

HOUSE BILL NO. 791

INTRODUCED BY C. SPRUNGER, D. BEDEY, M. MALONE, T. WELCH, J. WINDY BOY, F. ANDERSON, S. KERN, J. SCHILLINGER, T. RUNNING WOLF, D. HAWK, C. KNUDSEN, G. NIKOLAKAKOS, K. ZOLNIKOV, D. FERN, S. ESSMANN, B. MITCHELL, P. FIELDER, S. VINTON, L. REKSTEN, F. SMITH, M. BERTOGLIO, J. DOOLING, J. HINKLE, N. NICOL, M. BINKLEY, B. LER, K. SEEKINS-CROWE, E. BUTTREY, R. FITZGERALD, T. BROCKMAN, J. SMALL, S. FITZPATRICK, B. USHER, G. HERTZ, D. SALOMON, C. GLIMM, J. ELLSWORTH, G. KMETZ, T. FALK, J. FITZPATRICK, B. BARKER, J. KASSMIER, B. PHALEN, S. STEWART PEREGOY, Z. PERRY, L. DEMING, D. BAUM, T. SMITH, N. DURAM

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DRUG CRIME SENTENCES; PROVIDING A MANDATORY MINIMUM FOR CRIMINAL DISTRIBUTION OF FENTANYL; PROVIDING A MANDATORY MINIMUM FOR CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL; REQUIRING THE DEPARTMENT OF JUSTICE TO REPORT CERTAIN INFORMATION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 45-9-101, 45-9-103, AND 46-18-222, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

Section 1. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal distribution of dangerous drugs. (1) Except as provided in Title 16, chapter 12, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchange, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of dangerous drugs involving giving away or sharing any dangerous drug, as defined in 50-32-101, shall be sentenced as provided in 45-9-102.

(3) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (1), (2), (4), or (5), or (6) shall be imprisoned in the state prison for a term not to exceed 25 years or be fined an amount of not more than \$50,000, or both.

(4) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) For a first offense, the person shall be imprisoned in the state prison for a term not to exceed 40 years and may be fined not more than \$50,000.

(b) For a second or subsequent offense, the person shall be imprisoned in the state prison for a term not to exceed life and may be fined not more than \$50,000.

(5) If the offense charged results in the death of an individual from the use of any dangerous drug that was distributed, the person shall be imprisoned in the state prison for a term of not more than 100 years and may be fined not more than \$100,000.

(6) A person convicted of criminal distribution of dangerous drugs that involves distribution of fentanyl, carfentanil, sufentanil, alfentanil, or a fentanyl derivative, and who possessed or distributed a mixture containing one or more of these substances in a combined amount greater than 100 pills or a combined weight greater than 10 grams in a form such as a powder, solid, or liquid, inclusive of any additives or cutting agents, shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years or may be fined not more than \$50,000, or both. The court may not suspend execution or defer imposition of the first 2 years of the sentence, except as provided in 46-18-222(1) through (4), and during the first 2 years of imprisonment, the offender is not eligible for parole.

~~(6)~~(7) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 2. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to distribute. (1) Except as provided in Title 16, chapter 12, a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101 ~~[in an amount]~~ in an amount greater than permitted or for which a penalty is not specified under Title 16, chapter 12.

(2) A Except as provided in subsection (3), a person convicted of criminal possession with intent to distribute shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

(3) A person convicted of criminal possession with intent to distribute fentanyl shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years or may be fined not more than \$50,000, or both. The court may not suspend execution or defer imposition of the first 2 years of the sentence, except as provided in 46-18-222(1) through (4), and during the first 2 years of imprisonment, the offender is not eligible for parole.

(3)(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 3. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 45-9-101(6), 45-9-103(3), 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4), 45-9-101(6), and 45-9-103(3) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual

1 element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the
2 commission of the offense; or

3 (6) the offense was committed under 45-5-502(3), 45-5-508, 45-5-601(3), 45-5-602(3), or 45-5-
4 603(2)(b) and the judge determines, based on the findings contained in a psychosexual evaluation report
5 prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the
6 offender while incarcerated, while in a residential treatment facility, or while in a local community affords a
7 better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in
8 which case the judge shall include in its judgment a statement of the reasons for its determination."
9

10 **NEW SECTION. Section 4. Fentanyl mandatory minimum report.** Pursuant to the attorney
11 general's duty provided in 2-15-501(5) to exercise supervisory control over the county attorneys and to require
12 of them reports as to the public business entrusted to their charge, beginning on September 1, 2024, the
13 attorney general shall report annually on September 1 to the law and justice interim committee and the judicial
14 branch, law enforcement, and justice budget committee in accordance with 5-11-210 on the number of times a
15 court imposed a mandatory minimum required by 45-9-101(6) or 45-9-103(3) in the previous fiscal year.
16

17 **NEW SECTION. Section 5. Appropriation.** There is appropriated \$50,000 from the general fund to
18 the department of justice for the fiscal year beginning July 1, 2024, for the purpose of implementing the
19 reporting requirement provided in [section 4].
20

21 **NEW SECTION. Section 6. Codification instruction.** [Section 4] is intended to be codified as an
22 integral part of Title 2, chapter 15, part 5, and the provisions of Title 2, chapter 15, part 5, apply to [section 4].
23

24 **NEW SECTION. Section 7. Effective date.** (1) Except as provided in subsection (2), [this act] is
25 effective October 1, 2023.

26 (2) [Section 5] and this section are effective July 1, 2023.
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28 **NEW SECTION. Section 8. Applicability.** [This act] applies to offenses committed on or after

Amendment - 2nd Reading-yellow - Requested by: Bill Mercer - (H) Committee of the Whole

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0791.001.001

1 October 1, 2023 ~~[the effective date of this act].~~

2 - END -

AMENDED