

MONTANA LEGISLATIVE HISTORY

Chapter 327 1981

Bill H 12 S \_\_\_\_\_ Original bill & history ✓ c

H. Committee on Judiciary  
Hearing Date(s) 1/9 ✓ c  
2/19 ✓ c  
\_\_\_\_\_ c  
\_\_\_\_\_ c  
Date Out \_\_\_\_\_ c

S. Committee on Judiciary  
Hearing Date(s) 3/9 ✓ c  
3/24 ✓ c  
\_\_\_\_\_ c  
\_\_\_\_\_ c

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Did this bill originate in an interim committee? \_\_\_ Yes ✓ No  
Committee \_\_\_\_\_ Report \_\_\_\_\_

HB 10—KEEDY, NORDTVEDT, ROTH, ET AL—TO GENERALLY REVISE SENTENCING LAWS.

FISCAL NOTE: REQUIRED  
PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80  
HEARING: 1/9  
REPORT: DO PASS AS AMENDED, 1/21  
2ND READING: 1/24, YEAS: 69; NAYS: 27  
3RD READING: 1/26, YEAS: 67; NAYS: 30  
  
TRANSMITTED TO SENATE: 1/26  
REFERRED TO COMMITTEE ON JUDICIARY: 1/27  
HEARING: 2/10  
BILL DIED IN COMMITTEE

HB 11—SPILKER—TO ALLOW WORK PERIODS OTHER THAN 40 HOURS A WEEK TO BE ESTABLISHED BY COLLECTIVE BARGAINING....

PREFILED AND REFERRED TO COMMITTEE ON LABOR: 12/30/80  
HEARING: 1/8  
REPORT: DO PASS AS AMENDED, 1/15  
2ND READING: 1/19, YEAS: 84; NAYS: 9  
3RD READING: 1/20, YEAS: 89; NAYS: 9  
  
TRANSMITTED TO SENATE: 1/20  
REFERRED TO COMMITTEE ON LABOR AND EMPLOYMENT: 1/21  
HEARING: 2/3  
REPORT: 3/9, BE CONCURRED IN AS AMENDED  
2ND READING: 3/10, YEAS: 25; NAYS: 21  
3RD READING: 3/12, YEAS: 16; NAYS: 34  
BILL KILLED ON 3RD READING: 3/12

HB 12—GOULD—TO PROVIDE FOR INCREASED PUNISHMENT OF PERSONS WHO HAVE BEEN CONVICTED OF THREE SEPARATE FELONIES.

PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80  
HEARING: 1/9  
REPORT: DO PASS AS AMENDED, 2/19  
2ND READING: 2/21, YEAS: 79; NAYS: 7  
3RD READING: 2/24, YEAS: 94; NAYS: 4  
  
TRANSMITTED TO SENATE: 2/24  
REFERRED TO COMMITTEE ON JUDICIARY: 3/2  
HEARING: 3/9  
REPORT: 3/25, BE CONCURRED IN  
2ND READING: 3/27, BE CONCURRED IN  
3RD READING: 3/31, YEAS: 50

RETURNED TO HOUSE: 3/31  
TRANSMITTED TO GOVERNOR: 4/6  
ACTION: SIGNED, 4/9  
CHAPTER 327

HB 13—FABREGA—TO ALLOW THE DEPARTMENT OF REVENUE TO WAIVE INTEREST UPON DELINQUENT TAXES AND PENALTIES IN CERTAIN CASES.

PREFILED AND REFERRED TO COMMITTEE ON TAXATION: 12/30/80  
HEARING: 1/9  
REPORT: DO PASS, 1/15  
2ND READING: 1/17, YEAS: 87; NAYS: 0  
3RD READING: 1/19, YEAS: 94; NAYS: 0  
  
TRANSMITTED TO SENATE: 1/19  
REFERRED TO COMMITTEE ON TAXATION: 1/20

1 HOUSE BILL NO. 12  
 2 INTRODUCED BY GOULD

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 PROVIDE FOR  
 7 INCREASED PUNISHMENT OF PERSONS WHO HAVE BEEN CONVICTED OF  
 8 THREE SEPARATE FELONIES; AMENDING SECTIONS 46-18-222 AND  
 9 46-18-502, MCA."

