

HOUSE BILL NO. 272

INTRODUCED BY BRADLEY, LEE, MENAHAN,
STRIZICH, WANZENRIED, J. RICE, FAGG

IN THE HOUSE

JANUARY 19, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

 FIRST READING.

JANUARY 30, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 31, 1991 PRINTING REPORT.

FEBRUARY 1, 1991 SECOND READING, DO PASS.

FEBRUARY 2, 1991 ENGROSSING REPORT.

FEBRUARY 4, 1991 THIRD READING, PASSED.
AYES, 100; NOES, 0.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

 FIRST READING.

MARCH 19, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 20, 1991 ON MOTION, CONSIDERATION PASSED
UNTIL THE 61ST LEGISLATIVE DAY.

MARCH 22, 1991 ON MOTION, CONSIDERATION PASSED
UNTIL THE 63RD LEGISLATIVE DAY.

MARCH 23, 1991 SECOND READING, CONCURRED IN AS
AMENDED.

 ON MOTION TAKEN FROM THIRD READING
AND REREFERRED TO COMMITTEE ON
FINANCE AND CLAIMS.

MARCH 27, 1991 COMMITTEE RECOMMEND BILL BE

CONCURRED IN. REPORT ADOPTED.

APRIL 3, 1991

SECOND READING, CONCURRED IN.

APRIL 4, 1991

THIRD READING, CONCURRED IN.
AYES, 47; NOES, 3.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. *272*

INTRODUCED BY *Bradley Lee Menahan* ~~AT~~ ~~INTRODUCED~~

Alice Jagg

1 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
 2 COMMUNITY CORRECTIONS ACT; AUTHORIZING LOCAL GOVERNMENTS AND
 3 PRIVATE AGENCIES TO ESTABLISH AND OPERATE COMMUNITY
 4 CORRECTIONS FACILITIES AND PROGRAMS; PROVIDING FOR CREATION
 5 OF COMMUNITY CORRECTIONS BOARDS; ALLOWING SENTENCING COURTS
 6 TO SENTENCE NONVIOLENT FELONY OFFENDERS TO A COMMUNITY
 7 CORRECTIONS FACILITY OR PROGRAM; GRANTING THE DEPARTMENT OF
 8 INSTITUTIONS AUTHORITY TO ADOPT RULES GOVERNING OPERATION OF
 9 COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; ESTABLISHING
 10 PENALTIES FOR OFFENDERS WHO ESCAPE FROM COMMUNITY
 11 CORRECTIONS FACILITIES; AUTHORIZING PLACEMENT OF OFFENDERS
 12 IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM AS A
 13 CONDITION OF THE DEFERRED IMPOSITION OR SUSPENDED EXECUTION
 14 OF SENTENCES; AMENDING SECTIONS 45-7-306 AND 46-18-201, MCA;
 15 AND PROVIDING AN EFFECTIVE DATE."

16 WHEREAS, Article II, section 28, of the Montana
 17 Constitution requires that laws for the punishment of crime
 18 must be founded on the principles of prevention and
 19 reformation; and

20 WHEREAS, it is the state's policy that persons convicted
 21 of crime should be treated in accordance with their

1 individual characteristics, circumstances, needs, and
 2 potentialities; and

3 WHEREAS, the existing state corrections system offers
 4 few alternatives to imprisonment for offenders who have been
 5 convicted of a nonviolent felony offense; and

6 WHEREAS, community corrections programs provide an
 7 alternative to imprisonment that is of value both to society
 8 and to the individual because such programs provide
 9 offenders opportunities to overcome alcohol and drug
 10 problems, to obtain employment or become involved in an
 11 educational or vocational program, to learn life skills, or
 12 to be engaged in other activities that will reduce the
 13 recidivism of offenders and enable them to be productive
 14 members of society; and

15 WHEREAS, community corrections programs are desirable
 16 because such programs cost substantially less compared to
 17 the costs of imprisonment in the Montana State Prison.

18 THEREFORE, the Legislature of the State of Montana finds
 19 it appropriate to enact legislation to establish community
 20 corrections facilities and programs for the placement and
 21 treatment of nonviolent felony offenders.

STATEMENT OF INTENT

22 A statement of intent is required for this bill because
 23 [section 9] grants the department of institutions authority



1 to adopt rules necessary to carry out the provisions of
2 [sections 1 through 14].

3 It is the intent of the legislature that the department
4 adopt regulations and standards for the operation of
5 community corrections facilities and programs. In adopting
6 rules, the department shall comply with the requirements
7 established under [section 9]. In addition, the department
8 should consider the goals of [sections 1 through 14], which
9 are:

10 (1) to reduce reliance upon the Montana state prison
11 for detention of low-risk, nonviolent felony offenders;

12 (2) to increase services to offenders to help them
13 become productive members of society;

14 (3) to require offenders to pay restitution to crime
15 victims;

16 (4) to impose upon offenders responsibility for payment
17 of a portion of the costs of their room and board at
18 community corrections facilities or programs;

19 (5) to decentralize authority for corrections programs
20 from state government to local governments;

21 (6) to stimulate local participation in the
22 establishment of community corrections facilities and
23 programs;

24 (7) to reduce the long-term costs of state corrections;
25 and

1 (8) to reduce court commitments to the state prison,
2 thereby reducing the long-term capital construction costs
3 for the Montana state prison and other corrections
4 facilities.

5 To ensure the success of the community corrections
6 program, the department, when contracting for services,
7 should consider a potential service provider's knowledge,
8 background, and special expertise in the area of
9 postconviction diversion community corrections programs.

10 Prior to adopting rules, the department should examine
11 community corrections programs established in other states,
12 especially in the states of Colorado, Iowa, Minnesota,
13 Oregon, and Wyoming. In addition, the comments of potential
14 service providers should be encouraged during the rulemaking
15 process.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. **Section 1.** Short title. [Sections 1
19 through 14] may be cited as the "Montana Community
20 Corrections Act".

21 NEW SECTION. **Section 2.** Purpose. It is the purpose of
22 [sections 1 through 14] to:

23 (1) encourage the development of community corrections
24 facilities and programs by units of local government and
25 nongovernmental agencies;

1 (2) reduce court commitments to the state penitentiary
2 through diversion of low-risk, nonviolent felony offenders
3 to community corrections facilities and programs;

4 (3) provide a procedure by which units of local
5 government and nongovernmental agencies may provide
6 corrections services to the sentencing courts; and

7 (4) include citizen participation in the policymaking
8 and program planning related to community corrections
9 facilities and programs through the formation of local
10 community corrections boards.

11 NEW SECTION. Section 3. Definitions. As used in
12 [sections 1 through 14], unless the context requires
13 otherwise, the following definitions apply:

14 (1) "Community corrections board" means a community
15 corrections board as provided in [section 5].

16 (2) "Community corrections facility or program" means a
17 community-based or community-oriented facility or program,
18 other than a jail, that:

19 (a) is operated by a unit of local government or a
20 nongovernmental agency; and

21 (b) provides programs and services to aid offenders in:

22 (i) obtaining and holding regular employment;

23 (ii) enrolling in and maintaining academic courses;

24 (iii) participating in vocational training programs;

25 (iv) utilizing the resources of the community to meet

1 their personal and family needs;

2 (v) obtaining the benefits of specialized treatment
3 services that exist within the community; and

4 (vi) paying restitution or performing community
5 restitution to crime victims.

6 (3) "Crime of violence" means:

7 (a) a crime in which an offender uses or possesses and
8 threatens the use of a deadly weapon during the commission
9 or attempted commission of a crime, including felony
10 assault, kidnapping, aggravated kidnapping, robbery, arson,
11 burglary, aggravated burglary, escape, or intimidation;

12 (b) a crime in which the offender causes serious bodily
13 injury or death to a person other than himself or a
14 participant during the commission or attempted commission of
15 a crime; or

16 (c) any sexual offense in which the offender causes
17 bodily injury to the victim or uses threat, intimidation, or
18 force against the victim.

19 (4) "Department" means the department of institutions
20 created in 2-15-2301.

21 (5) "Nongovernmental agency" means a person, private
22 nonprofit agency, corporation, association, labor
23 organization, or other nongovernmental entity.

24 (6) "Offender" means a person who has entered a plea of
25 guilty or has been convicted of a felony. The term excludes

1 a person who has committed a crime of violence.

2 (7) "Unit of local government" means a county, city,
3 town, or city-county consolidated government.

4 NEW SECTION. Section 4. Community corrections
5 facilities and programs operated by units of local
6 government. (1) A unit of local government may establish,
7 maintain, and operate any community corrections facilities
8 and programs that it considers necessary to serve its own
9 needs or the needs of offenders who are sentenced to the
10 facility or program by a judge as provided in [section 8].

11 (2) A unit of local government may enter into a
12 contract or agreement with the department for the purpose of
13 providing community corrections facilities and programs for
14 offenders.

15 NEW SECTION. Section 5. Creation of community
16 corrections boards -- membership -- appointment -- terms --
17 compensation. (1) A unit of local government or the
18 governing bodies of two or more units of local government
19 may establish a community corrections board.

20 (2) A community corrections board consists of nine
21 members who must be appointed as follows:

- 22 (a) one local law enforcement officer;
- 23 (b) one county attorney;
- 24 (c) one district court judge;
- 25 (d) one probation and parole officer;

1 (e) one local private employer or representative of the
2 department of labor and industry;

3 (f) one mental health professional;

4 (g) one person representing local drug and alcohol
5 treatment programs; and

6 (h) two members of the public.

7 (3) Members of a community corrections board must be
8 nominated by representatives of units of local government
9 and appointed by the district court judges in the judicial
10 district in which community corrections facilities or
11 programs are established.

12 (4) Members of a community corrections board shall
13 serve for a term of 4 years.

14 (5) Members of a community corrections board shall
15 serve without compensation except as otherwise decided by
16 the units of local government.

17 NEW SECTION. Section 6. Powers and duties of community
18 corrections boards. (1) A community corrections board may
19 establish and enforce standards for:

20 (a) the operation of community corrections facilities
21 and programs operated by the unit of local government served
22 by the community corrections board; and

23 (b) the conduct of offenders placed in local community
24 corrections facilities and programs.

25 (2) The community corrections board, together with the

1 department and the judicial district, shall establish
2 procedures for screening offenders who are to be placed in
3 the community corrections facility or program. The screening
4 must take into account the aptitude, attitude, and social
5 and occupational skills of the offender and the risk of harm
6 the offender may present to himself and others.

7 (3) A community corrections board may accept, reject,
8 or reject after acceptance the placement of any offender in
9 the community corrections facility or program. If an
10 offender is rejected by the community corrections board
11 after initial acceptance, the offender must be remanded to
12 the custody of the sheriff of the county in which the
13 facility or program is located. The community corrections
14 board shall notify in writing the sentencing judge who,
15 after considering the board's reasons for rejection, shall
16 appropriately modify the sentencing order.

17 NEW SECTION. Section 7. Community corrections
18 facilities and programs operated by nongovernmental
19 agencies. (1) Except as provided in subsection (2), a
20 nongovernmental agency may establish, maintain, and operate
21 a community corrections facility or program to serve the
22 needs of offenders who are sentenced to the facility or
23 program by a judge as provided in [section 8].

24 (2) A nongovernmental agency may not establish a
25 community corrections facility or program unless approved by

1 the local community corrections board in a local government
2 that has established a community corrections board.

3 (3) A nongovernmental agency may enter into a contract
4 or agreement with the department for the purpose of
5 providing community corrections facilities or programs for
6 offenders. The contract or agreement must provide for strict
7 accountability procedures and practices for the conduct and
8 supervision of offenders assigned or sentenced to a facility
9 or program operated by a nongovernmental agency.

10 (4) A nongovernmental agency operating a community
11 corrections facility or program may accept, reject, or
12 reject after acceptance the placement of any offender in the
13 facility or program pursuant to a contract or agreement with
14 a unit of local government or a judicial district. If an
15 offender is rejected by the nongovernmental agency after
16 initial acceptance and the offender is a court referral, the
17 offender must be remanded to the custody of the sheriff of
18 the county in which the facility or program is located. The
19 nongovernmental agency shall notify in writing the
20 sentencing judge who, after considering the agency's reasons
21 for rejection, shall appropriately modify the sentencing
22 order.

23 NEW SECTION. Section 8. Authority of judge to utilize
24 community corrections facilities or programs -- procedure --
25 restrictions. (1) Subject to the restrictions contained in

1 subsection (3), a judge may order placement of a nonviolent
 2 felony offender in a community corrections facility or
 3 program operated by a unit of local government or a
 4 nongovernmental agency. If a judge orders placement of an
 5 offender in a community corrections facility or program, the
 6 judge shall indicate in the sentencing order that the
 7 offender would have been sentenced to prison if the
 8 community corrections facility or program had not been
 9 available.

