

1 VINCENT *House* BILL NO. *637*  
 2 INTRODUCED BY *Holmes Huenkel May Wolfe*  
 3 *Anthony Huchni McArthur Bradley Rasmussen*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER *Foley*  
 5 FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY *Long*  
 6 PUBLIC AND PRIVATE SUPERVISING AGENCIES, AND PLACING  
 7 RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF  
 8 INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH  
 9 95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M.  
 10 1947." *Rickman Luebeck O'Connell Kinble TEAGUE Ellis*

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

Section 1. Section 95-2217, R.C.M. 1947, is amended to read as follows:

"95-2217. Prisoner furlough program -- purpose and intent. The purpose and intent of this act is to establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison; to increase their responsibility to society; to make it possible that they may, while serving their sentences, work gainfully to support their dependents in whole or in part; and providing for a the minimum hourly wage required by law of--one--and 40/100--(91.40)--dollars-an-hour to be paid to said convicts while so employed; continue their education or training; and at the same time fulfill the obligations of the sentence of

1 imprisonment imposed; placing the establishment, regulation,  
 2 guidance, and control of such program under the direction of  
 3 the warden--of--the--state--prison department of institutions  
 4 with the advice and consent of the state--board--of--pardons  
 5 furlough committee created in section 4 of this act which  
 6 program shall operate by supplementing and not replacing  
 7 established penal procedures now or hereafter established by  
 8 law and shall serve to extend the limits of confinement for  
 9 treatment as well as jurisdictional purposes. This act is  
 10 to be liberally construed to effect the over-all objectives  
 11 set forth above."

Section 2. Section 95-2218, R.C.M. 1947, is amended to read as follows:

"95-2218. Definitions. Unless the context requires otherwise, in this act:

(1) "Board Department" means the state--board--of--pardons department of institutions provided for in section 82A-004 82A-801;

(2) "State prison" means the Montana state prison at Deer Lodge and any adult correctional facility under the direction of the department;

(3) "Prisoner" means a person sentenced by a district court to a term of confinement in the state prison;

(4) "Sheriff Supervising agency" means any county sheriff--including--all--deputies--or--other--persons--working

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1 ~~under his direction or guidance~~ federal, state, county,  
 2 local or private agency, Indian tribe and reservation, or  
 3 any person, group, association or organization approved by  
 4 the department to undertake the supervision of prisoners  
 5 participating in the furlough program;

6 (5) "Jail" means any county jail;

7 (6) "Warden Furlough committee" means the  
 8 ~~superintendent of the state prison appointed by the board of~~  
 9 ~~institutions;~~ committee established in section 4 of this  
 10 act;

11 (7) "Applicant" means any prisoner who has signed an  
 12 application to participate in the prisoner furlough  
 13 program."

14 Section 3. Section 95-2219, R.C.M. 1947, is amended to  
 15 read as follows:

16 "95-2219. Warden Department to establish program and  
 17 ~~rules --privileges granted prisoners.~~ The warden department  
 18 is authorized and directed to establish a furlough program  
 19 and rules to implement and control the same, in accordance  
 20 with the provisions of Title 82, chapter 42, R.C.M. 1947. A  
 21 ~~prisoner sentenced to the state prison may be granted the~~  
 22 ~~privilege of~~ Rules shall include provisions for:

23 (1) Working at paid employment for a rate of pay not  
 24 less than ~~one and 40/100 (\$1.40) dollars an hour, or the~~  
 25 minimum hourly wage as required by law;

1 (2) Participating in an educational or training  
 2 program;

3 (3) Approval of supervising agency; and

4 (4) Review of determinations in furlough application."

5 Section 4. There is a new R.C.M. section numbered  
 6 95-2219.1 that reads as follows:

7 95-2219.1. Creation of furlough committee --  
 8 composition. There is created a prisoner furlough committee  
 9 at the state prison. It shall be composed of the following  
 10 staff members of the prison:

11 (1) The warden or his designated representative;

12 (2) Employment counselor;

13 (3) Applicant's social case worker;

14 (4) Psychologist (or psychiatrist);

15 (5) Member chosen by the applicant.

16 Each member shall have an equal vote in all  
 17 proceedings. The furlough committee shall meet on a regular  
 18 monthly schedule which shall be adopted, printed and  
 19 circulated throughout the prison. Each inmate of the prison  
 20 shall be notified of any variation in the schedule at least  
 21 one week in advance of the rescheduled meeting.

22 Section 5. Section 95-2220, R.C.M. 1947, is amended to  
 23 read as follows:

24 "95-2220. Application for participation in furlough  
 25 program. Any prisoner confined in the state prison may make

1 application to participate in the furlough program ~~according~~  
 2 ~~to rules adopted by the warden with the advice and consent~~  
 3 ~~of the board~~ after having served at least one-half (1/2) of  
 4 the time required to be considered for parole."

5 Section 6. Section 95-2221, R.C.M. 1947, is amended to  
 6 read as follows:

7 "95-2221. Consideration of application -- ~~furlough~~  
 8 ~~plan-----consent--of-sheriff-necessary~~ duties of committee.

9 (1) At the monthly meeting of the furlough committee  
 10 following the signing of any prisoner's application, the  
 11 board the committee shall approve or deny the application of  
 12 the each prisoner after careful study of the--prisoner's  
 13 conduct--attitude--and--behavior-in-the-prison-in-which-the  
 14 prisoner--is--confined his furlough plans, his criminal  
 15 history, and all other pertinent case material. The  
 16 following rules shall be observed when the committee meets  
 17 to consider any application:

18 (a) every applicant shall be allowed to call two (2)  
 19 witnesses from outside the institution to testify as to his  
 20 general attitude, participation in self-help activities, or  
 21 his character or job references;

22 (b) every applicant shall be allowed one summary  
 23 dismissal of any committee member for reason of personality  
 24 conflict, in which event an appropriate and mutually  
 25 agreeable substitute shall be made;

1 (c) every applicant shall remain present during the  
 2 discussion of his application by the committee and be given  
 3 an oral decision on his application before the adjournment  
 4 of the committee. Nothing contained herein shall be  
 5 construed to allow an executive session of the committee to  
 6 be held in the absence of the applicant;

7 (d) every applicant shall be viewed singly, and shall  
 8 be recognized as an individual, with individual problems,  
 9 and individual capabilities; the decision of the committee  
 10 shall take into account the potential of the individual and  
 11 shall determine the course which is most likely to provide  
 12 optimum benefit to both society and the individual;

13 (e) each applicant shall be allowed to discuss any  
 14 specific problem areas with any member of the furlough  
 15 committee;

16 (f) a secretary shall be in attendance at each meeting  
 17 to record the entire proceedings, including the  
 18 determination of the committee, and the record shall be sent  
 19 to each person participating in the meeting within ten (10)  
 20 days following the meeting and the original copy shall be  
 21 filed with the department.

22 (2) If the application is approved, the warden  
 23 department shall, ~~adopt--a--furlough-plan-for-the-prisoner~~  
 24 within the shortest possible period of time, locate an  
 25 agency capable of supervising the prisoner applicant. The

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1 supervising agency, the department, and the prisoner  
 2 applicant shall enter into a written agreement setting out  
 3 the conditions and purposes of the furlough and specifying  
 4 the responsibility assumed by each of the parties. The  
 5 agreement shall be executed, signed by the parties before a  
 6 notary public, in triplicate, with one copy each to be filed  
 7 with the committee and the department and one copy to be  
 8 retained by the applicant. Upon the signing of the  
 9 agreement, the prisoner will be released to the supervising  
 10 agency, which shall constitute an extension of the limits of  
 11 confinement.

12 (3) ~~No prisoner shall be released without the written~~  
 13 ~~consent of the sheriff of the county receiving the prisoner~~  
 14 If the application is denied the prisoner may reapply after  
 15 six (6) months time. After an applicant has been denied  
 16 three (3) times he may appeal to the department for a  
 17 hearing by the board of pardons."

18 Section 7. Section 95-2222, R.C.M. 1947, is amended to  
 19 read as follows:

20 "95-2222. Disposition of prisoner's earnings -- trust  
 21 fund -- schooling costs. (1) A prisoner employed in the  
 22 community under a work furlough plan shall ~~surrender to the~~  
 23 ~~sheriff his total earnings less payroll deductions required~~  
 24 ~~by law. The sheriff shall deduct from such earnings in the~~  
 25 ~~following order of priority~~ enter into a written financial

1 agreement with the supervising agency and the department  
 2 concerning the acquisition and disposition of his earnings.  
 3 This financial agreement shall provide for the payment of:

4 (a) ~~A standard charge for all prisoners determined by~~  
 5 ~~the county commissioners to be the cost to the county of~~  
 6 ~~providing food, lodging and clothing for such the prisoner~~  
 7 ~~if incurred and if applicable;~~

8 (b) The actual and necessary travel and other expenses  
 9 of ~~such the~~ prisoner under furlough from actual confinement  
 10 under the program; ~~and~~

11 (c) ~~Such An~~ amount ~~as the prisoner may be determined~~  
 12 ~~by the district judge~~ to pay for the support of his  
 13 dependents, which amount shall be paid to ~~such the~~  
 14 dependents; and

15 (d) ~~A minimal~~ An allowance for personal items, and  
 16 other expenses or disbursements agreed upon by the prisoner  
 17 and the supervising agency.

18 (2) Unless the financial agreement specifically  
 19 provides for other disbursement of the money, Any any  
 20 balance remaining after such deductions and payments shall  
 21 be deposited to an interest-bearing account held in trust  
 22 for said the prisoner and shall be paid to him upon release.

23 (3) If no other sources of support are available, The  
 24 above the costs of a prisoner under furlough who is in  
 25 training or school shall be the responsibility of the

1 state."

2 Section 8. Section 95-2223, R.C.M. 1947, is amended to  
3 read as follows:

4 "95-2223. Administrative rules -- co-operation by  
5 state agencies. (1) The warden department is authorized to  
6 make rules for the administration of the provision of this  
7 act with-the-advice-and-consent-of-the-board in accordance  
8 with Title 82, chapter 42, R.C.M. 1947.

9 (2) All state, county and local agencies shall  
10 co-operate with-the-warden-and-sheriff in the administration  
11 of the furlough program."

12 Section 9. Section 95-2224, R.C.M. 1947, is amended to  
13 read as follows:

14 "95-2224. Prisoner not agent, employee or involuntary  
15 servant of-warden-or-sheriff. No prisoner employed in the  
16 community under the provisions of this act shall be deemed  
17 to be an agent, employee, or involuntary servant of the  
18 warden-or-sheriff department or of the supervising agency  
19 while released from confinement pursuant to the terms of the  
20 furlough program. Abuse of this section shall be deemed  
21 official misconduct pursuant to 94-7-401, R.C.M. 1947."

22 Section 10. There is a new R.C.M. section numbered  
23 95-2226.1 that reads as follows:

24 95-2226.1. Responsibility of department and  
25 supervising agency -- revocation of furlough -- escape. (1)

1 The department shall be responsible for the activities of a  
2 prisoner participating in a furlough program under this act.  
3 The supervising agency shall be responsible for those  
4 activities of a furloughed prisoner for which it is  
5 responsible in the written furlough agreement.

6 (2) If any prisoner released from actual prison  
7 confinement under the furlough program fails to comply with  
8 the rules and regulations of the furlough agreement, he  
9 shall be called by the department or by the supervising  
10 agency to appear before the department or supervising  
11 agency. If a conference is not sufficient to resolve the  
12 situation and if the prisoner continues in his  
13 noncompliance, the department shall file an affidavit in the  
14 district court of the county in which the violation took  
15 place charging the prisoner with a violation of the rules  
16 and regulations of the furlough agreement. The district  
17 court shall hold a hearing on the charge at which the  
18 prisoner is entitled to have counsel appointed to represent  
19 him. Upon determining that the prisoner has violated the  
20 rules and regulations of the furlough agreement, the court  
21 shall order the prisoner returned to prison.

22 (3) If the department determines that a prisoner  
23 presents an immediate grave threat to the community in which  
24 he is furloughed, it may order the prisoner returned to  
25 prison before a hearing is held, but in this case a hearing

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1 on the charges against the prisoner, as provided for in the  
2 above subsection, must be held in the district court no  
3 later than ten (10) days after the return of the prisoner to  
4 the state prison.

5 (4) If a prisoner, while not disabled from working by  
6 temporary illness, is unemployed for a period of thirty (30)  
7 days, or more, after his availability for employment is  
8 reported in writing by the supervising agency to the  
9 department of labor and industry office serving the area in  
10 which the prisoner is furloughed and to the union to which  
11 the prisoner belongs, or if a prisoner has become so  
12 disabled as to be unemployable, or if a prisoner is on an  
13 educational furlough and has demonstrated for a period of  
14 six (6) weeks or more that he is unable to benefit from  
15 schooling or training, then the prisoner, the department, or  
16 the supervising agency may request that a conference be held  
17 with the department, the prisoner, and a representative of  
18 the supervising agency to consider the problem of the  
19 prisoner's unemployment, disability, or inability to benefit  
20 from schooling or training. At this conference the prisoner  
21 may request that his supervision be transferred to another  
22 supervising agency, and a representative of the new agency  
23 may be at the conference. If the conference does not result  
24 in a resolution of the problem of the prisoner's  
25 unemployment, disability, or inability to benefit, the

1 department may file an affidavit in the district court of  
2 the county in which the prisoner is furloughed, stating that  
3 the prisoner is not benefiting from the furlough program and  
4 will not benefit from continued participation in the program  
5 and requesting a hearing to determine an alternate proposal.  
6 In this hearing the prisoner is entitled to have counsel  
7 appointed to represent him. Upon determining that the  
8 prisoner is not benefiting from the furlough program and  
9 will not benefit from continued participation in the  
10 program, the court shall order the prisoner returned to the  
11 prison.

12 (5) For the purpose of this act, the provisions  
13 relating to escape in section 94-7-306, R.C.M. 1947, shall  
14 apply, unless aggravating circumstances require a more  
15 severe penalty.

16 Section 11. Section 82-4202, R.C.M. 1947, is amended  
17 to read as follows:

18 "82-4202. Definitions. For purposes of this act:

19 (1) "Agency" means any board, bureau, commission,  
20 department, authority or officer of the state government  
21 authorized by law to make rules and to determine contested  
22 cases, except that the provisions of this act shall not  
23 apply to the following:

24 (a) the legislature and any branch, committee or  
25 officer thereof;

1 (b) the judicial branches and any committee or officer  
2 thereof;

3 (c) the governor, except that an agency otherwise  
4 covered by this act shall not be exempt because the governor  
5 has been designated as a member thereof;

6 (d) the state military establishment and agencies  
7 concerned with civil defense and recovery from hostile  
8 attack;

9 (e) the state board of pardons, except that said board  
10 shall be subject to the requirements of section 3 [82-4203]  
11 and 5 [82-4205] of this act and its rules shall be published  
12 in the Montana administrative code and register;

13 (f) the supervision and administration of any penal,  
14 mental, medical or eleemosynary institution with regard to  
15 the admission, release, institutional supervision, custody,  
16 control, care or treatment of inmates, prisoners or  
17 patients, except as provided in sections 95-2219 and  
18 95-2223, R.C.M. 1947;

19 (g) the administration and management of educational  
20 institutions;

21 (h) the financing, construction and maintenance of  
22 public works.

