

Report and Recommendations of the Interim Committee on Corrections Policy and Facility Needs

November 1980



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MONTANA LEGISLATIVE COUNCIL

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REPORT AND RECOMMENDATIONS OF THE
INTERIM COMMITTEE ON CORRECTIONS
POLICY AND FACILITY NEEDS

A REPORT TO THE
FORTY-SEVENTH LEGISLATURE

STUDY COMMITTEE
ON CORRECTIONS

119873

U.S. Department of Justice
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ACKNOWLEDGEMENTS

The Committee would like to thank Larry Zanto, Director of the Department of Institutions; Curt Chisholm, Deputy Director; Dan Russell, Corrections Division Administrator; and their staff for the cooperation they gave the Committee during the interim corrections study.

The Committee also commends the work of Warden Crist and Superintendents Al Davis, Mel Mohler and Don Robel. The Committee found that the Superintendents and their staffs are doing an outstanding job in carrying out their responsibilities to the State of Montana.

FINDINGS AND CONCLUSIONS

The Committee on Corrections Policy and Facility Needs found that:

- 1) There appears to be no immediate need for additional residential facilities at Montana State Prison; should the prison population increase so as to require additional facilities, careful consideration should be given to residential alternatives outside the prison;
- 2) Work rehabilitation and job training should be considered as worthwhile alternatives; and
- 3) The Committee views with alarm the increased incarceration rates recently experienced in Montana.

SUMMARY OF RECOMMENDATIONS - CORRECTIONS

The Committee on Corrections Policy and Facility Needs recommends to the 47th Legislature:

- 1) That the Correctional Needs Report from the Department of Institutions be commended to the 47th Legislature for their consideration; and
- 2) That this state make a major commitment to adult probation and parole.

SUMMARY OF RECOMMENDATIONS - SENTENCING

The Committee on Corrections Policy and Facility Needs recommends to the 47th Legislature:

- 1) That plea bargaining be an open process with a written record;
- 2) That the state be allowed to request an appellate review of a legal or a deferred sentence;
- 3) That the maximum period for deferred imposition of a sentence for a felony be increased from 3 to 5 years;
- 4) That fines and assessment of costs in felony criminal cases be allowed and community service as a condition of deferred or suspended sentence be allowed;
- 5) That additional sentences for crimes committed with a dangerous weapon run consecutively with the sentence provided for that offense;
- 6) That there be increased punishment of persons who have been convicted of three separate felonies;

- 7) That the period of time served before an offender is eligible for parole be increased from one-quarter to one-half for a non-dangerous offender, and from one-half to two-thirds for a dangerous offender;
- 8) That the good-time allowance for self-help programs and blood donations be eliminated and that it be clarified that good time is not earned while on parole; and
- 9) That a corrections board of visitors be created.

REFERRED WITHOUT RECOMMENDATION TO THE 47TH LEGISLATURE

The Committee on corrections policy and Facility Needs refers without recommendation the following legislation to the 47th Legislature:

- 1) A bill to eliminate the provision that an offender serving a time sentence may be paroled after 17 1/2 years.
- 2) A bill to provide for mandatory sentences for 25 felony offenses.

SUMMARY

The Interim Committee on Corrections Policy and Facility Needs was formed to examine Montana's overall correction policy. HJR 65 requested that the Committee include in its study a consideration of:

- 1) the prison release and furlough programs;
- 2) pre-release programs and facilities;
- 3) questions about the maximum size of a prison facility that should be built in one location;
- 4) the proper use of community and forest work camp programs and the relationship of such programs to prison needs;
- 5) the long-term needs for prison facilities in the state;
- 6) the long-term needs for juvenile corrections and evaluation facilities; and
- 7) health care of prisoners.

In addition to those considerations, the Committee was assigned the study of sentencing in criminal cases (HJR 59).

Early in the study it was decided that because of the diverse interests of the Committee members and the need to respond immediately to the Department of Institutions' plan to construct a Stillwater Forest Camp, the Committee would initially act as a monitoring agent of the activities of the Department of Institutions during the development of a comprehensive correctional needs plan, while at the same time individual committee members would bring forth their proposals for changes in Montana's sentencing laws.

The Committee considered sixteen bill drafts. The subject of the bills ranged in complexity from a change in the number of years for a deferred sentence to a complete revision of sentencing statutes. After considerable debate by the Committee and public scrutiny during a public hearing, the Committee decided to recommend nine bills to the 47th Legislature and to refer two bills without recommendations to the 47th Legislature. These bills are discussed in the body of the report.

During the study, the Committee toured the major state correctional facilities. The Committee was concerned about the long-range planning by the Department of Institutions. After a number of requests for a long-range plan, the Committee received a Correctional Needs plan from the Department of Institutions at its final meeting in August. Since the Committee did not have adequate time to review the various recommendations contained in the report, the members decided to commend the report to the 47th Legislature. A summary of the report is contained in the body of the report.

HOUSE JOINT RESOLUTION NO. 59

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ASSIGNMENT OF AN INTERIM STUDY OF SENTENCING IN CRIMINAL CASES.

WHEREAS, the 45th Legislature did not act on minimum sentencing legislation in expectation of receiving more information during the 1977-1978 interim; and

WHEREAS, the 46th Legislature has not been presented with such information; and

WHEREAS, the only way to ensure that the 47th Legislature receives the information is to have an interim legislative committee conduct a study; and

WHEREAS, uniformity in sentencing throughout Montana may be a highly desirable goal.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to give high priority to the appointment of an interim committee, selected from the members of the Senate and House Committees on the Judiciary and the Senate and House Committees on Public Health, Welfare, and Safety, to study sentencing of convicted criminal defendants in Montana.

BE IT FURTHER RESOLVED, that the interim committee report its findings to the 47th Legislature and, if necessary, draft legislation to implement its recommendations.

Approved April 18, 1979.

HOUSE JOINT RESOLUTION NO. 65

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF AN INTERIM STUDY OF CORRECTIONS POLICY AND PRISON NEEDS.

WHEREAS, there are currently more than 300 inmates housed at the old prison facility in Deer Lodge; and

WHEREAS, it is intended that the old prison be closed upon completion of the two new medium security buildings at the new prison or as soon thereafter as practical; and

WHEREAS, it is vital that the planned closure of the old prison occur as early as reasonably practical; and

WHEREAS, an assumed limit of 718 inmates can be housed in the new facilities, using double bunking whenever possible; and

WHEREAS, the total prison population is likely to exceed 718 in the near future; and

WHEREAS, this projected prison population increase indicates a need for the construction of additional prison space and auxiliary facilities or other alternatives; and

WHEREAS, there is a need to develop a long-term policy on construction and replacement of juvenile correctional and evaluation facilities; and

WHEREAS, long-term needs for replacement of facilities at juvenile institutions must be identified; and

WHEREAS, there are alternatives to the construction of additional prison facilities such as forest work camps, making better use of available space at the new prison, making use of space at other state institutions, the possibility of contracting services with private nonprofit corporations, use of facilities such as halfway houses, and the development of prerelease centers and other community facilities; and

WHEREAS, the Legislature should relate overall corrections policy to facility needs and develop a long-range prison facilities plan to most economically meet the state's long-term prison needs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an interim committee be assigned to study Montana's corrections policy and related prison needs.

(2) That the committee include in its study a consideration of at least the following:

(a) the prison release and furlough programs;

(b) prerelease programs and facilities;

(c) questions about the maximum size of a prison facility that should be built in one location;

(d) the proper use of community and forest work camp programs and the relationship of such programs to prison needs;

(e) the long-term need for prison facilities in the state;

(f) the long-term needs for juvenile correction and evaluation facilities; and

(g) health care of prisoners.

(3) The department of institutions shall consult with the committee in the development of the comprehensive plan set forth in HB 483 relating to the appropriation of \$3 million as set forth in item 7 of the appropriations to the department's central office.

(4) That the committee submit to the 47th Legislature a report of its findings together with recommendations for future corrections policy in Montana and recommendations for the construction of additional prison facilities, the location of such facilities, and other pertinent recommendations.

I. INTRODUCTION AND COMMITTEE DELIBERATIONS.

I.

The Interim Committee on Corrections Policy and Facility Needs was formed for the purpose of studying Montana's overall corrections policy and related correctional programs and facilities, both in the community and in institutional settings. HJR 65 specifically requested that the Committee include in its study a consideration of at least the following:

- 1) the prison release and furlough programs;
- 2) pre-release programs and facilities;
- 3) questions about the maximum size of a prison facility that should be built in one location;
- 4) the proper use of community and forest work camp programs and the relationship of such programs to prison needs;
- 5) the long-term needs for prison facilities in the state;
- 6) the long-term needs for juvenile corrections and evaluation facilities; and
- 7) health care of prisoners.

The Committee was also charged with the duty to consult with the Department of Institutions in "the development of the comprehensive plan set forth in HB 483 relating to the appropriation of \$3 million as set forth in item 7 of the appropriations to the Department's central office."

In addition, the Committee was assigned the study of sentencing in criminal cases (HJR 59).

The concern for uniformity in sentencing was a major topic in the 45th and 46th legislative sessions. Legislators were hampered during these sessions by inadequate information on mandatory or determinate sentencing since the move in other states to this type of sentencing was just beginning to gain momentum during this period. HJR 59 was introduced in order to ensure that this information would be available to the 47th Legislature. Since current sentencing practices and any proposed changes in sentencing practices would have a definite relationship to the state's overall corrections policy and the need for correctional facilities and programs, the Interim Study Committee on Corrections Policy approached both assignments knowing that changes in one part of the system would affect the rest of the system.

II.

The Committee met on nine separate occasions and had several two day meetings. The Committee devoted a number of meetings to the examination of state facilities. Members toured the Montana State Prison, Mountain View School, Pine Hills School, the Helena Attention Home, and an aftercare group home in Helena. Several members of the Committee also toured the Life Skills Center in Missoula and the Swan River Youth Forest Camp.

The Committee held a public hearing to hear views on the correctional needs of the state and to receive testimony on proposed sentencing legislation.

III.

Early in the study it was decided that because of the diverse interests of the Committee members and the need to respond immediately to the Department of Institutions' plan to construct a Stillwater Forest Camp, the Committee would initially act as a monitoring agent of the activities of the Department of Institutions during the development of a comprehensive correctional needs plan, while at the same time individual committee members would bring forth their proposals for changes in Montana's sentencing laws.

A further discussion of Committee deliberations is contained in the following presentations of the two separate assignments undertaken by the Committee. Sentencing proposals are discussed in chapter 2 and corrections policy and facility needs are discussed in chapter 3.

2. SENTENCING.

I.

The controversy concerning uniformity of sentencing practices has held the attention of legislators, academicians, criminal justice system officials and the public for many years. An immense amount of information is available on this subject. Because of the interest of several Committee members in the area of determinate sentencing, both mandatory and presumptive, the staff prepared a summary of determinate sentencing laws in other states.* The Committee also requested a panel presentation of information from individuals who had been participants in the Montana Justice Project and who were currently involved in specific aspects of the sentencing process.

* see Appendix A

The Montana Justice Project was the product of the Montana Council on Criminal Justice Standards and Goals. This Council was appointed by Governor Judge in October 1974 to adopt a set of standards and goals for the improvement of Montana's criminal justice system. Five task forces (Law Enforcement, Courts, Corrections, Information Systems, and Community Crime Prevention) were set up by the Council to research and draft standards and goals for review and adoption by the Council. Three members of this project addressed the Study Committee. They are: Henry Burgess, Chairman of the Projects Task Force on Corrections and current Chairman of the Board of Pardons; Judge Gordon Bennett, member of the Task Force on Corrections and a district court judge; and Mike Abley, coordinator of the Task Force on Courts and currently Administrator of the Montana Supreme Court. The Committee also received testimony from Harold Hanser, Yellowstone County Attorney. The general opinion gathered from this presentation was that the present system was working fairly well but there could be some "fine tuning." Henry Burgess recommended that there be periodic sentencing institutes for Montana judges and visitations of penal institutions by newly appointed judges. Harold Hanser suggested that lower courts be upgraded and a system of bifurcated sentencing hearings be initiated. Judge Bennett cautioned that the system be treated as a whole. He said that sentencing involves an identification of resources. If there is a program to modify or change the behavior of an offender, there is one kind of a sentence, but if there is no program, there is another kind of sentence.

Following the panel's presentation, the Study Committee, realizing the divergence of opinion among the Committee members, decided to allow individual members to submit bill drafting requests. A description of this proposed legislation as well as a brief account of the Committee deliberations on the bills is contained in part II.

II

The two major pieces of legislation proposed by Committee members would have the potential of extensively revising Montana's sentencing laws. One, LC 38, proposed a schedule of presumptive sentences. In other words, a specific sentence would be set by law for each felony offense. A sentence could be set above or below the presumed sentence and within the range now set by law for the felony offense if the judge found that aggravating or mitigating circumstances were present. The judge would have to state on the record the reason for deviating from the presumptive sentence. All other provisions of current sentencing provisions would be retained, i.e., the offender would still be subject to the parole provisions contained in current law. Senator Towe, the requestor of the bill, had intended to include a schedule of presumptive sentences as a part of the bill. These sentences

would have been based on the average sentence given for that offense. However, because of a number of problems with present sentencing data*, Senator Towe decided to amend the bill to require that the Montana Supreme Court, after consultation with district court judges, would prepare a schedule of presumptive sentences. After much debate LC 38 was tabled by the Committee when it was decided that the other proposal, LC 54, would be referred to the 47th Legislature.

LC 54 proposed to make only certain specific considerations relevant in determining the length of a sentence. Those considerations would be the nature of the crime committed, the defendant's criminal history, and the facts and circumstances surrounding the commission of the offense. The bill would attempt to solve the problem of disparate sentences and eliminate instances where judges ignore existing sentencing requirements. The specific provisions of LC 54 are:

- A. It would restrict deferral and suspension of sentence to a person:
 - 1) who was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;
 - 2) whose mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;
 - 3) who at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;
 - 4) who was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or
 - 5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense.
- B. It would require the imposition of a fixed sentence for a particular crime.**

* See a general discussion of these problems in Appendix B.

** Rep. Keedy, who proposed this bill, originally intended to develop a fixed sentence for each felony. However, because of the problems with the sentencing data, Rep. Keedy devised a schedule of fixed sentences for 25 felonies.

- C. It would give the judge the authority to increase the sentence by a fixed percentage if aggravating circumstances were found to be present at the time the crime was committed.
- D. It would grant the judge the authority to reduce the sentence by a fixed percentage if mitigating circumstances were found to be present.

This proposal has been labeled mandatory sentencing. While the bill does mandate sentences for 25 felonies, it does not eliminate the discretion of the parole board as a true mandatory sentencing bill would do. However, it does severely limit the discretion of the judge. Several Committee members were concerned about restrictions imposed by this bill, but because there was Committee support for the concept of limiting judicial discretion, the bill was referred out without recommendation.

While the two bills discussed above did not attempt to change current parole provisions several other bills proposed by Committee members did.

LC 51 and LC 52 would respond to public criticism concerning the unfulfilled expectation that an individual will be sent to prison for the entire time for which he is sentenced. In reality, the offender may serve about one-fifth the time if he is a non-dangerous offender and is eligible for all allowable good-time reductions.

LC 51 (to revise the laws relating to parole eligibility) would change the provisions for parole eligibility. The bill requires that an offender serve two-thirds of the term before being eligible for parole, rather than serving one-half of the term as is now required by state law. The minimum time a non-dangerous offender must serve would be increased to one-half from the present one-quarter of the term. The intent of this legislation is to insure that the actual time served by the offender closely corresponds to the sentence given by the judge. The Committee requested that a statement of intent accompany the bill. That statement is as follows:

It is the intent of the Legislature in enacting this legislation that the time actually served in prison by an individual not be increased as a result of this change in parole eligibility but that the sentence that is imposed coincide more closely with the term of imprisonment. The law should be construed by the District Courts and the Sentence Review Board to effectuate having a sentence imposed which would result in a term of imprisonment comparable to the median prison term served for the same crime in the preceding ten years.

LC 52 (to revise the law relating to good-time allowance) would attempt to readjust the time served by inmates. Testimony received by the Committee concerning the lack of consistency in the definition of self-help programs and the nonuse of the good-time allowance for blood donations prompted the Committee to propose elimination of the good-time allowance provisions for these programs. LC 52 also would clarify existing law to provide that good-time not be earned while the convict is on parole.

LC 32 (to eliminate the provision that an offender serving a time sentence--a sentence of more than 35 years--may be paroled after 17 1/2 years) was also designed to ensure that an offender serve the court's sentence. One Committee member viewed the 17 1/2 year parole provision as a provision that frustrated the purpose of the original sentence, while another member said that 17 1/2 years provided a sufficient time period for individual growth and change. It was pointed out that the parole provision would allow the individual to be considered eligible for parole but it did not guarantee that the individual would automatically receive the parole. Since several members of the Committee felt that this parole provision should receive further attention from the 47th Legislature, the Committee voted to submit the bill without recommendation.

Several bills proposed by the Committee are attempts to strengthen current laws.

