

VOLUME NO. 37

OPINION NO. 114

ADMINISTRATIVE PROCEDURE - Board of Pardons and Department of Institutions - prisoner furlough program; PRISONERS - Short term furloughs; STATE AGENCIES: BOARD OF PARDONS - Authority to approve short term prisoner furloughs; DEPARTMENT OF INSTITUTIONS - Authority to use short term prisoner furloughs; REVISED CODES OF MONTANA, 1947 - Sections 95-2219, et. seq., and 95-2226.1; 37 OP. ATT'Y GEN. NO. 82 (1977).

HELD: Under the prisoner furlough program, sections 95-2219, et. seq., R.C.M. 1947, a furlough may be granted to a prisoner for a specific, limited period of time. The prisoner may be required under the terms of the furlough agreement to

return to prison at the end of the furlough unless he applies for and is granted a new furlough. The Board of Pardons may review specific duration plans submitted to it and determine if the applicants are good candidates for furlough under the plans submitted.

14 February 1978

Henry E. Burgess, Chairman
Board of Pardons
1119 Main Street
Deer Lodge, Montana 59722

Dear Mr. Burgess:

You have requested my opinion concerning the following question:

Under the prisoner furlough program, sections 95-2219 et. seq., R.C.M. 1947, may a work or study furlough be granted a prisoner for a specific, limited period of time, at the end of which the prisoner would be required to return to the prison or obtain approval and execution of a new furlough plan?

A recent Attorney General opinion, 37 OP. ATT'Y GEN. NO. 82 (October 17, 1977), discussed the furlough program and the respective roles and powers of the Board of Pardons and Department of Institutions thereunder. Generally, the board's role is an adjudicatory one involving a determination of whether each furlough applicant "is a good candidate for furlough under the general plan or program he proposes."

The furlough statutes do not specify what terms and conditions must be made a part of the plan an applicant submits to the board or what terms and conditions shall be incorporated in the final furlough agreement executed between the prisoner, the department, and the supervising agency. There is neither a provision limiting the duration of furloughs to a specific period of time nor any provision requiring that a furlough be granted for the entire duration of time left to be served on the prisoner's sentence or until he is granted parole.

Opinion No. 82 holds that the Department of Institutions has broad authority in fixing the terms of furlough:

The repositing of "final authority in all matters" with the Department, section 95-2221(5), R.C.M. 1947, makes it the final judge of the terms the agreement will contain. * * * [T]he Department may include conditions which further the purposes of the furlough program.

In some cases a furlough plan or agreement cannot cover the entire period of time remaining before the applicant prisoner becomes eligible for parole or entitled to mandatory release since the proposed training program, job, or schooling may have a specific, shorter duration. For example, educational and training programs are typically completed within specified times. Granting indefinite furloughs in cases where the program is for a limited duration would be incompatible with the department's responsibilities for furloughees' activities and inconsistent with furlough program objectives which link furloughs to gainful employment, schooling or training. Similarly, rejection of a program because it does not plan for all the time remaining on a prisoner's sentence may eliminate many educational and vocational opportunities and frustrate or delay rehabilitation. Limited duration furloughs are a reasonable middle ground between the all or nothing approach. These may also serve to further the furlough program goals by permitting furloughs of prisoners who are good candidates for short term furloughs with intense supervision and training which may be unavailable on a long term basis. Furloughs for specific, limited periods of time are consistent with the goals of the prisoner furlough program. The Department of Institutions has the authority to limit a furlough to specific duration as a condition of furlough agreement. The Board of Pardons has corresponding authority to review all specific duration plans to determine if the applicant is a good candidate for furlough under the plan submitted.

In reaching this conclusion I am aware of the procedural requirements set forth in section 95-2226.1 for returning furloughees to prison. These requirements concern the return of prisoners for alleged violations of furlough plans, and cases in which the furloughees are unable to benefit from further participation in their programs. The provisions do not preclude conditioning a furlough agreement upon the prisoner's return to prison at the end of a specific duration furlough.

THEREFORE, IT IS MY OPINION:

Under the prisoner furlough program, sections 95-2219 et. seq., R.C.M. 1947, a furlough may be granted to a prisoner for a specific, limited period of time. The prisoner may be required under the terms of the furlough agreement to return to prison at the end of the furlough unless he applies for and is granted a new furlough. The Board of Pardons may review specific duration plans submitted to it and determine if the applicants are good candidates for furlough under the plans submitted.

Very truly yours,

MIKE GREELY
Attorney General