10 (2) Placement of an offender in a community corrections
 11 facility or program may be ordered only if:

12 (a) the community corrections facility or program is
 13 operated by a unit of local government or a nongovernmental
 14 agency that has entered into a contract or agreement with
 15 the department to provide community corrections services for
 16 offenders; and

17 (b) funding for the placement is available.

18 (3) A judge may not order placement of an offender in a
 19 residential community corrections facility or program for a
 20 period exceeding 1 year. After completing the residential
 21 community corrections portion of his sentence, an offender
 22 shall serve the remainder of his sentence under normal
 23 probation supervision, if applicable.

24 (4) An offender is not eligible for parole while
 25 serving a sentence in a community corrections facility or

1 program.

2 (5) The probation and parole officers for the judicial
 3 district shall include in their presentence report to the
 4 sentencing judge recommendations for utilization of a
 5 community correctional facility or program that has been
 6 approved for use by the judicial district.

7 NEW SECTION. **Section 9.** Powers and responsibilities of
 8 department -- rulemaking authority. The department shall:

9 (1) with the active and full participation of the local
 10 community corrections board, establish minimum standards for
 11 the operation of community corrections facilities and
 12 programs operated by a unit of local government or a
 13 nongovernmental agency that has entered into a contract or
 14 agreement with the department to provide services for
 15 offenders;

16 (2) review and evaluate all community corrections
 17 facilities and programs established under [sections 1
 18 through 14], subject to the requirements established in
 19 [section 13];

20 (3) prescribe accounting and reporting standards for
 21 all units of local government and nongovernmental agencies
 22 that have entered into a contract or agreement with the
 23 department;

24 (4) reimburse units of local government or
 25 nongovernmental agencies for community correctional services

1 at a rate to be negotiated by the department;

2 (5) adopt rules necessary to carry out the provisions
3 of [sections 1 through 14].

4 NEW SECTION. Section 10. Offender payments. (1) An
5 offender placed in a community corrections facility or
6 program under [sections 1 through 14] shall execute a
7 written contract or agreement with the director of the
8 facility or program, setting forth the terms and conditions
9 for placement in the facility or program. The contract or
10 agreement may provide that a portion of any money received
11 from employment of the offender be set aside for payment of
12 the following expenses in order of the priority in which
13 they appear below:

14 (a) reimbursement to the community corrections facility
15 or program for a portion of the cost of the room and board
16 provided at the facility or program. The reimbursement rate
17 must be reasonable, based on the offender's employment
18 status and other financial obligations. However, the charges
19 for room and board may not exceed 20% of the offender's net
20 employment income.

21 (b) victim restitution ordered by the sentencing court,
22 which may not exceed 20% of the offender's net employment
23 income;

24 (c) deposits to a savings account or fund to be used by
25 the offender for general living expenses following his

1 release from the community corrections facility or program;
2 and

3 (d) payment of family support.

4 (2) In a community corrections facility or program, the
5 offender has the primary obligation to obtain employment,
6 but the department of labor and industry shall provide
7 assistance to the offender in obtaining suitable employment.

8 NEW SECTION. Section 11. Good time allowance. If an
9 offender successfully completes the residential community
10 corrections portion of his sentence, he accrues a good time
11 allowance at a rate of 1 day of good time for each day
12 served in the facility or program. The good time allowance
13 operates as a credit on the remainder of his sentence.

14 NEW SECTION. Section 12. Technical assistance and
15 training. The department shall contract with qualified
16 community corrections specialists to provide necessary
17 technical assistance and training to judicial districts and
18 corrections boards.

19 NEW SECTION. Section 13. Report to legislature. No
20 later than January 30, 1993, the department shall submit to
21 the legislature a report describing:

22 (1) the number of community corrections facilities and
23 programs that have been established;

24 (2) the number and type of court-referred offenders
25 assigned to community corrections facilities and programs;

1 (3) the number and type of department-referred
2 offenders assigned to community based prerelease centers;

3 (4) the extent to which offenders have received and
4 benefited from educational or job training programs related
5 to rehabilitation;

6 (5) the rate of reconviction of community corrections
7 program participants as compared to the reconviction rate
8 for similar offenders sentenced to the state penitentiary;

9 (6) the amount of taxes, restitution, and room and
10 board fees paid by offenders assigned to community
11 corrections facilities and programs; and

12 (7) the number of court-referred offenders who, in the
13 absence of community corrections facilities and programs,
14 would have been sentenced to the custody of the department.

15 NEW SECTION. **Section 14.** Escape from custody. An
16 offender is guilty of escape from official detention and
17 shall be punished as provided in 45-7-306 if, without proper
18 authorization, he:

19 (1) fails to remain within the extended limits of his
20 confinement or fails to return within the time specified to
21 a community corrections facility or program to which he has
22 been assigned, sentenced, or transferred; or

23 (2) leaves his place of employment or neglects or fails
24 to return to the community corrections facility or program
25 after being specifically ordered to do so.

1 **Section 15.** Section 45-7-306, MCA, is amended to read:

2 "45-7-306. Escape. (1) "Official detention" means
3 imprisonment which resulted from a conviction for an
4 offense, confinement for an offense, confinement of a person
5 charged with an offense, detention by a peace officer
6 pursuant to arrest, detention for extradition or
7 deportation, placement in a community corrections facility
8 or program, supervision while under a supervised release
9 program, participation in a county jail work program under
10 7-32-2225 through 7-32-2227, or any lawful detention for the
11 purpose of the protection of the welfare of the person
12 detained or for the protection of society. "Official
13 detention" does not include supervision of probation or
14 parole, constraint incidental to release on bail, or an
15 unlawful arrest unless the person arrested employed physical
16 force, a threat of physical force, or a weapon to escape.

17 (2) A person subject to official detention commits the
18 offense of escape if he knowingly or purposely removes
19 himself from official detention or fails to return to
20 official detention following temporary leave granted for a
21 specific purpose or limited time. A person also commits the
22 offense of escape if he is participating in a county jail
23 work program under 7-32-2225 through 7-32-2227 and he
24 knowingly or purposely fails to appear for work at a time
25 and place scheduled for participation in the program.

1 (3) A person convicted of the offense of escape shall
2 be:

3 (a) imprisoned in the state prison for a term not to
4 exceed 20 years if he escapes from a state prison, county
5 jail, city jail, community corrections facility or program,
6 or supervised release program by the use or threat of force,
7 physical violence, weapon, or simulated weapon;

8 (b) imprisoned in the state prison for a term not to
9 exceed 10 years if he:

10 (i) escapes from a state prison, county jail, city
11 jail, halfway house, life skills center, community
12 corrections facility or program, or supervised release
13 program; or

14 (ii) escapes from another official detention by the use
15 or threat of force, physical violence, weapon, or simulated
16 weapon; or

17 (c) fined not to exceed \$500 or imprisoned in the
18 county jail for a term not to exceed 6 months, or both, if
19 he commits escape under circumstances other than (a) and (b)
20 of this subsection."

21 **Section 16.** Section 46-18-201, MCA, is amended to read:

22 ***46-18-201. Sentences that may be imposed.** (1) Whenever
23 a person has been found guilty of an offense upon a verdict
24 or a plea of guilty, the court may:

25 (a) defer imposition of sentence, excepting sentences

1 for driving under the influence of alcohol or drugs, for a
2 period, except as otherwise provided, not exceeding 1 year
3 for any misdemeanor or for a period not exceeding 3 years
4 for any felony. The sentencing judge may impose upon the
5 defendant any reasonable restrictions or conditions during
6 the period of the deferred imposition. Reasonable
7 restrictions or conditions may include:

8 (i) jail base release;

9 (ii) jail time not exceeding 180 days;

10 (iii) conditions for probation;

11 (iv) restitution;

12 (v) payment of the costs of confinement;

13 (vi) payment of a fine as provided in 46-18-231;

14 (vii) payment of costs as provided in 46-18-232 and
15 46-18-233;

16 (viii) payment of costs of court appointed counsel as
17 provided in 46-8-113;

18 (ix) placement in a community corrections facility or
19 program as provided in [section 8];

20 ~~(x)~~(x) community service;

21 ~~(xi)~~(xi) any other reasonable conditions considered
22 necessary for rehabilitation or for the protection of
23 society; or

24 ~~(xii)~~(xii) any combination of the above.

25 (b) suspend execution of sentence up to the maximum

1 sentence allowed for each particular offense. The sentencing
 2 judge may impose on the defendant any reasonable
 3 restrictions or conditions during the period of suspended
 4 sentence. Reasonable restrictions or conditions may include
 5 any of those listed in subsections (1)(a)(i) through
 6 (1)(a)~~(xi)~~(xii).

7 (c) impose a fine as provided by law for the offense;

8 (d) require payment of costs as provided in 46-18-232
 9 or payment of costs of court-appointed counsel as provided
 10 in 46-8-113;

11 (e) commit the defendant to a correctional institution,
 12 with or without a fine as provided by law for the offense;

13 (f) order the offender to be placed in a community
 14 corrections facility or program as provided in [section 8];

15 ~~(f)~~(g) impose any combination of subsections (1)(b)
 16 through (1)~~(e)~~(f).

17 (2) If any financial obligation is imposed as a
 18 condition under subsection (1)(a), sentence may be deferred
 19 for a period not exceeding 2 years for any misdemeanor or
 20 for a period not exceeding 6 years for any felony,
 21 regardless of whether any other conditions are imposed.

22 (3) If any restrictions or conditions imposed under
 23 subsection (1)(a) or (1)(b) are violated, the court shall
 24 consider any elapsed time and either expressly allow part or
 25 all of it as a credit against the sentence or reject all or

1 part as a credit and state its reasons in the order. Credit,
 2 however, must be allowed for jail time already served.

3 (4) Except as provided in 46-18-222, the imposition or
 4 execution of the first 2 years of a sentence of imprisonment
 5 imposed under the following sections may not be deferred or
 6 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 7 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
 8 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
 9 45-9-103(2).

10 (5) Except as provided in 46-18-222, the imposition or
 11 execution of the first 10 years of a sentence of
 12 imprisonment imposed under 45-5-102 may not be deferred or
 13 suspended.

14 (6) Except as provided in 46-18-222, imposition of
 15 sentence in a felony case may not be deferred in the case of
 16 a defendant who has been convicted of a felony on a prior
 17 occasion, whether or not the sentence was imposed,
 18 imposition of the sentence was deferred, or execution of the
 19 sentence was suspended.

20 (7) If the victim was less than 16 years old, the
 21 imposition or execution of the first 30 days of a sentence
 22 of imprisonment imposed under 45-5-502(3), 45-5-503,
 23 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
 24 suspended. Section 46-18-222 does not apply to the first 30
 25 days of such imprisonment.

1 (8) In imposing a sentence on a defendant convicted of
2 a sexual offense as defined in 46-23-502, the court may not
3 waive the registration requirement provided in 46-18-254,
4 46-18-255, and Title 46, chapter 23, part 5.

5 (9) A person convicted of a sexual offense, as defined
6 in 46-23-502, and sentenced to imprisonment in the state
7 prison shall enroll in the educational phase of the prison's
8 sexual offender program."

9 NEW SECTION. **Section 17.** Codification instruction.
10 [Sections 1 through 14] are intended to be codified as an
11 integral part of Title 53, chapter 30, and the provisions of
12 Title 53, chapter 30, apply to [sections 1 through 14].

13 NEW SECTION. **Section 18.** Effective date. [This act] is
14 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0272, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

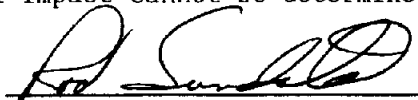
A bill for an act entitled: "An act creating the Montana Community Corrections Act; authorizing local governments and private agencies to establish and operate community corrections facilities and programs; providing for creation of community corrections boards; allowing sentencing courts to sentence nonviolent felony offenders to a community corrections facility or program; granting the Department of Institutions authority to adopt rules governing operation of community corrections facilities and programs; establishing penalties for offenders who escape from community corrections facilities; authorizing placement of offenders in a community corrections facility or program as a condition of the deferred imposition or suspended execution of sentences; amending sections 45-7-306 and 46-18-201, MCA; and providing an effective date."