LC 40 would mandate that the sentence imposed for the use of a weapon in the commission of a crime run consecutively with the sentence provided for the offense. The Committee conducted a survey of the county attorneys in the state and that survey indicated that the additional sentence for offenses committed with a dangerous weapon, required by 46-18-22, MCA, was not being applied by the judiciary.

LC 41 (to provide for increased punishment of persons who have been convicted of three separate felonies). Rep. Gould, who requested the bill, said that the purpose of LC 41 is to convince a person who has been convicted twice of felonies, but who has not learned from his prison experience, that he should give his situation some thought and perhaps decide that "going straight" is a better way of getting along in the world. LC 41 provides for a longer sentence for individuals convicted of a third felony offense. The bill states that an offender who was a persistent felony offender at the time of his previous felony conviction, less than 5 years have elapsed between his previous felony conviction and the commission of the present offense, and he was 21 years of age or older at the time of the commission of the present offense, he will be imprisoned in the state prison for a term of not less than 10 years or more than 100. A judge may not defer or suspend the first 10 years of the sentence.

For some felony offenses the use of the deferred sentence has constituted an effective method for placing under supervision individuals who would not benefit from incarceration. However, since some judges do not consider three years to be a sufficient period of supervision - LC 35 (to increase to five years the maximum period for deferred imposition of a sentence for a felony) was proposed. The majority of the Committee felt that this bill should receive recommendation.

Some of the proposed legislation was a result of testimony received at a February 1980 public hearing. This testimony brought to the attention of the Committee that there was a need for: 1) a requirement to make plea bargaining a matter of public record; 2) a procedure to allow the state to request an appellate review of legal sentences; and 3) the judge to be able to fine or assess cost in felony criminal cases and allow community service as a condition of deferred or suspended sentences.

LC 34 allows the state to request an appellate review of both legal sentences and deferred imposition of a sentence. This means that if an offender receives a sentence that is viewed by the prosecution as an unjustly light sentence, the prosecuting attorney may approach the attorney general to ask the sentence review board for a review of that sentence. A question was raised about potential abuse of the right to appeal, and the provision that the attorney general request the review was viewed as a means of curtailing this potential abuse.

LC 33 (to provide a plea agreement procedure) was in response to the charge that plea bargaining would increase if mandatory sentencing were imposed. During testimony at the public hearing a question was raised as to whether individuals who engage in plea bargaining are being treated equitably. When it was brought to the Committee's attention that although many jurisdictions require plea agreements to be in writing in many cases there are no rules governing the contents of the plea agreement, LC 33 was drafted. LC 33 is based upon the Federal Rule of Criminal Procedure 11. It provides that the defendant may enter a plea for a specific sentence, and if the court refuses the sentence, the defendant may withdraw his plea and go to trial. While the judge may not engage in the plea agreement, he will be informed in writing at the time of being presented with the plea bargain as to the exact reasons for the plea bargain. In addition, since the reasons for the plea bargain will be on the record, the press and interested members of the public will be able to find out the reasons for a plea bargain in a particular case. Testimony received by the Committee indicated that plea bargaining occurs in approximately 90% of the cases before the court and it can be a useful tool in speeding up the judicial process while eliminating the cost of bringing the majority of offenders to trial.

Another bill that would have the potential of cutting costs by increasing the sentencing options available to judges is LC 36. LC 36 (to provide for fines and assessment of costs in felony criminal cases and allowing community service as a condition of deferred or suspended sentences) was a response to the complaint that for certain white collar crimes and other kinds of economic crimes where for a variety of reasons incarceration is not likely to be an effective solution, no other alternatives are available. This bill offers that alternative. However the court is limited in its application of this sentence. The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. This restriction is also true for the assessment of costs. Also, a defendant who has been sentenced to pay costs and who is not in default in the payment may at any time petition the court to remove that sentence if it is imposing a manifest hardship on the defendant or his immediate family. If the fine or costs are a condition of a suspended or deferred sentence the suspension or deferral may not be revoked if the offender defaults and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment. The money collected by the court would be paid to the county general fund of the county in which the court is held.

For many years several members of the Committee and other members of the Legislature have been involved in reviewing correctional facilities. These legislators are often inundated with complaints from prisoners or the prisoners' family members.

LC 53 (which would establish a board of visitors for corrections facilities) would provide for an independent review of correctional facilities, and would eliminate the shotgun or crisis approach to reviewing problems in these facilities. LC 53 provides for a three-member board of visitors, appointed by the Governor, to visit and inspect each state correctional facility annually. The board would also be authorized to inspect local correctional facilities. The board would be empowered to investigate individual complaints. It would report annually to the Governor and biennially to the Legislature concerning the status of correctional facilities in the state.*

Besides LC 38, the Committee considered three other bills which they chose not to recommend. They are: LC 46 (to abolish the existing parole system and provide for fixed sentences, one-third of the sentence is in prison and two-thirds in the community under supervision); LC 49 (mandatory increased punishment for two or more rapes or attempted rapes); and LC 50 (to create permanent incarceration or full sentence on a third felony conviction). LC 46 was requested because the requestor felt that what the public sees happening and what actually happens in sentencing may not always be the same. He felt that there should be a definite system under which an individual would be punished by being sent to prison for a definite period of time and released to supervision at the end of that period. This would eliminate the discretion of the parole board. It was moved that the Committee reject the intent of the bill as proposed legislation of the Committee. The motion passed 4 to 3.

* A minority position has been taken with regard to LC 53. This report is on p. 25.

The intent of both LC 49 and LC 50 was to increase penalties for persistent offenders. The consensus of the Committee was that current laws or other proposed legislation before the Committee would handle these problems.

During the Committee's work on sentencing legislation, the Committee repeatedly requested suggestions or criticism from all members of the judicial system. Response was good from some members, especially the parole board, many county attorneys, and several district judges. However, on the whole the Committee received very little assistance from the majority of individuals in the judicial branch.

3. CORRECTIONS POLICY AND FACILITY NEEDS

I. Committee Deliberations

After an organizational meeting in July, 1979 the Committee began its consideration of Montana's correctional needs with a tour of the Montana State Prison on August 24, 1979. The Committee received reports from the Department of Institutions concerning prison population projections and prison expansion alternatives. The Department announced that its original prison population projections were overstated. A recalculation of the prison population projections, based on modified assumptions, showed that the prison expansion project funded by the 46th Legislature was not justified. It was at this time that the Department announced that it had dropped plans to construct the proposed Stillwater Forest Camp. The Committee informed the Department that it would like a revised plan for programs and facilities to meet Montana's correctional needs.

On October 11 the Committee toured the Helena Attention Home, an aftercare group home and the Mountain View School. On October 12 the Department of Institutions gave the Study Committee a progress report on prison alternatives that included options for a half-way house in Billings, use of the Family Training Center in Glasgow, creation of a forensic unit at Warm Springs, the expansion of the Swan River facility, increased use of parole, a proposal for contracting with the Swift Bird Indian Program in South Dakota and expansion of the Life Skills Training Center in Missoula as a pre-release program. The Study Committee passed two motions at this meeting. Senator Towe moved that the Committee go on record as approving the Department of Institutions' presentation and the direction it is taking at the present time. Senator Stephens moved that the Committee go on record in support of the concept that monies that are now available for the funding of the Billings half-way house--that the Committee endorse the concept and urge agencies and other committees involved to concur and affirm the program.

While the Committee approved of the direction the Department of Institutions was taking, there was still a concern regarding long-range planning by the Department. At the December 1979 meeting of the Committee, the Department presented an update of its prison alternatives plan. This plan proposed three alternatives to prison: the Billings and Missoula halfway houses and the Family Training Center in Glasgow. Department spokesmen then stated that they were unable to proceed with the plan since the Legislative Finance Committee had ruled that the decision to use the money appropriated in HB 483 was tied directly to the population increments at the prison, and until the prison experienced an increase in population the Department should not spend the appropriation. The Study Committee renewed its request that the Department develop a full long-range plan. The Committee passed a motion that Sen. Towe and Rep. Gould go to the Finance Committee meeting and tell them, in the strongest possible language, that the Committee supports the community correction program.

In February 1980, the Committee held a public hearing. The majority of the testimony was on proposed sentencing legislation, but concern was expressed that present corrections facilities would be unable to handle the increased numbers of those incarcerated if the proposed legislation was enacted. The Committee asked the Department for reports on 1) good time allowance, 2) female offenders, 3) sexual offenders, and 4) probation and parole.

In April the Committee toured the Pine Hills School and facilities. There was a discussion of the lawsuit that was pending against the school. The Committee again addressed the need for long-range planning by the Department of Institutions. Mr. Russell, Administrator, Corrections Division, responded that the Department was engaged in preparing the various reports requested by the Committee at its February meeting but he would have a long-range plan prepared by July or August.

At its June meeting the Committee received reports on good-time allowance, female offenders, sexual offenders, and probation and parole. The Committee agreed that the direction of corrections should be toward local or community corrections. There was a discussion of Alpha House, the Billings pre-release center. It was announced that it had finally received approval and had begun operating. Several members of the Committee also discussed their recent tour of the Swan River Forest Camp and the Missoula Life Skills Center. It was recommended that the Committee explore the possibility of having similar programs in other parts of the state.

The Committee received the long-awaited Correctional Needs plan from the Department of Institutions at its final meeting in August. Since the Committee did not have adequate time to review the various recommendations contained in the report and it was unable to agree upon the priority of the needs contained in the report, the members decided to commend the report to the 47th Legislature. A summary of that report is contained in the next section.

II. Summary of Correctional Needs Report

Overview

The Correctional Needs Report describes the programs of the state correctional system and outlines the future direction and needs of each program. The report contains: 1) a statement of the philosophy of each program; 2) a program description; 3) population projections; 4) program capacity; 5) long-range building plans; 6) special equipment needs; 7) staffing analysis; 8) proposed legislation; 9) caseloads; and 10) other problems in significant areas. Because of the length of the Correctional Needs Report, this summary will contain a brief description of the programs, population projections, and specific long-range needs.

Montana State Prison

The Montana State Prison provides a supervised security setting in which adequate food, clothing, shelter, medical services and treatment programs are provided for offenders.

The Department of Institutions has developed several projections of future prison populations. When 1979 Master Plan projections were found to be too high, the projections were revised by the Department of Institutions in August of 1979. An independent analysis of the Department's revised figures was made by Western Analysis, Incorporated, in November of 1979. The projections are listed in Table I.

Table I
COMPARISON OF PROJECTIONS

	<u>Master Plan</u>	<u>Department of Institutions (Revision)</u>	<u>Western Anal sis</u>
FY 1980	838	738	693
FY 1981	930	773	707
FY 1982	1014	798	721
FY 1983	1065	817	733
FY 1984	1064	831	746
FY 1985	1010	840	760
FY 1986	936	n/a	773
FY 1987	845	n/a	784
FY 1988	741	n/a	795
FY 1989	704	n/a	804
FY 1990	636	n/a	813

The programs and support services at the Montana State Prison have been geared to 672 inmates. The absolute capacity of the prison is 820 if it is filled as described in Table II.

TABLE II
PRISON SYSTEM CAPACITY

<u>Unit</u>	<u>Capacity</u>
1. Three-96 man units (A, B, C)	288
2. Two-96 man units (Close I & Close II)	<u>192</u>
Total Design Capacity	480
3. Double bunking the two 96 man units	<u>192</u>
Total Rated Capacity	672
4. Using Counselor Rooms	36
5. Double bunking in A,B, & C Units	36
6. Swan River Youth Forest Camp	50
7. Maximum Security Unit	<u>26</u>
ABSOLUTE CAPACITY	820

Two metal buildings from the old prison are currently being converted into an Industries Complex at the new prison. While these buildings will provide more work opportunities for the inmate population, the Department would like to see an expansion of available shop space.

The authorized FY 80 staffing base at the prison is 262.17 but the prison is currently operating with an additional 27 FTE based on the Department's assessment that adequate security and treatment in the new prison requires more staff than was expected during the planning phase. In addition, the Department has done a "Post-Trick" analysis* which indicates that the prison should be staffed at 300.825 FTE.

As of July 23, 1980, the prison had six social workers responsible for the casework needs of 652 inmates. This is a ratio of one social worker to 108 inmates. In addition to working with the inmates, the social workers are also responsible for intake, reclassification, parole reports, and unit management. The Department noted that the 15 percent of the population that is Indian may require special staffing patterns.

The Department foresees the following medical needs:

- 1) full-time medical doctor;
- 2) registered nurse seven days per week and a number of licensed practical nurses; and
- 3) a program for adequate psychiatric treatment in a secure setting, either at the prison or elsewhere.

The following educational needs were mentioned in the report:

- 1) mathematics and basic science programs;
- 2) an academic testing and counseling program;
- 3) an increased number of vocational and educational supplies;
- 4) increased funding for the associate of arts degree program;

* According to the Department, this analysis assesses all factors which mitigate a staffing pattern for the prison - such as holidays, sick leave, vacations, replacement, etc.

- 5) additional industries foremen; and
- 6) a full alcohol abuse prevention program.

Swan River Youth Forest Camp

Swan River facility maintains a forest industries work program provided by the Department of Natural Resources and Conservation. The Youth Camp has the capacity to handle 50 individuals between 18 and 25 years of age. The Department of Institutions has recommended increasing the capacity by 20. This would require additional dorm space. The Department has also indicated that there is a need to add on to the multipurpose room. The program lacks recreational facilities for residents during the winter months, a time when other work activities must be curtailed.

Pine Hills School

By statute, the Pine Hills School is directed to "properly diagnose, care for, train, educate, and rehabilitate" youth referred by Montana's youth courts. Acceptable federal standards suggest that it be accomplished in the "least restrictive environment."

A recent evaluation performed by out-of-state experts indicated that to be acceptable, the population at the Pine Hills School could not exceed 100 students. This recommendation was based on physical plant capacity.

The Pine Hills School is now performing four distinct functions:

- 1) 45 day evaluations
- 2) Intensive treatment programing
- 3) Federal boarder program
- 4) Regular open programing

According to the Department, in order to perform a meaningful experience for students in these subprograms the recommended levels should not exceed the following:

1) 45 day evaluation program	... 14
2) Intensive Treatment Program	... 8
3) Federal boarder program	... 4
4) Regular open programing	... <u>74</u>
Total	...100

The school will be constructing a 24-bed ISU/Pre-Release Lodge in the spring of 1981. The lodge will replace a lodge that is no longer functional. The school will also be continuing a remodeling program of three structurally sound lodges.

Mountain View School

Mountain View School is directed by statute "to properly diagnose, care for, train, educate, and rehabilitate children in need of these services."

The capacity of the education program and school building is 70. The capacity of the cottages are:

- 1) Cottonwood - 9 children and 5 temporary security rooms
- 2) Maple - 20 children
- 3) Spruce - 20 children
- 4) Aspen - 14 children

Changes in capacity and type of building may occur if the Mountain View School receives funds to construct a 32-bed duplex cottage.

While there are no long-range building programs planned, the Department has expressed a need for one-story fire resistant cottages to replace existing cottages constructed in the 1920's.

Women's Prison Programs

Women's programs involve three alternatives: 1) secure institutional placement; 2) intermediate levels of security placement; and 3) a minimum security unit - the Billings Life Skills Training Center.

As a part of a plan to handle the expanding women offender population, the Department is proposing the use of contracted space with other state/federal prisons as a safety valve for the most serious or dangerous women offenders.

The women inmates' population is expanding, requiring the Division to incarcerate at least 24-26 women a year.

Currently there is no capacity in Montana for the secure incarceration of women offenders. The Division currently places nine to ten women in out-of-state facilities. Nevada can accept up to ten women but they will not automatically accept any referral nor can they guarantee space should their own population continue to increase.

To cope with the possibility of not being able to use Nevada, the Division has so far located other potential resources which include:

- 1) Federal system (approximately \$45/day).
- 2) Idaho, after they construct (July '82), (cost is undetermined).
- 3) Wyoming, when renovation is finished, (cost is undetermined).
- 4) California (approximately \$33/day).
- 5) Arizona, when construction is completed, (approximately \$52/day).

The Department hopes that the use of out-of-state incarceration can be kept to a minimum by the development of an intermediate program within Montana.

There are no facilities or programs for women who do not fit into the Billings Life Skills Center or high security prisons. The Department proposes the development of a community-based program similar to the Billings Life Skills Center. The projected population of this program is six to eight women inmates who require intermediate levels of security and supervision.

The Billings Life Skills Training Center is a minimum security prison. The capacity of the center is 12 inmates. While the program is inadequate to meet a large number of commitments, there are no long-range building plans for the program.

Diagnosis and Evaluation

Diagnosis and evaluation programs are currently in effect for men at Montana State Prison, women in Missoula County Jail, boys at Pine Hills School, girls at Mountain View School, and both boys and girls at the Youth Evaluation Center. D & E's are mainly provided as a service to courts to help improve dispositions and judgements of courts.

According to the Department, 45-day evaluation of female and male offenders is declining and only exceptional cases are evaluated. The Department would like to eliminate this service. The Department is also considering phasing out or restricting 45-day evaluations at the juvenile institutions. Fifty to sixty evaluations are done annually.

