

HOUSE BILL NO. 149
INTRODUCED BY D. HEDGES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIMINAL SENTENCE REVIEW PROCESS; ALLOWING THE REVIEW DIVISION OF THE SUPREME COURT TO MEET IN DEER LODGE, BILLINGS, OR OTHER LOCATIONS; ALLOWING THE CHIEF JUSTICE OF THE SUPREME COURT TO DESIGNATE A REPLACEMENT FOR A MEMBER OF THE REVIEW DIVISION THAT IS UNABLE TO SERVE; ALLOWING A PERSON SENTENCED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO APPLY FOR SENTENCE REVIEW; REQUIRING CERTAIN NOTICES TO BE GIVEN TO A DEFENDANT'S COUNSEL; CLARIFYING LANGUAGE; REQUIRING THE DECISION OF THE REVIEW DIVISION TO BE SENT TO THE COUNTY ATTORNEY AND DEFENSE COUNSEL; AMENDING SECTIONS 46-18-901, 46-18-902, 46-18-903, 46-18-904, AND 46-18-905, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 46-18-901, MCA, is amended to read:

"46-18-901. Review division of the supreme court for -- review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of ~~such the~~ judges to act as ~~chairman thereof~~ presiding officer of the review division. The clerk of the Montana supreme court shall record ~~such the~~ appointment and shall give notice ~~thereof of the appointment~~ to the clerk of every district court.

(2) ~~This~~ The review division shall meet at least four times a year or more as its business requires, as determined by the ~~chairman~~ presiding officer. The review division shall hold its meetings at Deer Lodge, Billings, or other locations as determined by the review division.

(3) The decision of ~~any two of such the~~ judges ~~shall be~~ is sufficient to determine any matter before the review division.

(4) The review division may adopt any rules ~~which that~~ will expedite its review of sentences. The division is also authorized to appoint a secretary ~~and such clerical help as it deems adequate and fix their compensation."~~

Section 2. Section 46-18-902, MCA, is amended to read:

"46-18-902. Interested judge not to act. ~~No~~ A judge ~~shall~~ may not sit or act on a review of a sentence

that was imposed by him the judge. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by said the division or if any member is unavailable to serve, the chief justice of the supreme court of Montana may designate another judge to act in place of such the judge."

Section 3. Section 46-18-903, MCA, is amended to read:

"46-18-903. Application for review. (1) Any A person sentenced to a term of 1 year or more in the state prison or to the custody of the department of corrections by any a court of competent jurisdiction may within 60 days from the date such the sentence was imposed, except in any a case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced and to the person's counsel of his the right to make such a request. Such The notice shall must include a statement that review of the sentence may result in a decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit such the application to the review division and shall notify the judge who imposed the sentence and, the county attorney of the county in which the sentence was imposed, and the person's counsel of record. Such The judge may transmit to the review division a statement of his the judge's reasons for imposing the sentence and shall transmit such a the statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant such or deny the request.

(4) The filing of an application for review shall may not stay the execution of the sentence."

Section 4. Section 46-18-904, MCA, is amended to read:

"46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division:

(a) (i) shall review the judgment ~~so far~~ as it relates to the sentence imposed, ~~either increasing or decreasing the penalty~~; and any other sentence imposed on the person at the same time; and

(ii) may order such a different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review, including a decrease or increase in the penalty; or

(b) may decide that the sentence under review should stand.

(2) In reviewing any a judgment, said the division may require the production of presentence reports and

any other records, documents, or exhibits relevant to ~~such the~~ review proceedings. The ~~appellant person~~ requesting the review may appear and has the right to be represented by counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed. Any other interested person, including the sentencing judge, may attend and participate in the review proceedings.

(3) The sentence imposed by the district court is presumed correct. If the review division orders a different sentence, the court sitting in any convenient county shall resentence the ~~defendant person~~ as ordered by the review division. Time served on the sentence reviewed ~~shall be deemed~~ is considered to have been served on the sentence substituted."

Section 5. Section 46-18-905, MCA, is amended to read:

"46-18-905. Decision -- finality, report of. (1) The decision of the review division in each case ~~shall~~ be is final, and the reasons for ~~such the~~ decision ~~shall must~~ must be stated ~~therein in the decision~~. The original of each decision ~~shall must~~ must be sent to the clerk of the court for the county in which the judgment was rendered, and a copy ~~shall must~~ must be sent to the judge who imposed the sentence reviewed, the person sentenced, the defense counsel, the county attorney, and the principal officer of the institution in which ~~he the person~~ is confined.

(2) The decision ~~shall must~~ must be reported in the Montana Reports."

NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2003.

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