ASSUMPTIONS:

1. There would be enough first-time low-risk, nonviolent felony offenders to support organization of a few community corrections programs (there were 42 such admissions in FY90 and 9 in FY89).
2. Modifications submitted in the Executive Budget for community corrections increases include: (1) create 25 slots in Great Falls at a general fund cost of \$128,978 in FY92 and \$71,836 in FY93; (2) continue the community service program in Missoula at a cost of \$35,048 in FY92 and \$35,037 in FY93; (3) add a new 25 bed pre-release center and increase 25 beds in existing centers at a general fund cost of \$486,395 in FY92 and \$508,145 in FY93; (4) develop a new contract with non-profit organizations to supervise inmates in house arrest at a general fund cost of \$45,000 each year; (5) expand probation and parole services at a general fund cost of \$132,749 in FY92 and \$136,586 in FY93; (6) increase variable costs at the Billings Life Skills Pre-Release Center at a general fund cost of \$3,110 each year to provide for three additional residents per year; and (7) create a 16-bed women's pre-release center at a general fund cost of \$278,119 in FY92 and \$237,043 in FY93.
3. Current level community services in the Executive Budget are: Intensive Supervision Programs with a capacity of 50 slots at a general fund cost of \$709,992 FY92 and \$506,420 FY93; Swan River Forest Camp at a general fund cost of \$969,941 FY92 and \$961,379 in FY93; five pre-release centers across Montana with a capacity for 120 beds at a general fund cost of \$1,943,543 in FY92 and \$1,945,282 in FY93; and four regional probation and parole offices and 14 district offices with personnel of 43 officers and four supervisors at a general fund cost of \$1,935,000 each year of the biennium.
4. If the modified requests in the Executive Budget are not approved, there may be a need for approximately 119 community corrections slots at a cost of about \$8,033 per offender per year.
5. If the modified recommendations in the Executive Budget are approved, there does not appear to be a need for additional programs in the community because about 10% of the corrections population will be placed in the community. This is 3% over the national average.

FISCAL IMPACT:

Fiscal impact cannot be determined at this time.


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

1-25-91
DATE


DOROTHY BRADLEY, PRIMARY SPONSOR

1-28-91
DATE

Fiscal Note for HB0272, as introduced

HB 272

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 272

INTRODUCED BY BRADLEY, LEE, MFNAHAN,
STRIZICH, WANZENRIED, J. RICE, FAGG

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
COMMUNITY CORRECTIONS ACT; AUTHORIZING LOCAL GOVERNMENTS AND
PRIVATE AGENCIES TO ESTABLISH AND OPERATE COMMUNITY
CORRECTIONS FACILITIES AND PROGRAMS; PROVIDING FOR CREATION
OF COMMUNITY CORRECTIONS BOARDS; ALLOWING SENTENCING COURTS
TO SENTENCE NONVIOLENT FELONY OFFENDERS TO A COMMUNITY
CORRECTIONS FACILITY OR PROGRAM; GRANTING THE DEPARTMENT OF
INSTITUTIONS AUTHORITY TO ADOPT RULES GOVERNING OPERATION OF
COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; ESTABLISHING
PENALTIES FOR OFFENDERS WHO ESCAPE FROM COMMUNITY
CORRECTIONS FACILITIES; AUTHORIZING PLACEMENT OF OFFENDERS
IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM AS A
CONDITION OF THE DEFERRED IMPOSITION OR SUSPENDED EXECUTION
OF SENTENCES; AMENDING SECTIONS 45-7-306 AND 46-18-201, MCA;
AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, Article II, section 28, of the Montana
Constitution requires that laws for the punishment of crime
must be founded on the principles of prevention and
reformation; and

WHEREAS, it is the state's policy that persons convicted

of crime should be treated in accordance with their
individual characteristics, circumstances, needs, and
potentialities; and

WHEREAS, the existing state corrections system offers
few alternatives to imprisonment for offenders who have been
convicted of a nonviolent felony offense; and

WHEREAS, community corrections programs provide an
alternative to imprisonment that is of value both to society
and to the individual because such programs provide
offenders opportunities to overcome alcohol and drug
problems, to obtain employment or become involved in an
educational or vocational program, to learn life skills, or
to be engaged in other activities that will reduce the
recidivism of offenders and enable them to be productive
members of society; and

WHEREAS, community corrections programs are desirable
because such programs cost substantially less compared to
the costs of imprisonment in the Montana State Prison.

THEREFORE, the Legislature of the State of Montana finds
it appropriate to enact legislation to establish community
corrections facilities and programs for the placement and
treatment of nonviolent felony offenders.

STATEMENT OF INTENT

A statement of intent is required for this bill because

SECOND READING



1 [section 9] grants the department of institutions authority
2 to adopt rules necessary to carry out the provisions of
3 [sections 1 through 14].

4 It is the intent of the legislature that the department
5 adopt regulations and standards for the operation of
6 community corrections facilities and programs. In adopting
7 rules, the department shall comply with the requirements
8 established under [section 9]. In addition, the department
9 should consider the goals of [sections 1 through 14], which
10 are:

11 (1) to reduce reliance upon the Montana state prison
12 for detention of low-risk, nonviolent felony offenders;

13 (2) to increase services to offenders to help them
14 become productive members of society;

15 (3) to require offenders to pay restitution to crime
16 victims;

17 (4) to impose upon offenders responsibility for payment
18 of a portion of the costs of their room and board at
19 community corrections facilities or programs;

20 (5) to decentralize authority for corrections programs
21 from state government to local governments;

22 (6) to stimulate local participation in the
23 establishment of community corrections facilities and
24 programs;

25 (7) to reduce the long-term costs of state corrections;

1 and

2 (8) to reduce court commitments to the state prison,
3 thereby reducing the long-term capital construction costs
4 for the Montana state prison and other corrections
5 facilities.

6 To ensure the success of the community corrections
7 program, the department, when contracting for services,
8 should consider a potential service provider's knowledge,
9 background, and special expertise in the area of
10 postconviction diversion community corrections programs.

11 Prior to adopting rules, the department should examine
12 community corrections programs established in other states,
13 especially in the states of Colorado, Iowa, Minnesota,
14 Oregon, and Wyoming. In addition, the comments of potential
15 service providers should be encouraged during the rulemaking
16 process.

17

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

19 NEW SECTION. **Section 1.** Short title. [Sections 1
20 through 14] may be cited as the "Montana Community
21 Corrections Act".

22 NEW SECTION. **Section 2.** Purpose. It is the purpose of
23 [sections 1 through 14] to:

24 (1) encourage the development of community corrections
25 facilities and programs by units of local government and

- 1 nongovernmental agencies;
- 2 (2) reduce court commitments to the state penitentiary
- 3 through diversion of low-risk, nonviolent felony offenders
- 4 to community corrections facilities and programs;
- 5 (3) provide a procedure by which units of local
- 6 government and nongovernmental agencies may provide
- 7 corrections services to the sentencing courts; and
- 8 (4) include citizen participation in the policymaking
- 9 and program planning related to community corrections
- 10 facilities and programs through the formation of local
- 11 community corrections boards.

12 NEW SECTION. **Section 3. Definitions.** As used in
 13 [sections 1 through 14], unless the context requires
 14 otherwise, the following definitions apply:

- 15 (1) "Community corrections board" means a community
- 16 corrections board as provided in [section 5].
- 17 (2) "Community corrections facility or program" means a
- 18 community-based or community-oriented facility or program,
- 19 other than a jail, that:
- 20 (a) is operated by a unit of local government or a
- 21 nongovernmental agency; and
- 22 (b) provides programs and services to aid offenders in:
- 23 (i) obtaining and holding regular employment;
- 24 (ii) enrolling in and maintaining academic courses;
- 25 (iii) participating in vocational training programs;

- 1 (iv) utilizing the resources of the community to meet
- 2 their personal and family needs;
- 3 (v) obtaining the benefits of specialized treatment
- 4 services that exist within the community; and
- 5 (vi) paying restitution or performing community
- 6 restitution to crime victims.

7 (3) "Crime of violence" means:

- 8 (a) a-crime AN OFFENSE in which an offender uses or
- 9 possesses and threatens the use of a deadly weapon during
- 10 the commission or attempted commission of a--crime AN
- 11 OFFENSE, including felony assault, kidnapping, aggravated
- 12 kidnapping, robbery, arson, burglary, aggravated burglary,
- 13 escape, or intimidation;

- 14 (b) a-crime AN OFFENSE, OTHER THAN AN OFFENSE IN WHICH
- 15 NEGLIGENCE IS AN ELEMENT OF THE OFFENSE, in which the
- 16 offender causes serious bodily injury or death to a person
- 17 other than himself or a participant during the commission or
- 18 attempted commission of a-crime AN OFFENSE; or

- 19 (c) any sexual offense in which the offender causes
- 20 bodily injury to the victim or uses threat, intimidation, or
- 21 force against the victim.

22 (4) "Department" means the department of institutions
 23 created in 2-15-2301.

24 (5) "Nongovernmental agency" means a person, private
 25 nonprofit agency, corporation, association, labor

1 organization, or other nongovernmental entity.

2 (6) "Offender" means a person who has entered a plea of
3 guilty or has been convicted of a felony. The term excludes
4 a person who has committed a crime of violence.

5 (7) "Unit of local government" means a county, city,
6 town, or city-county consolidated government.

7 NEW SECTION. Section 4. Community corrections
8 facilities and programs operated by units of local
9 government. (1) A unit of local government may establish,
10 maintain, and operate any community corrections facilities
11 and programs that it considers necessary to serve its own
12 needs or the needs of offenders who are sentenced to the
13 facility or program by a judge as provided in [section 8].

14 (2) A unit of local government may enter into a
15 contract or agreement with the department for the purpose of
16 providing community corrections facilities and programs for
17 offenders.

18 NEW SECTION. Section 5. Creation of community
19 corrections boards -- membership -- appointment -- terms --
20 compensation. (1) A unit of local government or the
21 governing bodies of two or more units of local government
22 may establish a community corrections board.

23 (2) A community corrections board consists of nine
24 members who, MUST, WHEN POSSIBLE, BE GENDER-BALANCED AND
25 HAVE RACIAL PARITY, AND must be appointed as follows:

- 1 (a) one local law enforcement officer;
- 2 (b) one county attorney;
- 3 (c) one district court judge;
- 4 (d) one probation and parole officer;
- 5 (e) one local private employer or representative of the
- 6 department of labor and industry;
- 7 (f) one mental health professional;
- 8 (g) one person representing local drug and alcohol
- 9 treatment programs; and
- 10 (h) two members of the public.

11 (3) Members of a community corrections board must be
12 nominated by representatives of units of local government
13 and appointed by the district court judges in the judicial
14 district in which community corrections facilities or
15 programs are established.

16 (4) Members of a community corrections board shall
17 serve for a term of 4 years.

18 (5) Members of a community corrections board shall
19 serve without compensation except as otherwise decided by
20 the units of local government.

21 NEW SECTION. Section 6. Powers and duties of community
22 corrections boards. (1) A community corrections board may
23 establish and enforce standards for:

- 24 (a) the operation of community corrections facilities
- 25 and programs operated by the unit of local government served

1 by the community corrections board; and

2 (b) the conduct of offenders placed in local community
3 corrections facilities and programs.

4 (2) The community corrections board, together with the
5 department and the judicial district, shall establish
6 procedures for screening offenders who are to be placed in
7 the community corrections facility or program. The screening
8 must take into account the aptitude, attitude, and social
9 and occupational skills of the offender and the risk of harm
10 the offender may present to himself and others.

11 (3) A community corrections board may accept, reject,
12 or reject after acceptance the placement of any offender in
13 the community corrections facility or program. If an
14 offender is rejected by the community corrections board
15 after initial acceptance, the offender must be remanded to
16 the custody of the sheriff of the county in which the
17 facility or program is located. The community corrections
18 board shall notify in writing the sentencing judge who,
19 after considering the board's reasons for rejection, shall
20 appropriately modify the sentencing order.

21 NEW SECTION. **Section 7.** Community corrections
22 facilities and programs operated by nongovernmental
23 agencies. (1) Except as provided in subsection (2), a
24 nongovernmental agency may establish, maintain, and operate
25 a community corrections facility or program to serve the

1 needs of offenders who are sentenced to the facility or
2 program by a judge as provided in [section 8].

3 (2) A nongovernmental agency may not establish a
4 community corrections facility or program unless approved by
5 the local community corrections board in a local government
6 that has established a community corrections board.

7 (3) A nongovernmental agency may enter into a contract
8 or agreement with the department for the purpose of
9 providing community corrections facilities or programs for
10 offenders. The contract or agreement must provide for strict
11 accountability procedures and practices for the conduct and
12 supervision of offenders assigned or sentenced to a facility
13 or program operated by a nongovernmental agency.

14 (4) A nongovernmental agency operating a community
15 corrections facility or program may accept, reject, or
16 reject after acceptance the placement of any offender in the
17 facility or program pursuant to a contract or agreement with
18 a unit of local government or a judicial district. If an
19 offender is rejected by the nongovernmental agency after
20 initial acceptance and the offender is a court referral, the
21 offender must be remanded to the custody of the sheriff of
22 the county in which the facility or program is located. The
23 nongovernmental agency shall notify in writing the
24 sentencing judge who, after considering the agency's reasons
25 for rejection, shall appropriately modify the sentencing

1 order.