Pre-Release Programs

These programs provide a method for easing the offender from the tight structure of the institution into less restrictive supervision and eventually to full release. During this process community resources are utilized to address the individual needs of the offender.

1) Furlough program

The furlough program has been ongoing since 1976. Sixteen men were granted furloughs in 1977, six in 1979, and one in the first six months of 1980. The Division endorses the 'furlough concept but wants to change the current program to be more in line with the concept of furlough as an alternative release procedure.

Furlough applicants constitute approximately 20% of the total prison population, but only 1% or less of the population have been granted furloughs in the past 12 months. It is estimated by the Department that 5% of the prison population could be on furlough if the following changes in the program were made:

- a) Make the furlough program an administrative function.
- b) Consider changes to application procedures in the law to make release on furlough administrative.
- c) Establish a minimum time to be eligible for furlough.
- d) Make the furlough coordinator a full-time employee at the prison, where he would be available to write contracts for inmates.
- e) Study funding to support developmentally disabled prisoners in alternative living arrangements and pay for the necessary evaluation tests as a part of furlough.

2) Missoula Life Skills Center

This program is a community-based halfway house for adult felons. It is designed to provide a transition between institutional care and parole supervision.

The capacity of the program is 16 male and/or female residents. There are two buildings so men and women may be housed separately, if the program was coed.

According to the Department, the facility of the Missoula Life Skills Center is in dire need of extensive repairs. Many of the necessary repairs will need to be completed in the near future if the Center is to remain at its current location. A preliminary cost estimate was completed by the State of Montana, Architecture and Engineering Division, in February of 1980,

including those items necessary to permit the Center's continued operation. The current condition of the facility is detrimental to the program and an immediate decision needs to be made as to the future of the program in the existing facility. The available options are set forth in order of preference:

- 1) Continue at the present location, making all the needed repairs and changes as listed in report from Architecture and Engineering Division.
- 2) Move from the present site to a more central location.
 - a) Lease or purchase an existing building to remodel to specifications.
 - b) Build a facility to meet the specific needs of an inmate population, with room to expand.

A recent inspection by a visiting member of the Commission on Accreditation for Corrections confirmed that the physical structure would not meet the health and safety requirements adopted by the American Correctional Association.

3) Pre-Release, Residential Program

This program provides an intermediate minimum security living arrangement for selected prisoners who are within six months of their parole eligibility. The Alpha House in Billings now provides this service.

The capacity of the current pre-release option in Billings is 24 residents of which up to 20 can come from Montana State Prison.

If a need for more pre-release programs develops, the preferred option by the Department is to purchase service from private vendors, or, if the state runs the program, to rent or lease a facility for at least sixteen residents rather than construct a new facility.

An appropriation is needed to purchase services on a continuing basis from the existing pre-release service provider (Alpha House). Other potential programs would be included in executive requests.

Community Supervision

1) Probation and Parole

Probation and parole is community-based supervision of adult felons sentenced by the courts or released by the Board of Pardons. It is the largest service, with a total caseload of about 2,250. Its officers also perform investigations and reports for district courts, the Board of Pardons, and the Department.

The Department is currently working on a report that will give an estimate of the manpower needs of the probation and parole program. Preliminary projections indicate that there are 28 line officers. An additional 16.5 FET will be needed in 1981 and 1.03 the following year.

The rate of change in the number of probationers and parolees under supervision has remained fairly stable since June 1978, with slow increases. At the current time there are 2,233 offenders under supervision; the average for FY 80 was about 2,210. It is estimated the caseload for FY 82 will be about 2,430, and 2,500 in FY 83. For the current number of line officers, the caseload average is 80. Without additional officers the average caseload in FY 82 will be 87 and 89 in FY 83.

The Department suggests the following statutory changes to make the field officers' job more manageable:

1. Amend 46-14-302 MCA to exclude Adult Probation and Parole from providing medical supervision. The Department is not trained, staffed or qualified to handle these cases.
2. Amend 46-17-301(3) MCA to exclude Adult Probation and Parole from supervising misdemeanants. The Department is not staffed to handle the potential volume of cases that could be assigned, nor does misdemeanor supervision appear to further correctional goals.
3. Amend 46-23-411 MCA regarding furlough release.
4. Sentencing guidelines should be revised to promote some uniformity throughout the state.
5. The Department's role in deferred prosecutions should be eliminated or defined by statute.

2) Aftercare

Aftercare is the community-based supervision of youths who are released from correctional programs or committed by the courts.

Aftercare caseloads are comprised of three components:

1. Youth committed and residing within the juvenile institutions. (Aftercare counselors work with each youth's family on a monthly basis while the youth is residing in the institution.)
2. Youths released from the institutions and residing in the community.
3. Youths committed to Aftercare for six months.

As with other youth programs, a stable population is expected for several years until the size of the at-risk group begins to increase. There appears, however, to be a shift in the population such that the youth are now more troubled and difficult than in the past. Due to this both six month commitments and high levels of treatment required for emotionally disturbed youth are expected to increase.

The Division of Corrections recommends that Legislation be enacted that provides Aftercare counselors with specific authority to detain Aftercare youths in appropriate situations.

There are 14 FTE's working in the field plus one FTE working with adults.

3) Youth Residential Programs

District Youth Guidance Homes are long-term residential services for youth offered by nonprofit corporations. There are nine District Youth Guidance Homes, located in Bozeman, Butte, Great Falls, Havre, Kalispell, Miles City, Missoula, Ronan and Shelby.

Juvenile probation officers do not have funds for placements in group homes; consequently S.R.S. is paying for juvenile probation placements.

4) Aftercare Group Homes

There are four aftercare group homes which are state-operated residential programs for youths who are committed to the Department of Institutions. They are community-based to help youth released from institutions or who are committed directly to the Department.

The homes have been licensed for 8 youths, however, according to the Department, experience has demonstrated that an efficient and manageable capacity is 7 youth.

If study indicates the Aftercare Group Homes should be state run rather than operate as a purchase of service, then the Department would recommend purchasing the group homes rather than paying escalating rent payments.

There are no state FTEs. All houseparents are contracted.

Two contracted-services people serve as houseparents. Substitute houseparents are obtained for regular houseparents' days off. The local Aftercare counselor serves as director of the group home.

There are special problems unique to contracted services which make it impossible to provide raises after long-term employment, which tends to increase the turnover of houseparents.

5) Shelter Care

Shelter Care is a program which has been funded in part by grant funds. It is an alternative to jail for certain juvenile offenders, and the service is provided by private vendors.

A stable population of youth who can be placed into Shelter Care as opposed to jail is anticipated as is the case in other youth programs.

The program has the following capacity:

Billings Childrens Receiving Home	15
Discovery House	8
Great Falls Receiving Home	14
Great Falls Attention Home	10
Helena Attention Home	8
Mission Valley Receiving Home	12
Missoula Attention Home	12
Park County Attention Home	4
Soroptimists Attention Home	11
Emergency Foster Homes	Varies

Specialized Programs

Some segments of the offender population of both adults and juveniles require specialized attention due to extraordinary problems or disabilities. There are currently no programs designed to meet this need. A partial program solution for low functioning offenders who cannot cope with the demands of the "normal" world has been prepared. It is a grant proposal developed in conjunction with the Department of Labor and Industry to serve up to 20 offenders (adult and juvenile) and submitted by the Department of Labor to CETA TITLE III. It is designed to assist low functioning offenders in securing employment (perhaps in sheltered workshops), living, and training in daily living skills.

There are about 15 adults and 5 juveniles who require assistance each year and it is expected that this figure will remain fairly stable.

There appears to be a need to help the Mental Health Division in preparing an assessment of need for forensics that would help in dealing with the criminally insane, mentally ill, sex offender, and aggressive, dangerous persons.

According to the Department, a brief preliminary study at the prison indicated that perhaps as many as 80 inmates could benefit from forensic type services.

Prison Industries

The prison industries produce the following products and services:

- 1) furniture renovation
- 2) new furniture for institutions
- 3) printing
- 4) sign manufacturing

The Department would like to 1) expand the authorized market for prison products to local governments and non-profit corporations; 2) explore the feasibility of developing a line of office furniture utilized by state and other agencies; 3) add new industry operations, and 4) develop a marketing program.

Table III shows the Department's projections of future demands for the industries program.

Table III

Projections of Future Demand*

Industries Positions Needed	Close II	Med I	Med II	Min	Total
June 1980	54	21	58	56	189
June 1981	58	23	60	58	199
June 1982	61	25	62	60	208
June 1983	62	27	65	62	216
June 1984	66	28	67	64	225

The existing capacity of the program is 144 work positions. The Department would like to expand the production capabilities to meet the anticipated increased need of at least 225 work positions.

Safety Valve Legislation

The ability to plan for variations in prison population is one of the major reasons for long-range planning by the Department of Institutions. In its report the Department prepared plans for several alternatives to deal with most variations in prison population, but they do not guarantee that the plan will meet all future problems. The Department would like the Legislature to consider implementing "safety valve" legislation similar to

* This is an excerpt of a more detailed table contained on page 84 of the Department of Institutions' Correctional Needs Report.

legislation developed in Oklahoma. This legislation would allow the corrections administrator to set the capacity of the prison based on legal square footage allotments for inmates. If that capacity were exceeded, several actions would occur:

1. The Board of Pardons would consider all nonviolent offenders for parole within the six months prior to their scheduled release from a correctional facility;
2. No inmate could be received by a correctional facility from a county jail without first scheduling a transfer to the custody of the Department; and,
3. The Department would reimburse any county that is required to retain an inmate pursuant to the act for the cost of feeding and the cost of any emergency medical care for physical injury or illness.

III. FINAL RECOMMENDATIONS

At the final meeting of the Committee, recommendations were made concerning the direction of Montana's overall corrections policy and related correctional programs and facility needs. As was mentioned earlier in this report, the Committee commended the Correctional Needs Report from the Department of Institutions to the 47th Legislature for their consideration.

The Committee also recommended a major commitment be made to adult probation and parole. Throughout the corrections study the Committee observed that there was a need to provide a greater number of alternatives to incarceration. This move to increase the availability of community corrections means that there will be a greater drain on the resources of the adult probation and parole programs. An increase in the funding to these programs would help to reduce the potential strain on probation and parole resources. Also, this increased funding would potentially provide the opportunity for parolees to receive more attention from better qualified probation and parole officers. Currently, parolees are receiving an average of one hour of supervision per month. This practice reduces the opportunity for successful rehabilitation through supervision in the community.

In response to the charge to consider long-range prison needs, the Committee found that there is no immediate need for additional residential facilities at Montana State Prison, but recommends that, in the event the prison population warrants, careful consideration should be given to residential alternatives outside the prison. In addition, the Committee moved that work rehabilitation and job training be considered as worthwhile alternatives.

Finally, in accordance with the Committee's commitment to an increased emphasis on community corrections, it passed a motion that stated that this Committee views with alarm the increased incarceration rates.

MINORITY REPORT - BOARD OF VISITORS (LC 53)

I do not concur in the recommendation that LC 53 be commended to the 47th Legislature for the following reasons:

- (A) A Board of Visitors designed to safeguard the individual rights of inmates would only duplicate services currently being provided by:

The legal intern program from the law school of the University of Montana.

Qualified personnel within the Department of Institutions who are presently assigned this responsibility.

The continuing scrutiny of the legislature itself.

- (B) With the legal regulatory safeguards already built into the system a Board of Visitors would impede rather than assist those who hold the responsibility of operating Montana State Prison. The warden and his staff and indeed supervisory members of the Department of Institutions function continuously under the watchful eye of the legislature and the press as well as the various prison reform groups. There is clearly no demonstrated need for the creation of a Board of Visitors at this time.

Senator Stan Stephens

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APPENDIX A

RESEARCH MEMORANDUM*

TO: Committee on Corrections Policy and Facility Needs
FROM: Kathleen Harrington, Staff Researcher
DATE: October 2, 1979
RE: Criminal Sentencing

The controversy concerning the preferred method for sentencing criminals has recently received considerable attention from all segments of the criminal justice process. The practice of indeterminate sentencing, the predominant method of sentencing since the mid-1800's, is currently being replaced in many states by determinate sentencing schemes. Just as traditional criminal sentencing practices are strongly criticized by some, they are also strongly defended by others. Some of the arguments for and against indeterminate and determinate sentencing are outlined below. Examples of recent changes in sentencing practices will be given and other alternatives will be outlined.

I. Indeterminate Sentencing

Indeterminate sentencing laws evolved as a method of fitting the punishment to the crime. Ideally, they provide the judge and/or correction officials with the discretion needed to place the offender in an environment that is best suited to the process of rehabilitation. Wide sentence ranges were built into such laws to allow the judge the opportunity to select the appropriate sentence for each offender.

The basic rationale behind indeterminate sentencing is the belief that offenders can be rehabilitated. The arguments for and against this method are listed below:

For

1) It provides an incentive for inmates to behave properly in prison and to rehabilitate themselves.

Against

1) Rehabilitation has not been successful. The determination that the individual has been rehabilitated is a difficult determination to make.

*This memorandum has been revised for inclusion in this report.

For

- 2) The judge is able to individualize the sentence, taking into account the severity of the crime, risk to society, and chances for rehabilitation.
- 3) It allows for a reflection of changing public views on various crimes (i.e., greater flexibility).

Against

- 2) Indeterminate sentencing often results in a disparity in the sentences given to offenders who commit similar crimes.
- 3) The discretion given to paroling authorities to provide a method for relieving sentencing disparity has allegedly been abused by some parole systems.
- 4) The uncertainty of indeterminate sentencing leads to inmate frustration and violence.

II. Determinate Sentencing

Determinate sentencing may appear under several different names and formats. The main feature of this approach is the statutory limitation of the sentencing discretion of judges and correctional officials. This is achieved by limiting the applicable sentence to be imposed for different crimes and requiring that any sentence imposed be for a fixed number of years. The judge still has the discretion to utilize probation as an appropriate alternative. The rationale for this approach is retribution for crimes and deterrence of future criminal activity. For certain violent crimes incapacitation is the main purpose and this is accomplished by mandatory sentencing without parole.

The arguments for and against determinate sentencing are listed below:

For

- 1) Definite sentences are determined by judges and legislators. These individuals are more responsive to the public than are corrections authorities and parole boards.
- 2) Definite sentences would eliminate sentencing disparity.
- 3) Definite sentences would give more certainty to the release of prisoners, thus reducing inmate frustration and violence.

Against

- 1) Definite sentencing places more power in the hands of the prosecution and encourages plea bargaining.
- 2) It eliminates or restricts consideration of circumstances surrounding the crime.
- 3) The system is inflexible and could result in longer prison terms.
- 4) It may be a violation of constitutional rights.

Thirteen states have adopted laws that may be classified as determinate sentencing laws. They are:

Alaska	Indiana	North Carolina
Arizona	Maine	Pennsylvania
California	Minnesota	Tennessee (class x
Colorado	New Jersey	offenses, only)
Illinois	New Mexico	

There are three categories by which present determinate-sentencing laws are labeled. "Determinate-discretionary," a phrase coined by Michael Kannensohn of the Council of State Governments, describes a system in which there is a narrow range of sentences for each offense and the sentencing authority has discretion to select any sentence within that range but cannot go outside of it. The sentence must be for a fixed term. Probation or alternatives to prison are also options within the judge's discretion.

The second category is the presumptive sentence. A specific sentence is set by law for each offense but the sentence can be increased for aggravating factors or decreased for mitigating factors.

The third category involves sentencing guidelines. The court is given suggested sentencing options. The court is not bound by the options but it must give full consideration to them. When the judge sentences, any deviations from the guidelines must be accompanied by a written statement.

Some states have chosen to copy one of these sentencing categories while other states have drawn their statute from more than one category. Examples of recent determinate sentencing reforms are outlined in Part III.

III. RECENT SENTENCING REFORMS *

ALASKA

Sentencing Structure

A sentence range is established for Class A, B and C felonies -- murder and kidnapping. Each range includes a maximum sentence limit; a minimum term is established for murder and kidnapping. The court must impose a definite term within the sentence range for the felony class. Presumptive terms are established in each class for prior convictions and within Class A for the use of a firearm. Aggravating and mitigating factors are listed and may increase or decrease the presumptive terms within the limits allowed by law. If the sentencing court finds that the presumptive term is not appropriate or injustice will result in cases where aggravating and mitigating circumstances are not considered, the court must enter such findings in the record.

Use of a Firearm

Use of a firearm or infliction of serious injury in the commission of a Class A offense results in a presumptive term of six years for a first offense other than for manslaughter. This compares to the ordinary range for a Class A felony of a definite term, selected by the judge, not to exceed 20 years.

ARIZONA

Non-capital offenses. Presumptive sentence established by law for each class of offense, felony and misdemeanor. First time conviction for a Class 2 or 3 felony may be increased up to 100 percent for aggravating circumstances or reduced by 25 percent for mitigating circumstances; first time convictions for Class 4, 5 or 6 felonies may be increased up to 25 percent or reduced by 50 percent. Factual findings and reasons for sentence alterations must be stated in the record by the trial judge.

