

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING EQUAL PROTECTION FOR PERSONS SENTENCED
5 FOR CRIMES; PROVIDING THAT THE RACE, NATIONAL ORIGIN, OR SEXUAL ORIENTATION OF A CRIME
6 VICTIM, WHEN IT IS NOT AN ELEMENT OR PART OF AN ELEMENT OF THE OFFENSE, OR THE SEXUAL
7 ORIENTATION OF THE DEFENDANT MAY NOT BE REFERRED TO OR CONSIDERED IN A SENTENCING
8 INVESTIGATION, REPORT, OR HEARING AND MAY NOT BE USED BY THE JUDGE AS A FACTOR IN
9 DETERMINING THE SENTENCE; AND AMENDING SECTIONS 45-5-222 AND 46-18-101, MCA."

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11 WHEREAS, it is abhorrent to equal protection under the law and the fair and equitable administration
12 of justice that in the sentencing stage of criminal cases certain crime victims are given more protection than
13 others who are victims of the same type of crime; and

14 WHEREAS, the Legislature finds it necessary and appropriate to ensure the fair and equitable
15 administration of justice in the sentencing stage of criminal cases by providing that the race, color, national
16 origin, or sexual orientation of a victim may not be used to enhance the sentence for a crime.

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

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20 **Section 1.** Section 45-5-222, MCA, is amended to read:

21 **"45-5-222. Sentence enhancement -- offenses committed because of victim's race, creed,**
22 **religion, color, national origin, or involvement in civil rights or human rights activities.** (1) A person who
23 has pleaded guilty or nolo contendere to or who has been found guilty of any offense, except malicious
24 intimidation or harassment, that was committed because of the victim's ~~race, creed, religion, color, national~~
25 ~~origin,~~ or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted
26 destruction of a building regularly used for religious worship, in addition to the punishment provided for
27 commission of the offense, may, if the provisions of 46-1-401 have been complied with, be sentenced to a term
28 of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

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

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Section 2. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional and sentencing policy. (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.

(2) The correctional and sentencing policy of the state of Montana is to:

(a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;

(b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense; and

(d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, sexual orientation, national origin, or social or economic status and with respect to a victim's race, national origin, or sexual orientation unless the victim's race, national origin, or sexual orientation is or is part of an element of the offense.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must

1 require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of
2 court-appointed counsel as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical
3 treatment.

4 (i) Sentencing practices should promote and support practices, policies, and programs that focus on
5 restorative justice principles.

6 (4) Unless the victim's race, national origin, or sexual orientation is or is part of an element of the
7 offense, the race, national origin, or sexual orientation of a victim may not be referred to or considered in a
8 sentencing investigation, report, or hearing and may not be used by the judge as a factor in determining the
9 sentence. An alleged violation of this subsection must be supported by express reference to the victim's race,
10 national origin, or sexual orientation in the sentencing record."

11 - END -