23 (2) "Rule" means each agency regulation, standard or  
24 statement of general applicability that implements,  
25 interprets, or prescribes law or policy or describes the

1 organization, procedures, or practice requirements of an  
2 agency. The term includes the amendment or repeal of a prior  
3 rule, but does not include:

4 (a) statements concerning only the internal management  
5 of an agency and not affecting private rights or procedures  
6 available to the public;

7 (b) declaratory rulings issued pursuant to section 18  
8 [82-4218] of this act;

9 (c) intra-agency memoranda;

10 (d) rules relating to the use of public works,  
11 facilities, streets and highways, when the substance of such  
12 rules is indicated to the public by means of signs or  
13 signals;

14 (e) seasonal rules adopted annually relating to  
15 hunting, fishing and trapping when there is a statutory  
16 requirement for the publication of such rules, and rules  
17 adopted annually relating to the seasonal recreational use  
18 of lands and waters owned or controlled by the state when  
19 the substance of such rules is indicated to the public by  
20 means of signs or signals;

21 (f) rules relating to personnel standards, job  
22 classifications or salary ranges for agency employees;

23 (g) uniform rules adopted pursuant to interstate  
24 compact, except that such rules shall be filed in accordance  
25 with section 10 [82-4210] of this act and shall be published

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1 in the Montana administrative code and register.

2 (3) "Contested case" means any proceeding before an  
3 agency in which a determination of legal rights, duties or  
4 privileges of a party is required by law to be made after an  
5 opportunity for hearing. The term includes, but is not  
6 restricted to, rate making, price fixing and licensing.

7 (4) "License" includes the whole or part of any agency  
8 permit, certificate, approval, registration, charter or  
9 other form of permission required by law, but does not  
10 include a license required solely for revenue purposes.

11 (5) "Licensing" includes any agency process respecting  
12 the grant, denial, renewal, revocation, suspension,  
13 annulment, withdrawal, limitation or amendment of a license.

14 (6) "Party" means any person or agency named or  
15 admitted as a party, or properly seeking and entitled as of  
16 right to be admitted as a party; but nothing herein shall be  
17 construed to prevent an agency from admitting any person or  
18 agency as a party for limited purposes.

19 (7) "Person" means any individual, partnership,  
20 corporation, association, governmental subdivision or public  
21 organization of any character other than an agency."

22 Section 12. Section 95-2226, R.C.M. 1947, is repealed.

-End-



Approved by Committee  
on Judiciary

HOUSE BILL NO. 637

INTRODUCED BY HOLMES, HUENNEKENS, MELOY, WOLFE, VINCENT,  
JACK MOORE, JOHNSON, HALVORSON, SHELDEN, GUNDERSON,  
DRISCOLL, KEMMIS, GUTHRIE, MCKITTRICK, BRADLEY, RASMUSSEN,  
MERCER, SLOAN, BARDANOUE, DUSSAULT, C.R. ANDERSON,  
FINLEY, LORY, KENDALL, ELLIS, RICHARDS, LUEBECK,  
O'CONNELL, KIMBLE, TEAGUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER  
FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY  
PUBLIC AND PRIVATE SUPERVISING AGENCIES, AND PLACING  
RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF  
INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH  
95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M.  
1947."

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

Section 1. Section 95-2217, R.C.M. 1947, is amended to  
read as follows:

"95-2217. Prisoner furlough program -- purpose and  
intent. The purpose and intent of this act is to establish a  
program for the rehabilitation, education, and betterment of  
selected prisoners confined in the state prison; to increase  
their responsibility to society; to make it possible that  
they may, while serving their sentences, work gainfully to

support their dependents in whole or in part; and providing  
for a the minimum hourly wage required by law OR THE  
PREVAILING RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR  
OCCUPATIONS BY THE SAME EMPLOYER ~~of one and 40/100 (\$1.40)~~  
~~dollars--an--hour~~ to be paid to said convicts while so  
employed; continue their education or training; and at the  
same time fulfill the obligations of the sentence of  
imprisonment imposed; placing the establishment, regulation,  
guidance, and control of such program under the direction of  
the warden-of-the-state-prison department of institutions  
~~with--the--advice--and-consent-of-the-state-board-of-pardons~~  
~~furlough-committee-created-in-section-4-of-this-act~~ which.  
THE PRISONER program shall operate by supplementing and not  
replacing established penal procedures now or hereafter  
established by law and shall serve to extend the limits of  
confinement for treatment as well as jurisdictional  
purposes. This act is to be liberally construed to effect  
the over-all objectives set forth above."

Section 2. Section 95-2218, R.C.M. 1947, is amended to  
read as follows:

"95-2218. Definitions. Unless the context requires  
otherwise, in this act:

(1) "Board Department" means the ~~state--board--of~~  
~~pardons~~ department of institutions provided for in section  
~~82A-804~~ 82A-801;

1       (2) "BOARD" MEANS THE BOARD OF PARDONS PROVIDED FOR IN  
 2       SECTION 82A-804.

3       ~~(2)~~ (3) "State prison" means the Montana state prison  
 4       at Deer Lodge and any adult correctional facility under the  
 5       direction of the department;

6       ~~(3)~~ (4) "Prisoner" means a person sentenced by a  
 7       district court to a term of confinement in the state prison;

8       ~~(4)~~ (5) "Sheriff Supervising agency" means any county  
 9       ~~sheriff-including-all-deputies-or-other-persons-working~~  
 10       ~~under-his-direction-or-guidance~~ federal, state, county,  
 11       local or private agency, Indian tribe and reservation, or  
 12       any person, group, association or organization approved by  
 13       the department to undertake the supervision of prisoners  
 14       participating in the furlough program;

15       ~~(5)~~ (6) "Jail" means any county jail;

16       ~~(6)--"Warden Furlough-committee" means----the~~  
 17       ~~superintendent-of-the-state-prison-appointed-by-the-board-of~~  
 18       ~~institutions: committee--established--in--section-4-of-this~~  
 19       ~~act;~~

20       (7) "Applicant" means any prisoner who has signed an  
 21       application to participate in the prisoner furlough  
 22       program."

23       Section 3. Section 95-2219, R.C.M. 1947, is amended to  
 24       read as follows:

25       "95-2219. Warden Department to establish program and

1       rules ~~---privileges-granted-prisoners.~~ The warden department  
 2       is authorized and directed to establish a furlough program  
 3       and rules to implement and control the same, in accordance  
 4       with the provisions of Title 82, chapter 42, R.C.M. 1947. A  
 5       ~~prisoner--sentenced--to--the-state-prison-may-be-granted-the~~  
 6       ~~privilege-of~~ Rules shall include provisions for:

7       (1) Working at paid employment for a rate of pay not  
 8       less than ~~one--and--40/100--(\$1.40)--dollars-an-hour,-or the~~  
 9       minimum hourly wage as required by law OR THE PREVAILING  
 10       RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR OCCUPATIONS BY  
 11       THE SAME EMPLOYER;

12       (2) Participating in an educational, TREATMENT, or  
 13       training program;

14       (3) Approval of supervising agency; and

15       (4) Review of determinations in furlough application."

16       ~~Section-4--There-is--a--new--R.C.M.--section--numbered~~  
 17       ~~95-2219.1--that-reads-as-follows:~~

18       ~~95-2219.1--Creation----of----furlough--committee----~~  
 19       ~~composition--There-is-created-a-prisoner-furlough-committee~~  
 20       ~~at-the-state-prison--It-shall-be-composed-of-the--following~~  
 21       ~~staff-members-of-the-prison:~~

22       ~~(1)--The-warden-or-his-designated-representative;~~

23       ~~(2)--Employment-counselor;~~

24       ~~(3)--Applicant's-social-case-worker;~~

25       ~~(4)--Psychologist-(or-psychiatrist);~~

1 ~~(5) Member chosen by the applicant.~~

2 ~~Each member shall have an equal vote in all~~  
3 ~~proceedings. The furlough committee shall meet on a regular~~  
4 ~~monthly schedule which shall be adopted, printed and~~  
5 ~~circulated throughout the prison. Each inmate of the prison~~  
6 ~~shall be notified of any variation in the schedule at least~~  
7 ~~one week in advance of the rescheduled meeting.~~

8 Section 4. Section 95-2220, R.C.M. 1947, is amended to  
9 read as follows:

10 "95-2220. Application for participation in furlough  
11 program. Any prisoner confined in the state prison may make  
12 application to participate in the furlough program according  
13 to rules adopted by the warden with the advice and consent  
14 of the board after having served at least BY THE TIME THE  
15 INMATE HAS SERVED one-half (1/2) of the time required to be  
16 considered for parole."

17 ~~Section 6. Section 95-2221, R.C.M. 1947, is amended to~~  
18 ~~read as follows:~~

19 ~~"95-2221. Consideration of application of furlough~~  
20 ~~plan consent of sheriff necessary duties of committee.~~

21 ~~(i) At the monthly meeting of the furlough committee~~  
22 ~~following the signing of any prisoner's application; The~~  
23 ~~board the committee shall approve or deny the application of~~  
24 ~~the each prisoner after careful study of the prisoner's~~  
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1 ~~prisoner is confined his furlough plans, his criminal~~  
2 ~~history, and all other pertinent case material. The~~  
3 ~~following rules shall be observed when the committee meets~~  
4 ~~to consider any application:~~

5 ~~(a) every applicant shall be allowed to call two (2)~~  
6 ~~witnesses from outside the institution to testify as to his~~  
7 ~~general attitude, participation in self-help activities, or~~  
8 ~~his character or job references;~~

9 ~~(b) every applicant shall be allowed one summary~~  
10 ~~dismissal of any committee member for reason of personality~~  
11 ~~conflict, in which event an appropriate and mutually~~  
12 ~~agreeable substitute shall be made;~~

13 ~~(c) every applicant shall remain present during the~~  
14 ~~discussion of his application by the committee and be given~~  
15 ~~an oral decision on his application before the adjournment~~  
16 ~~of the committee. Nothing contained herein shall be~~  
17 ~~construed to allow an executive session of the committee to~~  
18 ~~be held in the absence of the applicant;~~

19 ~~(d) every applicant shall be viewed singly, and shall~~  
20 ~~be recognized as an individual, with individual problems,~~  
21 ~~and individual capabilities; the decision of the committee~~  
22 ~~shall take into account the potential of the individual and~~  
23 ~~shall determine the course which is most likely to provide~~  
24 ~~optimum benefit to both society and the individual;~~

25 ~~(e) each applicant shall be allowed to discuss any~~

1 specific-problem-areas--with--any--member--of--the--furlough  
2 committee;

3 (f)--a--secretary--shall--be--in--attendance--at--each--meeting  
4 to---record---the---entire---proceedings,---including---the  
5 determination--of--the--committee,--and--the--record--shall--be--sent  
6 to--each--person--participating--in--the--meeting--within--ten--(10)  
7 days--following--the--meeting--and--the--original--copy--shall--be  
8 filed--with--the--department.

9 (2)--If--the--application--is--approved,---the---warden  
10 department shall,--adopt--a--furlough--plan--for--the--prisoner  
11 within--the--shortest--possible--period--of--time,--locate--an  
12 agency--capable--of--supervising--the--prisoner--applicant,--The  
13 supervising--agency,--the--department,--and--the--prisoner  
14 applicant--shall--enter--into--a--written--agreement--setting--out  
15 the--conditions--and--purposes--of--the--furlough--and--specifying  
16 the--responsibility--assumed--by--each--of--the--parties,--The  
17 agreement--shall--be--executed,--signed--by--the--parties--before--a  
18 notary--public,--in--triplicate,--with--one--copy--each--to--be--filed  
19 with--the--committee--and--the--department--and--one--copy--to--be  
20 retained--by--the--applicant,---Upon--the--signing--of--the  
21 agreement,--the--prisoner--will--be--released--to--the--supervising  
22 agency, which--shall--constitute--an--extension--of--the--limits--of  
23 confinement.

24 (3)--No--prisoner--shall--be--released--without--the--written  
25 consent--of--the--sheriff--of--the--county--receiving--the--prisoner

1 if--the--application--is--denied--the--prisoner--may--reapply--after  
2 six--(6)--months--time,---After--an--applicant--has--been--denied  
3 three--(3)--times--he--may--appeal--to--the--department--for--a  
4 hearing--by--the--board--of--pardons.<sup>1</sup>

5 SECTION 5. SECTION 95-2221, R.C.M. 1947, IS AMENDED TO  
6 READ AS FOLLOWS:

7 "95-2221. Consideration of application--furlough  
8 plan--notification or consent of sheriff necessary--duties  
9 of board. (1) At the meeting of the board following the  
10 signing of any prisoner's application the board shall  
11 approve or deny the application of the each prisoner after  
12 careful study of the prisoner's conduct,--attitude--and  
13 behavior--in--the--prison--in--which--the--prisoner--is--confined,  
14 his furlough plans, criminal history, and all other  
15 pertinent case material. The following rules shall be  
16 observed when the board meets to consider an application:

17 (a) each applicant may call two (2) witnesses from  
18 outside the institution to testify as to the applicant's  
19 general attitude, participation in self-help activities, or  
20 his character or job references;

21 (b) each applicant shall remain present during the  
22 discussion of his application by the board and be given an  
23 oral decision on his application before the adjournment of  
24 the board as well as a written decision including a thorough  
25 statement of reasons for the decision;

1 (c) each applicant shall be viewed singly, and shall  
 2 be recognized as an individual;

3 (d) each applicant shall be allowed to discuss any  
 4 specific problem areas with any member of the board.

5 (2) If the application is approved, the warden shall  
 6 adopt a furlough plan for the prisoner, which shall  
 7 constitute an extension of the limits of confinement.  
 8 department shall: within the shortest possible time, locate  
 9 an agency capable of supervising the applicant.

10 (3) No prisoner shall be released without the written  
 11 consent of the sheriff of the county receiving the prisoner.  
 12 The supervising agency, the department, and the applicant  
 13 shall enter into a written agreement setting out the  
 14 conditions and purposes of the furlough and specifying the  
 15 responsibility assumed by each of the parties. The  
 16 agreement shall be executed, signed by the parties before a  
 17 notary public, in triplicate, with one copy to be filed with  
 18 the supervising agency and the department and one copy to be  
 19 retained by the applicant.

20 (4) Upon the signing of the agreement, the prisoner  
 21 shall be released to the supervising agency.

22 (5) Final authority in all matters pertaining to  
 23 prisoner furloughs is in the department.

24 (6) When an inmate is to reside in the county jail,  
 25 the consent of the sheriff in the receiving county is

1 necessary. However, when the inmate is to reside in a  
 2 community corrections center or some other supervised  
 3 setting the sheriff of the receiving county shall be  
 4 notified.

5 (7) If the application is denied the prisoner may  
 6 reapply after six (6) months time. After an applicant has  
 7 been denied three (3) times he may appeal to the department  
 8 for a hearing."

9 Section 6. Section 95-2222, R.C.M. 1947, is amended to  
 10 read as follows:

11 "95-2222. Disposition of prisoner's earnings -- trust  
 12 fund -- schooling costs. (1) A prisoner employed in the  
 13 community under a work furlough plan shall ~~surrender to the~~  
 14 ~~sheriff his total earnings less payroll deductions required~~  
 15 ~~by law. The sheriff shall deduct from such earnings in the~~  
 16 ~~following order of priority~~ enter into a written financial  
 17 agreement with the supervising agency and the department  
 18 concerning the acquisition and disposition of his earnings.  
 19 This financial agreement shall provide for the payment of:

20 (a) ~~A standard charge for all prisoners determined by~~  
 21 ~~the county commissioners to be the cost to the county of~~  
 22 providing food, lodging and clothing for such the prisoner  
 23 if incurred and if applicable;

24 (b) The actual and necessary travel and other expenses  
 25 of such the prisoner under furlough from actual confinement

1 under the program; and

2 (c) ~~Such An amount as the prisoner may be determined~~  
3 ~~by the district judge~~ to pay for the support of his  
4 dependents, which amount shall be paid to such the  
5 dependents; and

6 (d) ~~A minimal~~ An allowance for personal items, and  
7 other expenses or disbursements agreed upon by the prisoner  
8 and the supervising agency.