2 NEW SECTION. Section 8. Authority of judge to utilize
 3 community corrections facilities or programs -- procedure --
 4 restrictions. (1) Subject to the restrictions contained in
 5 subsection (3), a judge may order placement of a nonviolent
 6 felony offender in a community corrections facility or
 7 program operated by a unit of local government or a
 8 nongovernmental agency. If a judge orders placement of an
 9 offender in a community corrections facility or program, the
 10 judge shall indicate in the sentencing order that the
 11 offender would have been sentenced to prison if the
 12 community corrections facility or program had not been
 13 available.

14 (2) Placement of an offender in a community corrections
15 facility or program may be ordered only if:

16 (a) the community corrections facility or program is
 17 operated by a unit of local government or a nongovernmental
 18 agency that has entered into a contract or agreement with
 19 the department to provide community corrections services for
 20 offenders; and

21 (b) funding for the placement is available.

22 (3) A judge may not order placement of an offender in a
 23 residential community corrections facility or program for a
 24 period exceeding 1 year. After completing the residential
 25 community corrections portion of his sentence, an offender

1 shall serve the remainder of his sentence under normal
2 probation supervision, if applicable.

3 (4) An offender is not eligible for parole while
4 serving a sentence in a community corrections facility or
5 program.

6 (5) The probation and parole officers for the judicial
 7 district shall include in their presentence report to the
 8 sentencing judge recommendations for utilization of a
 9 community correctional facility or program that has been
 10 approved for use by the judicial district.

11 NEW SECTION. Section 9. Powers and responsibilities of
 12 department -- rulemaking authority. The department shall:

13 (1) with the active and full participation of the local
 14 community corrections board, establish minimum standards for
 15 the operation of community corrections facilities and
 16 programs operated by a unit of local government or a
 17 nongovernmental agency that has entered into a contract or
 18 agreement with the department to provide services for
 19 offenders;

20 (2) review and evaluate all community corrections
 21 facilities and programs established under [sections 1
 22 through 14], subject to the requirements established in
 23 [section 13];

24 (3) prescribe accounting and reporting standards for
25 all units of local government and nongovernmental agencies.

1 that have entered into a contract or agreement with the
2 department;

3 (4) reimburse units of local government or
4 nongovernmental agencies for community correctional services
5 at a rate to be negotiated by the department;

6 (5) adopt rules necessary to carry out the provisions
7 of [sections 1 through 14].

8 NEW SECTION. Section 10. Offender payments. (1) An
9 offender placed in a community corrections facility or
10 program under [sections 1 through 14] shall execute a
11 written contract or agreement with the director of the
12 facility or program, setting forth the terms and conditions
13 for placement in the facility or program. The contract or
14 agreement may provide that a portion of any money received
15 from employment of the offender be set aside for payment of
16 the following expenses in order of the priority in which
17 they appear below:

18 (a) reimbursement to the community corrections facility
19 or program for a portion of the cost of the room and board
20 provided at the facility or program. The reimbursement rate
21 must be reasonable, based on the offender's employment
22 status and other financial obligations. However, the charges
23 for room and board may not exceed 20% of the offender's net
24 employment income.

25 (b) victim restitution ordered by the sentencing court,

1 which may not exceed 20% of the offender's net employment
2 income;

3 (c) deposits to a savings account or fund to be used by
4 the offender for general living expenses following his
5 release from the community corrections facility or program;
6 and

7 (d) payment of family support.

8 (2) In a community corrections facility or program, the
9 offender has the primary obligation to obtain employment,
10 but the department of labor and industry shall provide
11 assistance to the offender in obtaining suitable employment.

12 NEW SECTION. Section 11. Good time allowance. If an
13 offender successfully completes the residential community
14 corrections portion of his sentence, he accrues a good time
15 allowance at a rate of 1 day of good time for each day
16 served in the facility or program. The good time allowance
17 operates as a credit on the remainder of his sentence.

18 NEW SECTION. Section 12. Technical assistance and
19 training. The department shall contract with qualified
20 community corrections specialists to provide necessary
21 technical assistance and training to judicial districts and
22 corrections boards.

23 NEW SECTION. Section 13. Report to legislatur.. No
24 later than January 30, 1993, the department shall submit to
25 the legislature a report describing:

1 (1) the number of community corrections facilities and
2 programs that have been established;

3 (2) the number and type of court-referred offenders
4 assigned to community corrections facilities and programs;

5 (3) the number and type of department-referred
6 offenders assigned to community based prerelease centers;

7 (4) the extent to which offenders have received and
8 benefited from educational or job training programs related
9 to rehabilitation;

10 (5) the rate of reconviction of community corrections
11 program participants as compared to the reconviction rate
12 for similar offenders sentenced to the state penitentiary;

13 (6) the amount of taxes, restitution, and room and
14 board fees paid by offenders assigned to community
15 corrections facilities and programs; and

16 (7) the number of court-referred offenders who, in the
17 absence of community corrections facilities and programs,
18 would have been sentenced to the custody of the department.

19 NEW SECTION. **Section 14.** Escape from custody. An
20 offender is guilty of escape from official detention and
21 shall be punished as provided in 45-7-306 if, without proper
22 authorization, he:

23 (1) fails to remain within the extended limits of his
24 confinement or fails to return within the time specified to
25 a community corrections facility or program to which he has

1 been assigned, sentenced, or transferred; or

2 (2) leaves his place of employment or neglects or fails
3 to return to the community corrections facility or program
4 after being specifically ordered to do so.

5 **Section 15.** Section 45-7-306, MCA, is amended to read:

6 "45-7-306. **Escape.** (1) "Official detention" means
7 imprisonment which resulted from a conviction for an
8 offense, confinement for an offense, confinement of a person
9 charged with an offense, detention by a peace officer
10 pursuant to arrest, detention for extradition or
11 deportation, placement in a community corrections facility
12 or program, supervision while under a supervised release
13 program, participation in a county jail work program under
14 7-32-2225 through 7-32-2227, or any lawful detention for the
15 purpose of the protection of the welfare of the person
16 detained or for the protection of society. "Official
17 detention" does not include supervision of probation or
18 parole, constraint incidental to release on bail, or an
19 unlawful arrest unless the person arrested employed physical
20 force, a threat of physical force, or a weapon to escape.

21 (2) A person subject to official detention commits the
22 offense of escape if he knowingly or purposely removes
23 himself from official detention or fails to return to
24 official detention following temporary leave granted for a
25 specific purpose or limited time. A person also commits the

1 offense of escape if he is participating in a county jail
2 work program under 7-32-2225 through 7-32-2227 and he
3 knowingly or purposely fails to appear for work at a time
4 and place scheduled for participation in the program.

5 (3) A person convicted of the offense of escape shall
6 be:

7 (a) imprisoned in the state prison for a term not to
8 exceed 20 years if he escapes from a state prison, county
9 jail, city jail, community corrections facility or program,
10 or supervised release program by the use or threat of force,
11 physical violence, weapon, or simulated weapon;

12 (b) imprisoned in the state prison for a term not to
13 exceed 10 years if he:

14 (i) escapes from a state prison, county jail, city
15 jail, halfway house, life skills center, community
16 corrections facility or program, or supervised release
17 program; or

18 (ii) escapes from another official detention by the use
19 or threat of force, physical violence, weapon, or simulated
20 weapon; or

21 (c) fined not to exceed \$500 or imprisoned in the
22 county jail for a term not to exceed 6 months, or both, if
23 he commits escape under circumstances other than (a) and (b)
24 of this subsection."

25 **Section 16.** Section 46-18-201, MCA, is amended to read:

1 "46-18-201. Sentences that may be imposed. (1) Whenever
2 a person has been found guilty of an offense upon a verdict
3 or a plea of guilty, the court may:

4 (a) defer imposition of sentence, excepting sentences
5 for driving under the influence of alcohol or drugs, for a
6 period, except as otherwise provided, not exceeding 1 year
7 for any misdemeanor or for a period not exceeding 3 years
8 for any felony. The sentencing judge may impose upon the
9 defendant any reasonable restrictions or conditions during
10 the period of the deferred imposition. Reasonable
11 restrictions or conditions may include:

12 (i) jail base release;
13 (ii) jail time not exceeding 180 days;
14 (iii) conditions for probation;
15 (iv) restitution;
16 (v) payment of the costs of confinement;
17 (vi) payment of a fine as provided in 46-18-231;
18 (vii) payment of costs as provided in 46-18-232 and
19 46-18-233;

20 (viii) payment of costs of court appointed counsel as
21 provided in 46-8-113;

22 (ix) placement in a community corrections facility or
23 program as provided in [section 8];

24 ~~(ix)~~(x) community service;

25 ~~(x)~~(xi) any other reasonable conditions considered

1 necessary for rehabilitation or for the protection of
2 society; or

3 ~~(x*)~~(xii) any combination of the above.

4 (b) suspend execution of sentence up to the maximum
5 sentence allowed for each particular offense. The sentencing
6 judge may impose on the defendant any reasonable
7 restrictions or conditions during the period of suspended
8 sentence. Reasonable restrictions or conditions may include
9 any of those listed in subsections (1)(a)(i) through
10 (1)(a)~~(x*)~~(xii).

11 (c) impose a fine as provided by law for the offense;

12 (d) require payment of costs as provided in 46-18-232
13 or payment of costs of court-appointed counsel as provided
14 in 46-8-113;

15 (e) commit the defendant to a correctional institution,
16 with or without a fine as provided by law for the offense;

17 (f) order the offender to be placed in a community
18 corrections facility or program as provided in [section 8];

19 ~~(f)~~(g) impose any combination of subsections (1)(b)
20 through (1)~~(e)~~(f).

21 (2) If any financial obligation is imposed as a
22 condition under subsection (1)(a), sentence may be deferred
23 for a period not exceeding 2 years for any misdemeanor or
24 for a period not exceeding 5 years for any felony,
25 regardless of whether any other conditions are imposed.

1 (3) If any restrictions or conditions imposed under
2 subsection (1)(a) or (1)(b) are violated, the court shall
3 consider any elapsed time and either expressly allow part or
4 all of it as a credit against the sentence or reject all or
5 part as a credit and state its reasons in the order. Credit,
6 however, must be allowed for jail time already served.

7 (4) Except as provided in 46-18-222, the imposition or
8 execution of the first 2 years of a sentence of imprisonment
9 imposed under the following sections may not be deferred or
10 suspended: 45-5-103, 45-5-202(3) relating to aggravated
11 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
12 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
13 45-9-103(2).

14 (5) Except as provided in 46-18-222, the imposition or
15 execution of the first 10 years of a sentence of
16 imprisonment imposed under 45-5-102 may not be deferred or
17 suspended.

18 (6) Except as provided in 46-18-222, imposition of
19 sentence in a felony case may not be deferred in the case of
20 a defendant who has been convicted of a felony on a prior
21 occasion, whether or not the sentence was imposed,
22 imposition of the sentence was deferred, or execution of the
23 sentence was suspended.

24 (7) If the victim was less than 16 years old, the
25 imposition or execution of the first 30 days of a sentence

1 of imprisonment imposed under 45-5-502(3), 45-5-503,
2 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
3 suspended. Section 46-18-222 does not apply to the first 30
4 days of such imprisonment.

5 (8) In imposing a sentence on a defendant convicted of
6 a sexual offense as defined in 46-23-502, the court may not
7 waive the registration requirement provided in 46-18-254,
8 46-18-255, and Title 46, chapter 23, part 5.

9 (9) A person convicted of a sexual offense, as defined
10 in 46-23-502, and sentenced to imprisonment in the state
11 prison shall enroll in the educational phase of the prison's
12 sexual offender program."

13 NEW SECTION. **Section 17.** Codification instruction.
14 [Sections 1 through 14] are intended to be codified as an
15 integral part of Title 53, chapter 30, and the provisions of
16 Title 53, chapter 30, apply to [sections 1 through 14].

