

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

House BILL NO. 273

INTRODUCED BY W. McCallister John Johnson

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE SENTENCING OF OFFENDERS WHO HAVE BEEN PREVIOUSLY CONVICTED OF ONE OR MORE VIOLENT OFFENSES; REQUIRING THAT THE OFFENDERS BE SENTENCED AS PERSISTENT FELONY OFFENDERS; SUBSTITUTING PERSISTENT FELONY OFFENDER STATUS FOR MANDATORY LIFE SENTENCES FOR OFFENDERS WHO HAVE BEEN PREVIOUSLY CONVICTED OF ONE OR MORE VIOLENT OFFENSES; AMENDING SECTIONS 45-5-102, 45-5-303, 45-5-503, 45-5-625, 46-13-108, 46-13-110, 46-18-111, 46-18-201, 46-18-219, 46-18-222, 46-18-225, 46-18-501, 46-18-502, 46-23-201, AND 46-23-411, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

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

**45-5-102. (Effective July 1, 1997) Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

- (a) the person purposely or knowingly causes the death of another human being; or
- (b) the person attempts to commit, commits, or is legally accountable for the attempt or

1 commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated  
2 kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the  
3 course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime  
4 causes the death of another human being.

5 (2) A person convicted of the offense of deliberate homicide shall be punished by death as provided  
6 in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term  
7 of not less than 10 years or more than 100 years, except as provided in ~~46-18-219~~ and 46-18-222."

8

9 **Section 2.** Section 45-5-303, MCA, is amended to read:

10 **"45-5-303. (Temporary) Aggravated kidnapping.** (1) A person commits the offense of aggravated  
11 kidnapping if he knowingly or purposely and without lawful authority restrains another person by either  
12 secreting or holding him in a place of isolation or by using or threatening to use physical force, with any  
13 of the following purposes:

- 14 (a) to hold for ransom or reward or as a shield or hostage;  
15 (b) to facilitate commission of any felony or flight thereafter;  
16 (c) to inflict bodily injury on or to terrorize the victim or another;  
17 (d) to interfere with the performance of any governmental or political function; or  
18 (e) to hold another in a condition of involuntary servitude.

19 (2) Except as provided in 46-18-222, a person convicted of the offense of aggravated kidnapping  
20 shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be  
21 imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined  
22 not more than \$50,000, unless he has voluntarily released the victim alive, in a safe place, and not  
23 suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for a term of  
24 not less than 2 years or more than 10 years and may be fined not more than \$50,000.

25 **45-5-303. (Effective July 1, 1997) Aggravated kidnapping.** (1) A person commits the offense of  
26 aggravated kidnapping if the person knowingly or purposely and without lawful authority restrains another  
27 person by either secreting or holding the other person in a place of isolation or by using or threatening to  
28 use physical force, with any of the following purposes:

- 29 (a) to hold for ransom or reward or as a shield or hostage;  
30 (b) to facilitate commission of any felony or flight thereafter;

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

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

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

4 (2) Except as provided in ~~46-18-219~~ and 46-18-222, a person convicted of the offense of  
5 aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through  
6 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years  
7 and may be fined not more than \$50,000, unless the person has voluntarily released the victim alive, in a  
8 safe place, and with no serious bodily injury, in which event the person shall be imprisoned in the state  
9 prison for a term of not less than 2 years or more than 10 years and may be fined not more than \$50,000."

10  
11 **Section 3.** Section 45-5-503, MCA, is amended to read:

12 **"45-5-503. (Temporary) Sexual intercourse without consent.** (1) A person who knowingly has  
13 sexual intercourse without consent with another person commits the offense of sexual intercourse without  
14 consent. A person may not be convicted under this section based on the age of the person's spouse, as  
15 provided in 45-5-501(1)(b)(iii).

16 (2) A person convicted of sexual intercourse without consent shall be punished by life  
17 imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100  
18 years and may be fined not more than \$50,000, except as provided in 46-18-222.

19 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the  
20 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse  
21 without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison  
22 for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000,  
23 except as provided in 46-18-222.