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

12 Section 1. Section 46-18-502, MCA, is amended to read:  
 13 "46-18-502. Sentencing of persistent felony offender.  
 14 (1) A EXCEPT AS PROVIDED IN SUBSECTION (2), a persistent  
 15 felony offender shall be imprisoned in the state prison for  
 16 a term of not less than 5 years or more than 100 years if he  
 17 was 21 years of age or older at the time of the commission  
 18 of the present offense.

19 (2) IF THE OFFENDER WAS A PERSISTENT FELONY OFFENDER,  
 20 AS DEFINED IN 46-18-501, AT THE TIME OF HIS PREVIOUS FELONY  
 21 CONVICTION, LESS THAN 5 YEARS HAVE ELAPSED BETWEEN HIS  
 22 PREVIOUS FELONY CONVICTION AND THE COMMISSION OF THE PRESENT  
 23 OFFENSE, AND HE WAS 21 YEARS OF AGE OR OLDER AT THE TIME OF  
 24 THE COMMISSION OF THE PRESENT OFFENSE, HE SHALL BE  
 25 IMPRISONED IN THE STATE PRISON FOR A TERM OF NOT LESS THAN

1 10 YEARS OR MORE THAN 100 YEARS.  
 2 ~~(2)~~ (2) Except as provided in 46-18-222, the imposition  
 3 of 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 the  
 19 commission of the offense for which he is to be sentenced,  
 20 was significantly impaired, although not so impaired as to  
 21 constitute a defense to the prosecution;

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

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
January 9, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser presiding. All committee members were present. Jim Lear, attorney of the Legislative Council, was also present.

HOUSE BILL 12 REP. GOULD, chief sponsor of the bill, stated this bill, if passed, would have relatively small effect on prison population. If there was a persistent felony offender, it would make that offender aware he/she would receive a mandatory sentence of a minimum of ten years. This would not jeopardize the person who at a young age had a few problems of one or two felony convictions and then had gone straight for a number of years to suddenly commit another felony. This bill would be strictly for the persistent felony offender.

CURT CHISHOLM, Department of Institutions, did not feel there would be any significant impact on the prison population should this bill be passed. CHISHOLM did not anticipate any major fiscal implementations on the prison. The persistent felony offender must be dealt with and he was in favor of this bill.

There were no other proponents.

There were no opponents.

No questions were asked by committee members.

HOUSE BILL 20 REP. GOULD stated that in 1977 the legislature passed a bill, signed by the Governor, which gave from a two to ten year sentence for a first conviction and a four to twenty year sentence for a second offense, for using a fire arm when committing a felony. This bill makes sure that a sentence is a consecutive and not a concurrent sentence. REP. GOULD implied we should control the criminal and not the gun.

CURT CHISHOLM, Department of Institutions, noted this bill would provide for additional sentences and judges would have certain rules to follow in sentencing a convicted person. There would be no fiscal impact on the prisons or the Department of Institutions of a great demand.

There were no other proponents.

There were no opponents.

CHAIRMAN KEYSER stated all the bills concerning criminal sentencing would be assigned to a sub-committee for research and recommendation.



Judiciary Committee  
February 19, 1981  
Page 2

REP. EUDAILY asked who certifies the alcohol counselors. The Department of Institutions will in the budget year of 81-82.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 8:45 a.m.

HOUSE BILL 12 REP. KEEDY moved do pass. The problem with the existing statute is additional sentencing does not run consecutively. REP. KEEDY offered an amendment to require judges to make the sentences run consecutively. The amendment passed unanimously.