17 NEW SECTION. **Section 18.** Effective date. [This act] is
18 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 272

2 INTRODUCED BY BRADLEY, LEE, MENAHAN,
3 STRIZICH, WANZENRIED, J. RICE, FAGG

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
6 COMMUNITY CORRECTIONS ACT; AUTHORIZING LOCAL GOVERNMENTS AND
7 PRIVATE AGENCIES TO ESTABLISH AND OPERATE COMMUNITY
8 CORRECTIONS FACILITIES AND PROGRAMS; PROVIDING FOR CREATION
9 OF COMMUNITY CORRECTIONS BOARDS; ALLOWING SENTENCING COURTS
10 TO SENTENCE NONVIOLENT FELONY OFFENDERS TO A COMMUNITY
11 CORRECTIONS FACILITY OR PROGRAM; GRANTING THE DEPARTMENT OF
12 INSTITUTIONS AUTHORITY TO ADOPT RULES GOVERNING OPERATION OF
13 COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS; ESTABLISHING
14 PENALTIES FOR OFFENDERS WHO ESCAPE FROM COMMUNITY
15 CORRECTIONS FACILITIES; AUTHORIZING PLACEMENT OF OFFENDERS
16 IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM AS A
17 CONDITION OF THE DEFERRED IMPOSITION OR SUSPENDED EXECUTION
18 OF SENTENCES; AMENDING SECTIONS 45-7-306 AND 46-18-201, MCA;
19 AND PROVIDING AN EFFECTIVE DATE."

20
21 WHEREAS, Article II, section 28, of the Montana
22 Constitution requires that laws for the punishment of crime
23 must be founded on the principles of prevention and
24 reformation; and

25 WHEREAS, it is the state's policy that persons convicted

1 of crime should be treated in accordance with their
2 individual characteristics, circumstances, needs, and
3 potentialities; and

4 WHEREAS, the existing state corrections system offers
5 few alternatives to imprisonment for offenders who have been
6 convicted of a nonviolent felony offense; and

7 WHEREAS, community corrections programs provide an
8 alternative to imprisonment that is of value both to society
9 and to the individual because such programs provide
10 offenders opportunities to overcome alcohol and drug
11 problems, to obtain employment or become involved in an
12 educational or vocational program, to learn life skills, or
13 to be engaged in other activities that will reduce the
14 recidivism of offenders and enable them to be productive
15 members of society; and

16 WHEREAS, community corrections programs are desirable
17 because such programs cost substantially less compared to
18 the costs of imprisonment in the Montana State Prison.

19 THEREFORE, the Legislature of the State of Montana finds
20 it appropriate to enact legislation to establish community
21 corrections facilities and programs for the placement and
22 treatment of nonviolent felony offenders.
23

24 STATEMENT OF INTENT

25 A statement of intent is required for this bill because

THIRD READING

1 [section 9] grants the department of institutions authority
2 to adopt rules necessary to carry out the provisions of
3 [sections 1 through 14].

4 It is the intent of the legislature that the department
5 adopt regulations and standards for the operation of
6 community corrections facilities and programs. In adopting
7 rules, the department shall comply with the requirements
8 established under [section 9]. In addition, the department
9 should consider the goals of [sections 1 through 14], which
10 are:

11 (1) to reduce reliance upon the Montana state prison
12 for detention of low-risk, nonviolent felony offenders;

13 (2) to increase services to offenders to help them
14 become productive members of society;

15 (3) to require offenders to pay restitution to crime
16 victims;

17 (4) to impose upon offenders responsibility for payment
18 of a portion of the costs of their room and board at
19 community corrections facilities or programs;

20 (5) to decentralize authority for corrections programs
21 from state government to local governments;

22 (6) to stimulate local participation in the
23 establishment of community corrections facilities and
24 programs;

25 (7) to reduce the long-term costs of state corrections;

1 and

2 (8) to reduce court commitments to the state prison,
3 thereby reducing the long-term capital construction costs
4 for the Montana state prison and other corrections
5 facilities.

6 To ensure the success of the community corrections
7 program, the department, when contracting for services,
8 should consider a potential service provider's knowledge,
9 background, and special expertise in the area of
10 postconviction diversion community corrections programs.

11 Prior to adopting rules, the department should examine
12 community corrections programs established in other states,
13 especially in the states of Colorado, Iowa, Minnesota,
14 Oregon, and Wyoming. In addition, the comments of potential
15 service providers should be encouraged during the rulemaking
16 process.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 NEW SECTION. **Section 1.** Short title. [Sections 1
20 through 14] may be cited as the "Montana Community
21 Corrections Act".

22 NEW SECTION. **Section 2.** Purpose. It is the purpose of
23 [sections 1 through 14] to:

24 (1) encourage the development of community corrections
25 facilities and programs by units of local government and

1 nongovernmental agencies;

2 (2) reduce court commitments to the state penitentiary
3 through diversion of low-risk, nonviolent felony offenders
4 to community corrections facilities and programs;

5 (3) provide a procedure by which units of local
6 government and nongovernmental agencies may provide
7 corrections services to the sentencing courts; and

8 (4) include citizen participation in the policymaking
9 and program planning related to community corrections
10 facilities and programs through the formation of local
11 community corrections boards.

12 NEW SECTION. Section 3. Definitions. As used in
13 [sections 1 through 14], unless the context requires
14 otherwise, the following definitions apply:

15 (1) "Community corrections board" means a community
16 corrections board as provided in [section 5].

17 (2) "Community corrections facility or program" means a
18 community-based or community-oriented facility or program,
19 other than a jail, that:

20 (a) is operated by a unit of local government or a
21 nongovernmental agency; and

22 (b) provides programs and services to aid offenders in:

23 (i) obtaining and holding regular employment;

24 (ii) enrolling in and maintaining academic courses;

25 (iii) participating in vocational training programs;

1 (iv) utilizing the resources of the community to meet
2 their personal and family needs;

3 (v) obtaining the benefits of specialized treatment
4 services that exist within the community; and

5 (vi) paying restitution or performing community
6 restitution to crime victims.

7 (3) "Crime of violence" means:

8 (a) a-crime AN OFFENSE in which an offender uses or
9 possesses and threatens the use of a deadly weapon during
10 the commission or attempted commission of a--crime AN
11 OFFENSE, including felony assault, kidnapping, aggravated
12 kidnapping, robbery, arson, burglary, aggravated burglary,
13 escape, or intimidation;

14 (b) a-crime AN OFFENSE, OTHER THAN AN OFFENSE IN WHICH
15 NEGLIGENCE IS AN ELEMENT OF THE OFFENSE, in which the
16 offender causes serious bodily injury or death to a person
17 other than himself or a participant during the commission or
18 attempted commission of a-crime AN OFFENSE; or

19 (c) any sexual offense in which the offender causes
20 bodily injury to the victim or uses threat, intimidation, or
21 force against the victim.

22 (4) "Department" means the department of institutions
23 created in 2-15-2301.

24 (5) "Nongovernmental agency" means a person, private
25 nonprofit agency, corporation, association, labor

1 organization, or other nongovernmental entity.

2 (6) "Offender" means a person who has entered a plea of
3 guilty or has been convicted of a felony. The term excludes
4 a person who has committed a crime of violence.

5 (7) "Unit of local government" means a county, city,
6 town, or city-county consolidated government.

7 NEW SECTION. Section 4. Community corrections
8 facilities and programs operated by units of local
9 government. (1) A unit of local government may establish,
10 maintain, and operate any community corrections facilities
11 and programs that it considers necessary to serve its own
12 needs or the needs of offenders who are sentenced to the
13 facility or program by a judge as provided in [section 8].

14 (2) A unit of local government may enter into a
15 contract or agreement with the department for the purpose of
16 providing community corrections facilities and programs for
17 offenders.

18 NEW SECTION. Section 5. Creation of community
19 corrections boards -- membership -- appointment -- terms --
20 compensation. (1) A unit of local government or the
21 governing bodies of two or more units of local government
22 may establish a community corrections board.

23 (2) A community corrections board consists of nine
24 members who, MUST, WHEN POSSIBLE, BE GENDER-BALANCED AND
25 HAVE RACIAL PARITY, AND must be appointed as follows:

- 1 (a) one local law enforcement officer;
- 2 (b) one county attorney;
- 3 (c) one district court judge;
- 4 (d) one probation and parole officer;
- 5 (e) one local private employer or representative of the
- 6 department of labor and industry;
- 7 (f) one mental health professional;
- 8 (g) one person representing local drug and alcohol
- 9 treatment programs; and
- 10 (h) two members of the public.

11 (3) Members of a community corrections board must be
12 nominated by representatives of units of local government
13 and appointed by the district court judges in the judicial
14 district in which community corrections facilities or
15 programs are established.

16 (4) Members of a community corrections board shall
17 serve for a term of 4 years.

18 (5) Members of a community corrections board shall
19 serve without compensation except as otherwise decided by
20 the units of local government.

21 NEW SECTION. Section 6. Powers and duties of community
22 corrections boards. (1) A community corrections board may
23 establish and enforce standards for:

- 24 (a) the operation of community corrections facilities
- 25 and programs operated by the unit of local government served

1 by the community corrections board; and

2 (b) the conduct of offenders placed in local community
3 corrections facilities and programs.

4 (2) The community corrections board, together with the
5 department and the judicial district, shall establish
6 procedures for screening offenders who are to be placed in
7 the community corrections facility or program. The screening
8 must take into account the aptitude, attitude, and social
9 and occupational skills of the offender and the risk of harm
10 the offender may present to himself and others.

11 (3) A community corrections board may accept, reject,
12 or reject after acceptance the placement of any offender in
13 the community corrections facility or program. If an
14 offender is rejected by the community corrections board
15 after initial acceptance, the offender must be remanded to
16 the custody of the sheriff of the county in which the
17 facility or program is located. The community corrections
18 board shall notify in writing the sentencing judge who,
19 after considering the board's reasons for rejection, shall
20 appropriately modify the sentencing order.

21 NEW SECTION. **Section 7.** Community corrections
22 facilities and programs operated by nongovernmental
23 agencies. (1) Except as provided in subsection (2), a
24 nongovernmental agency may establish, maintain, and operate
25 a community corrections facility or program to serve the

1 needs of offenders who are sentenced to the facility or
2 program by a judge as provided in [section 8].

3 (2) A nongovernmental agency may not establish a
4 community corrections facility or program unless approved by
5 the local community corrections board in a local government
6 that has established a community corrections board.

7 (3) A nongovernmental agency may enter into a contract
8 or agreement with the department for the purpose of
9 providing community corrections facilities or programs for
10 offenders. The contract or agreement must provide for strict
11 accountability procedures and practices for the conduct and
12 supervision of offenders assigned or sentenced to a facility
13 or program operated by a nongovernmental agency.

14 (4) A nongovernmental agency operating a community
15 corrections facility or program may accept, reject, or
16 reject after acceptance the placement of any offender in the
17 facility or program pursuant to a contract or agreement with
18 a unit of local government or a judicial district. If an
19 offender is rejected by the nongovernmental agency after
20 initial acceptance and the offender is a court referral, the
21 offender must be remanded to the custody of the sheriff of
22 the county in which the facility or program is located. The
23 nongovernmental agency shall notify in writing the
24 sentencing judge who, after considering the agency's reasons
25 for rejection, shall appropriately modify the sentencing

1 order.

2 NEW SECTION. Section 8. Authority of judge to utilize
 3 community corrections facilities or programs -- procedure --
 4 restrictions. (1) Subject to the restrictions contained in
 5 subsection (3), a judge may order placement of a nonviolent
 6 felony offender in a community corrections facility or
 7 program operated by a unit of local government or a
 8 nongovernmental agency. If a judge orders placement of an
 9 offender in a community corrections facility or program, the
 10 judge shall indicate in the sentencing order that the
 11 offender would have been sentenced to prison if the
 12 community corrections facility or program had not been
 13 available.

14 (2) Placement of an offender in a community corrections
 15 facility or program may be ordered only if:

16 (a) the community corrections facility or program is
 17 operated by a unit of local government or a nongovernmental
 18 agency that has entered into a contract or agreement with
 19 the department to provide community corrections services for
 20 offenders; and

21 (b) funding for the placement is available.

22 (3) A judge may not order placement of an offender in a
 23 residential community corrections facility or program for a
 24 period exceeding 1 year. After completing the residential
 25 community corrections portion of his sentence, an offender

1 shall serve the remainder of his sentence under normal
 2 probation supervision, if applicable.

3 (4) An offender is not eligible for parole while
 4 serving a sentence in a community corrections facility or
 5 program.

6 (5) The probation and parole officers for the judicial
 7 district shall include in their presentence report to the
 8 sentencing judge recommendations for utilization of a
 9 community correctional facility or program that has been
 10 approved for use by the judicial district.

11 NEW SECTION. Section 9. Powers and responsibilities of
 12 department -- rulemaking authority. The department shall:

13 (1) with the active and full participation of the local
 14 community corrections board, establish minimum standards for
 15 the operation of community corrections facilities and
 16 programs operated by a unit of local government or a
 17 nongovernmental agency that has entered into a contract or
 18 agreement with the department to provide services for
 19 offenders;

20 (2) review and evaluate all community corrections
 21 facilities and programs established under [sections 1
 22 through 14], subject to the requirements established in
 23 [section 13];

24 (3) prescribe accounting and reporting standards for
 25 all units of local government and nongovernmental agencies.