Use of a deadly weapon or dangerous instrument or the intentional infliction of serious injury in the commission of a felony results in a mandatory fixed sentence. Prior convictions of a similar nature result in a longer sentence.

A person sentenced under this section is not eligible for any type of release until a minimum amount of time is served. Minimum time served and the actual sentence vary depending on the class of the offense. The sentence may be altered depending on aggravating and mitigating circumstances.

* Mary Fairchild, Determinate Sentencing Laws, A Comparison of the Provisions of State Determinate Sentencing Laws, The Criminal Justice Project of the National Conference

Habitual or Repeat Offenders	A presumptive term is established within the sentence range for Class A, B and C felonies for prior felony convictions that have occurred within seven years of the present offense. Different presumptive terms are applied to second and third felony convictions with each class, and vary depending on the felony class.	Previous felony convictions result in a mandatory sentence. Length of sentence and minimum time to be served differ depending on the class of the present offense and the number of prior convictions.
Sentencing Authority	Trial Judge.	Trial Judge.
Sentence Review	Creates a three-judge panel in the superior court to review where the sentencing court finds that injustice will result because of failure to consider aggravating and mitigating circumstances or because of imposition of the presumptive term. Upon majority agreement, the panel may resentence the defendant or remand the case.	No specific provision.
Parole Decision-making	Every prisoner must serve at least 1/3 of the sentence imposed or the mandatory minimum where required by law before being released on parole. Discretion is then left to the parole board.	Limited discretion. Earliest parole eligibility occurs when half the sentence has been served, unless the law requires 2/3 of the sentence to be served before eligibility. Board can deny parole if it appears that the applicant will violate the law or is dangerous. Every person who has served one year is to be temporarily released 180 days prior to expiration of the actual sentence. Board has the power to grant absolute discharge.

ALASKA

Parole
Supervision

No specific provision

Good time/
Earned time

One day is awarded for every three
days of good behavior

ARIZONA

Department of Corrections
retains control over parolee
until the term of the sentence
expires. Violations of parole
result in a return to custody
until the sentence expires.

Earned credits are accrued for
those prisoners who are granted
class one eligibility status and
are granted at a rate of one day
for every two days served. How-
ever, if the sentence prohibits
release until 2/3 of the sentence
is served, earned credits are
granted at a rate of one day for
every three days served. Earned
credits reduce the term of impris-
onment but do not reduce the
sentence for the purpose of
eligibility.

CALIFORNIA

Sentencing Structure

Applies to most felonies other than murder and kidnapping which carry life sentences. Most felonies carry a choice of three terms: low, middle and high. The judge must impose the middle term unless there are aggravating or mitigating circumstances. In addition to the base term, longer sentences termed "enhancements" are imposed for prior convictions, certain sex offenses, or if the crime was committed with a weapon or if great bodily harm occurred.

Use of a Firearm

Results in a one-year sentence enhancement if the person was armed with a firearm or a cohort in the crime was armed with a firearm. A two-year enhancement is applied if the person uses a firearm in the commission of the crime. This section does not apply if a firearm is an element of the offense.

COLORADO

Establishes a presumptive range for each of the five classes of felonies. Class I felonies are unaffected by the new sentencing scheme and encompass only the crimes for which the punishment is life imprisonment or death. Absent extraordinary aggravating or mitigating circumstances, the maximum sentence for a Class 5 felony is one year. The sentencing court is to sentence within the appropriate presumptive range for a fixed term. A sentence within the range must take into account: the nature and elements of the offense; the character and record of the offender; and mitigating and aggravating circumstances. If the court finds extraordinary mitigating or aggravating circumstances, it may impose a sentence which is lesser or greater than the presumptive range, but the sentence cannot be more than twice the maximum or less than one-half the minimum term authorized. When a court does impose a sentence in an extraordinary case, it must make written findings detailing the extraordinary circumstances justifying the variance from the presumptive range.

Existing law is not affected. Existing law provides that a mandatory minimum within the presumptive range is to be imposed for the use of a deadly weapon in the commission of certain crimes.

CALIFORNIA

Habitual
or Repeat
Offenders

Violent present offenses plus violent prior convictions committed within 10 years where a prison term was served results in a 3-year enhancement. Other prior convictions committed within five years where a prison term was served result in a one-year enhancement.

Sentencing
Authority

Trial Judge.

Sentence
Review

Sentence is reviewed by parole authority no later than one year after the sentence is imposed, and parole may recommend that the offender be resentenced if parole authority determines the sentence is disparate.

Parole
Decision-
making

Authority to waive parole supervision and to set conditions and length of parole up to maximum period provided by law.

COLORADO

Existing habitual offender statute is not affected. Existing law provides that 2 prior convictions within 10 years of the present offense result in a term of imprisonment of not less than 25 years or more than 50 years for certain felonies. Three or more prior convictions result in a term of life imprisonment.

Trial Judge.

When the sentence imposed is lesser or greater than the presumptive range, the court of appeals automatically reviews the propriety of the sentence in a nonadversary proceeding. The court of appeals may affirm the sentence or remand the case for resentencing.

A one-year period of parole is included for each felony classification to be supervised by the division of adult services in the department of corrections. Conditions of parole continue to be established by the state board of parole.

CALIFORNIA

Parole Supervision	Authority to waive parole supervision and to set conditions and length of parole up to maximum period provided by law.
Good time/ Earned time	Sentences may be reduced by 1/3 for participation in prison programs and if conduct is consistent with the rules of the institution.

COLORADO

A one-year period of parole is included for each felony classification to be supervised by the division of adult services in the department of corrections. Conditions of parole continue to be established by the state board of parole.

Fifteen days a month for substantial conformance with institution rules and regulations. The good time is to vest quarterly. Earned time, not to exceed fifteen days for every six months of incarceration, may be deducted from the sentence for outstanding progress in the categories of work and training, group living, counseling and meeting established goals and programs.

ILLINOIS

Sentencing
Structure

Establishes different sentence ranges for murder, Class X felonies and for each of four felony classes. A sentence imposed must be determinate within the range specified for the particular offense. Class X felonies include aggravated kidnapping, rape, deviate sexual assault, heinous battery, armed robbery, aggravated arson and treason. The sentence range for Class X felonies is not less than six and not more than 30 years imprisonment. Aggravating and mitigating factors can be considered, and the court is to include the reasons for imposing a particular sentence in the record. If aggravating factors are found, a sentence may be imposed from a set of extended ranges established by law for different offenses. The extended range for a Class X offense is 30-60 years imprisonment.

Use of
a Firearm

Use of certain dangerous weapons in the commission of any felony is a Class X offense.

Habitual
or Repeat
Offenders

A person twice convicted of specified crimes: treason, murder, rape, deviate sexual assault, armed robbery, aggravated arson, or aggravated kidnapping for ransom, and is thereafter convicted of any one of these crimes committed after the two prior convictions, receives mandatory life sentence and is not eligible for parole. A person convicted of a Class 1 or Class 2 felony who has 2 prior Class 1 or Class 2 convictions is sentenced as a Class X offender. These sections are not retroactive prior to the effective date of the act.

INDIANA

Establishes fixed terms within each of four felony classes and for murder. Fixed terms can be increased for aggravating circumstances or decreased for mitigating circumstances within the limits allowed by law for each felony class.

No specific provision.

For two prior unrelated felony convictions, an additional fixed term of 30 years is to be imposed. However, if 10 or more years have elapsed since discharge from the sentence for the last felony conviction, the court may subtract up to 25 years from the additional fixed term. If a reduction is authorized, the court may consider aggravating or mitigating circumstances to determine if a reduction should be granted and what the reduction should be (added 1980).

ILLINOIS

Sentencing Authority	Trial Court.
Sentence Review	Upon appeal, the appellate court may modify a sentence imposed where appropriate.
Parole Decision-making	Abolishes Parole and Pardon Board and creates the Prisoner Review Board. Retains power of parole only over persons sentenced to an indeterminate term before the new act. Establishes convictions for parole and mandatory release; reviews revocation or suspension of good conduct credits over 30 days in cases of prisoner misconduct.
Parole Supervision	Every sentence must include the mandatory supervised release term specified by law for each type of felony offense.
Good time/ Earned time	Except for life sentences; good time credit, which accrues on a monthly basis, is awarded one day for every one day served and is to be deducted from the sentence. The Director of the Department of Corrections may award up to 90 days additional credit for meritorious conduct. No prisoner can be penalized more than one year of credit for any one infraction.

INDIANA

Trial Court.
No specific provision.
Board has power to revoke parole, to reinstate parole, and to insure discharges from parole. Offender must serve the length of the fixed sentence less credit time before being released on parole.
Supervision is limited to the amount of time before the fixed term expires, not to exceed one year.
Establishes three classes of credit time. All persons are initially assigned to Class I and may be reassigned to a lower class for institutional violations. Credit time accrues as follows: Class I, 1 day for every 1 day served; Class II, 1 day for every 2 days served; and Class III, no credit time.

MAINE

Sentencing Structure

Murder results in a minimum prison term of 25 years. Other crimes are divided into five classes and a maximum term is established for each class. Maximum terms increase according to the seriousness of the offense. The court is mandated to set a definite period of imprisonment not to exceed the maximum amount.

NEW JERSEY

A sentence range is established for each of four degrees of crimes. The sentence imposed must be a fixed term within the appropriate range and the court is to state on record the reasons for imposing a particular sentence. For first and second degree crimes, the court may fix a minimum term within the limits of law during which the person is not eligible for parole. An extended sentence range for murder, first, second and third degree crimes is also established and may be imposed if certain circumstances exist. Again, the court may fix a minimum term within the limits of the law. Further, the law establishes a presumptive term for each of the four degrees of crimes to be imposed if a sentence of imprisonment is proper. The sentence can be increased for aggravating factors. If mitigating factors outweigh aggravating factors in first or second degree crimes, the court may sentence the defendant to a term that is one degree lower. Such sentence is not final for 10 days in order to permit appeal by the prosecution.

MAINE

Use of a Firearm If the State proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon, the sentencing class is one class higher. Minimum terms of imprisonment are established for Class A, B, C and D crimes committed with the use of a firearm. Sentences imposed under this section cannot be suspended.

Habitual or Repeat Offenders No specific provision.

Sentencing Authority Trial Judge.

Sentence Review No specific provision.

Parole Decision-making Removed. Prisoners are to be unconditionally released at the expiration of the term, less good time.

NEW JERSEY

No specific provision.

Two previous felony convictions within 10 years of the present offense are the criteria for imposing a sentence within the extended range.

Trial court.

No specific provision.

Must compute a parole eligibility date within 90 days after the sentence begins. Most inmates become eligible for parole after serving nine months of the sentence; exceptions are made for special offenders. Power to increase eligibility date for infractions and decrease eligibility date for exceptional progress. Inmates to be released at that date for exceptional progress. Inmates to be released at that date unless the inmate is likely to commit a crime. Inmates are never eligible for parole before serving the minimum term, when imposed.

MAINE

Parole
Supervision

Removed.

Good time/
Earned time

Prisoners sentenced to a term over six months are awarded good time credits at a rate of 10 days for every month served. Sentences six months or less are awarded three days good time for every month served. An additional two days a month may be awarded for work or other duties.

NEW JERSEY

For most inmates, parole supervision amounts to the balance of the maximum term, less good time, and/or earned time.

For first offenders, good time may be awarded at a varying rate which starts at one-fifth of the original sentence for a one-year sentence, but which increases for longer sentences.

Earned time never exceeds one day for each five days of productive occupation.

NEW MEXICO

Sentencing
Structure

Non-capital offenses. Presumptive-fixed sentence established by law for each class of offense. Alteration for aggravating and mitigating circumstances cannot exceed 1/3 of the basic sentence. Firearm or prior convictions cannot be considered as an aggravating circumstance. Court may impose a fine in addition to the basic sentence for certain classes of offenses.

NORTH CAROLINA

Non-capital offenses (Class A and B felonies are excluded). Presumptive terms established by law for eight classes of felonies. Within each class, different terms are established for offenders with prior felony convictions. Maximum terms of imprisonment to be served in a jail or the state prison and fines are established for all 10 classes of felonies. The judge must impose the presumptive term unless aggravating or mitigating circumstances exist. If the judge deviates from the presumptive term, findings of fact regarding the alteration must be recorded.

NEW MEXICO

Use of Firearm	Considered as a separate issue in sentencing. Use of a firearm in the commission of a crime can result in an increase to the basic sentence which is served first and cannot be suspended or deferred.
Habitual or Repeat Offenders	Considered as a separate issue. One prior felony conviction will result in an additional four years; and three or more priors result in eight additional years imprisonment. Sentences under this provision cannot be suspended or deferred.
Sentencing Authority	Trial Judge.
Sentence Review	No special provision.
Parole Decision- making	Removed.

NORTH CAROLINA

Special provision for prior felony convictions with the use of a deadly weapon within seven years of the present offense. A sentence of at least 14 years is to be imposed and is to be served at the state prison. The offender must serve at least seven years excluding gained time. A person sentenced under this section cannot be sentenced as a youthful offender and is not eligible for probation. Sentence to be served consecutively and to begin after the expiration of the sentence imposed for the present offense.
Trial Judge.
If a defendant has been found guilty and the sentence exceeds the presumptive term, the defendant is entitled to appeal as a "matter of right" to determine whether the sentence is supported by the evidence introduced.
(Other than Class A or B felonies and youthful offenders.) Parole commission must parole each prisoner serving a term of 18 months or more 90 days before the expiration of the term less credit time for time already served, good time and gained time. The prisoner can refuse to accept parole and remain in prison or jail until the expiration of the term at which time he will be unconditionally discharged.

MINNESOTA

Sentencing
Authority

Trial Judge. Separate sentencing hearing must be held upon request of the defendant or the State. Court to issue written findings of fact and conclusions of law and enter an appropriate order.

Sentence
Review

Appeal to the Supreme Court for any sentence imposed or stayed may be brought by the defendant or the State. Supreme Court may review to determine whether the sentence is inconsistent with the law, unreasonable, inappropriate, excessive, disparate or not warranted based on the findings of fact.

Parole
Decision-
making

Corrections board to promulgate rules for the placement and supervision of inmates on parole. Power to revoke parole and place the offender back in the institution for an amount of time not to exceed the time remaining in the sentence.

Parole
Supervision

Every prisoner is to serve a period to the amount of good time accrued and not to exceed the amount of time remaining in the sentence. A person serving a life sentence is not eligible for release until he has served a minimum of 17 years.

PENNSYLVANIA

Trial Judge.

No specific provision. Existing parole law is not affected.

No specific provision. Existing parole law is not affected.

No specific provision in the new law.

MINNESOTA

Sentencing Structure

Effective May 1, 1980. Establishes a sentencing commission to develop advisory sentencing guidelines for use by the district court. Guidelines to establish: (1) circumstances where imprisonment is proper, and (2) a presumptive, fixed sentence scheme. The guidelines may provide a 15 percent increase or decrease in the presumptive sentence. If the court deviates from the presumptive sentence, the judge is required to make written findings of fact regarding the alteration.

Use of a Firearm

Present law not affected which provides that minimum terms established for certain crimes in which a firearm was used in the commission of the offense.
(See MN Stats. 609.11)

Habitual or Repeat Offenders

Prior felony convictions for certain offenses occurring within 15 years of the present offense will result in a prison term of not less than three years or more than the maximum sentence provided by law for the present offense.

PENNSYLVANIA

Establishes the Pennsylvania Commission on Sentencing to develop advisory guidelines to be used by the court to determine the appropriate sentence for felonies and misdemeanors. The guidelines must: (1) specify a range of sentences for different degrees of crimes; (2) specify a range of sentences of increased severity for repeat offenders or for crimes committed with the use of a deadly weapon; and (3) prescribe variations from the range of sentences for aggravating and mitigating circumstances. The judge must indicate in a written statement the reasons for any sentence imposed. The guidelines become effective 90 days after they are submitted to the legislature unless, by concurrent resolution, the legislature rejects them in their entirety.

(See above; also included in the interim guidelines described below.)

A minimum term of four years imprisonment is established as an interim guideline to be considered by the court for some repeat offenders. The guideline applies to certain crimes, particularly crimes against the person, and is to be used when the offender has prior convictions for similar crimes.

MINNESOTA

PENNSYLVANIA

Sentencing Authority

Trial Judge. Separate sentencing hearing must be held upon request of the defendant or the State. Court to issue written findings of fact and conclusions of law and enter an appropriate order.

Trial Judge.

Sentence Review

Appeal to the Supreme Court for any sentence imposed or stayed may be brought by the defendant or the State. Supreme Court may review to determine whether the sentence is inconsistent with the law, unreasonable, inappropriate, excessive, disparate or not warranted based on the findings of fact.

No specific provision. Existing parole law is not affected.

Parole Decision- making

Corrections board to promulgate rules for the placement and supervision of inmates on parole. Power to revoke parole and place the offender back in the institution for an amount of time not to exceed the time remaining in the sentence.

No specific provision. Existing parole law is not affected.