REP. EUDAILY felt judges should distinguish between dangerous and nondangerous crimes. REP. KEEDY moved to reconsider the amendment. All were in favor of the motion. After a brief discussion the amendment passed with SHELDEN, HUENNEKENS, YARDLEY, EUDAILY and ABRAMS voting no.

REP. KEEDY moved to amend less than five years have elapsed between the commitment of the present offense and either confinement or the language in 501. After a brief discussion REP. KEEDY changed his amendment to read "and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction". The amendment passed.

REP. HANNAH moved do pass as amended. A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, BENNETT, CONN, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, and KEEDY. Those voting no were: EUDAILY, DAILY, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE and YARDLEY. The bill passed as amended 10 to 7.

HOUSE BILL 20 REP. MCLANE moved do pass.

REP. IVERSON moved following "CONSECUTIVELY" strike "WITH" and insert "TO" in the title and on page 2, line 20. The motion passed unanimously.

REP. MATSKO moved do pass as amended. The motion carried with REP. YARDLEY voting no.

HOUSE BILL 99 REP. DAILY moved do pass.

REP. DAILY moved to amend the bill on page 3, line 6 striking "or execution" and on line 7, and to strike "of imprisonment" on line 7 in the title and throughout the bill. The amendment carried.

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 9, 1981

The thirty-eighth meeting of the Senate Judiciary Committee was called to order by Senator Olson, in the absence of Chairman Anderson and Vice Chairman O'Hara, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present except Senator Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 6:

TO ALLOW THE STATE TO REQUEST AN  
APPELLATE REVIEW OF THE DISPOSITION  
OF A CRIMINAL CASE.

Rep. Keedy presented the bill, describing it as an attempt to balance the scales of justice a little, and saying that it would help to bring about a greater uniformity in sentencing. He asked that a mistake in the bill be corrected by striking "THE ATTORNEY GENERAL" in line 22, page 3, and inserting it in line 23, following "by".

Tom Honzel, representing the County Attorneys Association, said that his group supports the bill because it is fair. He said that Judge Bennett has recommended that something like this be enacted, and has made attempts to draft something himself. Mr. Honzel said that he does not feel there would be any constitutional problem because the state's appeal would be based only on the sentence, and there would therefore be no double jeopardy problem.

Senator Crippen asked if there are statutes in other states that provide this remedy. Rep. Keedy said probably there were not, because a supreme court decision allowing this action is very recent.

CONSIDERATION OF HOUSE BILL 12:

TO PROVIDE FOR INCREASED PUNISHMENT  
OF PERSONS WHO HAVE BEEN CONVICTED  
OF THREE SEPARATE FELONIES.

Rep. Gould, District 98, Missoula, presented the bill and explained that it more or less came out of HB 10. It is,



he said, an effort to convince an habitual offender that severe punishment awaits him. He added that this bill would not have a very large effect on prison population.

Curt Chisholm, Deputy Director of the Department of Institutions, said that the "persistent felony offender" designation is not used nearly as often by judges as records would indicate it could be, and supported the bill.

Karen Mikota, representing the League of Women Voters, spoke in opposition because the bill does not make a distinction as to when felonies increase from five to ten years. She said that HB 207 deals with the definition of "convicted", and asked that this committee hold off deciding on this bill until the hearing of HB 207.

Senator S. Brown asked Mr. Chisholm why there had been only eight "persistent felony offender" designations made by the courts. Mike Meloy offered the information that in the six years he has been involved in practice under Judge Bennett not a single county attorney has asked for this designation. Mr. Chisholm said that the allowance for this designation was passed in 1975, and then in 1977 the "dangerous" (as opposed to "non-dangerous") designation was made available -- and this latter designation has proven more popular with county attorneys.

Senator Olson asked why the maximum sentence was fixed at one hundred years, and Rep. Gould said that the language was taken from the persistent felon law.