24 (b) If two or more persons are convicted of sexual intercourse without consent with the same  
25 victim in an incident in which each offender was present at the location where another offender's offense  
26 occurred during a time period in which each offender could have reasonably known of the other's offense,  
27 each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of  
28 not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided  
29 in 46-18-222.

30 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial

1 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall  
2 require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from  
3 the offense. The amount, method, and time of payment must be determined in the same manner as  
4 provided for in 46-18-244.

5 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without  
6 consent" includes an attempt to commit the offense or flight after the attempt or commission.

7 **45-5-503. (Effective July 1, 1997) Sexual intercourse without consent.** (1) A person who  
8 knowingly has sexual intercourse without consent with another person commits the offense of sexual  
9 intercourse without consent. A person may not be convicted under this section based on the age of the  
10 person's spouse, as provided in 45-5-501(1)(b)(iii).

11 (2) A person convicted of sexual intercourse without consent shall be punished by life  
12 imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100  
13 years and may be fined not more than \$50,000, except as provided in ~~46-18-219~~ and 46-18-222.

14 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the  
15 victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse  
16 without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison  
17 for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000,  
18 except as provided in ~~46-18-219~~ and 46-18-222.

19 (b) If two or more persons are convicted of sexual intercourse without consent with the same  
20 victim in an incident in which each offender was present at the location where another offender's offense  
21 occurred during a time period in which each offender could have reasonably known of the other's offense,  
22 each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of  
23 not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided  
24 in ~~46-18-219~~ and 46-18-222.

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

30 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without

1 consent" includes an attempt to commit the offense or flight after the attempt or commission."

2

3 **Section 4.** Section 45-5-625, MCA, is amended to read:

4 **"45-5-625. (Temporary) Sexual abuse of children.** (1) A person commits the offense of sexual  
5 abuse of children if the person:

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

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

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

12 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or  
13 advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

14 (e) knowingly possesses any visual or print medium in which children are engaged in sexual  
15 conduct, actual or simulated;

16 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing  
17 that the activity is of the nature described in those subsections; or

18 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual  
19 conduct, actual or simulated.

20 (2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life  
21 imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined  
22 not more than \$10,000.

23 (b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of  
24 children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less  
25 than 4 years or more than 100 years and may be fined not more than \$10,000.

26 (c) A person convicted of the offense of sexual abuse of children for the possession of material,  
27 as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison  
28 for a term not to exceed 10 years, or both.

29 (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print  
30 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed

1 with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course  
2 or program conducted or approved by the department of corrections.

3 **45-5-625. (Effective July 1, 1997) Sexual abuse of children.** (1) A person commits the offense  
4 of sexual abuse of children if the person:

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

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

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

11 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or  
12 advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

13 (e) knowingly possesses any visual or print medium in which children are engaged in sexual  
14 conduct, actual or simulated;

15 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing  
16 that the activity is of the nature described in those subsections; or

17 (g) possesses with intent to sell any visual or print medium in which children are engaged in sexual  
18 conduct, actual or simulated.

19 (2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life  
20 imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined  
21 not more than \$10,000.

22 (b) ~~Except as provided in 46-18-219, if~~ if the victim is under 16 years of age, a person convicted  
23 of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the  
24 state prison for a term of not less than 4 years or more than 100 years and may be fined not more than  
25 \$10,000.

26 (c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children  
27 for the possession of material, as provided in subsection (1)(e), shall be fined ~~not to exceed~~ more than  
28 \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

29 (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print  
30 medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed

1 with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course  
2 or program conducted or approved by the department of corrections."  
3

4 **Section 5.** Section 46-13-108, MCA, is amended to read:

5 **"46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except as  
6 provided in subsection (6) or for good cause shown, if the prosecution seeks treatment of the accused as  
7 a persistent felony offender, notice of that fact must be given at or before the omnibus hearing pursuant  
8 to 46-13-110.

9 (2) The notice must specify the alleged prior convictions and may not be made known to the jury  
10 before the verdict is returned except as allowed by the Montana Rules of Evidence.

11 (3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a  
12 hearing to determine if the allegations in the notice are true.

