

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 57

INSTITUTIONS, DEPARTMENT OF - Medical treatment as basis for furlough (supervised release) program under former statute sections 95-2217 to 95-2226.1, R.C.M. 1947 (§§ 46-23-401 to 46-23-426, MCA);
PARDONS, BOARD OF - Medical treatment as basis for furlough (supervised release) program under former statute sections 95-2217 to 95-2226.1, R.C.M. 1947 (§§ 46-23-401 to 46-23-426, MCA);
PRISONERS - Medical treatment as basis for furlough (supervised release) program under former statute sections 95-2217 to 95-2226.1, R.C.M. 1947 (§§ 46-23-401 to 46-23-426, MCA);
ADMINISTRATIVE RULES OF MONTANA - Sections 20.7.102, 20.7.103;
MONTANA CODE ANNOTATED - Sections 46-23-401 to 46-23-426;
MONTANA LAWS OF 1975 - Chapter 496, sections 1, 3;
MONTANA LAWS OF 1969 - Chapter 288;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 82 (1977);
REVISED CODES OF MONTANA, 1947 - Sections 95-2217 to 95-2226.1.

OPINIONS OF THE ATTORNEY GENERAL

HELD: An eligible inmate may present to the Board of Pardons an application for a furlough program which is based solely on medical treatment grounds. Discretion to approve or deny such an application is vested in the Board of Pardons.

21 January 1988

Carroll South, Director
Department of Institutions
1539 Eleventh Avenue
Helena MT 59620

Dear Mr. South:

You have asked my opinion on the following question:

May an eligible inmate present to the Board of Pardons a proposed furlough program that is based solely upon medical treatment?

Upon review of the relevant statutes, their legislative history, and rules promulgated by the Department of Institutions, I have concluded that the Board of Pardons may consider a furlough application directed exclusively to the delivery of medical treatment.

The facts upon which this opinion request is based are unique. The prisoner in question was sentenced to a lengthy imprisonment in 1978 for crimes committed that year. He is eligible under established Department of Institutions (hereinafter Department) rules and policy to apply for a furlough. See § 20.7.102(1)(a), ARM. The statutory framework underlying these regulations was originally enacted in 1969. 1969 Mont. Laws, ch. 288. The basic provisions of the legislation allowed inmates work, educational, and rehabilitation opportunities outside the confines of the prison. The statutes have been repeatedly amended over the years, with the general trend being to restrict eligibility for the program and limit its applicability. Initially termed a "prisoner furlough program," today the process is called a "supervised release program." The furlough program and the respective roles and powers of the Board of Pardons and the Department have been discussed in a prior opinion at some length. See 37 Op. Att'y Gen. No. 82 at 339 (1977).

There are three phases to a furlough request. This opinion assumes that the first phase, eligibility, has

OPINIONS OF THE ATTORNEY GENERAL

been obtained. The opinion addresses the second phase of the process, the application. The third phase of obtaining a furlough--review and favorable action by the Board of Pardons--is not at issue in your request, and nothing below should be construed as commenting on the merits of the furlough application.

The involved inmate suffers from motor impairment of the extremities, slurred speech, and pulmonary complications. These disabilities resulted from injuries he sustained in a car accident while attempting to elude police in 1978. The extent of the injuries and the accompanying psychological depression are the subject of conflicting medical and nonprofessional opinions.

The inmate's family has proposed a furlough program whereby the prisoner would be placed in his parents' private residence in Deer Lodge, Montana, and cared for by the family. This care would include private medical treatment that the family believes is presently unavailable at the state prison. The central question here is whether the furlough statutes contemplate a furlough application exclusively for medical treatment, as opposed to an application based in part on educational or occupational goals.

The purpose and intent of House Bill 72, enacted in 1969, was codified in section 95-2217, R.C.M. 1947. Key language in the statement of intent states:

The purpose and intent of this act is to establish a program for the rehabilitation, education, and betterment of selected prisoners[;] ... to make it possible [to] ... work gainfully to support their dependents[;] ... [to] continue their education or training; and at the same time [to] fulfill the obligations of the sentence of imprisonment imposed[.]

The language reflects that the primary purpose of the furlough program as originally enacted was to provide occupational and educational opportunities outside the confines of the prison. However, the statutes were amended in 1975.

House Bill 637 of the Forty-fourth Legislative Session broadened the scope of the furlough program. Language enlarging the goals of the program to include "treatment" was inserted within the statutes. For instance, the statement of intent quoted above was amended by the following: "[The prisoner program] shall serve to extend the limits of confinement for treatment

OPINIONS OF THE ATTORNEY GENERAL

as well as jurisdictional purposes." 1975 Mont. Laws, ch. 496, § 1. Similarly, the code section authorizing the Department to promulgate rules, § 95-2219, R.C.M. 1947, was amended to require rules for participation in a "treatment" program. 1975 Mont. Laws, ch. 496, § 3. The statute as amended read: "Rules shall include provisions for: ... Participating in an educational, treatment, or training program." § 95-2219, R.C.M. 1947 (1977).

The rules which the Department has promulgated under the furlough legislation indicate that the agency interpreted its mandate to include furloughs for medical purposes. In outlining the application process, section 20.7.102, ARM, states in part:

Treatment programs involving psychiatric treatment and/or serious physical impediment will be considered on an individual basis through supporting documentation of the unit counselors; supervisor of clinical services and/or consulting physician or psychologist.

Additionally, current rules specify terms that must be included in a furlough contract; reference is again made to treatment:

- (a) Location of residence;
- (b) Place of education or training;
- (c) Place of treatment;
- (d) Place of employment (if applicable)

§ 20.7.103(1), ARM (1984).

Thus, the furlough legislation as amended in 1975 and subsequent rulemaking expressly provide for furlough programs directed to delivery of medical treatment. While the bulk of the statutory scheme is designed for educational or occupational releases, no language prohibits a supervised release based solely on the need for specialized medical treatment. The legislative history of the 1975 amendments does not shed additional light upon my review. Lobbyists who testified in favor of the 1975 legislation commented that the bill would allow prisoners to obtain treatment for drug and alcohol abuse. The limited legislative history, however, need not be consulted; my opinion is based upon the plain meaning of the statutes in effect at the time the involved inmate's crimes were committed. "There is no safer nor better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly expresses." 2A Sutherland Statutory Construction § 46.01 (4th ed. 1984).

OPINIONS OF THE ATTORNEY GENERAL

Having held that a furlough application predicated exclusively on medical treatment grounds constitutes a statutorily-valid proposal that must be considered by the Board of Pardons, I emphasize that this opinion should not be construed as an endorsement of such a proposal. Discretion to approve or deny a prisoner's furlough application is vested in the Board of Pardons by section 46-23-412, MCA. Under that statute, the Board reviews each application individually and must study the actual furlough plan, the prisoner's criminal history, and all other pertinent case material before a decision is reached. See 37 Op. Att'y Gen. No. 82 at 339 (1977).

THEREFORE, IT IS MY OPINION:

An eligible inmate may present to the Board of Pardons an application for a furlough program which is based solely on medical treatment grounds. Discretion to approve or deny such an application is vested in the Board of Pardons.

Very truly yours,

MIKE GREELY
Attorney General