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## HOUSE BILL NO. 521

INTRODUCED BY B. NEWMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT BEFORE AN ENHANCED INCARCERATION PENALTY MAY BE IMPOSED, THE ENHANCING ACT, OMISSION, OR FACT MUST BE STATED IN THE CHARGING DOCUMENT, SUBMITTED TO A JURY FOR DETERMINATION IF THERE IS A JURY TRIAL, AND FOUND BY THE TRIER OF FACT TO HAVE EXISTED BEYOND A REASONABLE DOUBT; DEFINING ENHANCING ACT, OMISSION, OR FACT; ~~PROVIDING THAT THE MENTAL STATE APPLICABLE TO THE UNDERLYING OFFENSE APPLIES TO THE ENHANCING ACT, OMISSION, OR FACT;~~ AMENDING SECTIONS 45-5-222, 46-18-115, 46-18-220, 46-18-221, AND 46-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Incarceration penalty enhancement -- pleading, proof, and mental state**

**requirements.** (1) A court may not impose an incarceration penalty enhancement specified in Title 45, Title 46, or any other provision of law unless:

(a) the enhancing act, omission, or fact was charged in the information, complaint, or indictment, with a reference to the statute or statutes containing the enhancing act, omission, or fact and the penalty for the enhancing act, omission, or fact;

(b) if the case was tried before a jury, the jury unanimously found in a separate finding that the enhancing act, omission, or fact occurred beyond a reasonable doubt; and

(c) if the case was tried to the court without a jury, the court finds beyond a reasonable doubt that the enhancing act, omission, or fact occurred.

(2) The enhancement issue may be submitted to a jury on a form separate from the verdict form or may be separately stated on the verdict form. The jury must be instructed that it is to reach a verdict on the offense charged in the information, complaint, or indictment before the jury can consider whether the enhancing act, omission, or fact occurred.

(3) An enhancing act, omission, or fact is an act, omission, or fact, whether stated in the statute defining the charged offense or stated in another statute, that is not included in the statutory definition

1 of the elements of the charged offense and that allows or requires a sentencing court to add to, as  
 2 provided by statute, an incarceration period provided by statute for the charged offense or to impose the  
 3 death penalty instead of a statutory incarceration period provided by statute for the charged offense. ~~An~~  
 4 ~~enhancing act, omission, or fact includes but is not limited to:~~

5 ~~—— (a) bodily injury;~~

6 ~~—— (b) serious bodily injury;~~

7 ~~—— (c) property damage;~~

8 ~~—— (d) use of a weapon or of a certain type of ammunition;~~

9 ~~—— (e) the age of the victim or age difference between the defendant and the victim;~~

10 ~~—— (f) monetary value or amount of loss, damage, or theft;~~

11 ~~—— (g) commission of an offense for the benefit of, at the direction of, or in association with one or~~  
 12 ~~more other persons; and~~

13 ~~—— (h) commission of an offense at or in a certain place or within a specified distance of a certain~~  
 14 ~~place.~~

15 (4) Use of the fact of one or more prior convictions for the same type of offense or for one or  
 16 more other types of offenses to enhance the incarceration penalty for a charged offense is not subject to  
 17 the requirements of this section.

18 ~~(5) The mental state that applies to the elements of the offense that is enhanced also applies to~~  
 19 ~~an act, omission, or fact used to enhance the incarceration penalty for that offense unless a different~~  
 20 ~~mental state is provided in the statute creating the enhancing act, omission, or fact. The mental state for~~  
 21 ~~the enhancing act, omission, or fact must, as provided in subsections (1) and (2) with respect to the~~  
 22 ~~enhancing act, omission, or fact, be charged in the information, complaint, or indictment and must be~~  
 23 ~~found by the trier of fact to have existed beyond a reasonable doubt.~~

24

25 **Section 2.** Section 45-5-222, MCA, is amended to read:

26 **"45-5-222. Sentence enhancement -- offenses committed because of victim's race, creed,**  
 27 **religion, color, national origin, or involvement in civil rights or human rights activities.** (1) A person who  
 28 has pleaded guilty or nolo contendere to or who has been found guilty of any offense, except malicious  
 29 intimidation or harassment, that was committed because of the victim's race, creed, religion, color,  
 30 national origin, or involvement in civil rights or human rights activities or that involved damage,

1 destruction, or attempted destruction of a building regularly used for religious worship, in addition to the  
2 punishment provided for commission of the offense, may, if the provisions of [section 1] have been  
3 complied with, be sentenced to a term of imprisonment of not less than 2 years or more than 10 years,  
4 except as provided in 46-18-222.