13 (4) The hearing must be held before the judge alone. If the judge finds that any allegations of the  
14 prior convictions are true, the accused must be sentenced as provided by law.

15 (5) The notice must be filed and sealed until the time of trial or until a plea of guilty is given by the  
16 defendant.

17 (6) Notice under this section is not required if the charge filed against the defendant is an offense  
18 listed in 46-18-219."  
19

20 **Section 6.** Section 46-13-110, MCA, is amended to read:

21 **"46-13-110. Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea  
22 but not less than 30 days before trial, the court shall hold an omnibus hearing.

23 (2) The purpose of the hearing is to expedite the procedures leading up to the trial of the  
24 defendant.

25 (3) The presence of the defendant is not required. The prosecutor and the defendant's counsel shall  
26 attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including  
27 but not limited to:

28 (a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

29 (b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

30 (c) the need for exclusion of the public and for sealing records of any pretrial proceedings,

1 46-11-701;

2 (d) notification of the existence of a plea agreement, 46-12-211;

3 (e) disclosure and discovery motions, Title 46, chapter 15, part 3;

4 (f) notice of reliance on certain defenses, 46-15-323;

5 (g) if required, notice of seeking persistent felony offender status, 46-13-108;

6 (h) notice of other crimes, wrongs, or acts, 46-13-109;

7 (i) motion to suppress, 46-13-301 and 46-13-302;

8 (j) motion to dismiss, 46-13-401 and 46-13-402;

9 (k) motion for change of place of trial, 46-13-203 through 46-13-205;

10 (l) reasonableness of bail, Title 46, chapter 9; and

11 (m) stipulations.

12 (4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must  
13 be signed by the court and counsel and filed with the court.

14 (5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the  
15 time of the hearing, ~~where~~ when appropriate, or may be scheduled for briefing and further hearing as the  
16 court considers necessary."

17

18 **Section 7.** Section 46-18-111, MCA, is amended to read:

19 **"46-18-111. (Temporary) Presentence investigation -- when required.** (1) Upon the acceptance  
20 of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct  
21 the probation officer to make a presentence investigation and report. The district court shall consider the  
22 presentence investigation report prior to sentencing. If the defendant was convicted of an offense under  
23 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, or 45-5-625 involving a victim who was less than  
24 16 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. The evaluation must be completed by a person who is  
27 determined to be qualified under guidelines established by the department of corrections. All costs related  
28 to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be  
29 indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by  
30 the county or the state, or both, under Title 3, chapter 5, part 9.



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

6 **46-18-111. (Effective July 1, 1997) Presentence investigation -- when required.** (1) Upon the  
 7 acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court  
 8 shall direct the probation officer to make a presentence investigation and report. The district court shall  
 9 consider the presentence investigation report prior to sentencing. If the defendant was convicted of an  
 10 offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, or 45-5-507 or under 45-5-625 involving a victim  
 11 who was less than 16 years of age when the offense was committed, the investigation must include an  
 12 evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive  
 13 environment, considering community safety and offender needs, ~~unless the defendant was sentenced under~~  
 14 ~~46-18-219~~. The evaluation must be completed by a person who is determined to be qualified under  
 15 guidelines established by the department of corrections. All costs related to the evaluation must be paid  
 16 by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the  
 17 evaluation are the responsibility of the district court and must be paid by the county or the state, or both,  
 18 under Title 3, chapter 5, part 9.

19 (2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any  
 20 offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be  
 21 sentenced before a written presentence investigation report by a probation officer is presented to and  
 22 considered by the district court. The district court may, in its discretion, order a presentence investigation  
 23 for a defendant convicted of a misdemeanor."  
 24

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

26 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found  
 27 guilty of an offense upon a verdict or a plea of guilty, the court may:

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

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

3 (i) jail base release;

4 (ii) jail time not exceeding 180 days;

5 (iii) conditions for probation;

6 (iv) payment of the costs of confinement;

7 (v) payment of a fine as provided in 46-18-231;

8 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

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

10 (viii) with the approval of the facility or program, an order that the offender be placed in a  
11 community corrections facility or program as provided in 53-30-321;

12 (ix) community service;

13 (x) home arrest as provided in Title 46, chapter 18, part 10;

14 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of  
15 society;

16 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

17 or

18 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

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

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

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

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

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

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

2 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim  
3 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim  
4 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay  
5 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

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

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

13 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years  
14 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:  
15 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),  
16 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

26 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in  
27 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and  
28 Title 46, chapter 23, part 5.