Parole Supervision

Every prisoner is to serve a period to the amount of good time accrued and not to exceed the amount of time remaining in the sentence. A person serving a life sentence is not eligible for release until he has served a minimum of 17 years.

No specific provision in the new law.

MINNESOTA

PENNSYLVANIA

Good time/
Earned time

One day for every two days served. Good time reductions determine the period of supervised release to be served by the inmate. Good time earned prior to disciplinary violations cannot be forfeited, but the inmate may be required to serve an additional portion of his term after the violation without earning good time. Additional time served cannot result in a loss of more than 90 days good time. Mandatory life sentence excluded.

No specific provision in the new law.

TENNESSEE

Sentencing
Structure

Classified eleven serious felonies as "Class X" offenses. These include murder, aggravated kidnapping, certain sex crimes, aggravated robbery and certain drug offenses. Minimum sentences, or in some cases a range of sentences, are established for each offense. Only "Class X" sentences must be determinate within the limits prescribed by law for each offense and are not subject to credits for sentence reduction. (Class X offenses also require a mandatory sentence. Other offenses are in a non-mandatory indeterminate structure.)

Use of a
Firearm

No specific provision except that certain offenses are placed within the Class X category by virtue of the use of a deadly weapon in their commission.

Habitual
or Repeat
Offenders

No general provision, however, habitual drug offenders are defined and placed within the Class X category.

NOTE: Missouri has recently revised its criminal code, and according to §557.038 the court will decide the extent and duration of the sentence and impose a sentence of a term of years within the prescribed limits of each felony class.

TENNESSEE

Sentencing Authority	Present law not affected. Jury is to impose sentence.
Sentence Review	No special provision.
Parole Decision-making	Every person sentenced under the Class X scheme must serve 40 percent of the determinate sentence imposed before becoming eligible for release classification status. Discretion as to release is then determined by the administrative authority responsible for pardon, parole and release recommendation.
Parole Supervision	A minimum of three years supervised release is required of all Class X offenders.
Good time/ Earned time	No specific provision but record of the offender is taken into consideration in determining release classification status. Failure to conform behavior to acceptable standards may result in delaying eligibility for release classification status.

APPENDIX B

December 21, 1980

TO: Interim Study Committee on Corrections and Facility Needs
FROM: Kathleen Harrington, Staff Researcher
RE: Sentencing Data

On October 12, 1979, the Committee on Corrections Policy and Facility Needs requested a compilation of data on current sentencing practices in Montana. The Committee specifically requested statistics from the Department of Institutions concerning:

- 1) the crime committed
- 2) the sentence imposed, and
- 3) the actual length of incarceration for the crime.

Since these data would be used to establish presumptive sentences based on the actual average time of incarceration, the Committee should recognize some problems that would be encountered were these data applied to that purpose.

The current policy for sentencing in Montana provides a mandate for individualized sentences. This mandate, together with the sentencing provisions of the laws of Montana, has created a sentencing practice that is counter to the changes that are currently being considered by the Committee. Available data reflect current sentencing and correctional policies, so the limitations of these data should be examined.

The sentencing provisions of the Montana Code Annotated emphasize the rehabilitation of the individual criminal. 46-18-101 MCA states:

This chapter shall be liberally construed to the end that persons convicted of crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine, whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual.

With the elimination of minimum sentences and the establishment of fairly high maximum sentences, the 1973 Criminal Code permitted the judge considerable discretion in fixing sentences. This discretion is contained in the sentencing mandate that directs the court to fit the punishment to the criminal rather than the crime. Although some mandatory minimum sentences were enacted in 1977, the length of present sentences remains potentially a product of the judge's perception of the individual's threat to society rather than the judge's perception of the seriousness of the crime committed.

In addition to the impact of individualized terms of imprisonment, the Committee should also recognize the various sentencing alternatives available to the judge. He can:

- 1) release the defendant on probation;
- 2) defer imposition of the sentence for as long as 3 years;
- 3) suspend imposition of the sentence;
- 4) impose a fine as provided by law for that offense;
- 5) commit the defendant to a correctional institution; and
- 6) impose a combination of any or all of the above alternatives.

When a judge suspends or defers a sentence he may be acknowledging the fact that the criminal does not pose a threat to society and that rehabilitation or restitution is accomplished best in the community. The Department of Institution's profile of prisoners at the Montana State Prison describes the typical prisoner as poorly educated, without family ties and in need of alcoholic counseling. This individual has a limited potential for success in society and thus he poses a greater risk to society than a less troubled individual. If deferred or suspended sentences are eliminated, the immediate impact on the prison system will be increased numbers of incarcerated offenders. One way to lessen this impact is to have shorter sentences, thus reflecting the percentage of suspended or deferred sentences that are currently being given.

The state's sentencing policy instructs the judge to consider aggravating and mitigating factors when sentencing. By doing so, without completely restricting the judge, this policy has increased the potential for disparity in the system. The use of a weapon, prior felony convictions, or the fact that the individual is under eighteen years of age are examples of some overt restrictions on the judge. Many other factors exist which the judge probably takes into account but which are not readily identifiable. These factors are built into current sentences and the disparity in sentences are, in part, a function of the variation in perception of these factors by individual judges. These variations cannot be completely controlled. Yet to use current Department of Institutions statistics without some attempt to control the variations could result in merely compounding current injustices.

Once an individual has been incarcerated, the state's correctional policies begin to influence the length of time served. One of the more variable factors in the corrections system is good-time allowance. Good-time allowance is credited daily. Each day the length of the prisoner's sentence is decreased through credit earned, remains the same, or is increased by the revocation of earned credit. Good-time allowance exerts an impact on the length of sentences, but the impact varies with an individual's desire to earn the allowance and with the opportunities available for earning the allowance. The opportunities for participation in prison programs are limited at this time.

Other states became aware of the problems associated with setting fixed sentences when they attempted to incorporate good-time provisions into new sentencing policies. When California set its presumptive sentences the legislature estimated that nearly all prisoners would receive maximum good-time credit and in addition double counted good-time credit by adopting the median sentence served. The reason that double counting occurs is that good-time credit was included in the median sentence and since good-time also can be earned under the new code, it was double counted. If an attempt is made to avoid the problems encountered by California, the variation of sentence lengths produced by good-time credit cannot be taken into account since the accounting of good time is not on the computers at the Department of Institutions.

The Montana laws contain other provisions that will affect the time served. The persistent-felony-offender classification would lengthen the time in prison and the credit for time served prior to conviction could lessen the time in the Montana State Prison. Any changes in these provisions should be reflected in the length of the new sentences.

Finally, correctional policies influence the determination of sentence length through the use of parole. In Montana, a convict serving a time sentence may not be paroled until he has served at least one-half of his full term, less the good-time allowance. If he is designated a nondangerous offender then he may be paroled after he has served the 17-1/2 years. The designation of a nondangerous offender is a new mandate, and the Department of Institutions is currently in the process of contacting judges to confirm the judges' actions regarding this designation. After an individual is released on parole, his parole may be revoked. This aspect of parole poses a problem for gathering data.

If the Committee wishes to set a typical sentence for a crime, then it must decide whether to measure the time to the first possible release or the time to final release. If there are many parole violators, the median time to final release is likely to be appreciably longer than the median time to first release. According to Daniel Nagin in his analysis of California's determinate sentence,

The question of which is the appropriate measure of central tendency - time to first release or time to final release raises a difficult philosophical question. If the additional time spent in prison because of a parole revocation is viewed as a punishment for parole violation, then time to first release is appropriate. If the parole is viewed as a conditional pardon, however, time spent in prison subsequent to parole revocation can be regarded as punishment for the initial offense for which the individual was incarcerated. In this case, a measure of time in prison to final release is more appropriate.¹

In addition to asking the Committee to consider the limitations of present data, the reason for using the average (i.e. mean) sentence currently being served as a basis for the new sentences might be questioned. Other measures of central tendency could be used. The median, which is the 50th percentile of the sentencing distribution, was used as the choice of the typical sentence in California. In California this meant that the penalties that were selected were shorter than they would have been if the mean prison term had been selected. Even so, a substantial increase appeared in the California prison population. The other measure of central tendency is the mode, the sentence most frequently served. If the Committee is concerned with the disparity that currently is in the system, then you may want to consider using the mode.

Thus, the choice of an average sentence will be complicated by the influence of current sentencing practices by the restrictions of correctional policies on length of time served in prison, and by the limitations of data currently stored in the Department of Institutions' computers. Some of the impact of these factors can be controlled statistically, but we won't be in a position to determine how this is to be done until the Committee decides on what changes it wishes to make in the sentencing laws.

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1. Daniel Nagin, "The Impact of Determinate Sentencing, Legislation on Prison Population and Sentence Length; A California Case Study." Public Policy, Vol. 27, No. 1, (Winter 1979) p. 89.

APPENDIX C*

PROPOSED LEGISLATION

* Appendix C contains nine bills that were recommended to the 47th Legislature by the Committee and two bills that were referred to the 47th Legislature without recommendation (LC 32 and LC 54).

1 BILL NO.

2 INTRODUCED BY

3 BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS

4 POLICY AND FACILITY NEEDS WITH NO RECOMMENDATION

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE
7 PROVISION THAT AN OFFENDER SERVING A TIME SENTENCE MAY BE
8 PAROLED AFTER SERVING 17 1/2 YEARS; AMENDING SECTION
9 46-23-201, MCA."

10

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

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

13 "46-23-201. Prisoners eligible for parole. (1) Subject
14 to the following restrictions, the board shall release on
15 parole by appropriate order any person confined in the
16 Montana state prison, except persons under sentence of death
17 and persons serving sentences imposed under 46-18-202(2),
18 when in its opinion there is reasonable probability that the
19 prisoner can be released without detriment to himself or to
20 the community:

21 (a) No convict serving a time sentence may be paroled
22 until he has served at least one-half of his full term, less
23 the good time allowance provided for in 53-30-105; except
24 that a convict designated as a nondangerous offender under
25 46-18-404 may be paroled after he has served one-quarter of

1 his full term, less the good time allowance provided for in
2 53-30-105. Any-offender--serving--a--time--sentence--may--be
3 paroled--after--he--has--served--upon-his-term-of-sentence
4 17-1/2-years.

5 (b) No convict serving a life sentence may be paroled
6 until he has served 30 years, less the good time allowance
7 provided for in 53-30-105.

8 (2) A parole shall be ordered only for the best
9 interests of society and not as an award of clemency or a
10 reduction of sentence or pardon. A prisoner shall be placed
11 on parole only when the board believes that he is able and
12 willing to fulfill the obligations of a law-abiding
13 citizen."

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE COMMITTEE ON CORRECTIONS POLICY

4 AND FACILITY NEEDS

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PLEA
7 AGREEMENT PROCEDURE."

8

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

10 Section 1. Plea agreement. (1) The prosecuting
11 attorney and the attorney for the defendant (or the
12 defendant when acting pro se) may engage in discussions to
13 reach an agreement that, upon entry of a plea of guilty to a
14 charged offense or to a lesser or related offense, the
15 prosecuting attorney shall:

16 (a) move for a dismissal of other charges;

17 (b) make a recommendation or refrain from opposing the
18 defendant's request for a specified sentence, with the
19 understanding that such a recommendation or request does not
20 bind the court; or

21 (c) agree that a specific sentence is the appropriate
22 disposition of the case.

23 (2) The court may not participate in the plea
24 agreement discussions.

25 Section 2. Hearing of agreement. If a plea agreement

1 has been reached by the parties, the court shall hear the
2 agreement upon arraignment. The agreement must be heard in
3 open court and entered, except that on a showing of good
4 cause, it may be heard in camera and off the record.
5 Thereupon, the court may accept or reject the agreement or
6 may defer its decision as to the acceptance or rejection
7 until there has been an opportunity to consider the
8 presentence report.

9 Section 3. Acceptance of a plea agreement. If the
10 court accepts the plea agreement, the court shall inform the
11 defendant that it will include in the judgment and the
12 sentence the disposition provided for in the plea agreement.

13 Section 4. Rejection of plea agreement. If the court
14 rejects the plea agreement, the court shall, on the record,
15 inform the parties of this fact. The court shall:

16 (a) advise the defendant in open court or, on a
17 showing of good cause, in camera, that the court is not
18 bound by the plea agreement;

19 (b) afford the defendant the opportunity to then
20 withdraw his plea; or

21 (c) advise the defendant that if he persists in his
22 guilty plea, the disposition of the case may be less
23 favorable to the defendant than that contemplated by the
24 plea agreement.

25 Section 5. Inadmissibility of pleas, offers of pleas,

1 and related statements -- exception. (1) Except as otherwise
2 provided in this section, evidence of any of the following
3 is not admissible in any civil or criminal proceedings
4 against the person who made the plea or offer:

5 (a) a plea of guilty, later withdrawn;

6 (b) an offer to plead guilty to the crime charged or
7 any other crime; or

8 (c) statements made in connection with and relevant to
9 any of the pleas or offers.

10 (2) Evidence of a statement made in connection with
11 and relevant to either of the following is admissible in a
12 criminal proceeding for perjury or false swearing if the
13 statement was made by the defendant under oath, on the
14 record, and in the presence of counsel:

15 (a) a plea of guilty, later withdrawn; or

16 (b) an offer to plead guilty to the crime charged or
17 any other crime.

18 Section 6. Determining accuracy of plea.
19 Notwithstanding the acceptance of a plea of guilty, the
20 court may not enter a judgment upon such plea without making
21 such inquiry as shall satisfy it that there is a factual
22 basis for the plea.

23 Section 7. Record of proceedings. A verbatim record of
24 the proceedings at which the defendant enters a plea shall
25 be made and, if there is a plea of guilty, the record shall

1 include, without limitation, the court's advice to the
2 defendant, the inquiry into the voluntariness of the plea
3 including any plea agreement, and the inquiry into the
4 accuracy of a guilty plea.

5 Section 8. Codification. Sections 1 through 7 are
6 intended to be codified as an integral part of Title 46,
7 chapter 12, and the provisions of Title 46, chapter 12,
8 apply to sections 1 through 7.

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE INTERIM COMMITTEE ON

4 CORRECTIONS POLICY AND FACILITY NEEDS

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE STATE TO
7 REQUEST AN APPELLATE REVIEW OF THE DISPOSITION, WHETHER BY
8 IMPOSITION OR DEFERRED IMPOSITION OF SENTENCE, OF A CRIMINAL
9 CASE FOLLOWING A VERDICT OR PLEA OF GUILTY; AMENDING
10 SECTIONS 46-18-903 THROUGH 46-18-905, MCA."

11

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

13 Section 1. Section 46-18-903, MCA, is amended to read:

14 "46-18-903. Application for review. (1) ~~Any whenever,~~
15 ~~upon a verdict or a plea of guilty, a person has been~~
16 sentenced to a term of 1 year or more in the state prison by
17 any court of competent jurisdiction ~~and disposition has been~~
18 ~~made by imposition or deferred imposition of sentence, the~~
19 ~~defendant or, on behalf of the state, the attorney general~~
20 may within 60 days from the date ~~such sentence was imposed~~
21 ~~of disposition~~, except in any case in which a different
22 sentence ~~disposition~~ could not have been imposed ~~made~~, file
23 with the clerk of the district court in the county in which
24 judgment was rendered an application for review of the
25 sentence ~~disposition~~ by the review division. Upon ~~imposition~~

1 ~~of-the-sentence disposition~~, the clerk shall give written
2 notice to the ~~person--sentenced defendant~~ of his right to
3 make such a request. Such notice shall include a statement
4 that review of the sentence court's disposition may result
5 in ~~decrease-or-increase-of-the-sentence~~ a lesser or greater
6 sanction within limits fixed by law.

7 (2) The clerk shall transmit such application to the
8 review division and shall notify the judge ~~who--imposed--the~~
9 ~~sentence making the disposition, the defendant,~~ and the
10 county attorney of the county in which the ~~sentence--was~~
11 ~~imposed disposition occurred~~. Such judge may transmit to the
12 review division a statement of his reasons for ~~imposing-the~~
13 ~~sentence the disposition of the case~~ and shall transmit such
14 a statement within 7 days if requested to do so by the
15 review division.

16 (3) The review division may for cause shown consider
17 any late request for review of sentence disposition and may
18 grant such request.

19 (4) The filing of an application for review shall not
20 stay the execution of ~~the a~~ sentence."

21 Section 2. Section 46-18-904, MCA, is amended to read:

22 "46-18-904. Procedure upon review. (1) In each case in
23 which an application for review is filed in accordance with
24 46-18-903, the review division shall review the judgment so
25 far as it relates to the ~~sentence-imposed~~ disposition of the

1 case, either increasing or decreasing the penalty sanction,
2 and any other sentence sanction imposed on the person at the
3 same time and may order such different sentence-or-sentences
4 to-be-imposed disposition as could have been imposed made at
5 the time of the imposition court's disposition of the
6 sentence case under review or may decide that the sentence
7 disposition under review should stand.

8 (2) In reviewing any judgment, said division may
9 require the production of presentence reports and any other
10 records, documents, or exhibits relevant to such review
11 proceedings. The appellant defendant may appear and be
12 represented by counsel, and the state may be represented by
13 the county attorney of the county in which the sentence--was
14 imposed disposition occurred.