1 that have entered into a contract or agreement with the
2 department;

3 (4) reimburse units of local government or
4 nongovernmental agencies for community correctional services
5 at a rate to be negotiated by the department;

6 (5) adopt rules necessary to carry out the provisions
7 of [sections 1 through 14].

8 NEW SECTION. Section 10. Offender payments. (1) An
9 offender placed in a community corrections facility or
10 program under [sections 1 through 14] shall execute a
11 written contract or agreement with the director of the
12 facility or program, setting forth the terms and conditions
13 for placement in the facility or program. The contract or
14 agreement may provide that a portion of any money received
15 from employment of the offender be set aside for payment of
16 the following expenses in order of the priority in which
17 they appear below:

18 (a) reimbursement to the community corrections facility
19 or program for a portion of the cost of the room and board
20 provided at the facility or program. The reimbursement rate
21 must be reasonable, based on the offender's employment
22 status and other financial obligations. However, the charges
23 for room and board may not exceed 20% of the offender's net
24 employment income.

25 (b) victim restitution ordered by the sentencing court,

1 which may not exceed 20% of the offender's net employment
2 income;

3 (c) deposits to a savings account or fund to be used by
4 the offender for general living expenses following his
5 release from the community corrections facility or program;
6 and

7 (d) payment of family support.

8 (2) In a community corrections facility or program, the
9 offender has the primary obligation to obtain employment,
10 but the department of labor and industry shall provide
11 assistance to the offender in obtaining suitable employment.

12 NEW SECTION. Section 11. Good time allowance. If an
13 offender successfully completes the residential community
14 corrections portion of his sentence, he accrues a good time
15 allowance at a rate of 1 day of good time for each day
16 served in the facility or program. The good time allowance
17 operates as a credit on the remainder of his sentence.

18 NEW SECTION. Section 12. Technical assistance and
19 training. The department shall contract with qualified
20 community corrections specialists to provide necessary
21 technical assistance and training to judicial districts and
22 corrections boards.

23 NEW SECTION. Section 13. Report to legislatur.. No
24 later than January 30, 1993, the department shall submit to
25 the legislature a report describing:

1 (1) the number of community corrections facilities and
2 programs that have been established;

3 (2) the number and type of court-referred offenders
4 assigned to community corrections facilities and programs;

5 (3) the number and type of department-referred
6 offenders assigned to community based prerelease centers;

7 (4) the extent to which offenders have received and
8 benefited from educational or job training programs related
9 to rehabilitation;

10 (5) the rate of reconviction of community corrections
11 program participants as compared to the reconviction rate
12 for similar offenders sentenced to the state penitentiary;

13 (6) the amount of taxes, restitution, and room and
14 board fees paid by offenders assigned to community
15 corrections facilities and programs; and

16 (7) the number of court-referred offenders who, in the
17 absence of community corrections facilities and programs,
18 would have been sentenced to the custody of the department.

19 NEW SECTION. **Section 14.** Escape from custody. An
20 offender is guilty of escape from official detention and
21 shall be punished as provided in 45-7-306 if, without proper
22 authorization, he:

23 (1) fails to remain within the extended limits of his
24 confinement or fails to return within the time specified to
25 a community corrections facility or program to which he has

1 been assigned, sentenced, or transferred; or

2 (2) leaves his place of employment or neglects or fails
3 to return to the community corrections facility or program
4 after being specifically ordered to do so.

5 **Section 15.** Section 45-7-306, MCA, is amended to read:

6 "45-7-306. Escape. (1) "Official detention" means
7 imprisonment which resulted from a conviction for an
8 offense, confinement for an offense, confinement of a person
9 charged with an offense, detention by a peace officer
10 pursuant to arrest, detention for extradition or
11 deportation, placement in a community corrections facility
12 or program, supervision while under a supervised release
13 program, participation in a county jail work program under
14 7-32-2225 through 7-32-2227, or any lawful detention for the
15 purpose of the protection of the welfare of the person
16 detained or for the protection of society. "Official
17 detention" does not include supervision of probation or
18 parole, constraint incidental to release on bail, or an
19 unlawful arrest unless the person arrested employed physical
20 force, a threat of physical force, or a weapon to escape.

21 (2) A person subject to official detention commits the
22 offense of escape if he knowingly or purposely removes
23 himself from official detention or fails to return to
24 official detention following temporary leave granted for a
25 specific purpose or limited time. A person also commits the

1 offense of escape if he is participating in a county jail
 2 work program under 7-32-2225 through 7-32-2227 and he
 3 knowingly or purposely fails to appear for work at a time
 4 and place scheduled for participation in the program.

5 (3) A person convicted of the offense of escape shall
 6 be:

7 (a) imprisoned in the state prison for a term not to
 8 exceed 20 years if he escapes from a state prison, county
 9 jail, city jail, community corrections facility or program,
 10 or supervised release program by the use or threat of force,
 11 physical violence, weapon, or simulated weapon;

12 (b) imprisoned in the state prison for a term not to
 13 exceed 10 years if he:

14 (i) escapes from a state prison, county jail, city
 15 jail, halfway house, life skills center, community
 16 corrections facility or program, or supervised release
 17 program; or

18 (ii) escapes from another official detention by the use
 19 or threat of force, physical violence, weapon, or simulated
 20 weapon; or

21 (c) fined not to exceed \$500 or imprisoned in the
 22 county jail for a term not to exceed 6 months, or both, if
 23 he commits escape under circumstances other than (a) and (b)
 24 of this subsection."

25 **Section 16.** Section 46-18-201, MCA, is amended to read:

1 "46-18-201. Sentences that may be imposed. (1) Whenever
 2 a person has been found guilty of an offense upon a verdict
 3 or a plea of guilty, the court may:

4 (a) defer imposition of sentence, excepting sentences
 5 for driving under the influence of alcohol or drugs, for a
 6 period, except as otherwise provided, not exceeding 1 year
 7 for any misdemeanor or for a period not exceeding 3 years
 8 for any felony. The sentencing judge may impose upon the
 9 defendant any reasonable restrictions or conditions during
 10 the period of the deferred imposition. Reasonable
 11 restrictions or conditions may include:

- 12 (i) jail base release;
- 13 (ii) jail time not exceeding 180 days;
- 14 (iii) conditions for probation;
- 15 (iv) restitution;
- 16 (v) payment of the costs of confinement;
- 17 (vi) payment of a fine as provided in 46-18-231;
- 18 (vii) payment of costs as provided in 46-18-232 and
- 19 46-18-233;
- 20 (viii) payment of costs of court appointed counsel as
- 21 provided in 46-8-113;

22 {ix} placement in a community corrections facility or
 23 program as provided in [section 8];

- 24 {ix}{x} community service;
- 25 {x}{xi} any other reasonable conditions considered

1 necessary for rehabilitation or for the protection of
2 society; or

3 ~~(*)~~(xii) any combination of the above.

4 (b) suspend execution of sentence up to the maximum
5 sentence allowed for each particular offense. The sentencing
6 judge may impose on the defendant any reasonable
7 restrictions or conditions during the period of suspended
8 sentence. Reasonable restrictions or conditions may include
9 any of those listed in subsections (1)(a)(i) through
10 (1)(a)~~(xi)~~(xii).

11 (c) impose a fine as provided by law for the offense;

12 (d) require payment of costs as provided in 46-18-232
13 or payment of costs of court-appointed counsel as provided
14 in 46-8-113;

15 (e) commit the defendant to a correctional institution,
16 with or without a fine as provided by law for the offense;

17 (f) order the offender to be placed in a community
18 corrections facility or program as provided in [section 8];

19 ~~(f)~~(g) impose any combination of subsections (1)(b)
20 through (1)~~(e)~~(f).

21 (2) If any financial obligation is imposed as a
22 condition under subsection (1)(a), sentence may be deferred
23 for a period not exceeding 2 years for any misdemeanor or
24 for a period not exceeding 6 years for any felony,
25 regardless of whether any other conditions are imposed.

1 (3) If any restrictions or conditions imposed under
2 subsection (1)(a) or (1)(b) are violated, the court shall
3 consider any elapsed time and either expressly allow part or
4 all of it as a credit against the sentence or reject all or
5 part as a credit and state its reasons in the order. Credit,
6 however, must be allowed for jail time already served.

7 (4) Except as provided in 46-18-222, the imposition or
8 execution of the first 2 years of a sentence of imprisonment
9 imposed under the following sections may not be deferred or
10 suspended: 45-5-103, 45-5-202(3) relating to aggravated
11 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
12 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
13 45-9-103(2).

14 (5) Except as provided in 46-18-222, the imposition or
15 execution of the first 10 years of a sentence of
16 imprisonment imposed under 45-5-102 may not be deferred or
17 suspended.

18 (6) Except as provided in 46-18-222, imposition of
19 sentence in a felony case may not be deferred in the case of
20 a defendant who has been convicted of a felony on a prior
21 occasion, whether or not the sentence was imposed,
22 imposition of the sentence was deferred, or execution of the
23 sentence was suspended.

24 (7) If the victim was less than 16 years old, the
25 imposition or execution of the first 30 days of a sentence

1 of imprisonment imposed under 45-5-502(3), 45-5-503,
2 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
3 suspended. Section 46-18-222 does not apply to the first 30
4 days of such imprisonment.

5 (8) In imposing a sentence on a defendant convicted of
6 a sexual offense as defined in 46-23-502, the court may not
7 waive the registration requirement provided in 46-18-254,
8 46-18-255, and Title 46, chapter 23, part 5.

9 (9) A person convicted of a sexual offense, as defined
10 in 46-23-502, and sentenced to imprisonment in the state
11 prison shall enroll in the educational phase of the prison's
12 sexual offender program."

13 NEW SECTION. **Section 17.** Codification instruction.
14 [Sections 1 through 14] are intended to be codified as an
15 integral part of Title 53, chapter 30, and the provisions of
16 Title 53, chapter 30, apply to [sections 1 through 14].

17 NEW SECTION. **Section 18.** Effective date. [This act] is
18 effective July 1, 1991.

-End-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 20, 1991 12:57 pm

Mr. Chairman: I move to amend House Bill No. 272 (third reading copy -- blue) as follows:

1. Page 6, line 8.

Strike: "an offender"

Insert: "a person"

2. Page 6, line 16.

Strike: "offender"

Insert: "person"

3. Page 6, line 17.

Strike: "or a participant"

4. Page 7, line 2.

Following: line 1

Insert: "(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime of violence."

Renumber: subsequent subsections

ADOPT

REJECT

Signed: *J. Pinsonneault*

Senator Pinsonneault

101 3-20-9
Am. Coord.

53 3/20
Sec. of Senate

SENATE

HB 272

1 HOUSE BILL NO. 272
 2 INTRODUCED BY BRADLEY, LEE, MENAHAN,
 3 STRIZICH, WANZENRIED, J. RICE, FAGG
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
 6 COMMUNITY CORRECTIONS ACT; AUTHORIZING LOCAL GOVERNMENTS,
 7 TRIBAL GOVERNMENTS, AND PRIVATE AGENCIES TO ESTABLISH AND
 8 OPERATE COMMUNITY CORRECTIONS FACILITIES AND PROGRAMS;
 9 PROVIDING FOR CREATION OF COMMUNITY CORRECTIONS BOARDS;
 10 ALLOWING SENTENCING COURTS TO SENTENCE NONVIOLENT FELONY
 11 OFFENDERS TO A COMMUNITY CORRECTIONS FACILITY OR PROGRAM;
 12 GRANTING THE DEPARTMENT OF INSTITUTIONS AUTHORITY TO ADOPT
 13 RULES GOVERNING OPERATION OF COMMUNITY CORRECTIONS
 14 FACILITIES AND PROGRAMS; ESTABLISHING PENALTIES FOR
 15 OFFENDERS WHO ESCAPE FROM COMMUNITY CORRECTIONS FACILITIES;
 16 AUTHORIZING PLACEMENT OF OFFENDERS IN A COMMUNITY
 17 CORRECTIONS FACILITY OR PROGRAM AS A CONDITION OF THE
 18 DEFERRED IMPOSITION OR SUSPENDED EXECUTION OF SENTENCES;
 19 AMENDING SECTIONS 45-7-306 AND 46-18-201, MCA; AND PROVIDING
 20 AN EFFECTIVE DATE."