9 (2) Unless the financial agreement specifically  
10 provides for other disbursement of the money, Any any  
11 balance remaining after such deductions and payments shall  
12 be deposited to an interest-bearing account held in trust  
13 for said the prisoner and shall be paid to him upon release.

14 (3) If no other sources of support are available, The  
15 above the costs of a prisoner under furlough who is in  
16 training or school shall be the responsibility of the  
17 state."

18 Section 7. Section 95-2223, R.C.M. 1947, is amended to  
19 read as follows:

20 "95-2223. Administrative rules -- co-operation by  
21 state agencies. (1) The warden department is authorized to  
22 make rules for the administration of the provision of this  
23 act ~~with the advice and consent of the board~~ in accordance  
24 with Title 82, chapter 42, R.C.M. 1947.

25 (2) All state, county and local agencies shall

1 co-operate ~~with the warden and sheriff~~ in the administration  
2 of the furlough program."

3 Section 8. Section 95-2224, R.C.M. 1947, is amended to  
4 read as follows:

5 "95-2224. Prisoner not agent, ~~employee~~ or involuntary  
6 servant ~~of warden or sheriff~~. No prisoner ~~employed~~ in the  
7 community under the provisions of this act shall be deemed  
8 to be an agent, ~~employee,~~ or involuntary servant of the  
9 ~~warden or sheriff~~ department or of the supervising agency  
10 while released from confinement pursuant to the terms of the  
11 furlough program. Abuse of this section shall be deemed  
12 official misconduct pursuant to 94-7-401, R.C.M. 1947."

13 Section 9. There is a new R.C.M. section numbered  
14 95-2226.1 that reads as follows:

15 95-2226.1. Responsibility of department and  
16 supervising agency -- CHANGE OR revocation of furlough --  
17 escape. (1) The department shall be responsible for the  
18 activities of a prisoner participating in a furlough program  
19 under this act. THE DEPARTMENT MAY DELEGATE JURISDICTIONAL  
20 SUPERVISION OF WORK FURLOUGH PARTICIPANTS TO THE ADULT  
21 PAROLE AND PROBATION FIELD SERVICE. The supervising agency  
22 shall be responsible for those activities of a furloughed  
23 prisoner for which it is responsible in the written furlough  
24 agreement.

25 (2) If any prisoner released from actual prison

1 confinement under the furlough program fails to comply with  
 2 the rules and regulations of the furlough agreement, he  
 3 shall be called by the department or by the supervising  
 4 agency to appear before the department or supervising  
 5 agency. If a conference is not sufficient to resolve the  
 6 situation and if the prisoner continues in his  
 7 noncompliance, ~~the department shall file an affidavit in the~~  
 8 ~~district court of the county in which the violation took~~  
 9 ~~place charging the prisoner with a violation of the rules~~  
 10 ~~and regulations of the furlough agreement. The district~~  
 11 ~~court~~ THE BOARD shall hold a hearing on the charge at which  
 12 the prisoner is entitled to have counsel appointed to  
 13 represent him. Upon determining that the prisoner has  
 14 violated the rules and regulations of the furlough  
 15 agreement, the ~~court~~ BOARD shall order the prisoner returned  
 16 to prison.

17 (3) If the department determines AFTER HAVING BEEN  
 18 ADVISED BY THE SUPERVISING AGENCY OR THE ADULT PAROLE AND  
 19 PROBATION FIELD SERVICE, that a prisoner presents an  
 20 immediate grave threat to the community in which he is  
 21 furloughed, it may order the prisoner returned to prison  
 22 before a hearing is held, but in this case a hearing on the  
 23 charges against the prisoner, as provided for in the above  
 24 subsection, must be held in the district court no later than  
 25 ~~ten (10)~~ THIRTY (30) days after the return of the prisoner

1 to the state prison.

2 (4) IF, AFTER A REASONABLE TIME, A FURLOUGHED PRISONER  
 3 DETERMINES THAT HIS FURLOUGH PLAN IS UNSATISFACTORY DUE TO  
 4 PERSONALITY CONFLICT, A VIOLATION OF HIS RIGHTS BY HIS  
 5 SUPERVISOR, OR A CHANGE OF INTEREST OR EMPLOYMENT STATUS,  
 6 THE DEPARTMENT SHALL GRANT HIM A HEARING TO DETERMINE  
 7 WHETHER OR NOT A NEW FURLOUGH PLAN SHOULD BE EXECUTED.

8 ~~(4)~~ (5) If a prisoner, while not disabled from working  
 9 by temporary illness, is unemployed for a period of thirty  
 10 (30) days, or more, after his availability for employment is  
 11 reported in writing by the supervising agency to the  
 12 department of labor and industry office serving the area in  
 13 which the prisoner is furloughed and to the union to which  
 14 the prisoner belongs, or if a prisoner has become so  
 15 disabled as to be unemployable, or if a prisoner is on an  
 16 educational furlough and has demonstrated for a period of  
 17 six (6) weeks or more that he is unable to benefit from  
 18 schooling, TREATMENT, or training, then the prisoner, the  
 19 department, or the supervising agency may request that a  
 20 conference be held with the department, the prisoner, and a  
 21 representative of the supervising agency to consider the  
 22 problem of the prisoner's unemployment, disability, or  
 23 inability to benefit from schooling or training. At this  
 24 conference the prisoner may request that ~~his~~ supervision be  
 25 transferred to another supervising agency, and a

1 representative of the new agency may be at the conference.  
 2 If the conference does not result in a resolution of the  
 3 problem of the prisoner's unemployment, disability, or  
 4 inability to benefit, the department may file an affidavit  
 5 in the district court of the county in which the prisoner is  
 6 furloughed, stating that the prisoner is not benefiting from  
 7 the furlough program and will not benefit from continued  
 8 participation in the program and requesting a hearing  
 9 REQUEST A HEARING BY THE BOARD OF PARDONS to determine an  
 10 alternate proposal. In this hearing the prisoner is  
 11 entitled to have counsel appointed to represent him. Upon  
 12 determining that the prisoner is not benefiting from the  
 13 furlough program and will not benefit from continued  
 14 participation in the program, the court BOARD shall order  
 15 the prisoner returned to the prison.

16 ~~(5)~~ (6) For the purpose of this act, the provisions  
 17 relating to escape in section 94-7-306, R.C.M. 1947, shall  
 18 apply, unless aggravating circumstances require a more  
 19 severe penalty.

20 ~~Section 11, Section 82-4202, R.C.M., 1947, is amended~~  
 21 ~~to read as follows:~~

22 ~~"82-4202. Definitions. For purposes of this act:~~

23 ~~(1) "Agency" means any board, bureau, commission,~~  
 24 ~~department, authority or officer of the state government~~  
 25 ~~authorized by law to make rules and to determine contested~~

1 cases, except that the provisions of this act shall not  
 2 apply to the following:

3 (a) the legislature and any branch, committee or  
 4 officer thereof;

5 (b) the judicial branches and any committee or officer  
 6 thereof;

7 (c) the governor, except that an agency otherwise  
 8 covered by this act shall not be exempt because the governor  
 9 has been designated as a member thereof;

10 (d) the state military establishment and agencies  
 11 concerned with civil defense and recovery from hostile  
 12 attack;

13 (e) the state board of pardons, except that said board  
 14 shall be subject to the requirements of section 3-~~(82-4203)~~  
 15 and 5-~~(82-4205)~~ of this act and its rules shall be published  
 16 in the Montana administrative code and register;

17 (f) the supervision and administration of any penal,  
 18 mental, medical or eleemosynary institution with regard to  
 19 the admission, release, institutional supervision, custody,  
 20 control, care or treatment of inmates, prisoners or  
 21 patients, except as provided in sections ~~95-2219 and~~  
 22 95-2223, R.C.M., 1947;

23 (g) the administration and management of educational  
 24 institutions;

25 (h) the financing, construction and maintenance of



1 public works;

2 (2) "Rule" means each agency regulation, standard or

3 statement of general applicability that implements,

4 interprets, or prescribes law or policy or describes the

5 organization, procedures, or practice requirements of an

6 agency. The term includes the amendment or repeal of a prior

7 rule, but does not include:

8 (a) statements concerning only the internal management

9 of an agency and not affecting private rights or procedures

10 available to the public;

11 (b) declaratory rulings issued pursuant to section 18

12 {82-4218} of this act;

13 (c) intra-agency memoranda;

14 (d) rules relating to the use of public works,

15 facilities, streets and highways, when the substance of such

16 rules is indicated to the public by means of signs or

17 signals;

18 (e) seasonal rules adopted annually relating to

19 hunting, fishing and trapping when there is a statutory

20 requirement for the publication of such rules, and rules

21 adopted annually relating to the seasonal recreational use

22 of lands and waters owned or controlled by the state when

23 the substance of such rules is indicated to the public by

24 means of signs or signals;

25 (f) rules relating to personnel standards, job

1 classifications or salary ranges for agency employees;

2 (g) uniform rules adopted pursuant to interstate

3 compact, except that such rules shall be filed in accordance

4 with section 18 {82-4218} of this act and shall be published

5 in the Montana administrative code and register;

6 (3) "Contested case" means any proceeding before an

7 agency in which a determination of legal rights, duties or

8 privileges of a party is required by law to be made after an

9 opportunity for hearing. The term includes, but is not

10 restricted to, rate making, price fixing and licensing;

11 (4) "License" includes the whole or part of any agency

12 permit, certificate, approval, registration, charter or

13 other form of permission required by law, but does not

14 include a license required solely for revenue purposes;

15 (5) "Licensing" includes any agency process respecting

16 the grant, denial, renewal, revocation, suspension,

17 annulment, withdrawal, limitation or amendment of a license;

18 (6) "Party" means any person or agency named or

19 admitted as a party, or properly seeking and entitled as of

20 right to be admitted as a party, but nothing herein shall be

21 construed to prevent an agency from admitting any person or

22 agency as a party for limited purposes;

23 (7) "Person" means any individual, partnership,

24 corporation, association, governmental subdivision or public

25 organization of any character other than an agency."

1       SECTION 10. ALL RULES PROMULGATED UNDER THIS ACT SHALL  
2 COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT.

3       SECTION 11. SEVERABILITY. IF A PART OF THIS ACT IS  
4 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID  
5 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN  
6 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT  
7 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE  
8 INVALID APPLICATIONS.

9       Section 12. Section 95-2226, R.C.M. 1947, is repealed.

-End-

HOUSE BILL NO. 637

INTRODUCED BY HOLMES, HUENNEKENS, MELOY, WOLFE, VINCENT,  
JACK MOORE, JOHNSON, HALVORSON, SHELDEN, GUNDERSON,  
DRISCOLL, KEMMIS, GUTHRIE, MCKITTRICK, BRADLEY, RASMUSSEN,  
MERCER, SLOAN, BARDANOUE, DUSSAULT, C.R. ANDERSON,  
FINLEY, LORY, KENDALL, ELLIS, RICHARDS, LUEBECK,  
O'CONNELL, KIMBLE, TEAGUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER  
FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY  
PUBLIC AND PRIVATE SUPERVISING AGENCIES, AND PLACING  
RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF  
INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH  
95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M.  
1947."

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

Section 1. Section 95-2217, R.C.M. 1947, is amended to  
read as follows:

"95-2217. Prisoner furlough program -- purpose and  
intent. The purpose and intent of this act is to establish a  
program for the rehabilitation, education, and betterment of  
selected prisoners confined in the state prison; to increase  
their responsibility to society; to make it possible that  
they may, while serving their sentences, work gainfully to

support their dependents in whole or in part; and providing  
for ~~a~~ the minimum hourly wage required by law OR THE  
PREVAILING RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR  
OCCUPATIONS BY THE SAME EMPLOYER ~~of one and 40/100 (\$1.40)  
dollars--an--hour~~ to be paid to said convicts while so  
employed; continue their education or training; and at the  
same time fulfill the obligations of the sentence of  
imprisonment imposed; placing the establishment, regulation,  
guidance, and control of such program under the direction of  
the ~~warden of the state prison~~ department of institutions  
~~with--the--advice--and--consent--of--the--state--board--of--pardons~~  
~~furlough committee created in section 4 of this act~~ which.  
THE PRISONER program shall operate by supplementing and not  
replacing established penal procedures now or hereafter  
established by law and shall serve to extend the limits of  
confinement for treatment as well as jurisdictional  
purposes. This act is to be liberally construed to effect  
the over-all objectives set forth above."

Section 2. Section 95-2218, R.C.M. 1947, is amended to  
read as follows:

"95-2218. Definitions. Unless the context requires  
otherwise, in this act:

(1) "Board Department" means the ~~state--board--of~~  
~~pardons~~ department of institutions provided for in section  
~~82A-804~~ 82A-801;

1        (2) "BOARD" MEANS THE BOARD OF PARDONS PROVIDED FOR IN  
 2        SECTION 82A-804.

3        ~~(2)~~ (3) "State prison" means the Montana state prison  
 4        at Deer Lodge and any adult correctional facility under the  
 5        direction of the department;

6        ~~(3)~~ (4) "Prisoner" means a person sentenced by a  
 7        district court to a term of confinement in the state prison;

8        ~~(4)~~ (5) "Sheriff Supervising agency" means any county  
 9        ~~sheriff-including-all-deputies-or-other-persons-working~~  
 10        ~~under-his-direction-or-guidance~~ federal, state, county,  
 11        local or private agency, Indian tribe and reservation, or  
 12        any person, group, association or organization approved by  
 13        the department to undertake the supervision of prisoners  
 14        participating in the furlough program;

15        ~~(5)~~ (6) "Jail" means any county jail;

16        ~~(6)~~ "Warden Furlough Committee" means the  
 17        ~~superintendent-of-the-state-prison-appointed-by-the-board-of~~  
 18        ~~institutions: committee-established-in-section-4-of-this~~  
 19        act;

20        (7) "Applicant" means any prisoner who has signed an  
 21        application to participate in the prisoner furlough  
 22        program."

23        Section 3. Section 95-2219, R.C.M. 1947, is amended to  
 24        read as follows:

25        "95-2219. Warden Department to establish program and

1        ~~rules ---privileges-granted-prisoners.~~ The warden department  
 2        is authorized and directed to establish a furlough program  
 3        and rules to implement and control the same, in accordance  
 4        with the provisions of Title 82, chapter 42, R.C.M. 1947. A  
 5        ~~prisoner--sentenced--to--the--state--prison--may--be--granted--the~~  
 6        ~~privilege-of~~ Rules shall include provisions for:

7                (1) Working at paid employment for a rate of pay not  
 8        less than ~~one--and--40/100--(\$1.40)--dollars-an-hour, or the~~  
 9        minimum hourly wage as required by law OR THE PREVAILING  
 10        RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR OCCUPATIONS BY  
 11        THE SAME EMPLOYER;

12                (2) Participating in an educational, TREATMENT, or  
 13        training program;

14                (3) Approval of supervising agency; and

15                (4) Review of determinations in furlough application."