15 (3) If the review division orders a different sentence
16 disposition, the court sitting in any convenient county
17 shall resentence--the---defendant make___such___different
18 disposition as ordered by the review division. Time served
19 on the a sentence reviewed shall be deemed to have been
20 served on the a sentence substituted."

21 Section 3. Section 46-18-905, MCA, is amended to read:

22 "46-18-905. Decision -- finality, report of. (1) The
23 decision of the review division in each case shall be final,
24 and the reasons for such decision shall be stated therein.
25 The original of each decision shall be sent to the clerk of

1 the court for the county in which the judgment was rendered,
2 and a copy shall be sent to the judge who imposed--the
3 sentence made the disposition reviewed, the person-sentenced
4 defendant. the prosecuting attorney, and the principal
5 officer of the institution in which he is confined.

6 (2) The decision shall be reported in the Montana
7 Reports."

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF

4 COMMITTEE ON CORRECTIONS POLICY AND FACILITY NEEDS

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE TO 5 YEARS
7 THE MAXIMUM PERIOD FOR DEFERRED IMPOSITION OF A SENTENCE FOR
8 A FELONY; AMENDING SECTION 46-18-201, MCA."

9

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

11 Section 1. Section 46-18-201, MCA, is amended to read:

12 "46-18-201. Sentences that may be imposed. (1)
13 Whenever a person has been found guilty of an offense upon a
14 verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 5 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

23 (i) jail base release;

24 (ii) jail time not exceeding 90 days;

25 (iii) conditions for probation;

1 (iv) restitution;

2 (v) any other reasonable conditions considered
3 necessary for rehabilitation or for the protection of
4 society; or

5 (vi) any combination of the above;

6 (b) suspend execution of sentence up to the maximum
7 sentence allowed for the particular offense. The sentencing
8 judge may impose on the defendant any reasonable
9 restrictions during the period of suspended sentence. Such
10 reasonable restrictions may include any of those listed in
11 subsections (1)(a)(i) through (1)(a)(vi).

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

13 (d) commit the defendant to a correctional institution
14 with or without a fine as provided by law for the offense;

15 (e) impose any combination of subsections (1)(b),
16 (1)(c), and (1)(d).

17 (2) If any restrictions or conditions imposed under
18 subsection (1)(a) or (1)(b) are violated, any elapsed time,
19 except jail time, is not a credit against the sentence
20 unless the court orders otherwise.

21 (3) Except as provided in 46-18-222, the imposition or
22 execution of the first 2 years of a sentence of imprisonment
23 imposed under the following sections may not be deferred or
24 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),
25 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)

1 and (3), 45-9-102(3), and 45-9-103(2).

2 (4) Except as provided in 46-18-222, the imposition or
3 execution of the first 10 years of a sentence of
4 imprisonment imposed under 45-5-102(2) may not be deferred
5 or suspended."

-End-

1 BILL NO.

2 INTRODUCED BY

3 BY REQUEST OF COMMITTEE

4 ON CORRECTIONS POLICY AND FACILITY NEEDS

5.

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR FINES AND
7 ASSESSMENT OF COSTS IN FELONY CRIMINAL CASES; ALLOWING
8 COMMUNITY SERVICE AS A CONDITION OF DEFERRED OR SUSPENDED
9 SENTENCES; AMENDING SECTION 46-18-201, MCA."

10

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

12 **NEW SECTION.** Section 1. Fines in felony cases. (1)
13 Whenever, upon a verdict or a plea of guilty, a person has
14 been found guilty of an offense for which a felony penalty
15 could be imposed, the court may impose a fine. Except as
16 provided in 45-5-103(2), 45-5-202(2), 45-5-302(2),
17 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)
18 and (3), 45-9-102(3), and 45-9-103(2), a fine may be imposed
19 in lieu of or in addition to a sentence of imprisonment.

(2) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

1 (3) The fine shall be in an amount fixed by the court.

2 NEW SECTION. Section 2. Payment of costs by
3 defendant. (1) A court may require a convicted defendant in
4 a felony case to pay costs, as defined in 25-10-201, plus
5 costs of jury service as a part of his sentence. Such costs
6 shall be limited to expenses specifically incurred by the
7 prosecution in connection with the proceedings against the
8 defendant.

9 (2) The court may not sentence a defendant to pay
10 costs unless the defendant is or will be able to pay them.
11 In determining the amount and method of payment of costs,
12 the court shall take into account the financial resources of
13 the defendant and the nature of the burden that payment of
14 costs will impose.

15 (3) A defendant who has been sentenced to pay costs
16 and who is not in default in the payment thereof may at any
17 time petition the court that sentenced him for remission of
18 the payment of costs or of any unpaid portion thereof. If
19 it appears to the satisfaction of the court that payment of
20 the amount due will impose manifest hardship on the
21 defendant or his immediate family, the court may remit all
22 or part of the amount due in costs or modify the method of
23 payment.

24 NEW SECTION. Section 3. Fine or costs as a condition
25 on suspended or deferred sentence. (1) Whenever a defendant

1 is sentenced to pay a fine or costs under [section 1 or 2]
2 and the imposition or execution of the rest of his sentence
3 is deferred or suspended, the court may make payment of the
4 fine or costs a condition for probation.

5 (2) A suspended or deferred sentence may not be
6 revoked if the defendant defaults on the payment of the fine
7 and the default is not attributable to an intentional
8 refusal to obey the order of the court or a failure to make
9 a good faith effort to make the payment.

10 NEW SECTION. Section 4. When payment of fine or costs
11 due. Whenever a defendant is sentenced to pay a fine or
12 costs under [section 1 or 2], the court may grant permission
13 for payment to be made within a specified period of time or
14 in specified installments. If no such permission is included
15 in the sentence, the payment is due immediately.

16 NEW SECTION. Section 5. Disposition of money
17 collected as fines and costs. The money collected by a court
18 as a result of the imposition of fines or assessment of
19 costs under the provisions of [sections 1 and 2] shall be
20 paid to the county general fund of the county in which the
21 court is held.

22 Section 6. Section 46-18-201, MCA, is amended to read:

23 "46-18-201. Sentences that may be imposed. (1)
24 Whenever a person has been found guilty of an offense upon a
25 verdict or a plea of guilty, the court may:

1 (a) defer imposition of sentence, excepting sentences
 2 for driving under the influence of alcohol or drugs, for a
 3 period not exceeding 1 year for any misdemeanor or for a
 4 period not exceeding 3 years for any felony. The sentencing
 5 judge may impose upon the defendant any reasonable
 6 restrictions or conditions during the period of the deferred
 7 imposition. Such reasonable restrictions or conditions may
 8 include:

- 9 (i) jail base release;
- 10 (ii) jail time not exceeding 90 days;
- 11 (iii) conditions for probation;
- 12 (iv) restitution;
- 13 (v) payment of a fine as provided in [section 11];
- 14 (vi) payment of costs as provided in [sections 2 and
 15 3];
- 16 (vii) community service;
- 17 ~~(viii)~~ (viii) any other reasonable conditions considered
 18 necessary for rehabilitation or for the protection of
 19 society; or
- 20 ~~(viii)~~ (ix) any combination of the above.

21 (b) suspend execution of sentence up to the maximum
 22 sentence allowed for the particular offense. The sentencing
 23 judge may impose on the defendant any reasonable
 24 restrictions or conditions during the period of suspended
 25 sentence. Such reasonable restrictions or conditions may

1 include any of those listed in subsections (1)(a)(i) through
 2 ~~(1)(a)(i) through (1)(a)(ix).~~

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

4 ~~(d) require payment of costs as provided in [section~~

5 ~~2]i~~

6 ~~(d)(e)~~ commit the defendant to a correctional
 7 institution with or without a fine as provided by law for
 8 the offense;

9 ~~(e)(f)~~ impose any combination of subsections (1)(b),
 10 ~~(1)(c), and (1)(d) through (1)(e).~~

11 (2) If any restrictions or conditions imposed under
 12 subsection (1)(a) or (1)(b) are violated, any elapsed time,
 13 except jail time, is not a credit against the sentence
 14 unless the court orders otherwise.

15 (3) Except as provided in 46-18-222, the imposition or
 16 execution of the first 2 years of a sentence of imprisonment
 17 imposed under the following sections may not be deferred or
 18 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),
 19 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)
 20 and (3), 45-9-102(3), and 45-9-103(2).

21 (4) Except as provided in 46-18-222, the imposition or
 22 execution of the first 10 years of a sentence of
 23 imprisonment imposed under 45-5-102(2) may not be deferred
 24 or suspended."

25 Section 7. Codification instruction. It is intended

- 1 that sections 1 through 5 be codified as an integral part of
- 2 Title 46, chapter 18, and the provisions of Title 46,
- 3 chapter 18, apply to sections 1 through 5.

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS

4 POLICY AND FACILITY NEEDS

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
7 46-18-221, MCA, TO PROVIDE THAT ADDITIONAL SENTENCES FOR
8 CRIMES COMMITTED WITH A DANGEROUS WEAPON ARE TO RUN
9 CONSECUTIVELY WITH THE SENTENCE PROVIDED FOR THE OFFENSE."

10

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

12 Section 1. Section 46-18-221, MCA, is amended to read:

13 "46-18-221. Additional sentence for offenses committed
14 with a dangerous weapon. (1) A person who has been found
15 guilty of any offense and who, while engaged in the
16 commission of the offense, knowingly displayed, brandished,
17 or otherwise used a firearm, destructive device, as defined
18 in 45-8-332(1), or other dangerous weapon shall, in addition
19 to the punishment provided for the commission of such
20 offense, be sentenced to a term of imprisonment in the state
21 prison of not less than 2 years or more than 10 years,
22 except as provided in 46-18-222.

23 (2) A person convicted of a second or subsequent
24 offense under this section shall, in addition to the
25 punishment provided for the commission of the present

1 offense, be sentenced to a term of imprisonment in the state
2 prison of not less than 4 years or more than 20 years,
3 except as provided in 46-18-222. For the purposes of this
4 subsection, the following persons shall be considered to
5 have been convicted of a previous offense under this
6 section:

7 (a) a person who has previously been convicted of an
8 offense, committed on a different occasion than the present
9 offense, under 18 U.S.C. 924(c); and

10 (b) a person who has previously been convicted of an
11 offense in this or another state, committed on a different
12 occasion than the present offense, during the commission of
13 which he knowingly displayed, brandished, or otherwise used
14 a firearm, destructive device, as defined in 45-8-332(1), or
15 other dangerous weapon.

16 (3) The imposition or execution of the minimum
17 sentences prescribed by this section may not be deferred or
18 suspended, except as provided in 46-18-222.

19 (4) An additional sentence prescribed by this section
20 shall run consecutively with the sentence provided for the
21 offense."

-End-

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS

POLICY AND FACILITY NEEDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
INCREASED PUNISHMENT OF PERSONS WHO HAVE BEEN CONVICTED OF
THREE SEPARATE FELONIES; AMENDING SECTIONS 46-18-222 AND
46-18-502, MCA."

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

Section 1. Section 46-18-502, MCA, is amended to read:

"46-18-502. Sentencing of persistent felony offender.

(1) ~~Except as provided in subsection (2),~~ a persistent
felony offender shall be imprisoned in the state prison for
a term of not less than 5 years or more than 100 years if he
was 21 years of age or older at the time of the commission
of the present offense.

~~(2) If the offender was a persistent felony offender,
as defined in 46-18-501, at the time of his previous felony
conviction, less than 5 years have elapsed between his
previous felony conviction and the commission of the present
offense, and he was 21 years of age or older at the time of
the commission of the present offense, he shall be
imprisoned in the state prison for a term of not less than~~

1 ~~10 years or more than 100 years.~~

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

7 Section 2. Section 46-18-222, MCA, is amended to read:

8 "46-18-222. Exceptions to mandatory minimum sentences
9 and restrictions on deferred imposition and suspended
10 execution of sentence. All mandatory minimum sentences
11 prescribed by the laws of this state and the restrictions on
12 deferred imposition and suspended execution of sentence
13 prescribed by subsections (3) and (4) of 46-18-201,
14 46-18-221(3), and 46-18-502~~(2)(3)~~ do not apply if:

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

18 (2) the defendant's mental capacity, at the time of
19 the commission of the offense for which he is to be
20 sentenced, was significantly impaired, although not so
21 impaired as to constitute a defense to the prosecution;

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

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

5 (5) where applicable, no serious bodily injury was
6 inflicted on the victim unless a weapon was used in the
7 commission of the offense."

-End-

1 BILL NO.

2 INTRODUCED BY _____

3 BY REQUEST OF THE STUDY COMMITTEE ON CORRECTIONS POLICY

4 AND FACILITY NEEDS

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
7 RELATING TO PAROLE ELIGIBILITY; AMENDING SECTIONS 46-23-201
8 AND 46-23-216, MCA."

9

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

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

12 "46-23-201. Prisoners eligible for parole. (1) Subject
13 to the following restrictions, the board shall release on
14 parole by appropriate order any person confined in the
15 Montana state prison, except persons under sentence of death
16 and persons serving sentences imposed under 46-18-202(2),
17 when in its opinion there is reasonable probability that the
18 prisoner can be released without detriment to himself or to
19 the community:

(a) No convict serving a time sentence may be paroled until he has served at least ~~one-half~~ ~~two-thirds~~ of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served ~~one-quarter~~ ~~one-half~~ of his full term, less

1 the good time allowance provided for in 53-30-105. Any
2 offender serving a time sentence may be paroled after he has
3 served, upon his term of sentence, 17 1/2 years.

4 (b) No convict serving a life sentence may be paroled
5 until he has served 30 years, less the good time allowance
6 provided for in 53-30-105.

7 (2) A parole shall be ordered only for the best
8 interests of society and not as an award of clemency or a
9 reduction of sentence or pardon. A prisoner shall be placed
10 on parole only when the board believes that he is able and
11 willing to fulfill the obligations of a law-abiding
12 citizen."

13 Section 2. Section 46-23-216, MCA, is amended to read:

14 "46-23-216. Duration of parole. (1) A prisoner on
15 parole who has served ~~one-half~~ ~~two-thirds~~ of his term or
16 terms, less the good time allowance, or a nondangerous
17 offender on parole who has served ~~one-quarter~~ ~~one-half~~ of
18 his term or terms, less the good time allowance, is
19 considered released on parole until the expiration of the
20 maximum term or terms for which he was sentenced, less the
21 good time allowance as provided for in 53-30-105.

22 (2) The period served on parole or conditional release
23 shall be deemed service of the term of imprisonment, and
24 subject to the provisions contained in 46-23-1023 through
25 46-23-1026 relating to a prisoner who is a fugitive from or

1 has fled from justice, the total time served may not exceed
2 the maximum term or sentence. When a prisoner on parole or
3 conditional release has performed the obligations of his
4 release, the board shall make a final order or discharge and
5 issue a certificate of discharge to the prisoner."

6 Section 3. Applicability. This act applies to all
7 sentences imposed after June 30, 1981.

-End-

1 BILL NO.

2 INTRODUCED BY _____

3 BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS POLICY
4 AND FACILITY NEEDS

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE THE LAW
7 RELATING TO GOOD TIME ALLOWANCE MORE RESTRICTIVE; AMENDING
8 SECTION 53-30-105, MCA."

9

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

11 Section 1. Section 53-30-105, MCA, is amended to read:

12 "53-30-105. Good time allowance. (1) The department of
13 institutions shall adopt rules providing for the granting of
14 good time allowance for inmates employed in any prison work
15 or activity. The good time allowance shall operate as a
16 credit on his sentence as imposed by the court, conditioned
17 upon the inmate's good behavior and compliance with the
18 rules made by the department or the warden. The rules
19 adopted by the department may not grant good time allowance
20 to exceed:

21 (a) 10 days per month for inmates assigned within the
22 confines of the walls of the prison;

23 (b) 13 days per month for those inmates placed outside
24 the confines of the walls of the prison;

25 (c) 15 days per month for those inmates who have been

1 assigned outside the walls of the prison for an
2 uninterrupted period of 1 year on a minimum status;

3 (d) 13 days per month for those inmates enrolled in
4 school inside the walls who successfully complete the course
5 of study or who while so enrolled are released from prison
6 by discharge or parole;

7 ~~(e) 10 days for each pint of blood donated by an~~
8 ~~inmate;~~

9 ~~(f) 5 days per month for those inmates participating~~
10 ~~in self-improvement activities designated by the department.~~

11 (2) In the event of an attempted escape by an inmate
12 or a violation of the rules prescribed by the department or
13 warden, the inmate may be punished by the forfeiture of part
14 or all good time allowances. The warden of the state prison
15 shall advise the department of any attempted escape or
16 violation of rules on the part of the inmate. Any punishment
17 by forfeiture of good time allowance must be approved by the
18 department.

19 (3) ~~This section applies to all persons who are on A~~
20 ~~person may not earn good time under this section while he is~~
21 ~~on probation or parole or eligible to be placed on probation~~
22 ~~or parole. No person convicted and sentenced before April 1,~~
23 ~~1955, shall have his good time allowance reduced as a result~~
24 ~~of this section."~~

-End-

25 Section 2. Corrections board of visitors --

1 composition -- allocation. (1) There is a corrections board
2 of visitors.