5 (2) An additional sentence prescribed by subsection (1) ~~shall~~ must run consecutively to the  
6 sentence, except as provided in 46-18-222."

7

8 **Section 3.** Section 46-18-115, MCA, is amended to read:

9 **"46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication.** Before  
10 imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding  
11 of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

12 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the  
13 disposition, including the ~~applicability of sentencing enhancement provisions,~~ imposition of a sentence  
14 enhancement penalty and the applicability of mandatory minimum sentences, persistent felony offender  
15 status, or an exception to these matters.

16 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided  
17 by 46-18-301.

18 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address  
19 the defendant personally to ascertain whether the defendant wishes to make a statement and to present  
20 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the  
21 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to  
22 do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor  
23 offense, the requirement that the court address the defendant personally may be satisfied by the use of  
24 two-way electronic audio-video communication. Audio-video communication may be used if neither party  
25 objects and the court agrees to its use. The audio-video communication must operate as provided in  
26 46-12-201.

27 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime  
28 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,  
29 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present  
30 the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or

1 both.

2 (b) The court shall give copies of any written statements of the victim to the prosecutor and the  
3 defendant prior to imposing sentence.

4 (c) The court shall consider the victim's statement along with other factors. However, if the  
5 victim's statement includes new material facts upon which the court intends to rely, the court shall allow  
6 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

7 (5) The court shall impose sentence or make any other disposition authorized by law.

8 (6) In felony cases, the court shall specifically state all reasons for the sentence, including  
9 restrictions, conditions, or enhancements imposed, in open court on the record and in the written  
10 judgment."

11

12 **Section 4.** Section 46-18-220, MCA, is amended to read:

13 **"46-18-220. Sentences for certain offenses committed in official detention -- death penalty.** An  
14 offender convicted of having committed attempted deliberate homicide, aggravated assault, or aggravated  
15 kidnapping while in official detention, as defined in 45-2-101, shall, if the provisions of [section 1] have  
16 been complied with, be sentenced to death or life imprisonment as provided in 46-18-301 through  
17 46-18-310."

18

19 **Section 5.** Section 46-18-221, MCA, is amended to read:

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

26 (2) ~~A~~ If the provisions of [section 1] have been complied with, a person convicted of a second or  
27 subsequent offense under this section shall, in addition to the punishment provided for the commission  
28 of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years  
29 or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the  
30 following persons shall be considered to have been convicted of a previous offense under this section:

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

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

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

9 (4) An additional sentence prescribed by this section ~~shall~~ must run consecutively to the sentence  
10 provided for the offense."  
11

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12 **Section 6.** Section 46-18-224, MCA, is amended to read:

13 **"46-18-224. Additional sentence for offense committed while carrying a handgun loaded with**

14 **armor-piercing ammunition.** (1) ~~A~~ If the provisions of [section 1] have been complied with, a person who  
15 has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and  
16 who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission  
17 of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment  
18 in the state prison of not less than 5 years or more than 25 years, except as provided in 46-18-222.

19 (2) An additional sentence prescribed by this section must run consecutively to the sentence  
20 provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and  
21 imposition of it may not be deferred.

22 (3) For purposes of this section:

23 (a) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test  
24 procedure of the national institute of law enforcement and criminal justice standard for the ballistics  
25 resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant  
26 apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as  
27 formulated by the United States department of justice and published in December 1978; and

28 (b) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by  
29 the use of a single hand."  
30

1            NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an  
2 integral part of Title 46, chapter 1, and the provisions of Title 46 apply to [section 1].

3

4            NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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