16        ~~Section 4.--There is--a--new--R.C.M.--section--numbered~~  
 17        ~~95-2219.i--that--reads--as--follows:~~

18                ~~95-2219.i.--Creation---of---furlough---committee---~~  
 19        ~~composition.--There-is-created-a-prisoner-furlough-committee~~  
 20        ~~at-the-state-prison.--It-shall-be-composed-of-the--following~~  
 21        ~~staff-members-of-the-prison:~~

22                ~~(1)--The-warden-or-his-designated-representative;~~

23                ~~(2)--Employment-counselor;~~

24                ~~(3)--Applicant's-social-case-worker;~~

25                ~~(4)--Psychologist-(or-psychiatrist);~~

~~(5) Member chosen by the applicant.~~

~~Each member shall have an equal vote in all proceedings. The furlough committee shall meet on a regular monthly schedule which shall be adopted, printed and circulated throughout the prison. Each inmate of the prison shall be notified of any variation in the schedule at least one week in advance of the rescheduled meeting.~~

Section 4. Section 95-2220, R.C.M. 1947, is amended to read as follows:

"95-2220. Application for participation in furlough program. Any prisoner confined in the state prison may make application to participate in the furlough program according to rules adopted by the warden with the advice and consent of the board after having served at least BY THE TIME THE INMATE HAS SERVED one-half (1/2) of the time required to be considered for parole."

~~Section 6. Section 95-2221, R.C.M. 1947, is amended to read as follows:~~

~~"95-2221. Consideration of application furlough plan consent of sheriff necessary duties of committee:~~

~~(1) At the monthly meeting of the furlough committee following the signing of any prisoner's application, The board the committee shall approve or deny the application of the each prisoner after careful study of the prisoner's conduct, attitude and behavior in the prison in which the~~

~~prisoner is confined his furlough plans, his criminal history, and all other pertinent case material. The following rules shall be observed when the committee meets to consider any application:~~

~~(a) every applicant shall be allowed to call two (2) witnesses from outside the institution to testify as to his general attitude, participation in self-help activities, or his character or job references;~~

~~(b) every applicant shall be allowed one summary dismissal of any committee member for reason of personality conflict, in which event an appropriate and mutually agreeable substitute shall be made;~~

~~(c) every applicant shall remain present during the discussion of his application by the committee and be given an oral decision on his application before the adjournment of the committee. Nothing contained herein shall be construed to allow an executive session of the committee to be held in the absence of the applicant;~~

~~(d) every applicant shall be viewed singly, and shall be recognized as an individual, with individual problems and individual capabilities, the decision of the committee shall take into account the potential of the individual and shall determine the course which is most likely to provide optimum benefit to both society and the individual;~~

~~(e) each applicant shall be allowed to discuss any~~

1 specific problem areas with any member of the furlough  
2 committee;

3 (1) a secretary shall be in attendance at each meeting  
4 to record the entire proceedings, including the  
5 determination of the committee, and the record shall be sent  
6 to each person participating in the meeting within ten (10)  
7 days following the meeting and the original copy shall be  
8 filed with the department;

9 (2) If the application is approved, the warden  
10 department shall adopt a furlough plan for the prisoner  
11 within the shortest possible period of time, locate an  
12 agency capable of supervising the prisoner applicant. The  
13 supervising agency, the department, and the prisoner  
14 applicant shall enter into a written agreement setting out  
15 the conditions and purposes of the furlough and specifying  
16 the responsibility assumed by each of the parties. The  
17 agreement shall be executed, signed by the parties before a  
18 notary public, in triplicate, with one copy each to be filed  
19 with the committee and the department and one copy to be  
20 retained by the applicant. Upon the signing of the  
21 agreement, the prisoner will be released to the supervising  
22 agency, which shall constitute an extension of the limits of  
23 confinement;

24 (3) No prisoner shall be released without the written  
25 consent of the sheriff of the county receiving the prisoner

1 ~~If the application is denied the prisoner may reapply after~~  
2 ~~six (6) months time. After an applicant has been denied~~  
3 ~~three (3) times he may appeal to the department for a~~  
4 ~~hearing by the board of pardons.~~

5 SECTION 5. SECTION 95-2221, R.C.M. 1947, IS AMENDED TO  
6 READ AS FOLLOWS:

7 "95-2221. Consideration of application--furlough  
8 plan--notification or consent of sheriff necessary--duties  
9 of board. (1) ~~The~~ At the meeting of the board following the  
10 signing of any prisoner's application the board shall  
11 approve or deny the application of the each prisoner after  
12 careful study of the prisoner's conduct, attitude and  
13 behavior in the prison in which the prisoner is confined,  
14 his furlough plans, criminal history, and all other  
15 pertinent case material. The following rules shall be  
16 observed when the board meets to consider an application:

17 (a) each applicant may call two (2) witnesses from  
18 outside the institution to testify as to the applicant's  
19 general attitude, participation in self-help activities, or  
20 his character or job references;

21 (b) each applicant shall remain present during the  
22 discussion of his application by the board and be given an  
23 oral decision on his application before the adjournment of  
24 the board as well as a written decision including a thorough  
25 statement of reasons for the decision;

1 (c) each applicant shall be viewed singly, and shall  
2 be recognized as an individual;

3 (d) each applicant shall be allowed to discuss any  
4 specific problem areas with any member of the board.

5 (2) If the application is approved, the ~~warden--shall~~  
6 ~~adopt---a--furlough--plan--for--the--prisoner--which--shall~~  
7 ~~constitute--an--extension--of--the--limits--of--confinement--~~  
8 department shall: within the shortest possible time, locate  
9 an agency capable of supervising the applicant.

10 (3) ~~No--prisoner--shall--be--released--without--the--written~~  
11 ~~consent--of--the--sheriff--of--the--county--receiving--the--prisoner--~~  
12 The supervising agency, the department, and the applicant  
13 shall enter into a written agreement setting out the  
14 conditions and purposes of the furlough and specifying the  
15 responsibility assumed by each of the parties. The  
16 agreement shall be executed, signed by the parties before a  
17 notary public, in triplicate, with one copy to be filed with  
18 the supervising agency and the department and one copy to be  
19 retained by the applicant.

20 (4) Upon the signing of the agreement, the prisoner  
21 shall be released to the supervising agency.

22 (5) Final authority in all matters pertaining to  
23 prisoner furloughs is in the department.

24 (6) When an inmate is to reside in the county jail,  
25 the consent of the sheriff in the receiving county is

1 necessary. However, when the inmate is to reside in a  
2 community corrections center or some other supervised  
3 setting the sheriff of the receiving county shall be  
4 notified.

5 (7) If the application is denied the prisoner may  
6 reapply after six (6) months time. After an applicant has  
7 been denied three (3) times he may appeal to the department  
8 for a hearing."

9 Section 6. Section 95-2222, R.C.M. 1947, is amended to  
10 read as follows:

11 "95-2222. Disposition of prisoner's earnings -- trust  
12 fund -- schooling costs. (1) A prisoner employed in the  
13 community under a work furlough plan shall ~~surrender-to--the~~  
14 ~~sheriff--his--total--earnings--less--payroll--deductions--required~~  
15 ~~by--law--The--sheriff--shall--deduct--from--such--earnings--in--the~~  
16 ~~following--order--of--priority~~ enter into a written financial  
17 agreement with the supervising agency and the department  
18 concerning the acquisition and disposition of his earnings.  
19 This financial agreement shall provide for the payment of:

20 (a) A standard charge for ~~all--prisoners--determined--by~~  
21 ~~the--county--commissioners--to--be--the--cost--to--the--county--of~~  
22 providing food, lodging and clothing for such the prisoner  
23 if incurred and if applicable;

24 (b) The actual and necessary travel and other expenses  
25 of such the prisoner under furlough from actual confinement

1 under the program; and

2 (c) ~~Such An~~ amount ~~as the prisoner may be determined~~  
 3 ~~by the district judge~~ to pay for the support of his  
 4 dependents, which amount shall be paid to ~~such~~ the  
 5 dependents; and

6 (d) ~~A minimal~~ An allowance for personal items, and  
 7 other expenses or disbursements agreed upon by the prisoner  
 8 and the supervising agency.

9 (2) Unless the financial agreement specifically  
 10 provides for other disbursement of the money, Any any  
 11 balance remaining after such deductions and payments shall  
 12 be deposited to an interest-bearing account held in trust  
 13 for ~~said~~ the prisoner and shall be paid to him upon release.

14 (3) If no other sources of support are available, the  
 15 above the costs of a prisoner under furlough who is in  
 16 training or school shall be the responsibility of the  
 17 state."

18 Section 7. Section 95-2223, R.C.M. 1947, is amended to  
 19 read as follows:

20 "95-2223. Administrative rules -- co-operation by  
 21 state agencies. (1) The warden department is authorized to  
 22 make rules for the administration of the provision of this  
 23 act ~~with the advice and consent of the board~~ in accordance  
 24 with Title 82, chapter 42, R.C.M. 1947.

25 (2) All state, county and local agencies shall

1 ~~co-operate with the warden and sheriff~~ in the administration  
 2 of the furlough program."

3 Section 8. Section 95-2224, R.C.M. 1947, is amended to  
 4 read as follows:

5 "95-2224. Prisoner not agent, ~~employee~~ or involuntary  
 6 ~~servant of warden or sheriff~~. No prisoner ~~employed~~ in the  
 7 community under the provisions of this act shall be deemed  
 8 to be an agent, ~~employee,~~ or involuntary servant of the  
 9 ~~warden or sheriff~~ department or of the supervising agency  
 10 while released from confinement pursuant to the terms of the  
 11 furlough program. Abuse of this section shall be deemed  
 12 official misconduct pursuant to 94-7-401, R.C.M. 1947."

13 Section 9. There is a new R.C.M. section numbered  
 14 95-2226.1 that reads as follows:

15 95-2226.1. Responsibility of department and  
 16 supervising agency -- CHANGE OR revocation of furlough --  
 17 escape. (1) The department shall be responsible for the  
 18 activities of a prisoner participating in a furlough program  
 19 under this act. THE DEPARTMENT MAY DELEGATE JURISDICTIONAL  
 20 SUPERVISION OF WORK FURLOUGH PARTICIPANTS TO THE ADULT  
 21 PAROLE AND PROBATION FIELD SERVICE. The supervising agency  
 22 shall be responsible for those activities of a furloughed  
 23 prisoner for which it is responsible in the written furlough  
 24 agreement.

25 (2) If any prisoner released from actual prison



1 confinement under the furlough program fails to comply with  
 2 the rules and regulations of the furlough agreement, he  
 3 shall be called by the department or by the supervising  
 4 agency to appear before the department or supervising  
 5 agency. If a conference is not sufficient to resolve the  
 6 situation and if the prisoner continues in his  
 7 noncompliance, ~~the department shall file an affidavit in the~~  
 8 ~~district court of the county in which the violation took~~  
 9 ~~place charging the prisoner with a violation of the rules~~  
 10 ~~and regulations of the furlough agreement. The district~~  
 11 ~~court~~ THE BOARD shall hold a hearing on the charge at which  
 12 the prisoner is entitled to have counsel appointed to  
 13 represent him. Upon determining that the prisoner has  
 14 violated the rules and regulations of the furlough  
 15 agreement, the ~~court~~ BOARD shall order the prisoner returned  
 16 to prison.

17 (3) If the department determines AFTER HAVING BEEN  
 18 ADVISED BY THE SUPERVISING AGENCY OR THE ADULT PAROLE AND  
 19 PROBATION FIELD SERVICE, that a prisoner presents an  
 20 immediate grave threat to the community in which he is  
 21 furloughed, it may order the prisoner returned to prison  
 22 before a hearing is held, but in this case a hearing on the  
 23 charges against the prisoner, as provided for in the above  
 24 subsection, must be held in the district court no later than  
 25 ~~ten (10)~~ THIRTY (30) days after the return of the prisoner

1 to the state prison.

2 (4) IF, AFTER A REASONABLE TIME, A FURLOUGHED PRISONER  
 3 DETERMINES THAT HIS FURLOUGH PLAN IS UNSATISFACTORY DUE TO  
 4 PERSONALITY CONFLICT, A VIOLATION OF HIS RIGHTS BY HIS  
 5 SUPERVISOR, OR A CHANGE OF INTEREST OR EMPLOYMENT STATUS,  
 6 THE DEPARTMENT SHALL GRANT HIM A HEARING TO DETERMINE  
 7 WHETHER OR NOT A NEW FURLOUGH PLAN SHOULD BE EXECUTED.

8 ~~(4)~~ (5) If a prisoner, while not disabled from working  
 9 by temporary illness, is unemployed for a period of thirty  
 10 (30) days, or more, after his availability for employment is  
 11 reported in writing by the supervising agency to the  
 12 department of labor and industry office serving the area in  
 13 which the prisoner is furloughed and to the union to which  
 14 the prisoner belongs, or if a prisoner has become so  
 15 disabled as to be unemployable, or if a prisoner is on an  
 16 educational furlough and has demonstrated for a period of  
 17 six (6) weeks or more that he is unable to benefit from  
 18 schooling, TREATMENT, or training, then the prisoner, the  
 19 department, or the supervising agency may request that a  
 20 conference be held with the department, the prisoner, and a  
 21 representative of the supervising agency to consider the  
 22 problem of the prisoner's unemployment, disability, or  
 23 inability to benefit from schooling or training. At this  
 24 conference the prisoner may request that ~~his~~ supervision be  
 25 transferred to another supervising agency, and a

1 representative of the new agency may be at the conference.  
 2 If the conference does not result in a resolution of the  
 3 problem of the prisoner's unemployment, disability, or  
 4 inability to benefit, the department may file ~~an affidavit~~  
 5 ~~in the district court of the county in which the prisoner is~~  
 6 ~~furloughed, stating that the prisoner is not benefiting from~~  
 7 ~~the furlough program and will not benefit from continued~~  
 8 ~~participation in the program and requesting a hearing~~  
 9 REQUEST A HEARING BY THE BOARD OF PARDONS to determine an  
 10 alternate proposal. In this hearing the prisoner is  
 11 entitled to have counsel appointed to represent him. Upon  
 12 determining that the prisoner is not benefiting from the  
 13 furlough program and will not benefit from continued  
 14 participation in the program, the court BOARD shall order  
 15 the prisoner returned to the prison.

16 ~~(5)~~ (6) For the purpose of this act, the provisions  
 17 relating to escape in section 94-7-306, R.C.M. 1947, shall  
 18 apply, unless aggravating circumstances require a more  
 19 severe penalty.