3 (2) The board consists of three members appointed by
4 the governor for a term of 3 years, except that the first
5 appointments shall be for terms of 1 year for one member, 2
6 years for one member, and 3 years for one member.

7 (3) No one may be a member of the board who is an
8 employee of the department of institutions. One member must
9 have experience in law enforcement.

10 (4) A vacancy on the board shall be filled by
11 appointment by the governor for the unexpired term.

12 (5) The board is attached to the legislative auditor
13 for administrative purposes. The legislative auditor may
14 employ staff for the purpose of carrying out the board's
15 duties as set out in [section 4].

16 Section 3. Compensation -- expenses. Members of the
17 board shall receive compensation of \$25 a day plus travel
18 expenses, as provided for in 2-18-501 through 2-18-503, as
19 amended, while engaged in business of the board.

20 Section 4. Power and duties of the corrections board
21 of visitors. (1) The board is an independent board of
22 inquiry and review to assure that the condition, custody,
23 treatment, training, discipline, rehabilitation, and health
24 care of persons who are detained or confined in a
25 correctional facility are just, humane, and decent and

1 consistent with the law and with written policy and
2 procedure.

3 (2) The board shall establish and maintain a
4 continuing program of inspection of correctional facilities.

5 (3) The board shall at least annually visit and
6 inspect each state correctional facility and may inspect any
7 local correctional facility. The board shall inspect the
8 physical plant, including residential, recreational, dining,
9 and sanitary facilities. The board shall inquire concerning
10 all treatment, training, rehabilitation, and disciplinary
11 programs being implemented by the facility.

12 (4) The board may investigate, upon a complaint or
13 upon its own initiative, any alleged mistreatment of an
14 inmate of a correctional facility.

15 (5) The board shall report annually to the governor
16 and shall report to each session of the legislature
17 concerning the status of the correctional facilities which
18 the board has inspected during the applicable period. Such
19 a report may include an evaluation of one or more of the
20 programs being implemented by those facilities. Each such
21 report must include but is not limited to:

22 (a) the findings made in its inspections and
23 inquiries;

24 (b) the disposition of investigated complaints;

25 (c) recommendations to improve the condition or

1 operation of a correctional facility;

2 (d) where appropriate, mention of good programs found
3 which can serve as examples for others; and

4 (e) a separate evaluation of the inmate grievance
5 procedure at each state correctional facility.

6 Section 5. Board to have access to correctional
7 facilities and records. The board and each member thereof
8 shall, for the purpose of making an inspection as provided
9 in [section 5], have access to:

10 (1) any state or local correctional facility, or any
11 part thereof, at any time and may not be required to give
12 advance notice of or to make prior arrangements before
13 conducting an inspection; and

14 (2) all of the facility's records relating to inmate
15 care and treatment. For this purpose, the compelling state
16 interest in providing an independent review of conditions at
17 the correctional facilities of the state override the
18 interests of individual privacy with regard to all
19 personally identifiable records held by the facility
20 inspected.

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS POLICY

4 AND FACILITY NEEDS WITH NO RECOMMENDATION

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
7 SENTENCING LAWS; AMENDING SECTIONS 45-5-102 THROUGH
8 45-5-105, 45-5-201 THROUGH 45-5-204, 45-5-302 THROUGH
9 45-5-304, 45-5-401, 45-5-502, 45-5-503, 45-5-505, 45-5-603,
10 45-5-613, 45-5-621, 45-5-625, 45-6-101 THROUGH 45-6-103,
11 45-6-204, 46-18-101, 46-18-201, 46-18-222, AND 46-18-223,
12 MCA; AND REPEALING SECTIONS 46-18-111 THROUGH 46-18-113,
13 46-18-221, AND 46-18-501 THROUGH 46-18-503, MCA."

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

16 Section 1. Section 46-18-101, MCA, is amended to read:

17 "46-18-101. Policy -- liberal construction. This
18 chapter shall be liberally construed to the end that persons
19 a person convicted of a crime shall be dealt with in
20 accordance with ~~their---~~individual---characteristics
21 ~~circumstances, needs,--and--potentialities,--that--dangerous~~
22 ~~offenders--shall--be--correctively--treated--in--custody--for--long~~
23 ~~terms--as--needed,--and--that--other--offenders--shall--be--dealt~~
24 ~~with--by--probation,--suspended--sentence,--or--fine--whenever--such~~
25 ~~disposition--appears--practicable--and--not--detrimental--to--the~~

1 ~~needs-of-public-safety-and-the-welfare-of-the-individual~~ the
2 ~~seriousness_of_the_crime_committed_and_in_accordance_with~~
3 ~~his_prior_record.~~ A person convicted of a crime may be dealt
4 ~~with_by_fine_when_provided_for_by_law_or_by_deferred~~
5 ~~imposition_or_suspension_of_sentence_if_the_age_of_the~~
6 ~~person_or_the_circumstances_surrounding_the_crime_warrant~~
7 ~~such_treatment_as_provided_for_in_this_chapter."~~

8 Section 2. Section 46-18-201, MCA, is amended to read:

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

12 (a) defer imposition of sentence ~~for_persons~~
13 ~~committing_a_first_offense_and_who_are_eligible_under~~
14 ~~46-18-222,~~ excepting sentences for driving under the
15 influence of alcohol or drugs, for a period not exceeding 1
16 year for any misdemeanor or for a period not exceeding 3
17 years for any felony. The sentencing judge may impose upon
18 the defendant any reasonable restrictions or conditions
19 during the period of the deferred imposition. Such
20 reasonable restrictions or conditions may include:

21 (i) jail base release;

22 (ii) jail time not exceeding 90 days;

23 (iii) conditions for probation;

24 (iv) restitution;

25 (v) any other reasonable conditions considered

1 necessary for rehabilitation or for the protection of
2 society; or

3 (vi) any combination of the above;

4 (b) suspend execution of sentence for persons eligible
5 under 46-18-222 up to the maximum sentence allowed for the
6 particular offense. The sentencing judge may impose on the
7 defendant any reasonable restrictions during the period of
8 suspended sentence. Such reasonable restrictions may include
9 any of those listed in subsections (1)(a)(i) through
10 (1)(a)(vi).

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

12 (d) commit the defendant to a correctional institution
13 with or without a fine as provided by law for the offense;

14 (e) impose any combination of subsections (1)(b),
15 (1)(c), and (1)(d).

16 (2) If any restrictions or conditions imposed under
17 subsection (1)(a) or (1)(b) are violated, any elapsed time,
18 except jail time, is not a credit against the sentence
19 unless the court orders otherwise.

20 ~~{3}--Except-as-provided-in-46-18-222-the-imposition-or~~
21 ~~execution-of-the-first-2-years-of-a-sentence-of-imprisonment~~
22 ~~imposed--under-the-following-sections-may-not-be-deferred-or~~
23 ~~suspended+----45-5-103{2}+----45-5-202{2}+----45-5-302{2}+~~
24 ~~45-5-303{2}+45-5-401{2}+45-5-503{2}-and-{3}+45-9-101{2}~~
25 ~~and-{3}+45-9-102{3}+and-45-9-103{2}.~~

1 ~~(4) -- Except as provided in 46-18-222, the imposition or~~
 2 ~~execution of the first 10 years of a sentence of~~
 3 ~~imprisonment imposed under 45-5-102(2) may not be deferred~~
 4 ~~or suspended.~~"

5 NEW SECTION. Section 3. Mandatory sentences to be
 6 imposed for felonies -- exceptions. Except as provided in
 7 46-18-201, the court shall impose the mandatory sentence
 8 provided by law for a felony offense unless the court finds
 9 in accordance with [section 5] that aggravating
 10 circumstances are present or in accordance with [section 6]
 11 that mitigating circumstances are present.

12 NEW SECTION. Section 4. Hearing to determine
 13 exceptions to mandatory sentences. (1) Upon request of
 14 either the defendant or the prosecution, the court shall
 15 grant a hearing prior to the imposition of sentence to
 16 determine the existence of circumstances enumerated in
 17 [section 5 or 6].

18 (2) The hearing shall be held before the court sitting
 19 without a jury. The defendant and the prosecution are
 20 entitled to the assistance of counsel, compulsory process,
 21 and cross-examination of witnesses who appear at the
 22 hearing.

23 (3) If it appears by a preponderance of the evidence
 24 submitted during the trial and during the sentencing hearing
 25 that none of the circumstances enumerated in [section 5 or

1 6] existed, the court shall impose the applicable mandatory
2 sentence. If it appears by a preponderance of the evidence
3 that one or more of the circumstances enumerated in [section
4 5 or 6] existed, the court shall impose the applicable
5 sentence as provided in [section 5 or 6].

6 (4) The court shall state the reasons for its decision
7 in writing and shall include an identification of the facts
8 relied upon in making its determination. The statement
9 shall be included in the judgment.

10 NEW SECTION. Section 5. Aggravating circumstances for
11 felonies -- increased penalties. (1) The court shall add to
12 the mandatory sentence for a felony offense 25% of the
13 mandatory sentence for each of the following aggravating
14 circumstances found by the court to have existed at the time
15 the offense was committed:

16 (a) the victim was mentally defective or
17 incapacitated;

18 (b) the victim was physically helpless;

19 (c) The victim was less than 16 years old or 65 years
20 of age or older;

21 (d) there were multiple victims;

22 (e) the defendant threatened to inflict bodily injury
23 upon any person or knowingly put any person in fear of
24 immediate bodily injury;

25 (f) the defendant took advantage of his fiduciary

1 relationship with the victim to commit the offense;

2 (g) the defendant used or involved minors in the
3 commission of the crime; or

4 (h) the defendant, prior to age 18, had committed an
5 act that would have been a felony if committed by an adult.

6 (2) The court shall add to the mandatory sentence for
7 a felony offense 50% of the mandatory sentence for each of
8 the following aggravating circumstances found by the court
9 to have existed at the time the offense was committed:

10 (a) the defendant inflicted bodily injury upon
11 another;

12 (b) the defendant received compensation for committing
13 the offense;

14 (c) the defendant, while engaged in the commission of
15 the offense, knowingly displayed, brandished, or otherwise
16 used a firearm, destructive device as defined in
17 45-8-332(1), or other dangerous weapon;

18 (d) the defendant had previously been convicted of a
19 felony.

20 (3) The court shall add to the mandatory sentence for
21 a felony offense 100% of the mandatory sentence for each of
22 the following aggravating circumstances found by the court
23 to have existed at the time the offense was committed:

24 (a) the defendant is a person who had previously been
25 convicted of an offense committed under 18 U.S.C. 924(c) on

1 a different occasion than the present offense or who had
2 previously been convicted of an offense in this or another
3 state, committed on a different occasion than the present
4 offense, during the commission of which he knowingly
5 displayed, brandished, or otherwise used a firearm,
6 destructive device as defined in 45-8-332(1), or other
7 dangerous weapon.

8 (b) the defendant is a person who had previously been
9 convicted of a second felony offense and who is presently
10 being sentenced for a third or subsequent felony committed
11 on a different occasion than any of his prior felonies.

12 (4) For the purpose of this section, an offender is
13 considered to have been previously convicted of a felony if:

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

18 (b) the offender has not been pardoned on the ground
19 of innocence and the conviction has not been set aside in a
20 postconviction hearing.

21 (5) A circumstance that constitutes a lesser included
22 offense of the present offense or a circumstance that
23 constitutes a necessary element of the present offense may
24 not be found to be an aggravating circumstance for purposes
25 of this section.

1 NEW SECTION. Section 6. Mitigating circumstances for
2 felonies -- reduced penalties. If appropriate for the
3 offense, the court shall reduce the sentence for a felony
4 offense by 10% for each of the following mitigating
5 circumstances found to be present:

6 (1) The defendant, at the time of the commission of
7 the offense for which he is to be sentenced, was acting
8 under unusual and substantial duress. The duress need not
9 be such that it would constitute a defense to the
10 prosecution.

11 (2) The defendant was an accomplice, the conduct
12 constituting the offense was principally the conduct of
13 another, and the defendant's participation was relatively
14 minor.

15 (3) No serious bodily injury was inflicted on the
16 victim nor was a weapon used in the commission of the
17 offense.

18 (4) The defendant has fully compensated or can
19 reasonably be expected to fully compensate the victim of his
20 criminal conduct.

21 (5) The defendant assisted law enforcement authorities
22 in the performance of their duties.

23 Section 7. Section 46-18-222, MCA, is amended to read:

24 "46-18-222. ~~Exceptions-to-mandatory-minimum--sentences~~
25 ~~and---restrictions--on--deferred--imposition--and--suspended~~

1 ~~execution-of-sentence~~ Eligibility for deferred or suspended
2 sentence. ~~All-mandatory-minimum-sentences-prescribed-by-the~~
3 ~~laws--of--this--state--and--the--restrictions--on--deferred~~
4 ~~imposition-and-suspended-execution-of-sentence-prescribed-by~~
5 ~~subsections--(3)--and--(4)--of--46-18-201, 46-18-221(3), and~~
6 ~~46-18-502(2) do not apply if~~ A person is eligible for a
7 deferred imposition or suspension of sentence as provided in
8 46-18-201 if:

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

12 (2) the defendant's mental capacity, at the time of
13 the commission of the offense for which he is to be
14 sentenced, was significantly impaired, although not so
15 impaired as to constitute a defense to the prosecution;

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

20 (4) the defendant was an accomplice, the conduct
21 constituting the offense was principally the conduct of
22 another, and the defendant's participation was relatively
23 minor; or

24 (5) where applicable, no serious bodily injury was
25 inflicted on the victim unless a weapon was used in the

1 commission of the offense."

2 Section 8. Section 46-18-223, MCA, is amended to read:

3 "46-18-223. Hearing to determine ~~application--of~~
4 ~~exceptions eligibility.~~ (1) When the--~~application--of--an~~
5 ~~exception---provided---for---in~~ eligibility for deferred
6 imposition or suspension of sentence under 46-18-222 is an
7 issue, upon request the court shall grant the defendant a
8 hearing prior to the imposition of sentence to determine the
9 ~~applicability-of-the-exception~~ such eligibility.

10 (2) The hearing shall be held before the court sitting
11 without a jury. The defendant and the prosecution are
12 entitled to assistance of counsel, compulsory process, and
13 cross-examination of witnesses who appear at the hearing.

14 (3) If it appears by a preponderance of the
15 ~~information evidence,~~ including information submitted during
16 the trial, and during the sentencing hearing, ~~and-in-so-much~~
17 ~~of--the-presentence-report-as-the-court-relies-on,~~ that none
18 of the ~~exceptions-at-issue~~ provisions for eligibility apply,
19 the court shall impose the appropriate applicable mandatory
20 sentence with no deferred imposition or suspension thereof.

21 (4) The court shall state the reasons for its decision
22 in writing and shall include an identification of the facts
23 relied upon in making its determination. The statement shall
24 be included in the judgment."

25 Section 9. Section 45-5-102, MCA, is amended to read:

1 "45-5-102. Deliberate homicide. (1) Except as provided
2 in 45-5-103(1), criminal homicide constitutes deliberate
3 homicide if:

4 (a) it is committed purposely or knowingly; or

5 (b) it is committed while the offender is engaged in
6 or is an accomplice in the commission of, an attempt to
7 commit, or flight after committing or attempting to commit
8 robbery, sexual intercourse without consent, arson,
9 burglary, kidnapping, felonious escape, or any other felony
10 which involves the use or threat of physical force or
11 violence against any individual.

12 (2) A person convicted of the offense of deliberate
13 homicide shall be punished by death or life imprisonment as
14 provided in 46-18-301 through 46-18-310 or by imprisonment
15 in the state prison for a term of ~~not less than 10 years--or~~
16 ~~more than 100 60 years--except as provided in 46-18-222."~~

17 Section 10. Section 45-5-103, MCA, is amended to read:

18 "45-5-103. Mitigated deliberate homicide. (1) Criminal
19 homicide constitutes mitigated deliberate homicide when a
20 homicide which would otherwise be deliberate homicide is
21 committed under the influence of extreme mental or emotional
22 stress for which there is reasonable explanation or excuse.
23 The reasonableness of such explanation or excuse shall be
24 determined from the viewpoint of a reasonable person in the
25 actor's situation.

1 (2) A person convicted of mitigated deliberate
2 homicide shall be imprisoned in the state prison for a term
3 of ~~not-less-than-2-years-or-more-than-40~~ 30 years, ~~except as~~
4 ~~provided in 46-18-222.~~"

5 Section 11. Section 45-5-104, MCA, is amended to read:

6 "45-5-104. Negligent homicide. (1) Criminal homicide
7 constitutes negligent homicide when it is committed
8 negligently.

9 (2) A person convicted of negligent homicide shall be
10 imprisoned in the state prison for ~~any a term not-to-exceed~~
11 ~~10 of 20~~ years."