21
 22 WHEREAS, Article II, section 28, of the Montana
 23 Constitution requires that laws for the punishment of crime
 24 must be founded on the principles of prevention and
 25 reformation; and

1 WHEREAS, it is the state's policy that persons convicted
 2 of crime should be treated in accordance with their
 3 individual characteristics, circumstances, needs, and
 4 potentialities; and

5 WHEREAS, the existing state corrections system offers
 6 few alternatives to imprisonment for offenders who have been
 7 convicted of a nonviolent felony offense; and

8 WHEREAS, community corrections programs provide an
 9 alternative to imprisonment that is of value both to society
 10 and to the individual because such programs provide
 11 offenders opportunities to overcome alcohol and drug
 12 problems, to obtain employment or become involved in an
 13 educational or vocational program, to learn life skills, or
 14 to be engaged in other activities that will reduce the
 15 recidivism of offenders and enable them to be productive
 16 members of society; and

17 WHEREAS, community corrections programs are desirable
 18 because such programs cost substantially less compared to
 19 the costs of imprisonment in the Montana State Prison.

20 THEREFORE, the Legislature of the State of Montana finds
 21 it appropriate to enact legislation to establish community
 22 corrections facilities and programs for the placement and
 23 treatment of nonviolent felony offenders.

24
 25 STATEMENT OF INTENT

1 A statement of intent is required for this bill because
2 [section 9 10] grants the department of institutions
3 authority to adopt rules necessary to carry out the
4 provisions of [sections 1 through 14 15].

5 It is the intent of the legislature that the department
6 adopt regulations and standards for the operation of
7 community corrections facilities and programs. In adopting
8 rules, the department shall comply with the requirements
9 established under [section 9 10]. In addition, the
10 department should consider the goals of [sections 1 through
11 14 15], which are:

12 (1) to reduce reliance upon the Montana state prison
13 for detention of low-risk, nonviolent felony offenders;

14 (2) to increase services to offenders to help them
15 become productive members of society;

16 (3) to require offenders to pay restitution to crime
17 victims;

18 (4) to impose upon offenders responsibility for payment
19 of a portion of the costs of their room and board at
20 community corrections facilities or programs;

21 (5) to decentralize authority for corrections programs
22 from state government to local OR TRIBAL governments;

23 (6) to stimulate local OR TRIBAL participation in the
24 establishment of community corrections facilities and
25 programs;

1 (7) to reduce the long-term costs of state corrections;
2 and

3 (8) to reduce court commitments to the state prison,
4 thereby reducing the long-term capital construction costs
5 for the Montana state prison and other corrections
6 facilities.

7 To ensure the success of the community corrections
8 program, the department, when contracting for services,
9 should consider a potential service provider's knowledge,
10 background, and special expertise in the area of
11 postconviction diversion community corrections programs.

12 Prior to adopting rules, the department should examine
13 community corrections programs established in other states,
14 especially in the states of Colorado, Iowa, Minnesota,
15 Oregon, and Wyoming. In addition, the comments of potential
16 service providers should be encouraged during the rulemaking
17 process.

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

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21 through 14 15] may be cited as the "Montana Community
22 Corrections Act".

23 NEW SECTION. **Section 2.** Purpose. It is the purpose of
24 [sections 1 through 14 15] to:

25 (1) encourage the development of community corrections

1 facilities and programs by units of local government, TRIBAL
2 GOVERNMENTS, and nongovernmental agencies;

3 (2) reduce court commitments to the state penitentiary
4 through diversion of low-risk, nonviolent felony offenders
5 to community corrections facilities and programs;

6 (3) provide a procedure by which units of local
7 government, TRIBAL GOVERNMENTS, and nongovernmental agencies
8 may provide corrections services to the sentencing courts;
9 and

10 (4) include citizen participation in the policymaking
11 and program planning related to community corrections
12 facilities and programs through the formation of local
13 community corrections boards.

14 NEW SECTION. Section 3. Definitions. As used in
15 [sections 1 through ~~14~~ 15], unless the context requires
16 otherwise, the following definitions apply:

17 (1) "Community corrections board" means a community
18 corrections board as provided in [section 5].

19 (2) "Community corrections facility or program" means a
20 community-based or community-oriented facility or program,
21 other than a jail, that:

22 (a) is operated by a unit of local government, A TRIBAL
23 GOVERNMENT, or a nongovernmental agency; and

24 (b) provides programs and services to aid offenders in:

25 (i) obtaining and holding regular employment;

1 (ii) enrolling in and maintaining academic courses;

2 (iii) participating in vocational training programs;

3 (iv) utilizing the resources of the community to meet
4 their personal and family needs;

5 (v) obtaining the benefits of specialized treatment
6 services that exist within the community; and

7 (vi) paying restitution or performing community
8 restitution to crime victims.

9 (3) "Crime of violence" means:

10 (a) ~~a-crime~~ AN OFFENSE in which ~~an--offender~~ A PERSON
11 uses or possesses and threatens the use of a deadly weapon
12 during the commission or attempted commission of ~~a-crime~~ AN
13 OFFENSE, including felony assault, kidnapping, aggravated
14 kidnapping, robbery, arson, burglary, aggravated burglary,
15 escape, or intimidation;

16 (b) ~~a--crime~~ AN OFFENSE, OTHER THAN AN OFFENSE IN WHICH
17 NEGLIGENCE IS AN ELEMENT OF THE OFFENSE, in which the
18 ~~offender~~ PERSON causes serious bodily injury or death to a
19 person other than himself ~~or--a--participant~~ during the
20 commission or attempted commission of ~~a-crime~~ AN OFFENSE; or

21 (c) any sexual offense in which the offender causes
22 bodily injury to the victim or uses threat, intimidation, or
23 force against the victim.

24 (4) "Department" means the department of institutions
25 created in 2-15-2301.

1 (5) "Nongovernmental agency" means a person, private
2 nonprofit agency, corporation, association, labor
3 organization, or other nongovernmental entity.

4 (6) "NONVIOLENT FELONY OFFENDER" MEANS A PERSON WHO HAS
5 COMMITTED A FELONY OTHER THAN A CRIME OF VIOLENCE.

6 (7) "Offender" means a person who has entered a plea
7 of guilty or has been convicted of a felony. The term
8 excludes a person who has committed a crime of violence.

9 (8) "TRIBAL GOVERNMENT" MEANS A FEDERALLY RECOGNIZED
10 INDIAN TRIBE WITHIN THE STATE OF MONTANA.

11 (9) "Unit of local government" means a county,
12 city, town, or city-county consolidated government.

13 NEW SECTION. Section 4. Community corrections
14 facilities and programs operated by units of local
15 government. (1) A unit of local government may establish,
16 maintain, and operate any community corrections facilities
17 and programs that it considers necessary to serve its own
18 needs or the needs of offenders who are sentenced to the
19 facility or program by a judge as provided in [section 9].

20 (2) A unit of local government may enter into a
21 contract or agreement with the department for the purpose of
22 providing community corrections facilities and programs for
23 offenders.

24 NEW SECTION. Section 5. Creation of community
25 corrections boards -- membership -- appointment -- terms --

1 compensation. (1) A unit of local government or, the
2 governing bodies of two or more units of local government,
3 OR A TRIBAL GOVERNMENT may establish a community corrections
4 board.

5 (2) A community corrections board consists of nine
6 members who, MUST, WHEN POSSIBLE, BE GENDER-BALANCED AND
7 HAVE RACIAL PARITY, AND must be appointed as follows:

- 8 (a) one local law enforcement officer;
- 9 (b) one county attorney;
- 10 (c) one district court judge;
- 11 (d) one probation and parole officer;
- 12 (e) one local private employer or representative of the
13 department of labor and industry;
- 14 (f) one mental health professional;
- 15 (g) one person representing local OR TRIBAL drug and
16 alcohol treatment programs; and
- 17 (h) two members of the public.

18 (3) Members of a community corrections board must be
19 nominated by representatives of units of local government OR
20 A TRIBAL GOVERNMENT and appointed by the district court
21 judges OR THE TRIBAL JUDGES in the judicial district in
22 which community corrections facilities or programs are
23 established.

24 (4) Members of a community corrections board shall
25 serve for a term of 4 years.

1 (5) Members of a community corrections board shall
 2 serve without compensation except as otherwise decided by
 3 the units of local government OR A TRIBAL GOVERNMENT.

4 NEW SECTION. Section 6. Powers and duties of community
 5 corrections boards. (1) A community corrections board may
 6 establish and enforce standards for:

7 (a) the operation of community corrections facilities
 8 and programs operated by the unit of local government OR A
 9 TRIBAL GOVERNMENT served by the community corrections board;
 10 and

11 (b) the conduct of offenders placed in local community
 12 corrections facilities and programs.

13 (2) The community corrections board, together with the
 14 department and the judicial district, shall establish
 15 procedures for screening offenders who are to be placed in
 16 the community corrections facility or program. The screening
 17 must take into account the aptitude, attitude, and social
 18 and occupational skills of the offender and the risk of harm
 19 the offender may present to himself and others.

20 (3) A community corrections board may accept, reject,
 21 or reject after acceptance the placement of any offender in
 22 the community corrections facility or program. If an
 23 offender is rejected by the community corrections board
 24 after initial acceptance, the offender must be remanded to
 25 the custody of the sheriff of the county in which the

1 facility or program is located. The community corrections
 2 board shall notify in writing the sentencing judge who,
 3 after considering the board's reasons for rejection, shall
 4 appropriately modify the sentencing order.

5 NEW SECTION. SECTION 7. COMMUNITY CORRECTIONS
 6 FACILITIES AND PROGRAMS OPERATED BY TRIBAL GOVERNMENTS. (1)
 7 A TRIBAL GOVERNMENT MAY ESTABLISH, MAINTAIN, AND OPERATE A
 8 COMMUNITY CORRECTIONS FACILITY OR PROGRAM TO SERVE THE NEEDS
 9 OF OFFENDERS WHO ARE SENTENCED TO THE FACILITY OR PROGRAM BY
 10 A JUDGE AS PROVIDED IN [SECTION 9].

11 (2) A TRIBAL GOVERNMENT MAY ENTER INTO AN AGREEMENT
 12 WITH THE DEPARTMENT, PURSUANT TO TITLE 18, CHAPTER 11, PART
 13 1, FOR THE PURPOSE OF PROVIDING COMMUNITY CORRECTIONS
 14 FACILITIES OR PROGRAMS FOR OFFENDERS. THE AGREEMENT MUST
 15 PROVIDE FOR STRICT ACCOUNTABILITY PROCEDURES AND PRACTICES
 16 FOR THE CONDUCT AND SUPERVISION OF OFFENDERS ASSIGNED OR
 17 SENTENCED TO A FACILITY OR PROGRAM OPERATED BY A TRIBAL
 18 GOVERNMENT.

19 (3) A TRIBAL GOVERNMENT OPERATING A COMMUNITY
 20 CORRECTIONS FACILITY OR PROGRAM MAY ACCEPT, REJECT, OR
 21 REJECT AFTER ACCEPTANCE THE PLACEMENT OF ANY OFFENDER IN THE
 22 FACILITY OR PROGRAM PURSUANT TO AN AGREEMENT WITH A UNIT OF
 23 LOCAL GOVERNMENT, A NONGOVERNMENTAL AGENCY, OR A JUDICIAL
 24 DISTRICT. IF AN OFFENDER IS REJECTED BY THE TRIBAL
 25 GOVERNMENT AFTER INITIAL APPEARANCE AND THE OFFENDER IS A

1 COURT REFERRAL, THE OFFENDER MUST BE REMANDED TO THE CUSTODY
 2 OF THE SHERIFF OF THE COUNTY IN WHICH THE FACILITY OR
 3 PROGRAM IS LOCATED. THE TRIBAL GOVERNMENT SHALL NOTIFY IN
 4 WRITING THE SENTENCING JUDGE WHO, AFTER CONSIDERING THE
 5 TRIBAL GOVERNMENT'S REASONS FOR REJECTION, SHALL
 6 APPROPRIATELY MODIFY THE SENTENCING ORDER.

7 NEW SECTION. Section 8. Community corrections
 8 facilities and programs operated by nongovernmental
 9 agencies. (1) Except as provided in subsection (2), a
 10 nongovernmental agency may establish, maintain, and operate
 11 a community corrections facility or program to serve the
 12 needs of offenders who are sentenced to the facility or
 13 program by a judge as provided in [section 8 9].

14 (2) A nongovernmental agency may not establish a
 15 community corrections facility or program unless approved by
 16 the local community corrections board in a local government
 17 OR TRIBAL GOVERNMENT that has established a community
 18 corrections board.

19 (3) A nongovernmental agency may enter into a contract
 20 or agreement with the department for the purpose of
 21 providing community corrections facilities or programs for
 22 offenders. The contract or agreement must provide for strict
 23 accountability procedures and practices for the conduct and
 24 supervision of offenders assigned or sentenced to a facility
 25 or program operated by a nongovernmental agency.