20 ~~Section 11. Section 02-4202, R.C.M. 1947, is amended~~  
 21 ~~to read as follows:~~

22 ~~"02-4202. Definitions. For purposes of this act:~~

23 ~~(1) "Agency" means any board, bureau, commission,~~  
 24 ~~department, authority or officer of the state government~~  
 25 ~~authorized by law to make rules and to determine contested~~

1 ~~cases, except that the provisions of this act shall not~~  
 2 ~~apply to the following:~~

3 ~~(a) the legislature and any branch, committee or~~  
 4 ~~officer thereof;~~

5 ~~(b) the judicial branches and any committee or officer~~  
 6 ~~thereof;~~

7 ~~(c) the governor, except that an agency otherwise~~  
 8 ~~covered by this act shall not be exempt because the governor~~  
 9 ~~has been designated as a member thereof;~~

10 ~~(d) the state military establishment and agencies~~  
 11 ~~concerned with civil defense and recovery from hostile~~  
 12 ~~attack;~~

13 ~~(e) the state board of pardons, except that said board~~  
 14 ~~shall be subject to the requirements of section 3-02-4203~~  
 15 ~~and 5-02-4205 of this act and its rules shall be published~~  
 16 ~~in the Montana administrative code and register;~~

17 ~~(f) the supervision and administration of any penal,~~  
 18 ~~mental, medical or eleemosynary institution with regard to~~  
 19 ~~the admission, release, institutional supervision, custody,~~  
 20 ~~control, care or treatment of inmates, prisoners or~~  
 21 ~~patients, except as provided in sections 95-2219 and~~  
 22 ~~95-2223, R.C.M. 1947;~~

23 ~~(g) the administration and management of educational~~  
 24 ~~institutions;~~

25 ~~(h) the financing, construction and maintenance of~~

1 ~~public works;~~

2 ~~{2}--"Rule"--means--each--agency--regulation,--standard--or~~  
 3 ~~statement--of--general--applicability--that--implements,~~  
 4 ~~interprets,--or--prescribes--law--or--policy--or--describes--the~~  
 5 ~~organization,--procedures,--or--practice--requirements--of--an~~  
 6 ~~agency. The term includes the amendment or repeal of a prior~~  
 7 ~~rule, but does not include:~~

8 ~~{a}--statements--concerning--only--the--internal--management~~  
 9 ~~of--an--agency--and--not--affecting--private--rights--or--procedures~~  
 10 ~~available--to--the--public;~~

11 ~~{b}--declaratory--rulings--issued--pursuant--to--section--10~~  
 12 ~~{02-4210}--of--this--act;~~

13 ~~{c}--intra--agency--memoranda;~~

14 ~~{d}--rules--relating--to--the--use--of--public--works,~~  
 15 ~~facilities,--streets--and--highways,--when--the--substance--of--such~~  
 16 ~~rules--is--indicated--to--the--public--by--means--of--signs--or~~  
 17 ~~signals;~~

18 ~~{e}--seasonal--rules--adopted--annually--relating--to~~  
 19 ~~hunting,--fishing--and--trapping--when--there--is--a--statutory~~  
 20 ~~requirement--for--the--publication--of--such--rules,--and--rules~~  
 21 ~~adopted--annually--relating--to--the--seasonal--recreational--use~~  
 22 ~~of--lands--and--waters--owned--or--controlled--by--the--state--when~~  
 23 ~~the--substance--of--such--rules--is--indicated--to--the--public--by~~  
 24 ~~means--of--signs--or--signals;~~

25 ~~{f}--rules--relating--to--personnel--standards,--job~~

1 ~~classifications--or--salary--ranges--for--agency--employees;~~

2 ~~{g}--uniform--rules--adopted--pursuant--to--interstate~~  
 3 ~~compact,--except--that--such--rules--shall--be--filed--in--accordance~~  
 4 ~~with--section--10--{02-4210}--of--this--act--and--shall--be--published~~  
 5 ~~in--the--Montana--administrative--code--and--register;~~

6 ~~{3}--"Contested--case"--means--any--proceeding--before--an~~  
 7 ~~agency--in--which--a--determination--of--legal--rights,--duties--or~~  
 8 ~~privileges--of--a--party--is--required--by--law--to--be--made--after--an~~  
 9 ~~opportunity--for--hearing. The term includes, but is not~~  
 10 ~~restricted to, rate-making, price-fixing and licensing;~~

11 ~~{4}--"License"--includes--the--whole--or--part--of--any--agency~~  
 12 ~~permit,--certificate,--approval,--registration,--charter--or~~  
 13 ~~other--form--of--permission--required--by--law,--but--does--not~~  
 14 ~~include--a--license--required--solely--for--revenue--purposes;~~

15 ~~{5}--"Licensing"--includes--any--agency--process--respecting~~  
 16 ~~the--grant,--denial,--renewal,--revocation,--suspension,~~  
 17 ~~annulment,--withdrawal,--limitation--or--amendment--of--a--license;~~

18 ~~{6}--"Party"--means--any--person--or--agency--named--or~~  
 19 ~~admitted--as--a--party,--or--properly--seeking--and--entitled--as--of~~  
 20 ~~right--to--be--admitted--as--a--party,--but--nothing--herein--shall--be~~  
 21 ~~construed--to--prevent--an--agency--from--admitting--any--person--or~~  
 22 ~~agency--as--a--party--for--limited--purposes;~~

23 ~~{7}--"Person"--means--any--individual,--partnership,~~  
 24 ~~corporation,--association,--governmental--subdivision--or--public~~  
 25 ~~organization--of--any--character--other--than--an--agency."~~

1        SECTION 10. ALL RULES PROMULGATED UNDER THIS ACT SHALL  
2 COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT.

3        SECTION 11. SEVERABILITY. IF A PART OF THIS ACT IS  
4 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID  
5 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN  
6 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT  
7 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE  
8 INVALID APPLICATIONS.

9        Section 12. Section 95-2226, R.C.M. 1947, is repealed.

-End-

March 18, 1975

SENATE COMMITTEE ON JUDICIARY  
AMENDMENTS TO HOUSE BILL NO. 637

That House Bill No. 637, third reading, be amended as follows:

1. Amend page 3, section 2, line 15.  
Following: "jail"  
Insert: "or tribal jail"
2. Amend page 4, section 3, lines 3 and 4.  
Following: "same"  
Strike: lines 3 and 4 in their entirety  
Insert: "."
3. Amend page 8, section 5, line 18.  
Following: "outside"  
Insert: "or inside"
4. Amend page 9, section 5, line 24.  
Following: "county"  
Insert: "or tribal"
5. Amend page 9, section 5, line 25.  
Following: "sheriff"  
Insert: "or tribal chief of police"
6. Amend page 9, section 5, line 25.  
Following: "county"  
Insert: "or reservation"
7. Amend page 10, section 5, line 3.  
Following: "sheriff"  
Insert: "or tribal chief of police"
8. Amend page 10, section 5, line 3.  
Following: "county"  
Insert: "or reservation"
9. Amend page 11, section 7, line 25.  
Following: "shall"  
Insert: "be encouraged to"
10. Amend page 13, section 9, line 11.  
Following: "~~court~~"  
Strike: line 11 in its entirety  
Insert: "The prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists."

11. Amend page 13, section 9, line 12.  
Following: line 11  
Strike: "the"  
Insert: "The"
12. Amend page 13, section 9, lines 13 through 16.  
Following "him"  
Strike: lines 13 through 16 in their entirety  
Insert: " at the hearing. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under section 95-3220, R.C.M. 1947, pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison. At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has, in fact, violated the terms of the prisoner's furlough release. If it is determined that the prisoner has, in fact, violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."
13. Amend page 13, section 9, line 24.  
Following: "held"  
Strike: "in the district court"  
Insert: "by the board"
14. Amend page 14, section 9, line 13.  
Following: "and to"  
Strike: "the"  
Insert: "any"
15. Amend page 19, section 10, lines 1 through 2.  
Strike: Section 10 in its entirety  
Renumber: All subsequent sections

## HOUSE BILL NO. 637

INTRODUCED BY HOLMES, HUENNEKENS, MELOY, WOLFE, VINCENT,  
 JACK MOORE, JOHNSON, HALVORSON, SHELDEN, GUNDERSON,  
 DRISCOLL, KEMMIS, GUTHRIE, MCKITTRICK, BRADLEY, RASMUSSEN,  
 MERCER, SLOAN, BARDANOUE, DUSSAULT, C.R. ANDERSON,  
 FINLEY, LORY, KENDALL, ELLIS, RICHARDS, LUEBECK,  
 O'CONNELL, KIMBLE, TEAGUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER  
 FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY  
 PUBLIC AND PRIVATE SUPERVISING AGENCIES, AND PLACING  
 RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF  
 INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH  
 95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M.  
 1947."

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

Section 1. Section 95-2217, R.C.M. 1947, is amended to  
 read as follows:

"95-2217. Prisoner furlough program -- purpose and  
 intent. The purpose and intent of this act is to establish a  
 program for the rehabilitation, education, and betterment of  
 selected prisoners confined in the state prison; to increase  
 their responsibility to society; to make it possible that  
 they may, while serving their sentences, work gainfully to

support their dependents in whole or in part; and providing  
 for a the minimum hourly wage required by law OR THE  
PREVAILING RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR  
OCCUPATIONS BY THE SAME EMPLOYER ~~of one and 40/100--(\$1.40)~~  
~~dollars--an-hour~~ to be paid to said convicts while so  
 employed; continue their education or training; and at the  
 same time fulfill the obligations of the sentence of  
 imprisonment imposed; placing the establishment, regulation,  
 guidance, and control of such program under the direction of  
 the ~~warden-of-the-state-prison~~ department of institutions  
~~with--the--advice--and-consent-of-the-state-board-of-pardons~~  
~~furlough-committee-created-in-section-4-of-this-act~~ which.  
 THE PRISONER program shall operate by supplementing and not  
 replacing established penal procedures now or hereafter  
 established by law and shall serve to extend the limits of  
confinement for treatment as well as jurisdictional  
purposes. This act is to be liberally construed to effect  
 the over-all objectives set forth above."

Section 2. Section 95-2218, R.C.M. 1947, is amended to  
 read as follows:

"95-2218. Definitions. Unless the context requires  
 otherwise, in this act:

(1) "Board Department" means the ~~state--board--of~~  
~~pardons~~ department of institutions provided for in section  
~~82A-804~~ 82A-801;

1 (2) "BOARD" MEANS THE BOARD OF PARDONS PROVIDED FOR IN  
2 SECTION 82A-804.

3 ~~(2)~~ (3) "State prison" means the Montana state prison  
4 at Deer Lodge and any adult correctional facility under the  
5 direction of the department;

6 ~~(3)~~ (4) "Prisoner" means a person sentenced by a  
7 district court to a term of confinement in the state prison;

8 ~~(4)~~ (5) "Sheriff Supervising agency" means any county  
9 ~~sheriff--including--all--deputies--or--other--persons--working~~  
10 ~~under--his--direction--or--guidance~~ federal, state, county,  
11 local or private agency, Indian tribe and reservation, or  
12 any person, group, association or organization approved by  
13 the department to undertake the supervision of prisoners  
14 participating in the furlough program;

15 ~~(5)~~ (6) "Jail" means any county jail OR TRIBAL JAIL;

16 ~~(6)~~ ~~--"Warden Furlough---committee"~~ ~~means-----the~~  
17 ~~superintendent-of-the-state-prison-appointed-by-the-board-of~~  
18 ~~institutions.~~ ~~committee--established--in--section-4-of-this~~  
19 ~~act;~~

20 (7) "Applicant" means any prisoner who has signed an  
21 application to participate in the prisoner furlough  
22 program."

23 Section 3. Section 95-2219, R.C.M. 1947, is amended to  
24 read as follows:

25 "95-2219. Warden Department to establish program and

1 ~~rules ---privileges-granted-prisoners.~~ The warden department  
2 is authorized and directed to establish a furlough program  
3 and rules to implement and control the same, ~~in--accordance~~  
4 ~~with-the-provisions-of-Title-80y-chapter-40y-RrCrMv-1947.~~ A  
5 ~~prisoner--sentenced--to--the--state--prison--may--be--granted--the~~  
6 ~~privilege-of~~ Rules shall include provisions for:

7 (1) Working at paid employment for a rate of pay not  
8 less than ~~one--and--40/100--(41.40)--dollars-an-hour,~~ ~~or~~ the  
9 minimum hourly wage as required by law OR THE PREVAILING  
10 RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR OCCUPATIONS BY  
11 THE SAME EMPLOYER;

12 (2) Participating in an educational, TREATMENT, or  
13 training program;

14 (3) Approval of supervising agency; and

15 (4) Review of determinations in furlough application."

16 ~~Section-4--There-is--a--new--RrCrMv--section--numbered~~  
17 ~~95-2219.1--that--reads--as--follows:~~

18 ~~95-2219.1--Creation---of---furlough---committee---"~~  
19 ~~composition,--There-is-created-a-prisoner-furlough-committee~~  
20 ~~at-the-state-prison,--it-shall-be-composed-of-the--following~~  
21 ~~staff-members-of-the-prison:~~

22 ~~(1)--The-warden-or-his-designated-representative;~~

23 ~~(2)--Employment-counselor;~~

24 ~~(3)--Applicant's-social-case-worker;~~

25 ~~(4)--Psychologist-(or-psychiatrist);~~



1       ~~(5) Member chosen by the applicant.~~  
 2       ~~Each member shall have an equal vote in all~~  
 3 ~~proceedings. The furlough committee shall meet on a regular~~  
 4 ~~monthly schedule which shall be adopted, printed and~~  
 5 ~~circulated throughout the prison. Each inmate of the prison~~  
 6 ~~shall be notified of any variation in the schedule at least~~  
 7 ~~one week in advance of the rescheduled meeting.~~

8       Section 4. Section 95-2220, R.C.M. 1947, is amended to  
 9 read as follows:

10       "95-2220. Application for participation in furlough  
 11 program. Any prisoner confined in the state prison may make  
 12 application to participate in the furlough program ~~according~~  
 13 ~~to rules adopted by the warden with the advice and consent~~  
 14 ~~of the board after having served at least BY THE TIME THE~~  
 15 ~~INMATE HAS SERVED one-half (1/2) of the time required to be~~  
 16 ~~considered for parole."~~

17       ~~Section 6. Section 95-2221, R.C.M. 1947, is amended to~~  
 18 ~~read as follows:~~

19       ~~95-2221. Consideration of application of furlough~~  
 20 ~~plan consent of sheriff necessary duties of committee~~  
 21 ~~(1) At the monthly meeting of the furlough committee~~  
 22 ~~following the signing of any prisoner's application, the~~  
 23 ~~board the committee shall approve or deny the application of~~  
 24 ~~the each prisoner after careful study of the prisoner's~~  
 25 ~~conduct, attitude and behavior in the prison in which the~~

1       ~~prisoner is confined his furlough plans, his criminal~~  
 2 ~~history, and all other pertinent case material. The~~  
 3 ~~following rules shall be observed when the committee meets~~  
 4 ~~to consider any application:~~

5       ~~(a) every applicant shall be allowed to call two (2)~~  
 6 ~~witnesses from outside the institution to testify as to his~~  
 7 ~~general attitude, participation in self-help activities, or~~  
 8 ~~his character or job references;~~

9       ~~(b) every applicant shall be allowed one summary~~  
 10 ~~dismissal of any committee member for reason of personality~~  
 11 ~~conflict in which event an appropriate and mutually~~  
 12 ~~agreeable substitute shall be made;~~

13       ~~(c) every applicant shall remain present during the~~  
 14 ~~discussion of his application by the committee and be given~~  
 15 ~~an oral decision on his application before the adjournment~~  
 16 ~~of the committee. Nothing contained herein shall be~~  
 17 ~~construed to allow an executive session of the committee to~~  
 18 ~~be held in the absence of the applicant;~~

19       ~~(d) every applicant shall be viewed singly, and shall~~  
 20 ~~be recognized as an individual with individual problems,~~  
 21 ~~and individual capabilities; the decision of the committee~~  
 22 ~~shall take into account the potential of the individual and~~  
 23 ~~shall determine the course which is most likely to provide~~  
 24 ~~optimum benefit to both society and the individual;~~

25       ~~(e) each applicant shall be allowed to discuss any~~

1 ~~specific problem areas with any member of the furlough~~  
2 ~~committee,~~

3 ~~{f} a secretary shall be in attendance at each meeting~~  
4 ~~to record the entire proceedings, including the~~  
5 ~~determination of the committee, and the record shall be sent~~  
6 ~~to each person participating in the meeting within ten {10}~~  
7 ~~days following the meeting and the original copy shall be~~  
8 ~~filed with the department.~~

9 ~~{2} if the application is approved, the warden~~  
10 ~~department shall adopt a furlough plan for the prisoner~~  
11 ~~within the shortest possible period of time, locate an~~  
12 ~~agency capable of supervising the prisoner applicant. The~~  
13 ~~supervising agency, the department, and the prisoner~~  
14 ~~applicant shall enter into a written agreement setting out~~  
15 ~~the conditions and purposes of the furlough and specifying~~  
16 ~~the responsibility assumed by each of the parties. The~~  
17 ~~agreement shall be executed, signed by the parties before a~~  
18 ~~notary public, in triplicate, with one copy each to be filed~~  
19 ~~with the committee and the department and one copy to be~~  
20 ~~retained by the applicant. Upon the signing of the~~  
21 ~~agreement, the prisoner will be released to the supervising~~  
22 ~~agency, which shall constitute an extension of the limits of~~  
23 ~~confinement.~~

24 ~~{3} No prisoner shall be released without the written~~  
25 ~~consent of the sheriff of the county receiving the prisoner~~

1 ~~if the application is denied the prisoner may reapply after~~  
2 ~~six {6} months time. After an applicant has been denied~~  
3 ~~three {3} times he may appeal to the department for a~~  
4 ~~hearing by the board of pardons.~~

5 SECTION 5. SECTION 95-2221, R.C.M. 1947, IS AMENDED TO  
6 READ AS FOLLOWS:

7 "95-2221. Consideration of application--furlough  
8 plan--notification or consent of sheriff necessary--duties  
9 of board. (1) ~~The~~ At the meeting of the board following the  
10 signing of any prisoner's application the board shall  
11 approve or deny the application of the each prisoner after  
12 careful study of the prisoner's conduct, attitude--and  
13 behavior--in--the--prison--in--which--the--prisoner--is--confined,  
14 his furlough plans, criminal history, and all other  
15 pertinent case material. The following rules shall be  
16 observed when the board meets to consider an application:

17 (a) each applicant may call two (2) witnesses from  
18 outside OR INSIDE the institution to testify as to the  
19 applicant's general attitude, participation in self-help  
20 activities, or his character or job references;

21 (b) each applicant shall remain present during the  
22 discussion of his application by the board and be given an  
23 oral decision on his application before the adjournment of  
24 the board as well as a written decision including a thorough  
25 statement of reasons for the decision;

1 (c) each applicant shall be viewed singly, and shall  
 2 be recognized as an individual;

3 (d) each applicant shall be allowed to discuss any  
 4 specific problem areas with any member of the board.

