SENATE JUDICIARY
EXHIBIT NO. 2
DATE 2/5/13
BILL NO. SB 137

MONTANA DEPARTMENT OF JUSTICE
HB 137: Clarifying That Sentencing Statute Change Does Not Make Offenders Immediately Eligible for Parole

The Olivares-Coster Homicide Case

In June 2009, Sebastian Olivares-Coster led three unsuspecting teenagers up a hill near Helena and opened fire on them. Olivares-Coster killed one of the boys and severely injured two others. Olivares-Coster, who was 17 at the time of the attack, was charged as an adult. He pled guilty to one count of deliberate homicide and two counts of attempted deliberate homicide.

The sentencing court decided that Olivares-Coster posed an extreme danger to the public and had minimal prospects for rehabilitation. Judge McCarter sentenced him to three life sentences, and imposed the sentences in a manner that the judge believed would make Olivares-Coster ineligible for parole for 60 years.

Appeal to the Montana Supreme Court

Olivares-Coster appealed his sentence to the Montana Supreme Court. In deciding his appeal, the Supreme Court analyzed, for the first time, a portion of Montana Code Annotated § 46-18-222 that had been added to that statute by the 2007 Legislature. That exception added restrictions on parole eligibility to the list of sentencing restrictions that do not apply to the groups of offenders listed in MCA § 46-18-222. Offenders who commit an offense before turning 18 years old are one of the groups listed.

In 2011, the Supreme Court concluded that the plain language of the statute makes the groups of offenders listed in MCA § 46-18-222 immediately eligible for parole. Contrary to the intention of the sentencing judge, the Supreme Court's decision made Olivares-Coster immediately parole eligible. As explained further below, that was not the intent of the 2007 legislature.

Purpose of HB 137

The Attorney General's Office believes that the Supreme Court's decision in *State v. Olivares-Coster*, 2011 MT 196, is not consistent with the intent of the legislature and has proposed this bill in order to clarify the original intent of the statute.

The *Olivares-Coster* case demonstrates how important it is that some offenders not be eligible for parole immediately after they are convicted. The surviving shooting victims were traumatized by the murder of their friend and Olivares-Coster's attempt to murder them. The victims testified at the sentencing hearing about how important it was for him to remain in jail. The sentencing court attempted to give them certainty that Olivares-Coster would not be released for 60 years, but now they live in fear that he could be granted parole at any time. It is important that MCA § 46-18-222 be corrected so that victims in future cases can have some assurance that their offenders will not be eligible for parole until an appropriate time.

Original Intent of the 2007 Amendment to MCA § 46-18-222

As a general rule, offenders serving a sentence of a specific number of years are eligible for parole after serving one quarter of their sentence. Offenders serving a life sentence are eligible for parole after serving 30 years. MCA § 46-23-201(3)-(4). The 2007 amendment to MCA § 46-18-222 was not designed to change this rule in any way.

The 2007 amendment was part of Senate Bill 547, known as Jessica's Law. Jessica's Law was designed to protect children by increasing penalties for sexual offenses. SB 547 created strong penalties for six sexual offenses, requiring that offenders be sentenced to 100 years in prison, 25 years of which cannot be suspended or deferred, with no parole for 25 years. This penalty applies to six sexual offenses if the victim is under 12 years old and the offender is over 18.

Although SB 547 did not originally include any amendment to MCA § 46-18-222, the final draft of the bill added "restrictions on parole eligibility" to the list of sentencing restrictions that do not apply to the groups of offenders listed in MCA § 46-18-222. The context in which this amendment was made explains the amendment's purpose. MCA § 46-18-222 creates exceptions for certain groups of people to mandatory minimum sentences and similar sentencing requirements. The statute is designed to give judges the discretion to impose sentences that are below the statutory minimum when the offender is in a category of less culpable offenders. The groups listed in the statute are:

- offenders who committed the offense when they were under 18 years old,
- offenders whose mental capacity is impaired,
- offenders who were acting under duress that was not a complete defense,
- accomplices whose participation in the offense was minor,
- offenders who did not cause serious bodily injury when committing an offense that requires bodily injury as an element (most partner/family member assault offenders fall under this category), and
- certain sexual offenders who can be rehabilitated through treatment rather than lengthy incarceration.

Through Jessica's Law, the legislature for the first time required that offenders convicted of specific sexual offenses could not be parole eligible for 25 years. No other statute in the criminal code requires that a person convicted of a specific offense cannot be parole eligible for a specific number of years. The addition of the language "restrictions on parole eligibility" to MCA § 46-18-222 was designed to apply to the new offense-specific parole eligibility restrictions that were created by Jessica's Law. The language was not designed to affect the general rule governing the calculation of parole eligibility, which was not even discussed during the hearings. This bill would accomplish the original intent of the 2007 amendment and clarify that the statute does not make offenders immediately eligible for parole.