CONSIDERATION OF HOUSE BILL 20:

TO PROVIDE THAT ADDITIONAL SENTENCES  
FOR CRIMES COMMITTED WITH A DANGEROUS  
WEAPON ARE TO RUN CONSECUTIVELY TO  
THE SENTENCE PROVIDED FOR THE OFFENSE.

Rep. Gould presented the bill as an attempt to spell out the language more clearly than it is in the 1977 law. There were no proponents or opponents.

CONSIDERATION OF HOUSE BILL 9:

TO MAKE THE LAW RELATING TO GOOD  
TIME ALLOWANCE MORE RESTRICTIVE.

Rep. Yardley, District 74, presented the bill and said that it is not connected with HB 10. He said that he felt some of the "good time" programs designated were biased against some religions. He felt that it was ludicrous to have good time accrue while a prisoner is on probation.

ROLL CALL

JUDICIARY COMMITTEE

#7th LEGISLATIVE SESSION - - 1981

Date March 9, 1981

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NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>			✓
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: Curt Chisholm DATE: 3/9  
60 - 4del

ADDRESS: Dept Institutions

PHONE: 5930

REPRESENTING WHOM? Institutions

APPEARING ON WHICH PROPOSAL: 7, 9, 10, 20

DO YOU: SUPPORT? 12, 20, AMEND? 9 OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE March 9, 1981

COMMITTEE ON JUDICIARY

HB 6  
HB 20    HB 9  
HB 12    HB 8

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
<i>Karen Mulkata</i>	<i>League of Women Voters</i>	<i>6</i> <i>20</i>		<input checked="" type="checkbox"/>
	<i>"</i>	<i>12</i> <i>9</i>	<input checked="" type="checkbox"/>	
	<i>"</i>	<i>8</i>	<input checked="" type="checkbox"/>	
<i>Tom Howell</i>	<i>County Attorney</i>	<i>6</i>	<input checked="" type="checkbox"/>	
<i>Jan Brown</i>	<i>Mt Assn of Churches</i>			
<i>Ed Hall</i>	<i>Associations</i>	<i>89</i> <i>12, 20</i>		

(Please leave unrounded statement with ...)

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
MARCH 24, 1981

The fifty-first meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF HOUSE BILL 316:

Senator Mazurek moved to reconsider the action taken March 14, which resulted in a "be not concurred in" vote. He said that this bill merely puts into law what the practice has been since 1975. His motion carried unanimously. Senator Mazurek then moved that the bill BE CONCURRED IN, and his motion passed over the objection of Senators Tveit and Olson.

DISPOSITION OF HOUSE BILL 66:

Senator B. Brown moved that the bill BE CONCURRED IN, and his motion passed with Senators Anderson, O'Hara, Olson, and Berg opposing, as shown on the attached roll call vote.

DISPOSITION OF HOUSE BILL 273:

Senator Crippen moved to amend the bill as shown on the attached Committee Report, and his motion passed over the objection of Senators O'Hara and S. Brown. Senator Berg moved that the bill BE NOT CONCURRED IN, since the law is presently adequate if enforced, and his motion passed over Senator S. Browne' objection.

DISPOSITION OF HOUSE BILL 403:

Senator S. Brown moved to amend the bill as shown on the attached Committee Report, and his motion passed over Senator Tveit's objection. Senator S. Brown then moved that the bill BE CONCURRED IN AS AMENDED, and the motion carried over the objection of Senators Anderson, Olson, Crippen, and Tveit, as shown on the attached roll call vote.

DISPOSITION OF HOUSE BILL 12:

Senator O'Hara moved that the bill BE CONCURRED IN, and his motion passed over the opposition of Senators Halligan, Mazurek, Crippen, and B. Brown.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 24, 1981

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

# STANDING COMMITTEE REPORT

March 24, 1961

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 12

GOULD (O'HARA)

Respectfully report as follows: That HOUSE Bill No. 12

ADDRESS  
BE CONCERNED IN