29 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to  
30 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender

1 program.

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

8 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has  
9 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

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

- 15 (i) jail base release;
- 16 (ii) jail time not exceeding 180 days;
- 17 (iii) conditions for probation;
- 18 (iv) payment of the costs of confinement;
- 19 (v) payment of a fine as provided in 46-18-231;
- 20 (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- 21 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 22 (viii) with the approval of the facility or program, an order that the offender be placed in a  
23 community corrections facility or program as provided in 53-30-321;
- 24 (ix) community service;
- 25 (x) home arrest as provided in Title 46, chapter 18, part 10;
- 26 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of  
27 society;
- 28 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 29 or
- 30 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

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 for placement in an appropriate correctional institution or  
10 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; or

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

14 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim  
15 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim  
16 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay  
17 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

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

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

25 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years  
26 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:  
27 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),  
28 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

8 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in  
 9 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and  
 10 Title 46, chapter 23, part 5.

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

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

20 ~~(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does~~  
 21 ~~not apply to a person sentenced under 46-18-219."~~

22

23 **Section 9.** Section 46-18-219, MCA, is amended to read:

24 "**46-18-219. (Effective July 1, 1997) ~~Life sentence without possibility of release~~ Sentencing of**  
 25 **certain offenders previously convicted of one or more offenses -- persistent felony offender status.** (1) ~~(a)~~  
 26 ~~Except as provided in subsection (3), if~~ If a person convicted of one of the following offenses was  
 27 previously convicted of one of the following offenses or of an offense under the laws of another state or  
 28 of the United States that, if committed in this state, would be one of the following offenses, the person  
 29 must be sentenced ~~to life in prison, unless the death penalty is applicable and imposed~~ as a persistent  
 30 felony offender as provided in 46-18-501 and 46-18-502:

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

2 ~~(ii)(b)~~ 45-5-303, aggravated kidnapping;

3 ~~(iii)(c)~~ 45-5-503, sexual intercourse without consent;

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

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

6 ~~(b)(2)~~ ~~Except as provided in subsection (3), if~~ If a person convicted of one of the following offenses  
 7 was previously convicted of two of the following offenses, two of any combination of the offenses listed  
 8 in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or  
 9 of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a)  
 10 or this subsection, the person must be sentenced to life in prison, unless the death penalty is applicable  
 11 and imposed as a persistent felony offender as provided in 46-18-501 and 46-18-502:

12 ~~(i)(a)~~ 45-5-103, mitigated deliberate homicide;

13 ~~(ii)(b)~~ 45-5-202(1), aggravated assault;

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

15 ~~(iv)(d)~~ 45-5-401, robbery.

16 ~~(2)~~ ~~Except as provided in 46-23-210 and subsection (3) of this section, a person sentenced under~~  
 17 ~~subsection (1):~~

18 ~~(a) shall serve the entire sentence;~~

19 ~~(b) shall serve the sentence in prison;~~

20 ~~(c) may not for any reason, except medical reasons, be transferred for any length of time to~~  
 21 ~~another type of institution, facility, or program;~~

22 ~~(d) may not be paroled; and~~

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

25 ~~(3) If the person was previously sentenced for either of two or three offenses listed in subsection~~  
 26 ~~(1), as applicable, pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections~~  
 27 ~~(1) and (2) of this section do not apply to the person's present sentence.~~

28 ~~(4) (a) For purposes of this section, "prison" means a secure detention facility in which inmates~~  
 29 ~~are locked up 24 hours a day and that is operated by this state, another state, the federal government, or~~  
 30 ~~a private contractor.~~