5 (2) If the application is approved, the ~~warden--shall~~  
 6 ~~adopt---a-furlough-plan-for-the-prisoner,--which--shall~~  
 7 ~~constitute--an-extension-of--the--limits--of--confinement,~~  
 8 department shall: within the shortest possible time, locate  
 9 an agency capable of supervising the applicant.

10 (3) ~~No--prisoner--shall--be--released--without--the--written~~  
 11 ~~consent-of-the-sheriff-of-the-county-receiving-the-prisoner.~~  
 12 The supervising agency, the department, and the applicant  
 13 shall enter into a written agreement setting out the  
 14 conditions and purposes of the furlough and specifying the  
 15 responsibility assumed by each of the parties. The  
 16 agreement shall be executed, signed by the parties before a  
 17 notary public, in triplicate, with one copy to be filed with  
 18 the supervising agency and the department and one copy to be  
 19 retained by the applicant.

20 (4) Upon the signing of the agreement, the prisoner  
 21 shall be released to the supervising agency.

22 (5) Final authority in all matters pertaining to  
 23 prisoner furloughs is in the department.

24 (6) When an inmate is to reside in the county OR  
 25 TRIBAL jail, the consent of the sheriff OR TRIBAL CHIEF OF

1 POLICE in the receiving county OR RESERVATION is necessary.  
 2 However, when the inmate is to reside in a community  
 3 corrections center or some other supervised setting the  
 4 sheriff OR TRIBAL CHIEF OF POLICE of the receiving county OR  
 5 RESERVATION shall be notified.

6 (7) If the application is denied the prisoner may  
 7 reapply after six (6) months' time. After an applicant has  
 8 been denied three (3) times he may appeal to the department  
 9 for a hearing."

10 Section 6. Section 95-2222, R.C.M. 1947, is amended to  
 11 read as follows:

12 "95-2222. Disposition of prisoner's earnings -- trust  
 13 fund -- schooling costs. (1) A prisoner employed in the  
 14 community under a work furlough plan shall ~~surrender-to--the~~  
 15 ~~sheriff--his-total-earnings-less-payroll-deductions-required~~  
 16 ~~by-law--The-sheriff-shall-deduct-from-such-earnings--in--the~~  
 17 ~~following--order--of-priority~~ enter into a written financial  
 18 agreement with the supervising agency and the department  
 19 concerning the acquisition and disposition of his earnings.  
 20 This financial agreement shall provide for the payment of:

21 (a) A standard charge for ~~all-prisoners-determined-by~~  
 22 ~~the--county--commissioners--to--be-the-cost-to-the-county-of~~  
 23 providing food, lodging and clothing for such the prisoner  
 24 if incurred and if applicable;

25 (b) The actual and necessary travel and other expenses

1 of ~~such~~ the prisoner under furlough from actual confinement  
2 under the program; and

3 (c) ~~Such An~~ amount ~~as-the-prisoner-may-be-determined~~  
4 ~~by-the--district--judge~~ to pay for the support of his  
5 dependents, which amount shall be paid to ~~such the~~  
6 dependents; and

7 (d) ~~A-minimal~~ An allowance for personal items, and  
8 other expenses or disbursements agreed upon by the prisoner  
9 and the supervising agency.

10 (2) Unless the financial agreement specifically  
11 provides for other disbursement of the money, Any any  
12 balance remaining after ~~such~~ deductions and payments shall  
13 be deposited to an interest-bearing account held in trust  
14 for ~~said the~~ prisoner and shall be paid to him upon release.

15 (3) If no other sources of support are available, The  
16 above the costs of a prisoner under furlough who is in  
17 training or school shall be the responsibility of the  
18 state."

19 Section 7. Section 95-2223, R.C.M. 1947, is amended to  
20 read as follows:

21 "95-2223. Administrative rules -- co-operation by  
22 state agencies. (1) The ~~warden~~ department is authorized to  
23 make rules for the administration of the provision of this  
24 act ~~with-the-advice-and-consent-of-the-board~~ in accordance  
25 with Title 82, chapter 42, R.C.M. 1947.

1 (2) All state, county and local agencies shall BE  
2 ENCOURAGED TO co-operate ~~with-the-warden-and-sheriff~~ in the  
3 administration of the furlough program."

4 Section 8. Section 95-2224, R.C.M. 1947, is amended to  
5 read as follows:

6 "95-2224. Prisoner not agent, ~~employee~~ or involuntary  
7 servant ~~of-warden-or-sheriff~~. No prisoner ~~employed~~ in the  
8 community under the provisions of this act shall be deemed  
9 to be an agent, ~~employee~~, or involuntary servant of the  
10 ~~warden--or--sheriff~~ department or of the supervising agency  
11 while released from confinement pursuant to the terms of the  
12 furlough program. Abuse of this section shall be deemed  
13 official misconduct pursuant to 94-7-401, R.C.M. 1947."

14 Section 9. There is a new R.C.M. section numbered  
15 95-2226.1 that reads as follows:

16 95-2226.1. Responsibility of department and  
17 supervising agency -- CHANGE OR revocation of furlough --  
18 escape. (1) The department shall be responsible for the  
19 activities of a prisoner participating in a furlough program  
20 under this act. THE DEPARTMENT MAY DELEGATE JURISDICTIONAL  
21 SUPERVISION OF WORK FURLOUGH PARTICIPANTS TO THE ADULT  
22 PAROLE AND PROBATION FIELD SERVICE. The supervising agency  
23 shall be responsible for those activities of a furloughed  
24 prisoner for which it is responsible in the written furlough  
25 agreement.

1 (2) If any prisoner released from actual prison  
 2 confinement under the furlough program fails to comply with  
 3 the rules and regulations of the furlough agreement, he  
 4 shall be called by the department or by the supervising  
 5 agency to appear before the department or supervising  
 6 agency. If a conference is not sufficient to resolve the  
 7 situation and if the prisoner continues in his  
 8 noncompliance, ~~the department shall file an affidavit in the~~  
 9 ~~district court of the county in which the violation took~~  
 10 ~~place charging the prisoner with a violation of the rules~~  
 11 ~~and regulations of the furlough agreement. The district~~  
 12 ~~court THE BOARD shall hold a hearing on the charge at which~~  
 13 THE PRISONER SHALL BE GRANTED A HEARING ON THE VIOLATION  
 14 WITHIN A REASONABLE TIME ON OR NEAR THE SITE OF THE ALLEGED  
 15 VIOLATION TO DETERMINE WHETHER A VIOLATION OF THE FURLOUGH  
 16 AGREEMENT EXISTS. the THE prisoner is entitled to have  
 17 counsel appointed to represent him. ~~Upon determining that~~  
 18 ~~the prisoner has violated the rules and regulations of the~~  
 19 ~~furlough agreement, the court BOARD shall order the prisoner~~  
 20 ~~returned to prison, at the hearing. THE HEARING SHALL BE~~  
 21 ~~CONDUCTED BY A HEARING OFFICER OF THE BOARD OF PARDONS. THE~~  
 22 ~~PRISONER ON FURLOUGH SHALL HAVE ALL OPPORTUNITIES PROVIDED~~  
 23 ~~UNDER SECTION 95-3220, R.C.M. 1947, PERTAINING TO ON-SITE~~  
 24 ~~HEARINGS FOR PAROLE REVOCATION. IF REASONABLE GROUNDS ARE~~  
 25 ~~ESTABLISHED FOR VIOLATION OF THE FURLOUGH AGREEMENT, THE~~

1 FURLOUGH SHALL BE CANCELLED AND THE PRISONER SHALL BE  
 2 RETURNED TO THE PRISON. AT THE NEXT MEETING OF THE BOARD OF  
 3 PARDONS AFTER THE RETURN OF THE PRISONER TO THE PRISON, THE  
 4 PRISONER SHALL BE GRANTED A DUE PROCESS HEARING IN ORDER TO  
 5 DETERMINE IF THE PRISONER HAS, IN FACT, VIOLATED THE TERMS  
 6 OF THE PRISONER'S FURLOUGH RELEASE. IF IT IS DETERMINED  
 7 THAT THE PRISONER HAS, IN FACT, VIOLATED THE TERMS OF THE  
 8 PRISONER'S FURLOUGH, THE PRISONER SHALL REMAIN AT THE  
 9 PRISON. IF THE TERMS OF THE PRISONER'S RELEASE HAVE NOT  
 10 BEEN VIOLATED, THE PRISONER'S CASE SHALL BE ASSIGNED TO A  
 11 PAROLE AGENT AND A NEW FURLOUGH ARRANGEMENT SHALL BE WORKED  
 12 OUT.

13 (3) If the department determines AFTER HAVING BEEN  
 14 ADVISED BY THE SUPERVISING AGENCY OR THE ADULT PAROLE AND  
 15 PROBATION FIELD SERVICE, that a prisoner presents an  
 16 immediate grave threat to the community in which he is  
 17 furloughed, it may order the prisoner returned to prison  
 18 before a hearing is held, but in this case a hearing on the  
 19 charges against the prisoner, as provided for in the above  
 20 subsection, must be held ~~in the district court~~ BY THE BOARD  
 21 no later than ~~ten (10)~~ THIRTY (30) days after the return of  
 22 the prisoner to the state prison.

23 (4) IF, AFTER A REASONABLE TIME, A FURLOUGHED PRISONER  
 24 DETERMINES THAT HIS FURLOUGH PLAN IS UNSATISFACTORY DUE TO  
 25 PERSONALITY CONFLICT, A VIOLATION OF HIS RIGHTS BY HIS

1 SUPERVISOR, OR A CHANGE OF INTEREST OR EMPLOYMENT STATUS,  
2 THE DEPARTMENT SHALL GRANT HIM A HEARING TO DETERMINE  
3 WHETHER OR NOT A NEW FURLOUGH PLAN SHOULD BE EXECUTED.

4 ~~(4)~~ (5) If a prisoner, while not disabled from working  
5 by temporary illness, is unemployed for a period of thirty  
6 (30) days, or more, after his availability for employment is  
7 reported in writing by the supervising agency to the  
8 department of labor and industry office serving the area in  
9 which the prisoner is furloughed and to ~~the~~ ANY union to  
10 which the prisoner belongs, or if a prisoner has become so  
11 disabled as to be unemployable, or if a prisoner is on an  
12 educational furlough and has demonstrated for a period of  
13 six (6) weeks or more that he is unable to benefit from  
14 schooling, TREATMENT, or training, then the prisoner, the  
15 department, or the supervising agency may request that a  
16 conference be held with the department, the prisoner, and a  
17 representative of the supervising agency to consider the  
18 problem of the prisoner's unemployment, disability, or  
19 inability to benefit from schooling or training. At this  
20 conference the prisoner may request that ~~his~~ supervision be  
21 transferred to another supervising agency, and a  
22 representative of the new agency may be at the conference.  
23 If the conference does not result in a resolution of the  
24 problem of the prisoner's unemployment, disability, or  
25 inability to benefit, the department may ~~file an affidavit~~

1 ~~in the district court of the county in which the prisoner is~~  
2 ~~furloughed, stating that the prisoner is not benefiting from~~  
3 ~~the furlough program and will not benefit from continued~~  
4 ~~participation in the program and requesting a hearing~~  
5 REQUEST A HEARING BY THE BOARD OF PARDONS to determine an  
6 alternate proposal. In this hearing the prisoner is  
7 entitled to have counsel appointed to represent him. Upon  
8 determining that the prisoner is not benefiting from the  
9 furlough program and will not benefit from continued  
10 participation in the program, the ~~court~~ BOARD shall order  
11 the prisoner returned to the prison.

12 ~~(5)~~ (6) For the purpose of this act, the provisions  
13 relating to escape in section 94-7-306, R.C.M. 1947, shall  
14 apply, unless aggravating circumstances require a more  
15 severe penalty.

