correctional center, except persons under sentence
5 of death and persons serving sentences imposed under 46-18-202(2) or [section 1], when in its opinion
6 there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the
7 community.

8 (2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has
9 served at least one-half of the prisoner's full term, less the good time allowance provided for in 53-30-105.
10 Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404
11 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time
12 allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the
13 prisoner has served 17½ years of the sentence.

14 (3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has
15 served at least one-half of the full term, less the good time allowance provided for in 53-30-105.

16 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has
17 served 30 years, less the good time allowance provided for in 53-30-105.

18 (5) A parole may be ordered under this section only for the best interests of society and not as an
19 award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when
20 the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

21 (6) Whenever the department of corrections and human services certifies to the board that the
22 population at either the male or female correctional facility has exceeded its designed capacity for 30
23 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction
24 of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2)
25 through (4).

26 (7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial
27 12 months of incarceration, the provisions of subsection (6) do not apply."

28

29 **Section 18.** Section 46-23-411, MCA, is amended to read:

30 **"46-23-411. Application to participate -- eligibility.** (1) Any prisoner, except a prisoner serving

1 a sentence imposed under 46-18-202(2) or [section 1], may ~~make application~~ apply to participate in the
 2 supervised release program if ~~he~~ the prisoner has served at least one-half of the time required to be
 3 considered for parole and not more than 24 months remain before ~~he~~ the person is eligible for parole.

4 (2) Prisoners serving sentences under [section 1] or with the restriction imposed under
 5 46-18-202(2) are not eligible for participation in the program.

6 (3) In order to be accepted into the program, an applicant must qualify under the rules established
 7 by the department."
 8

9 **NEW SECTION. Section 19. Codification instruction.** [Section 1] is intended to be codified as an
 10 integral part of Title 46, chapter 18, and the provisions of Title 46 apply to [section 1].
 11

12 **NEW SECTION. SECTION 20. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 46 IS PASSED**
 13 **AND APPROVED, THEN THE CRIME OF ARSON, 45-6-103, IS DELETED FROM THE CRIMES LISTED IN**
 14 **[SUBSECTION (1)(B) OF SECTION 1 OF THIS ACT].**
 15

16 **NEW SECTION. SECTION 21. COORDINATION -- EFFECTIVE DATES. (1) IF HOUSE BILL NO. 357**
 17 **AND [THIS ACT] ARE BOTH PASSED AND APPROVED:**

18 **(A) [SECTIONS 1 THROUGH 18] OF [THIS ACT] ARE EFFECTIVE JULY 1, 1997; AND**

19 **(B) THE SENTENCING COMMISSION SHALL INCLUDE RECOMMENDATIONS FOR IMPLEMENTING**
 20 **THE PUBLIC POLICY CONTAINED IN [SECTIONS 1 THROUGH 18] OF [THIS ACT].**

21 **(2) [SECTIONS 19, 20, AND THIS SECTION] ARE EFFECTIVE JULY 1, 1995.**

22 **(3) IF HOUSE BILL NO. 357 IS NOT PASSED AND APPROVED, THEN THIS SECTION IS VOID.**
 23

-END-