1 (4) A nongovernmental agency operating a community
 2 corrections facility or program may accept, reject, or
 3 reject after acceptance the placement of any offender in the
 4 facility or program pursuant to a contract or agreement with
 5 a unit of local government, A TRIBAL GOVERNMENT, or a
 6 judicial district. If an offender is rejected by the
 7 nongovernmental agency after initial acceptance and the
 8 offender is a court referral, the offender must be remanded
 9 to the custody of the sheriff of the county in which the
 10 facility or program is located. The nongovernmental agency
 11 shall notify in writing the sentencing judge who, after
 12 considering the agency's reasons for rejection, shall
 13 appropriately modify the sentencing order.

14 NEW SECTION. Section 9. Authority of judge to utilize
 15 community corrections facilities or programs -- procedure --
 16 restrictions. (1) Subject to the restrictions contained in
 17 subsection (3), a judge may order placement of a nonviolent
 18 felony offender in a community corrections facility or
 19 program operated by a unit of local government, A TRIBAL
 20 GOVERNMENT, or a nongovernmental agency. If a judge orders
 21 placement of an offender in a community corrections facility
 22 or program, the judge shall indicate in the sentencing order
 23 that the offender would have been sentenced to prison if the
 24 community corrections facility or program had not been
 25 available.

1 (2) Placement of an offender in a community corrections
2 facility or program may be ordered only if:

3 (a) the community corrections facility or program is
4 operated by a unit of local government, A TRIBAL GOVERNMENT,
5 or a nongovernmental agency that has entered into a contract
6 or agreement with the department to provide community
7 corrections services for offenders; and

8 (b) funding for the placement is available.

9 (3) A judge may not order placement of an offender in a
10 residential community corrections facility or program for a
11 period exceeding 1 year. After completing the residential
12 community corrections portion of his sentence, an offender
13 shall serve the remainder of his sentence under normal
14 probation supervision, if applicable.

15 (4) An offender is not eligible for parole while
16 serving a sentence in a community corrections facility or
17 program.

18 (5) The probation and parole officers for the judicial
19 district shall include in their presentence report to the
20 sentencing judge recommendations for utilization of a
21 community correctional facility or program that has been
22 approved for use by the judicial district.

23 NEW SECTION. Section 10. Powers and responsibilities
24 of department -- rulemaking authority. The department shall:

25 (1) with the active and full participation of the local

1 community corrections board, establish minimum standards for
2 the operation of community corrections facilities and
3 programs operated by a unit of local government, A TRIBAL
4 GOVERNMENT, or a nongovernmental agency that has entered
5 into a contract or agreement with the department to provide
6 services for offenders;

7 (2) review and evaluate all community corrections
8 facilities and programs established under [sections 1
9 through ~~14~~ 15], subject to the requirements established in
10 [section 13];

11 (3) prescribe accounting and reporting standards for
12 all units of local government, TRIBAL GOVERNMENTS, and
13 nongovernmental agencies that have entered into a contract
14 or agreement with the department;

15 (4) reimburse units of local government, TRIBAL
16 GOVERNMENTS, or nongovernmental agencies for community
17 correctional services at a rate to be negotiated by the
18 department;

19 (5) adopt rules necessary to carry out the provisions
20 of [sections 1 through ~~14~~ 15].

21 NEW SECTION. Section 11. Offender payments. (1) An
22 offender placed in a community corrections facility or
23 program under [sections 1 through ~~14~~ 15] shall execute a
24 written contract or agreement with the director of the
25 facility or program, setting forth the terms and conditions

1 for placement in the facility or program. The contract or
2 agreement may provide that a portion of any money received
3 from employment of the offender be set aside for payment of
4 the following expenses in order of the priority in which
5 they appear below:

6 (a) reimbursement to the community corrections facility
7 or program for a portion of the cost of the room and board
8 provided at the facility or program. The reimbursement rate
9 must be reasonable, based on the offender's employment
10 status and other financial obligations. However, the charges
11 for room and board may not exceed 20% of the offender's net
12 employment income.

13 (b) victim restitution ordered by the sentencing court,
14 which may not exceed 20% of the offender's net employment
15 income;

16 (c) deposits to a savings account or fund to be used by
17 the offender for general living expenses following his
18 release from the community corrections facility or program;
19 and

20 (d) payment of family support.

21 (2) In a community corrections facility or program, the
22 offender has the primary obligation to obtain employment,
23 but the department of labor and industry shall provide
24 assistance to the offender in obtaining suitable employment.

25 NEW SECTION. Section 12. Good time allowance. If an

1 offender successfully completes the residential community
2 corrections portion of his sentence, he accrues a good time
3 allowance at a rate of 1 day of good time for each day
4 served in the facility or program. The good time allowance
5 operates as a credit on the remainder of his sentence.

6 NEW SECTION. Section 13. Technical assistance and
7 training. The department shall contract with qualified
8 community corrections specialists to provide necessary
9 technical assistance and training to judicial districts and
10 corrections boards.

11 NEW SECTION. Section 14. Report to legislature. No
12 later than January 30, 1993, the department shall submit to
13 the legislature a report describing:

14 (1) the number of community corrections facilities and
15 programs that have been established;

16 (2) the number and type of court-referred offenders
17 assigned to community corrections facilities and programs;

18 (3) the number and type of department-referred
19 offenders assigned to community based prerelease centers;

20 (4) the extent to which offenders have received and
21 benefited from educational or job training programs related
22 to rehabilitation;

23 (5) the rate of reconviction of community corrections
24 program participants as compared to the reconviction rate
25 for similar offenders sentenced to the state penitentiary;

1 (6) the amount of taxes, restitution, and room and
 2 board fees paid by offenders assigned to community
 3 corrections facilities and programs; and

4 (7) the number of court-referred offenders who, in the
 5 absence of community corrections facilities and programs,
 6 would have been sentenced to the custody of the department.

7 NEW SECTION. **Section 15. Escape from custody.** An
 8 offender is guilty of escape from official detention and
 9 shall be punished as provided in 45-7-306 if, without proper
 10 authorization, he:

11 (1) fails to remain within the extended limits of his
 12 confinement or fails to return within the time specified to
 13 a community corrections facility or program to which he has
 14 been assigned, sentenced, or transferred; or

15 (2) leaves his place of employment or neglects or fails
 16 to return to the community corrections facility or program
 17 after being specifically ordered to do so.

18 **Section 16.** Section 45-7-306, MCA, is amended to read:

19 **"45-7-306. Escape.** (1) "Official detention" means
 20 imprisonment which resulted from a conviction for an
 21 offense, confinement for an offense, confinement of a person
 22 charged with an offense, detention by a peace officer
 23 pursuant to arrest, detention for extradition or
 24 deportation, placement in a community corrections facility
 25 or program, supervision while under a supervised release

1 program, participation in a county jail work program under
 2 7-32-2225 through 7-32-2227, or any lawful detention for the
 3 purpose of the protection of the welfare of the person
 4 detained or for the protection of society. "Official
 5 detention" does not include supervision of probation or
 6 parole, constraint incidental to release on bail, or an
 7 unlawful arrest unless the person arrested employed physical
 8 force, a threat of physical force, or a weapon to escape.

9 (2) A person subject to official detention commits the
 10 offense of escape if he knowingly or purposely removes
 11 himself from official detention or fails to return to
 12 official detention following temporary leave granted for a
 13 specific purpose or limited time. A person also commits the
 14 offense of escape if he is participating in a county jail
 15 work program under 7-32-2225 through 7-32-2227 and he
 16 knowingly or purposely fails to appear for work at a time
 17 and place scheduled for participation in the program.

18 (3) A person convicted of the offense of escape shall
 19 be:

20 (a) imprisoned in the state prison for a term not to
 21 exceed 20 years if he escapes from a state prison, county
 22 jail, city jail, community corrections facility or program,
 23 or supervised release program by the use or threat of force,
 24 physical violence, weapon, or simulated weapon;

25 (b) imprisoned in the state prison for a term not to

1 exceed 10 years if he:

2 (i) escapes from a state prison, county jail, city
3 jail, halfway house, life skills center, community
4 corrections facility or program, or supervised release
5 program; or

6 (ii) escapes from another official detention by the use
7 or threat of force, physical violence, weapon, or simulated
8 weapon; or

9 (c) fined not to exceed \$500 or imprisoned in the
10 county jail for a term not to exceed 6 months, or both, if
11 he commits escape under circumstances other than (a) and (b)
12 of this subsection."

13 **Section 17.** Section 46-18-201, MCA, is amended to read:

14 "46-18-201. Sentences that may be imposed. (1) Whenever
15 a person has been found guilty of an offense upon a verdict
16 or a plea of guilty, the court may:

17 (a) defer imposition of sentence, excepting sentences
18 for driving under the influence of alcohol or drugs, for a
19 period, except as otherwise provided, not exceeding 1 year
20 for any misdemeanor or for a period not exceeding 3 years
21 for any felony. The sentencing judge may impose upon the
22 defendant any reasonable restrictions or conditions during
23 the period of the deferred imposition. Reasonable
24 restrictions or conditions may include:

25 (i) jail base release;

1 (ii) jail time not exceeding 180 days;

2 (iii) conditions for probation;

3 (iv) restitution;

4 (v) payment of the costs of confinement;

5 (vi) payment of a fine as provided in 46-18-231;

6 (vii) payment of costs as provided in 46-18-232 and
7 46-18-233;

8 (viii) payment of costs of court appointed counsel as
9 provided in 46-8-113;

10 (ix) placement in a community corrections facility or
11 program as provided in [section 8 9];

12 ~~(x)~~ community service;

13 ~~(xi)~~ any other reasonable conditions considered
14 necessary for rehabilitation or for the protection of
15 society; or

16 ~~(xii)~~ any combination of the above.

17 (b) suspend execution of sentence up to the maximum
18 sentence allowed for each particular offense. The sentencing
19 judge may impose on the defendant any reasonable
20 restrictions or conditions during the period of suspended
21 sentence. Reasonable restrictions or conditions may include
22 any of those listed in subsections (1)(a)(i) through
23 (1)(a)~~(xi)~~(xii).

24 (c) impose a fine as provided by law for the offense;

25 (d) require payment of costs as provided in 46-18-232

1 or payment of costs of court-appointed counsel as provided
2 in 46-8-113;

3 (e) commit the defendant to a correctional institution,
4 with or without a fine as provided by law for the offense;

5 (f) order the offender to be placed in a community
6 corrections facility or program as provided in [section 8
7 9];

8 ~~(f)~~(g) impose any combination of subsections (1)(b)
9 through (1)~~(e)~~(f).

10 (2) If any financial obligation is imposed as a
11 condition under subsection (1)(a), sentence may be deferred
12 for a period not exceeding 2 years for any misdemeanor or
13 for a period not exceeding 6 years for any felony,
14 regardless of whether any other conditions are imposed.

15 (3) If any restrictions or conditions imposed under
16 subsection (1)(a) or (1)(b) are violated, the court shall
17 consider any elapsed time and either expressly allow part or
18 all of it as a credit against the sentence or reject all or
19 part as a credit and state its reasons in the order. Credit,
20 however, must be allowed for jail time already served.

21 (4) Except as provided in 46-18-222, the imposition or
22 execution of the first 2 years of a sentence of imprisonment
23 imposed under the following sections may not be deferred or
24 suspended: 45-5-103, 45-5-202(3) relating to aggravated
25 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)

1 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
2 45-9-103(2).

3 (5) Except as provided in 46-18-222, the imposition or
4 execution of the first 10 years of a sentence of
5 imprisonment imposed under 45-5-102 may not be deferred or
6 suspended.

7 (6) Except as provided in 46-18-222, imposition of
8 sentence in a felony case may not be deferred in the case of
9 a defendant who has been convicted of a felony on a prior
10 occasion, whether or not the sentence was imposed,
11 imposition of the sentence was deferred, or execution of the
12 sentence was suspended.

13 (7) If the victim was less than 16 years old, the
14 imposition or execution of the first 30 days of a sentence
15 of imprisonment imposed under 45-5-502(3), 45-5-503,
16 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
17 suspended. Section 46-18-222 does not apply to the first 30
18 days of such imprisonment.

19 (8) In imposing a sentence on a defendant convicted of
20 a sexual offense as defined in 46-23-502, the court may not
21 waive the registration requirement provided in 46-18-254,
22 46-18-255, and Title 46, chapter 23, part 5.

23 (9) A person convicted of a sexual offense, as defined
24 in 46-23-502, and sentenced to imprisonment in the state
25 prison shall enroll in the educational phase of the prison's

1 sexual offender program."

2 NEW SECTION. Section 18. Codification instruction.

3 [Sections 1 through ~~14~~ 15] are intended to be codified as an
4 integral part of Title 53, chapter 30, and the provisions of
5 Title 53, chapter 30, apply to [sections 1 through ~~14~~ 15].

6 NEW SECTION. Section 19. Effective date. [This act] is
7 effective July 1, 1991.

-End-