16 ~~Section 11, Section 82-4202, R.C.M. 1947, is amended~~  
17 ~~to read as follows:~~

18 ~~"82-4202--Definitions--For purposes of this act:~~

19 ~~(1)--"Agency"--means--any--board--bureau--commission,~~  
20 ~~department, authority or officer--of--the--state--government~~  
21 ~~authorized--by--law--to--make--rules--and--to--determine--contested~~  
22 ~~cases, except that the provisions--of--this--act--shall--not~~  
23 ~~apply--to--the--following:~~

24 ~~(a)--the--legislature--and--any--branch,--committee--or~~  
25 ~~officer thereof;~~

1       ~~(b) the judicial branches and any committee or officer~~  
2       ~~thereof;~~

3       ~~(c) the governor, except that an agency otherwise~~  
4       ~~covered by this act shall not be exempt because the governor~~  
5       ~~has been designated as a member thereof;~~

6       ~~(d) the state military establishment and agencies~~  
7       ~~concerned with civil defense and recovery from hostile~~  
8       ~~attacks;~~

9       ~~(e) the state board of pardons, except that said board~~  
10       ~~shall be subject to the requirements of section 3-4203~~  
11       ~~and 5-4205 of this act and its rules shall be published~~  
12       ~~in the Montana administrative code and register;~~

13       ~~(f) the supervision and administration of any penal,~~  
14       ~~mental, medical or eleemosynary institution with regard to~~  
15       ~~the admission, release, institutional supervision, custody,~~  
16       ~~control, care or treatment of inmates, prisoners or~~  
17       ~~patients, except as provided in sections 95-2219 and~~  
18       ~~95-2223, R.C.M. 1947;~~

19       ~~(g) the administration and management of educational~~  
20       ~~institutions;~~

21       ~~(h) the financing, construction and maintenance of~~  
22       ~~public works;~~

23       ~~(2) "Rule" means each agency regulation, standard or~~  
24       ~~statement of general applicability that implements,~~  
25       ~~interprets, or prescribes law or policy or describes the~~

1       ~~organization, procedures or practice requirements of an~~  
2       ~~agency. The term includes the amendment or repeal of a prior~~  
3       ~~rule, but does not include:~~

4               ~~(a) statements concerning only the internal management~~  
5               ~~of an agency and not affecting private rights or procedures~~  
6               ~~available to the public;~~

7               ~~(b) declaratory rulings issued pursuant to section 10~~  
8               ~~4210 of this act;~~

9               ~~(c) intra-agency memoranda;~~

10               ~~(d) rules relating to the use of public works,~~  
11               ~~facilities, streets and highways, when the substance of such~~  
12               ~~rules is indicated to the public by means of signs or~~  
13               ~~signals;~~

14               ~~(e) seasonal rules adopted annually relating to~~  
15               ~~hunting, fishing and trapping when there is a statutory~~  
16               ~~requirement for the publication of such rules, and rules~~  
17               ~~adopted annually relating to the seasonal recreational use~~  
18               ~~of lands and waters owned or controlled by the state when~~  
19               ~~the substance of such rules is indicated to the public by~~  
20               ~~means of signs or signals;~~

21               ~~(f) rules relating to personnel standards, job~~  
22               ~~classifications or salary ranges for agency employees;~~

23               ~~(g) uniform rules adopted pursuant to interstate~~  
24               ~~compact, except that such rules shall be filed in accordance~~  
25               ~~with section 10-4210 of this act and shall be published~~

1 ~~in the Montana administrative code and register,~~

2 ~~(3) "Contested case" means any proceeding before an~~  
3 ~~agency in which a determination of legal rights, duties or~~  
4 ~~privileges of a party is required by law to be made after an~~  
5 ~~opportunity for hearing. The term includes, but is not~~  
6 ~~restricted to, rate making, price fixing and licensing.~~

7 ~~(4) "License" includes the whole or part of any agency~~  
8 ~~permit, certificate, approval, registration, charter or~~  
9 ~~other form of permission required by law, but does not~~  
10 ~~include a license required solely for revenue purposes.~~

11 ~~(5) "Licensing" includes any agency process respecting~~  
12 ~~the grant, denial, renewal, revocation, suspension,~~  
13 ~~annulment, withdrawal, limitation or amendment of a license.~~

14 ~~(6) "Party" means any person or agency named or~~  
15 ~~admitted as a party, or properly seeking and entitled as of~~  
16 ~~right to be admitted as a party, but nothing herein shall be~~  
17 ~~construed to prevent an agency from admitting any person or~~  
18 ~~agency as a party for limited purposes.~~

19 ~~(7) "Person" means any individual, partnership,~~  
20 ~~corporation, association, governmental subdivision or public~~  
21 ~~organization of any character other than an agency."~~

22 ~~SECTION 10. ALL RULES PROMULGATED UNDER THIS ACT SHALL~~  
23 ~~COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT.~~

24 SECTION 11. SEVERABILITY. IF A PART OF THIS ACT IS  
25 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID

1 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN  
2 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT  
3 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE  
4 INVALID APPLICATIONS.

5 Section 12. Section 95-2226, R.C.M. 1947, is repealed.

-End-



## 1 HOUSE BILL NO. 637

2 INTRODUCED BY HOLMES, HUENNEKENS, MELOY, WOLPE, VINCENT,  
 3 JACK MOORE, JOHNSON, HALVORSON, SHELDEN, GUNDERSON,  
 4 DRISCOLL, KEMMIS, GUTHRIE, ECKITTRICK, BRADLEY, RABUSSEN,  
 5 MERCER, SLOAN, BARDANOUVE, DUSSAULT, C.B. ANDERSON,  
 6 FINLEY, LORY, KENDALL, ELLIS, RICHARDS, LUEBECK,  
 7 O'CONNELL, KIMBLE, TEAGUE

8  
 9 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER  
 10 FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY  
 11 PUBLIC AND PRIVATE SUPERVISING AGENCIES, AND PLACING  
 12 RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF  
 13 INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH  
 14 95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M.  
 15 1947."

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

18 Section 1. Section 95-2217, R.C.M. 1947, is amended to  
 19 read as follows:

20 "95-2217. Prisoner furlough program — purpose and  
 21 intent. The purpose and intent of this act is to establish a  
 22 program for the rehabilitation, education, and betterment of  
 23 selected prisoners confined in the state prison; to increase  
 24 their responsibility to society; to make it possible that  
 25 they may, while serving their sentences, work gainfully to

1 support their dependents in whole or in part; and providing  
 2 for ~~the~~ the minimum hourly wage required by law OR THE  
 3 PREVAILING RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR  
 4 OCCUPATIONS BY THE SAME EMPLOYEE ~~of one and 40/100 (\$1.40)~~  
 5 ~~dollars an hour~~ to be paid to said convicts while so  
 6 employed; continue their education or training; and at the  
 7 same time fulfill the obligations of the sentence of  
 8 imprisonment imposed; placing the establishment, regulation,  
 9 guidance, and control of such program under the direction of  
 10 ~~the warden of the state prison~~ department of institutions  
 11 ~~with the advice and consent of the state board of pardons~~  
 12 ~~furlough committee created in section 4 of this act which,~~  
 13 THE PRISONER program shall operate by supplementing and not  
 14 replacing established penal procedures now or hereafter  
 15 established by law and shall serve to extend the limits of  
 16 confinement for treatment as well as jurisdictional  
 17 purposes. This act is to be liberally construed to effect  
 18 the over-all objectives set forth above."

19 Section 2. Section 95-2218, R.C.M. 1947, is amended to  
 20 read as follows:

21 "95-2218. Definitions. Unless the context requires  
 22 otherwise, in this act:

23 (1) "~~Board~~ Department" means the ~~state board of~~  
 24 ~~pardons~~ department of institutions provided for in section  
 25 ~~82A-804~~ 82A-801;

1        (2) "BOARD" MEANS THE BOARD OF PARDONS PROVIDED FOR IN  
 2        SECTION 82A-804.

3        ~~(3)~~ (3) "State prison" means the Montana state prison  
 4        at Deer Lodge and any adult correctional facility under the  
 5        direction of the department;

6        ~~(3)~~ (4) "Prisoner" means a person sentenced by a  
 7        district court to a term of confinement in the state prison;

8        ~~(4)~~ (5) "Sheriff Supervising agency" means any county  
 9        sheriff including all deputies or other persons working  
 10       under his direction or guidance federal, state, county,  
 11       local or private agency, Indian tribe and reservation, or  
 12       any person, group, association or organization approved by  
 13       the department to undertake the supervision of prisoners  
 14       participating in the furlough program;

15       ~~(5)~~ (6) "Jail" means any county jail OR TRIBAL JAIL;

16       ~~(6)~~ "Warden Furlough committee" means the  
 17       superintendent of the state prison appointed by the board of  
 18       institutions. committee established in section 4 of this  
 19       act;

20       (7) "Applicant" means any prisoner who has signed an  
 21       application to participate in the prisoner furlough  
 22       program."

23       Section 3. Section 95-2219, R.C.M. 1947, is amended to  
 24       read as follows:

25       "95-2219. ~~Warden Department~~ to establish program and

1       ~~rules — privileges granted prisoners. The warden department~~  
 2       ~~is authorized and directed to establish a furlough program~~  
 3       ~~and rules to implement and control the same, in accordance~~  
 4       ~~with the provisions of Title 92, Chapter 42, R.C.M. 1947. A~~  
 5       ~~prisoner sentenced to the state prison may be granted the~~  
 6       ~~privilege of Rules shall include provisions for:~~

7       (1) Working at paid employment for a rate of pay not  
 8       less than ~~one and 40/100 (\$1.40) dollars an hour, or the~~  
 9       minimum hourly wage as required by law OF THE PREVAILING  
 10       RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR OCCUPATIONS BY  
 11       THE SAME EMPLOYER;

12       (2) Participating in an educational, TREATMENT, or  
 13       training program;

14       (3) Approval of supervising agency; and

15       (4) Review of determinations in furlough application."  
 16       ~~section 4. There is a new R.C.M. section numbered~~  
 17       ~~95-2219.1 that reads as follows:~~

18       ~~95-2219.1. Creation of furlough committee~~  
 19       ~~composition. There is created a prisoner furlough committee~~  
 20       ~~at the state prison. It shall be composed of the following~~  
 21       ~~staff members of the prison:~~

- 22       ~~(1) The warden or his designated representative;~~
- 23       ~~(2) Employment counselor;~~
- 24       ~~(3) Applicant's social case worker;~~
- 25       ~~(4) Psychologist (or psychiatrist);~~

1 ~~(5) Member chosen by the applicant.~~  
 2 ~~Each member shall have an equal vote in all~~  
 3 ~~proceedings. The furlough committee shall meet on a regular~~  
 4 ~~monthly schedule which shall be adopted, printed and~~  
 5 ~~circulated throughout the prison. Each inmate of the prison~~  
 6 ~~shall be notified of any variation in the schedule at least~~  
 7 ~~one week in advance of the rescheduled meeting.~~

8 Section 4. Section 95-2220, R.C.M. 1947, is amended to  
 9 read as follows:

10 "95-2220. Application for participation in furlough  
 11 program. Any prisoner confined in the state prison may make  
 12 application to participate in the furlough program according  
 13 to rules adopted by the warden with the advice and consent  
 14 of the board ~~after having served at least~~ BY THE TIME THE  
 15 ~~INMATE HAS SERVED~~ one-half (1/2) of the time required to be  
 16 ~~considered for parole."~~

17 Section 6. Section 95-2221, R.C.M. 1947, is amended to  
 18 read as follows:

19 "95-2221. Consideration of application ~~and~~ furlough  
 20 ~~plan and consent of sheriff necessary duties of committee.~~

21 ~~(1) At the monthly meeting of the furlough committee~~  
 22 ~~following the signing of any prisoner's application, The~~  
 23 ~~board the committee shall approve or deny the application of~~  
 24 ~~the each prisoner after careful study of the prisoner's~~  
 25 ~~conduct, attitude and behavior in the prison in which the~~

1 ~~prisoner is confined his furlough plans, his criminal~~  
 2 ~~history, and all other pertinent case material. The~~  
 3 ~~following rules shall be observed when the committee meets~~  
 4 ~~to consider any application:~~

5 ~~(a) every applicant shall be allowed to call two (2)~~  
 6 ~~witnesses from outside the institution to testify as to his~~  
 7 ~~general attitude, participation in self help activities, or~~  
 8 ~~his character or job references;~~

9 ~~(b) every applicant shall be allowed one summary~~  
 10 ~~dismissal of any committee member for reason of personality~~  
 11 ~~conflict, in which event an appropriate and mutually~~  
 12 ~~agreeable substitute shall be made;~~

13 ~~(c) every applicant shall remain present during the~~  
 14 ~~discussion of his application by the committee and be given~~  
 15 ~~an oral decision on his application before the adjournment~~  
 16 ~~of the committee. Nothing contained herein shall be~~  
 17 ~~construed to allow an executive session of the committee to~~  
 18 ~~be held in the absence of the applicant;~~

19 ~~(d) every applicant shall be viewed singly, and shall~~  
 20 ~~be recognized as an individual, with individual problems,~~  
 21 ~~and individual capabilities; the decision of the committee~~  
 22 ~~shall take into account the potential of the individual and~~  
 23 ~~shall determine the course which is most likely to provide~~  
 24 ~~optimum benefit to both society and the individual;~~

25 ~~(e) each applicant shall be allowed to discuss any~~

~~specific problem areas with any member of the furlough committee.~~

~~(f) a secretary shall be in attendance at each meeting to record the entire proceedings, including the determination of the committee, and the record shall be sent to each person participating in the meeting within ten (10) days following the meeting and the original copy shall be filed with the department.~~

~~(2) If the application is approved, the warden department shall, adopt a furlough plan for the prisoner within the shortest possible period of time, locate an agency capable of supervising the prisoner applicant. The supervising agency, the department, and the prisoner applicant shall enter into a written agreement setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties. The agreement shall be executed, signed by the parties before a notary public, in triplicate, with one copy each to be filed with the committee and the department and one copy to be retained by the applicant. Upon the signing of the agreement, the prisoner will be released to the supervising agency, which shall constitute an extension of the limits of confinement.~~

~~(3) No prisoner shall be released without the written consent of the sheriff of the county receiving the prisoner~~

~~If the application is denied the prisoner may reapply after six (6) months time. After an applicant has been denied three (3) times he may appeal to the department for a hearing by the board of pardons.~~

SECTION 5. SECTION 95-2221, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"95-2221. Consideration of application—furlough plan—notification or consent of sheriff necessary—duties of board. (1) The At the meeting of the board following the signing of any prisoner's application the board shall approve or deny the application of the each prisoner after careful study of the prisoner's conduct, attitude and behavior in the prison in which the prisoner is confined, his furlough plans, criminal history, and all other pertinent case material. The following rules shall be observed when the board meets to consider an application:

(a) each applicant may call two (2) witnesses from outside OR INSIDE the institution to testify as to the applicant's general attitude, participation in self-help activities, or his character or job references;

(b) each applicant shall remain present during the discussion of his application by the board and be given an oral decision on his application before the adjournment of the board as well as a written decision including a thorough statement of reasons for the decision;

1 (B) AN APPLICANT MAY REMAIN PRESENT DURING THE BOARD  
2 PROCEEDINGS ON HIS APPLICATION; HOWEVER, THE BOARD MAY MEET  
3 IN EXECUTIVE SESSION WITHOUT THE APPLICANT FOR FINAL  
4 DECISION ON THE APPLICATION;

5 (C) THE BOARD SHALL CAUSE THE APPLICANT TO BE NOTIFIED  
6 OF ITS DECISION IMMEDIATELY AND SHALL PROVIDE THE APPLICANT  
7 WITH A WRITTEN DECISION INCLUDING A THOROUGH STATEMENT OF  
8 THE REASONS FOR THE DECISION WITHIN TWO (2) DAYS FOLLOWING  
9 ADJOURNMENT;

10 ~~(e)~~--(D) each applicant shall be viewed singly, and  
11 shall be recognized as an individual;

12 ~~(d)~~--(E) each applicant shall be allowed to discuss  
13 any specific problem areas with any member of the board.

14 (2) If the application is approved, the warden--shall  
15 ~~adopt--a--furlough--plan--for--the--prisoner,--which--shall~~  
16 ~~constitute--an--extension--of--the--limits--of--confinement.~~  
17 department shall: within the shortest possible time, locate  
18 an agency capable of supervising the applicant.

19 (3) ~~No--prisoner--shall--be--released--without--the--written~~  
20 ~~consent--of--the--sheriff--of--the--county--receiving--the--prisoner.~~  
21 The supervising agency, the department, and the applicant  
22 shall enter into a written agreement setting out the  
23 conditions and purposes of the furlough and specifying the  
24 responsibility assumed by each of the parties. The  
25 agreement shall be executed, signed by the parties before a

1 notary public, in triplicate, with one copy to be filed with  
2 the supervising agency and the department and one copy to be  
3 retained by the applicant.

4 (4) Upon the signing of the agreement, the prisoner  
5 shall be released to the supervising agency.

6 (5) Final authority in all matters pertaining to  
7 prisoner furloughs is in the department.

8 (6) When an inmate is to reside in the county OR  
9 TRIBAL jail, the consent of the sheriff OR TRIBAL CHIEF OF  
10 POLICE in the receiving county OR RESERVATION is necessary.  
11 However, when the inmate is to reside in a community  
12 corrections center or some other supervised setting the  
13 sheriff OR TRIBAL CHIEF OF POLICE of the receiving county OR  
14 RESERVATION shall be notified.