1           ~~(b) Prison does not include a work release center, prerelease center, boot camp, or any other type~~  
2 ~~of facility that does not provide secure detention."~~

3  
4           **Section 10.** Section 46-18-222, MCA, is amended to read:

5           **"46-18-222. (Temporary) Exceptions to mandatory minimum sentences and restrictions on**  
6 **deferred imposition and suspended execution of sentence.** All mandatory minimum sentences prescribed  
7 by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence  
8 prescribed by 46-18-201(5) through (7), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

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

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

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

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

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

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

27           **46-18-222. (Effective July 1, 1997) Exceptions to mandatory minimum sentences and restrictions**  
28 **on deferred imposition and suspended execution of sentence.** All mandatory minimum sentences prescribed  
29 by the laws of this state ~~and 46-18-219~~ and the restrictions on deferred imposition and suspended  
30 execution of sentence prescribed by 46-18-201(5) through (7), 46-18-221(3), 46-18-224, and



1 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 the victim and society, in which case the court shall include in its judgment a  
19 statement of the reasons for its determination."  
20

21 **Section 11.** Section 46-18-225, MCA, is amended to read:

22 **"46-18-225. (Temporary) Criteria for sentencing nonviolent felony offenders.** Prior to sentencing  
23 a nonviolent felony offender to a term of imprisonment in the state prison or the women's correctional  
24 system, 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 system;

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 system;

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 **46-18-225. (Effective July 1, 1997) Criteria for sentencing nonviolent felony offenders.** Prior to  
13 sentencing a nonviolent felony offender ~~to whom 46-18-219 does not apply~~ to a term of imprisonment in  
14 the state prison or the women's correctional system, the court shall take into account whether:

- 15 (1) the interests of justice and the needs of public safety truly require the level of security provided  
16 by imprisonment of the offender in the state prison or the women's correctional system;
- 17 (2) the needs of the offender can be better served in the community or in a facility or program  
18 other than the state prison or the women's correctional system;
- 19 (3) there are substantial grounds tending to excuse or justify the offense, though failing to establish  
20 a defense;
- 21 (4) the offender acted under strong provocation;
- 22 (5) the offender has made restitution or will make restitution to the victim of the offender's criminal  
23 conduct;
- 24 (6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for  
25 a substantial period of time before the commission of the present crime;
- 26 (7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;
- 27 (8) the character and attitude of the offender indicate that the offender is likely to commit another  
28 crime;
- 29 (9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and
- 30 (10) imprisonment of the offender would create an excessive hardship on the offender or the

1 offender's family."

2

3 **Section 12.** Section 46-18-501, MCA, is amended to read:

4 **"46-18-501. Definition of persistent felony offender.** A "persistent felony offender" is an offender  
5 who has previously been convicted of a felony and who is presently being sentenced for a second felony  
6 committed on a different occasion than the first. An offender is considered to have been previously  
7 convicted of a felony if:

8 (1) the previous felony conviction was for an offense committed in this state or any other  
9 jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

10 (2) except as provided in 46-18-219, less than 5 years have elapsed between the commission of  
11 the present offense and either:

12 (a) the previous felony conviction; or

13 (b) the offender's release on parole or otherwise from prison or other commitment imposed as a  
14 result of the previous felony conviction; and

15 (3) the offender has not been pardoned on the ground of innocence and the conviction has not  
16 been set aside in a postconviction hearing."

17

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

19 **"46-18-502. (Temporary) Sentencing of persistent felony offender.** (1) Except as provided in  
20 subsection (2), a persistent felony offender shall be imprisoned in the state prison for a term of not less  
21 than 5 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if he was  
22 21 years of age or older at the time of the commission of the present offense.

23 (2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his  
24 previous felony conviction, less than 5 years have elapsed between the commission of the present offense  
25 and either the previous felony conviction or the offender's release on parole or otherwise from prison or  
26 other commitment imposed as a result of the previous felony conviction, and he was 21 years of age or  
27 older at the time of the commission of the present offense, he shall be imprisoned in the state prison for  
28 a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed  
29 \$50,000, or both.

30 (3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence

1 imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be  
2 deferred or suspended.