12 Section 12. Section 45-5-105, MCA, is amended to read:

13 "45-5-105. Aiding or soliciting suicide. (1) A person
14 who purposely aids or solicits another to commit suicide,
15 but such suicide does not occur, commits the offense of
16 aiding or soliciting suicide.

17 (2) A person convicted of the offense of aiding or
18 soliciting a suicide shall be imprisoned in the state prison
19 for ~~any a term not-to-exceed of~~ 10 years."

20 Section 13. Section 45-5-201, MCA, is amended to read:

21 "45-5-201. Assault. (1) A person commits the offense
22 of assault if he:

23 (a) purposely or knowingly causes bodily injury to
24 another;

25 (b) negligently causes bodily injury to another with a

1 weapon;

2 (c) purposely or knowingly makes physical contact of
3 an insulting or provoking nature with any individual; or

4 (d) purposely or knowingly causes reasonable
5 apprehension of bodily injury in another. The purpose to
6 cause reasonable apprehension or the knowledge that
7 reasonable apprehension would be caused shall be presumed in
8 any case in which a person knowingly points a firearm at or
9 in the direction of another, whether or not the offender
10 believes the firearm to be loaded.

11 (2) Except as provided in subsection (3), a person
12 convicted of assault shall be fined not to exceed \$500 or be
13 imprisoned in the county jail for any term not to exceed 6
14 months, or both.

15 (3) If the victim is less than 14 years old and the
16 offender is 18 or more years old, the offender, upon
17 conviction under subsection (1)(a), shall be imprisoned in
18 the state prison for a term ~~not-to-exceed-5~~ of 10 years."

19 Section 14. Section 45-5-202, MCA, is amended to read:

20 "45-5-202. Aggravated assault. (1) A person commits
21 the offense of aggravated assault if he purposely or
22 knowingly causes:

23 (a) serious bodily injury to another;

24 (b) bodily injury to another with a weapon;

25 (c) reasonable apprehension of serious bodily injury

1 in another by use of a weapon; or

2 (d) bodily injury to a peace officer.

3 (2) A person convicted of aggravated assault shall be
4 imprisoned in the state prison for a term of ~~not-less-than-2~~
5 ~~years---or---more---than~~ 20 years, ~~except---as---provided---in~~
6 ~~46-18-222.~~"

7 Section 15. Section 45-5-203, MCA, is amended to read:

8 "45-5-203. Intimidation. (1) A person commits the
9 offense of intimidation when, with the purpose to cause
10 another to perform or to omit the performance of any act, he
11 communicates to another a threat to perform without lawful
12 authority any of the following acts:

13 (a) inflict physical harm on the person threatened or
14 any other person or on property;

15 (b) subject any person to physical confinement or
16 restraint;

17 (c) commit any criminal offense;

18 (d) accuse any person of an offense;

19 (e) expose any person to hatred, contempt, or
20 ridicule; or

21 (f) take action as a public official against anyone or
22 anything, withhold official action, or cause such action or
23 withholding.

24 (2) A person commits the offense of intimidation if he
25 knowingly communicates a threat or false report of a pending

1 fire, explosion, or disaster which would endanger life or
2 property.

3 (3) A person convicted of the offense of intimidation
4 shall be imprisoned in the state prison for ~~any a~~ term ~~not~~
5 ~~to-exceed-10 of_2~~ years."

6 Section 16. Section 45-5-204, MCA, is amended to read:

7 "45-5-204. Mistreating prisoners. (1) A person commits
8 the offense of mistreating prisoners if, being responsible
9 for the care or custody of a prisoner, he purposely or
10 knowingly:

11 (a) assaults or otherwise injures a prisoner;

12 (b) intimidates, threatens, endangers, or withholds
13 reasonable necessities from the prisoner with the purpose to
14 obtain a confession from him or for any other purpose; or

15 (c) violates any civil right of a prisoner.

16 (2) A person convicted of the offense of mistreating
17 prisoners shall be removed from office or employment and
18 imprisoned in the state prison for a term ~~not-to-exceed-10~~
19 ~~of_2~~ years."

20 Section 17. Section 45-5-302, MCA, is amended to read:

21 "45-5-302. Kidnapping. (1) A person commits the
22 offense of kidnapping if he knowingly or purposely and
23 without lawful authority restrains another person by either
24 secreting or holding him in a place of isolation or by using
25 or threatening to use physical force.

1 (2) A person convicted of the offense of kidnapping
2 shall be imprisoned in the state prison for a term of not
3 ~~less--than--2--years--or--more--than--10~~ 20 years, ~~except as~~
4 ~~provided in 46-18-222.~~"

5 Section 18. Section 45-5-303, MCA, is amended to read:

6 "45-5-303. Aggravated kidnapping. (1) A person commits
7 the offense of aggravated kidnapping if he knowingly or
8 purposely and without lawful authority restrains another
9 person by either secreting or holding him in a place of
10 isolation or by using or threatening to use physical force,
11 with any of the following purposes:

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

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

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

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

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

22 (2) Except as provided in 46-18-222, a person
23 convicted of the offense of aggravated kidnapping shall be
24 punished by death or life imprisonment as provided in
25 46-18-301 through 46-18-310 or be imprisoned in the state

1 prison for a term of ~~not-less-than-2-years-or-more-than-100~~
2 ~~40~~ years, unless he has voluntarily released the victim
3 alive, in a safe place, and not suffering from serious
4 bodily injury, in which event he shall be imprisoned in the
5 state prison for a term of ~~not-less-than-2-years-or-more~~
6 ~~than-10~~ 6 years."

7 Section 19. Section 45-5-304, MCA, is amended to read:

8 "45-5-304. Custodial interference. (1) A person
9 commits the offense of custodial interference if, knowing
10 that he has no legal right to do so, he takes, entices, or
11 withholds from lawful custody any child, incompetent person,
12 or other person entrusted by authority of law to the custody
13 of another person or institution.

14 (2) A person convicted of the offense of custodial
15 interference shall be imprisoned in the state prison for any
16 a term ~~not-to-exceed-10~~ of 5 years.

17 (3) A person who has not left the state does not
18 commit an offense under this section if he voluntarily
19 returns such person to lawful custody prior to arraignment.
20 A person who has left the state does not commit an offense
21 under this section if he voluntarily returns such person to
22 lawful custody prior to arrest."

23 Section 20. Section 45-5-401, MCA, is amended to read:

24 "45-5-401. Robbery. (1) A person commits the offense
25 of robbery if in the course of committing a theft he:

1 (a) inflicts bodily injury upon another;

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

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

7 (2) A person convicted of the offense of robbery shall
8 be imprisoned in the state prison for a term of ~~not--less~~
9 ~~than-2-years-or-more-than-40~~ 20 years, ~~except-as-provided-in~~
10 ~~46-18-222.~~

11 (3) "In the course of committing a theft" as used in
12 this section includes acts which occur in an attempt to
13 commit or in the commission of theft or in flight after the
14 attempt or commission."

15 Section 21. Section 45-5-502, MCA, is amended to read:

16 "45-5-502. Sexual assault. (1) A person who knowingly
17 subjects another not his spouse to any sexual contact
18 without consent commits the offense of sexual assault.

19 (2) A person convicted of sexual assault shall be
20 fined not to exceed \$500 or be imprisoned in the county jail
21 for any term not to exceed 6 months.

22 (3) If the victim is less than 16 years old and the
23 offender is 3 or more years older than the victim or if the
24 offender inflicts bodily injury upon anyone in the course of
25 committing sexual assault, he shall be imprisoned in the

1 state prison for ~~any~~ a term ~~not-to-exceed-20~~ of 10 years.

2 (4) An act "in the course of committing sexual
3 assault" shall include an attempt to commit the offense or
4 flight after the attempt or commission.

5 (5) Consent is ineffective under this section if the
6 victim is less than 14 years old and the offender is 3 or
7 more years older than the victim."

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

9 "45-5-503. Sexual intercourse without consent. (1) A
10 person who knowingly has sexual intercourse without consent
11 with a person of the opposite sex not his spouse commits the
12 offense of sexual intercourse without consent.

13 (2) A person convicted of sexual intercourse without
14 consent shall be imprisoned in the state prison for a term
15 of ~~not-less-than-2-years-or-more-than~~ 20 years~~---except---as~~
16 ~~provided-in-46-18-222.~~

17 (3) If the victim is less than 16 years old and the
18 offender is 3 or more years older than the victim or if the
19 offender inflicts bodily injury upon anyone in the course of
20 committing sexual intercourse without consent, he shall be
21 imprisoned in the state prison for ~~any~~ term of ~~not-less-than~~
22 ~~2-years-or-more-than-40~~ 30 years~~---except---as---provided---in~~
23 ~~46-18-222.~~

24 (4) An act "in the course of committing sexual
25 intercourse without consent" shall include an attempt to

1 commit the offense or flight after the attempt or
2 commission.

3 (5) No evidence concerning the sexual conduct of the
4 victim is admissible in prosecutions under this section,
5 except:

6 (a) evidence of the victim's past sexual conduct with
7 the offender;

8 (b) evidence of specific instances of the victim's
9 sexual activity to show the origin of semen, pregnancy, or
10 disease which is at issue in the prosecution under this
11 section.

12 (6) If the defendant proposes for any purpose to offer
13 evidence described in subsection (5)(a) or (5)(b), the trial
14 judge shall order a hearing out of the presence of the jury
15 to determine whether the proposed evidence is admissible
16 under subsection (5).

17 (7) Evidence of failure to make a timely complaint or
18 immediate outcry does not raise any presumption as to the
19 credibility of the victim."

20 Section 23. Section 45-5-505, MCA, is amended to read:

21 "45-5-505. Deviate sexual conduct. (1) A person who
22 knowingly engages in deviate sexual relations or who causes
23 another to engage in deviate sexual relations commits the
24 offense of deviate sexual conduct.

25 (2) A person convicted of the offense of deviate

1 sexual conduct shall be imprisoned in the state prison for
2 any a term ~~not-to-exceed-10~~ of 2 years.

3 (3) A person convicted of deviate sexual conduct
4 without consent shall be imprisoned in the state prison for
5 any a term ~~not-to-exceed-20~~ of 10 years."

6 Section 24. Section 45-5-603, MCA, is amended to read:

7 "45-5-603. Aggravated promotion of prostitution. (1) A
8 person commits the offense of aggravated promotion of
9 prostitution if he purposely or knowingly commits any of the
10 following acts:

11 (a) compels another to engage in or promote
12 prostitution;

13 (b) promotes prostitution of a child under the age of
14 18 years, whether or not he is aware of the child's age;

15 (c) promotes the prostitution of one's spouse, child,
16 ward, or any person for whose care, protection, or support
17 he is responsible.

18 (2) A person convicted of aggravated promotion of
19 prostitution shall be imprisoned in the state prison for any
20 a term ~~not-to-exceed-20~~ of 10 years."

21 Section 25. Section 45-5-613, MCA, is amended to read:

22 "45-5-613. Incest. (1) A person commits the offense of
23 incest if he knowingly marries or cohabits or has sexual
24 intercourse with an ancestor, a descendant, a brother or
25 sister of the whole or half blood. The relationships

1 referred to herein include blood relationships without
2 regard to legitimacy and relationships of parent and child
3 by adoption.

4 (2) A person convicted of incest shall be imprisoned
5 in the state prison for any a term not-to-exceed-10 of 2
6 years."

7 Section 26. Section 45-5-621, MCA, is amended to read:

8 "45-5-621. Nonsupport. (1) A person commits the
9 offense of nonsupport if he fails to provide support which
10 he can provide and which he knows he is legally obliged to
11 provide to a spouse, child, or other dependent.

12 (2) A person commits the offense of aggravated
13 nonsupport if:

14 (a) the offender has left the state to avoid the duty
15 of support; or

16 (b) the offender has been previously convicted of the
17 offense of nonsupport.

18 (3) A person convicted of nonsupport shall be fined
19 not to exceed \$500 or be imprisoned in the county jail for
20 any term not to exceed 6 months, or both. A person convicted
21 of aggravated nonsupport shall be imprisoned in the state
22 prison for any a term not-to-exceed-10 of 2 years.

23 (4) The court may order, in its discretion, any fine
24 levied or any bond forfeited upon a charge of nonsupport
25 paid to or for the benefit of any person that the defendant

1 has failed to support."

2 Section 27. Section 45-5-625, MCA, is amended to read:

3 "45-5-625. Sexual abuse of children. (1) A person
4 commits the offense of sexual abuse of children if he
5 knowingly:

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

9 (b) photographs, films, videotapes, or records a child
10 engaging in sexual contact, actual or simulated;

11 (c) persuades, entices, counsels, or procures a child
12 to engage in sexual contact, actual or simulated, for use as
13 designated in (1)(a), (1)(b), or (1)(d);

14 (d) processes, develops, prints, publishes,
15 transports, distributes, sells, possesses with intent to
16 sell, exhibits, or advertises material consisting of or
17 including a photograph, photographic negative, undeveloped
18 film, videotape, or recording representing a child engaging
19 in sexual contact, actual or simulated; or

20 (e) finances any of the activities described in
21 subsections (1)(a) through (1)(d) knowing that the activity
22 is of the nature described in those subsections.

23 (2) A person convicted of the offense of sexual abuse
24 of children shall be fined not to exceed \$10,000 or be
25 imprisoned in the state prison for any a term ~~not-to-exceed~~

1 of 20 years, or both.

2 (3) For the purposes of this section, "child" means
3 any person less than 16 years old."

4 Section 28. Section 45-6-101, MCA, is amended to read:

5 "45-6-101. Criminal mischief. (1) A person commits the
6 offense of criminal mischief if he knowingly or purposely:

7 (a) injures, damages, or destroys any property of
8 another or public property without consent;

9 (b) without consent tampers with property of another
10 or public property so as to endanger or interfere with
11 persons or property or its use;

12 (c) damages or destroys property with the purpose to
13 defraud an insurer; or

14 (d) fails to close a gate previously unopened which he
15 has opened, leading in or out of any enclosed premises. This
16 does not apply to gates located in cities or towns.

17 (2) A person convicted of the offense of criminal
18 mischief shall be fined not to exceed \$500 or be imprisoned
19 in the county jail for any term not to exceed 6 months, or
20 both. If the offender commits the offense of criminal
21 mischief and causes pecuniary loss in excess of \$150,
22 injures or kills a commonly domesticated hoofed animal, or
23 causes a substantial interruption or impairment of public
24 communication, transportation, supply of water, gas, or
25 power, or other public services, he shall be imprisoned in

1 the state prison for any a term ~~not-to-exceed-10~~ of 4
2 years."

3 Section 29. Section 45-6-102, MCA, is amended to read:

4 "45-6-102. Negligent arson. (1) A person commits the
5 offense of negligent arson if he purposely or knowingly
6 starts a fire or causes an explosion, whether on his own
7 property or property of another, and thereby negligently:

8 (a) places another person in danger of death or bodily
9 injury; or

10 (b) places property of another in danger of damage or
11 destruction.

12 (2) A person convicted of the offense of negligent
13 arson shall be fined not to exceed \$500 or be imprisoned in
14 the county jail for any term not to exceed 6 months, or
15 both. If the offender places another person in danger of
16 death or bodily injury, he shall be imprisoned in the state
17 prison for any a term ~~not-to-exceed-10~~ of 5 years."

18 Section 30. Section 45-6-103, MCA, is amended to read:

19 "45-6-103. Arson. (1) A person commits the offense of
20 arson when, by means of fire or explosives, he knowingly or
21 purposely:

22 (a) damages or destroys an occupied structure which is
23 property of another without consent; or

24 (b) places another person in danger of death or bodily
25 injury.

1 (2) A person convicted of the offense of arson shall
2 be imprisoned in the state prison for any a term not--to
3 exceed-20 of 10 years."

4 Section 31. Section 45-6-204, MCA, is amended to read:

5 "45-6-204. Burglary. (1) A person commits the offense
6 of burglary if he knowingly enters or remains unlawfully in
7 an occupied structure with the purpose to commit an offense
8 therein.

9 (2) A person commits the offense of aggravated
10 burglary if he knowingly enters or remains unlawfully in an
11 occupied structure with the purpose to commit a felony
12 therein and:

13 (a) in effecting entry or in the course of committing
14 the offense or in immediate flight thereafter, he or another
15 participant in the offense is armed with explosives or a
16 weapon; or

17 (b) in effecting entry or in the course of committing
18 the offense or in immediate flight thereafter, he purposely,
19 knowingly, or negligently inflicts or attempts to inflict
20 bodily injury upon anyone.

21 (3) A person convicted of the offense of burglary
22 shall be imprisoned in the state prison for any a term not
23 to--exceed of 10 years. A person convicted of the offense of
24 aggravated burglary shall be imprisoned in the state prison
25 for any a term not-to-exceed-40 of 20 years."

1 Section 32. Codification. Sections 3 through 6 are
2 intended to be codified as an integral part of Title 46,
3 chapter 18, and the provisions contained in Title 46,
4 chapter 18, apply to sections 3 through 6.

5 Section 33. Repealer. Sections 46-18-111 through
6 46-18-113, 46-18-221, and 46-18-501 through 46-18-503, MCA,
7 are repealed.

-End-