15 (7) If the application is denied the prisoner may  
16 reapply after six (6) months' time. After an applicant has  
17 been denied three (3) times he may appeal to the department  
18 for a hearing."

19 Section 6. Section 95-2222, R.C.M. 1947, is amended to  
20 read as follows:

21 "95-2222. Disposition of prisoner's earnings — trust  
22 fund — schooling costs. (1) A prisoner employed in the  
23 community under a work furlough plan shall ~~surrender to the~~  
24 ~~sheriff his total earnings less payroll deductions required~~  
25 ~~by law. The sheriff shall deduct from such earnings in the~~

1 ~~following order of priority enter into a written financial~~  
 2 ~~agreement with the supervising agency and the department~~  
 3 ~~concerning the acquisition and disposition of his earnings.~~

4 This financial agreement shall provide for the payment of:

5 (a) ~~A standard charge for all prisoners determined by~~  
 6 ~~the county commissioners to be the cost to the county of~~  
 7 ~~providing food, lodging and clothing for each the prisoner~~  
 8 ~~if incurred and if applicable;~~

9 (b) The actual and necessary travel and other expenses  
 10 of ~~each the~~ prisoner under furlough from actual confinement  
 11 under the program; and

12 (c) ~~Such an amount as the prisoner may be determined~~  
 13 ~~by the district judge to pay for the support of his~~  
 14 ~~dependents, which amount shall be paid to each the~~  
 15 ~~dependents; and~~

16 (d) ~~A minimal an allowance for personal items, and~~  
 17 ~~other expenses or disbursements agreed upon by the prisoner~~  
 18 ~~and the supervising agency.~~

19 (2) Unless the financial agreement specifically  
 20 provides for other disbursement of the money, any  
 21 balance remaining after each deductions and payments shall  
 22 be deposited to an interest-bearing account held in trust  
 23 for said the prisoner and shall be paid to him upon release.

24 (3) If no other sources of support are available, the  
 25 above the costs of a prisoner under furlough who is in

1 training or school shall be the responsibility of the  
 2 state."

3 Section 7. Section 95-2223, R.C.M. 1947, is amended to  
 4 read as follows:

5 "95-2223. Administrative rules -- co-operation by  
 6 state agencies. (1) The ~~warden department~~ is authorized to  
 7 make rules for the administration of the provision of this  
 8 act ~~with the advice and consent of the board in accordance~~  
 9 with Title 82, chapter 42, R.C.M. 1947.

10 (2) All state, county and local agencies shall be  
 11 ENCOURAGED TO co-operate ~~with the warden and sheriff~~ in the  
 12 administration of the furlough program."

13 Section 8. Section 95-2224, R.C.M. 1947, is amended to  
 14 read as follows:

15 "95-2224. Prisoner not agent, ~~employee~~ or involuntary  
 16 servant of ~~warden or sheriff~~. No prisoner employed in the  
 17 community under the provisions of this act shall be deemed  
 18 to be an agent, ~~employee~~, or involuntary servant of the  
 19 ~~warden or sheriff department or of the supervising agency~~  
 20 while released from confinement pursuant to the terms of the  
 21 furlough program. Abuse of this section shall be deemed  
 22 official misconduct pursuant to 94-7-401, R.C.M. 1947."

23 Section 9. There is a new R.C.M. section numbered  
 24 95-2226.1 that reads as follows:

25 95-2226.1. Responsibility of department and

1 supervising agency — ~~CHANGE OR~~ revocation of furlough —  
 2 escape. (?) The department shall be responsible for the  
 3 activities of a prisoner participating in a furlough program  
 4 under this act. THE DEPARTMENT MAY DELEGATE JURISDICTIONAL  
 5 SUPERVISION OF WORK FURLOUGH PARTICIPANTS TO THE ADULT  
 6 PAROLE AND PROBATION FIELD SERVICE. The supervising agency  
 7 shall be responsible for those activities of a furloughed  
 8 prisoner for which it is responsible in the written furlough  
 9 agreement.

10 (2) If any prisoner released from actual prison  
 11 confinement under the furlough program fails to comply with  
 12 the rules and regulations of the furlough agreement, he  
 13 shall be called by the department or by the supervising  
 14 agency to appear before the department or supervising  
 15 agency. If a conference is not sufficient to resolve the  
 16 situation and if the prisoner continues in his  
 17 noncompliance, ~~the department shall file an affidavit in the~~  
 18 ~~district court of the county in which the violation took~~  
 19 ~~place charging the prisoner with a violation of the rules~~  
 20 ~~and regulations of the furlough agreement. The district~~  
 21 ~~court THE BOARD shall hold a hearing on the charge at which~~  
 22 THE PRISONER SHALL BE GRANTED A HEARING ON THE VIOLATION  
 23 WITHIN A REASONABLE TIME ON OR NEAR THE SITE OF THE ALLEGED  
 24 VIOLATION TO DETERMINE WHETHER A VIOLATION OF THE FURLOUGH  
 25 AGREEMENT EXISTS. ~~the~~ THE prisoner is entitled to have

1 counsel appointed to represent him. ~~Upon determining that~~  
 2 ~~the prisoner has violated the rules and regulations of the~~  
 3 ~~furlough agreement, the court BOARD shall order the prisoner~~  
 4 ~~returned to prison. AT THE HEARING. THE HEARING SHALL BE~~  
 5 CONDUCTED BY A HEARING OFFICER OF THE BOARD OF PARDONS. THE  
 6 PRISONER ON FURLOUGH SHALL HAVE ALL OPPORTUNITIES PROVIDED  
 7 UNDER SECTION 95-3220, E.C.M. 1947, PERTAINING TO ON-SITE  
 8 HEARINGS FOR PAROLE REVOCATION. IF REASONABLE GROUNDS ARE  
 9 ESTABLISHED FOR VIOLATION OF THE FURLOUGH AGREEMENT, THE  
 10 FURLOUGH SHALL BE CANCELLED AND THE PRISONER SHALL BE  
 11 RETURNED TO THE PRISON. AT THE NEXT MEETING OF THE BOARD OF  
 12 PARDONS AFTER THE RETURN OF THE PRISONER TO THE PRISON, THE  
 13 PRISONER SHALL BE GRANTED A DUE PROCESS HEARING IN ORDER TO  
 14 DETERMINE IF THE PRISONER HAS, IN FACT, VIOLATED THE TERMS  
 15 OF THE PRISONER'S FURLOUGH RELEASE. IF IT IS DETERMINED  
 16 THAT THE PRISONER HAS, IN FACT, VIOLATED THE TERMS OF THE  
 17 PRISONER'S FURLOUGH, THE PRISONER SHALL REMAIN AT THE  
 18 PRISON. IF THE TERMS OF THE PRISONER'S RELEASE HAVE NOT  
 19 BEEN VIOLATED, THE PRISONER'S CASE SHALL BE ASSIGNED TO A  
 20 PAROLE AGENT AND A NEW FURLOUGH ARRANGEMENT SHALL BE WORKED  
 21 OUT.

22 (3) If the department determines AFTER HAVING BEEN  
 23 ADVISED BY THE SUPERVISING AGENCY OR THE ADULT PAROLE AND  
 24 PROBATION FIELD SERVICE, that a prisoner presents an  
 25 immediate grave threat to the community in which he is

1 furloughed, it may order the prisoner returned to prison  
 2 before a hearing is held, but in this case a hearing on the  
 3 charges against the prisoner, as provided for in the above  
 4 subsection, must be held ~~in the district court~~ BY THE BOARD  
 5 no later than ~~ten (10)~~ THIRTY (30) days after the return of  
 6 the prisoner to the state prison.

7 (4) IF, AFTER A REASONABLE TIME, A FURLOUGHED PRISONER  
 8 DETERMINES THAT HIS FURLOUGH PLAN IS UNSATISFACTORY DUE TO  
 9 PERSONALITY CONFLICT, A VIOLATION OF HIS RIGHTS BY HIS  
 10 SUPERVISOR, OR A CHANGE OF INTEREST OR EMPLOYMENT STATUS,  
 11 THE DEPARTMENT SHALL GRANT HIM A HEARING TO DETERMINE  
 12 WHETHER OR NOT A NEW FURLOUGH PLAN SHOULD BE EXECUTED.

13 ~~(4)~~ (5) If a prisoner, while not disabled from working  
 14 by temporary illness, is unemployed for a period of thirty  
 15 (30) days, or more, after his availability for employment is  
 16 reported in writing by the supervising agency to the  
 17 department of labor and industry office serving the area in  
 18 which the prisoner is furloughed and to ~~the~~ ANY union to  
 19 which the prisoner belongs, or if a prisoner has become so  
 20 disabled as to be unemployable, or if a prisoner is on an  
 21 educational furlough and has demonstrated for a period of  
 22 six (6) weeks or more that he is unable to benefit from  
 23 schooling, TREATMENT, or training, then the prisoner, the  
 24 department, or the supervising agency may request that a  
 25 conference be held with the department, the prisoner, and a

1 representative of the supervising agency to consider the  
 2 problem of the prisoner's unemployment, disability, or  
 3 inability to benefit from schooling or training. At this  
 4 conference the prisoner may request that his supervision be  
 5 transferred to another supervising agency, and a  
 6 representative of the new agency may be at the conference.  
 7 If the conference does not result in a resolution of the  
 8 problem of the prisoner's unemployment, disability, or  
 9 inability to benefit, the department may ~~file an affidavit~~  
 10 ~~in the district court of the county in which the prisoner is~~  
 11 ~~furloughed, stating that the prisoner is not benefiting from~~  
 12 ~~the furlough program and will not benefit from continued~~  
 13 ~~participation in the program and requesting a hearing~~  
 14 REQUEST A HEARING BY THE BOARD OF PARDONS to determine an  
 15 alternate proposal. In this hearing the prisoner is  
 16 entitled to have counsel appointed to represent him. Upon  
 17 determining that the prisoner is not benefiting from the  
 18 furlough program and will not benefit from continued  
 19 participation in the program, the ~~court~~ BOARD shall order  
 20 the prisoner returned to the prison.

21 ~~(5)~~ (6) For the purpose of this act, the provisions  
 22 relating to escape in section 94-7-306, H.C.M. 1947, shall  
 23 apply, unless aggravating circumstances require a more  
 24 severe penalty.

25 ~~Section 11, Section 82-4202, H.C.M. 1947, is amended~~



1 to read as follows:

2 ~~§ 2-4202. Definitions. For purposes of this act:~~

3 ~~(1) "Agency" means any board, bureau, commission,~~  
 4 ~~department, authority or officer of the state government~~  
 5 ~~authorized by law to make rules and to determine contested~~  
 6 ~~cases, except that the provisions of this act shall not~~  
 7 ~~apply to the following:~~

8 ~~(a) the legislature and any branch, committee or~~  
 9 ~~officer thereof;~~

10 ~~(b) the judicial branches and any committee or officer~~  
 11 ~~thereof;~~

12 ~~(c) the governor, except that an agency otherwise~~  
 13 ~~covered by this act shall not be exempt because the governor~~  
 14 ~~has been designated as a member thereof;~~

15 ~~(d) the state military establishment and agencies~~  
 16 ~~concerned with civil defense and recovery from hostile~~  
 17 ~~attacks;~~

18 ~~(e) the state board of pardons, except that said board~~  
 19 ~~shall be subject to the requirements of section 3 [§ 2-4203]~~  
 20 ~~and 5 [§ 2-4205] of this act and its rules shall be published~~  
 21 ~~in the Montana administrative code and register;~~

22 ~~(f) the supervision and administration of any penal,~~  
 23 ~~mental, medical or eleemosynary institution with regard to~~  
 24 ~~the admission, release, institutional supervision, custody,~~  
 25 ~~control, care or treatment of inmates, prisoners or~~

1 ~~patients, except as provided in sections 95-2219 and~~  
 2 ~~95-2223, R.C.M. 1947;~~

3 ~~(g) the administration and management of educational~~  
 4 ~~institutions;~~

5 ~~(h) the financing, construction and maintenance of~~  
 6 ~~public works.~~

7 ~~(2) "Rule" means each agency regulation, standard or~~  
 8 ~~statement of general applicability that implements,~~  
 9 ~~interprets, or prescribes law or policy or describes the~~  
 10 ~~organization, procedures, or practice requirements of an~~  
 11 ~~agency. The term includes the amendment or repeal of a prior~~  
 12 ~~rule, but does not include:~~

13 ~~(a) statements concerning only the internal management~~  
 14 ~~of an agency and not affecting private rights or procedures~~  
 15 ~~available to the public;~~

16 ~~(b) declaratory rulings issued pursuant to section 18~~  
 17 ~~[§ 2-4218] of this act;~~

18 ~~(c) intra-agency memoranda;~~

19 ~~(d) rules relating to the use of public works,~~  
 20 ~~facilities, streets and highways, when the substance of such~~  
 21 ~~rules is indicated to the public by means of signs or~~  
 22 ~~signals;~~

23 ~~(e) seasonal rules adopted annually relating to~~  
 24 ~~hunting, fishing and trapping when there is a statutory~~  
 25 ~~requirement for the publication of such rules, and rules~~

1 ~~adopted annually relating to the seasonal recreational use~~  
 2 ~~of lands and waters owned or controlled by the state when~~  
 3 ~~the substance of such rules is indicated to the public by~~  
 4 ~~means of signs or signals;~~

5 ~~(f) rules relating to personnel standards, job~~  
 6 ~~classifications or salary ranges for agency employees;~~

7 ~~(g) uniform rules adopted pursuant to interstate~~  
 8 ~~compact, except that such rules shall be filed in accordance~~  
 9 ~~with section 10 [82-4210] of this act and shall be published~~  
 10 ~~in the Montana administrative code and register.~~

11 ~~(3) "Contested case" means any proceeding before an~~  
 12 ~~agency in which a determination of legal rights, duties or~~  
 13 ~~privileges of a party is required by law to be made after an~~  
 14 ~~opportunity for hearing. The term includes, but is not~~  
 15 ~~restricted to, rate making, price fixing and licensing.~~

16 ~~(4) "License" includes the whole or part of any agency~~  
 17 ~~permit, certificate, approval, registration, charter or~~  
 18 ~~other form of permission required by law, but does not~~  
 19 ~~include a license required solely for revenue purposes.~~

20 ~~(5) "Licensing" includes any agency process respecting~~  
 21 ~~the grant, denial, renewal, revocation, suspension,~~  
 22 ~~annulment, withdrawal, limitation or amendment of a license.~~

23 ~~(6) "Party" means any person or agency named or~~  
 24 ~~admitted as a party, or properly seeking and entitled as of~~  
 25 ~~right to be admitted as a party; but nothing herein shall be~~

1 ~~construed to prevent an agency from admitting any person or~~  
 2 ~~agency as a party for limited purposes.~~

3 ~~(7) "Person" means any individual, partnership,~~  
 4 ~~corporation, association, governmental subdivision or public~~  
 5 ~~organization of any character other than an agency."~~

6 ~~SECTION 10. ALL RULES PROMULGATED UNDER THIS ACT SHALL~~  
 7 ~~COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT.~~

8 ~~SECTION 11. SEVERABILITY. IF A PART OF THIS ACT IS~~  
 9 ~~INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID~~  
 10 ~~PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN~~  
 11 ~~ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT~~  
 12 ~~IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE~~  
 13 ~~INVALID APPLICATIONS.~~

14 Section 12. Section 95-2226, R.C.M. 1947, is repealed.

-End-