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

5 **46-18-502. (Effective July 1, 1997) Sentencing of persistent felony offender.** (1) Except as  
6 provided in ~~46-18-219~~ and subsection (2) ~~of this section~~, a persistent felony offender shall be imprisoned  
7 in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount  
8 not to exceed \$50,000, or both, if the offender was 21 years of age or older at the time of the commission  
9 of the present offense.

10 (2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of 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 the offender  
14 was 21 years of age or older at the time of the commission of the present offense, the offender shall,  
15 ~~except as provided in 46-18-219~~, 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) must run consecutively to any other sentence  
21 imposed."

22

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

24 **"46-23-201. (Temporary) Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions  
25 contained in subsections (2) through (4), the board may release on nonmedical parole by appropriate order  
26 any person confined in the Montana state prison or the women's correctional system, except persons under  
27 sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there  
28 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-fourth of the prisoner's full term.

2 (3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has  
3 served 30 years.

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

7 **46-23-201. (Effective July 1, 1997) Prisoners eligible for nonmedical parole.** (1) Subject to the  
8 restrictions contained in subsections (2) through (4), the board may release on nonmedical parole by  
9 appropriate order any person confined in the Montana state prison or the women's correctional system,  
10 except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) ~~or~~  
11 ~~46-18-219~~, when in its opinion there is reasonable probability that the prisoner can be released without  
12 detriment to the prisoner or to the community.

13 (2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has  
14 served at least one-fourth of the prisoner's full term.

15 (3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has  
16 served 30 years.

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

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

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

26 (2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible  
27 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 **46-23-411. (Effective July 1, 1997) Application to participate -- eligibility.** (1) Any prisoner, except

1 a prisoner serving a sentence imposed under 46-18-202(2) ~~or 46-18-219~~, may apply to participate in the  
2 supervised release program if the prisoner has served at least one-half of the time required to be considered  
3 for parole and not more than 24 months remain before the person is eligible for parole.

4 (2) Prisoners serving sentences ~~under 46-18-219~~ 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 16. Effective date. [This act] is effective July 1, 1997.

10

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0273, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the sentencing of offenders who have been previously convicted of one or more violent offenses; requiring that the offenders be sentenced as persistent felony offenders; substituting persistent felony offenders status for mandatory life sentences for offenders who have been previously convicted of one or more violent offenses and providing an effective date.

ASSUMPTIONS:

1. On an average based on fiscal years 1990-1995 data, the number of annual prison admissions of offenders with two separate convictions for the crimes defined in this bill is five (5).
2. The average age of prison admissions with two or more court trials of the crimes defined in this bill is 31 years of age based on fiscal year 1994 data.
2. The average sentence of these offenders is 13 years, which exceeds the minimum sentences provided in Section 46-18-502, subsections 1 and 2, MCA.
3. The Department of Corrections (DOC) assumes that County Attorneys will not change their sentencing practices in designating offenders as persistent felony offenders.
4. There is no impact to the Department of Justice.
5. There is no impact to the state funded Judiciary.


FISCAL IMPACT:

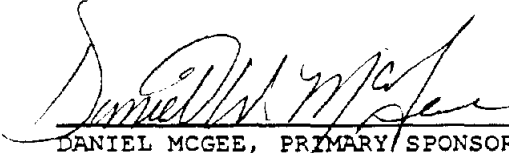
No impact to the DOC in fiscal year 1998 or 1999, because the average length of sentence of offenders sentenced under this bill still exceeds two years.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The DOC assumes that because good time will not be available after 1/31/97, judges will adjust their sentencing practices so that offenders will serve the same amount of time under supervision as has occurred in the past. If this adjustment in sentencing does not occur, long range lengths of DOC supervision will increase, correspondingly increasing costs.

The long-range impact of this bill will be to reduce the care and custody costs for those inmates who would have received mandatory life sentences under the current law. Under this bill, these offenders could receive sentences ranging from 5 to 100 years.

 1-20-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
DANIEL MCGEE, PRIMARY SPONSOR      DATE  
Fiscal Note for HB0273, as introduced

**HB 273**