

1 House BILL NO. 646
 2 INTRODUCED BY Mr. Keith Holmes
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT ONE
 5 MEMBER OF THE BOARD OF PARDONS SERVE FULL-TIME AND THAT THE
 6 RESPONSIBILITY FOR FIELD SERVICES STAFF FOR PROBATION AND
 7 PAROLE BE TRANSFERRED TO THE DEPARTMENT OF INSTITUTIONS;
 8 AMENDING SECTIONS 82A-804, 95-3203 THROUGH 95-3206, R.C.M.
 9 1947; RENUMBERING AND AMENDING SECTIONS 95-3210, 95-3213 AND
 10 95-3220, R.C.M. 1947; AND REPEALING SECTIONS 95-3207,
 11 95-3211, 95-3212, AND 95-3219, R.C.M. 1947."
 12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 Section 1. Section 82A-804, R.C.M. 1947, is amended to
 15 read as follows:
 16 "82A-804. Board of pardons -- composition --
 17 allocation -- designation. (1) There is a board of
 18 pardons.
 19 (2) The board consists of three (3) members.
 20 (3) At least one of the board members shall serve
 21 full-time as determined by the governor.
 22 ~~(3)~~ (4) The board is allocated to the department for
 23 administrative purposes only as prescribed in section
 24 82A-108. However, the board may hire its own personnel, and
 25 section 82A-108 (2) (d) does not apply.

1 ~~(4)~~ (5) The board is designated as a quasi-judicial
 2 board for purposes of section 82A-112."
 3 Section 2. Section 95-3203, R.C.M. 1947, is amended to
 4 read as follows:
 5 "95-3203. Act, how cited. This act shall be known and
 6 may be cited as the "~~Probation~~, Parole and Executive
 7 Clemency Act".
 8 Section 3. Section 95-3204, R.C.M. 1947, is amended to
 9 read as follows:
 10 "95-3204. Board of pardons. (1) The board of
 11 pardons ~~shall--administer--the~~ is responsible for executive
 12 ~~clerical--probation and parole system, as provided in this~~
 13 ~~chapter. and--shall--endeavor--to--secure--the--effective~~
 14 ~~application-and-improvement-of-that-system-and-the-laws-upon~~
 15 ~~which-it-is-based.~~
 16 (2) The board shall meet at least once each month at
 17 the state prison.
 18 (3) The principal office of the board shall be in Deer
 19 Lodge."
 20 Section 4. Section 95-3205, R.C.M. 1947, is amended to
 21 read as follows:
 22 "95-3205. Definitions. Unless the context requires
 23 otherwise, in this ~~act~~ chapter:
 24 (1) "Board" means the board of pardons provided for in
 25 section 82A-804.

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1 (2) ~~"Probation" means the release by the court without~~
 2 ~~imprisonment except as otherwise provided by law, of a~~
 3 ~~defendant found guilty of a crime upon verdict or plea,~~
 4 ~~subject to conditions imposed by the court and subject to~~
 5 ~~the supervision of the board upon direction of the court.~~
 6 "Department" means the department of institutions provided
 7 for in Title 82A, chapter 8.

8 (3) "Parole" means the release to the community of a
 9 prisoner by the decision of the board prior to the
 10 expiration of his term, subject to conditions imposed by the
 11 board and subject to ~~its~~ supervision of the department of
 12 institutions.

13 (4) "Executive clemency" refers to the powers of the
 14 governor as provided by section 12 of article VI of the
 15 constitution of Montana."

16 Section 5. Section 95-3206, R.C.M. 1947, is amended to
 17 read as follows:

18 "95-3206. Orders, records, report. Decisions of the
 19 board shall be by majority vote. The orders of the board are
 20 not reviewable except as to compliance of terms of this act.
 21 The department of institutions shall keep a record of the
 22 board's acts and decisions available to the public. However,
 23 all social records, including the pre-sentence report, the
 24 pre-parole report and the supervision history obtained in
 25 the discharge of official duty by ~~any member or employee of~~

1 ~~the board~~ the department, shall be confidential and shall
 2 not be disclosed directly or indirectly to anyone other than
 3 the members of the board or a judge. The board or a court
 4 may in its discretion, when the best interest or welfare of
 5 a particular defendant or prisoner makes such action
 6 desirable or helpful, permit the inspection of the report or
 7 any parts thereof by the prisoner or his attorney."

8 Section 6. There is a new R.C.M. section numbered
 9 95-3301 that reads as follows:

10 95-3301. Definitions. As used in this chapter, unless
 11 the context requires otherwise: (1) "Board" means the board
 12 of pardons provided for in section 82A-804.

13 (2) "Department" means the department of institutions
 14 provided for in Title 82A, chapter 8.

15 (3) "Probation" means the release by the court without
 16 imprisonment except as otherwise provided by law, of a
 17 defendant found guilty of a crime upon verdict or plea,
 18 subject to conditions imposed by the court and subject to
 19 the supervision of the department upon direction of the
 20 court.

21 (4) "Parole" means the release to the community of a
 22 prisoner by the decision of the board prior to the
 23 expiration of his term, subject to conditions imposed by the
 24 board and subject to supervision of the department.

25 Section 7. There is a new R.C.M. section numbered

1 95-3302 that reads as follows:

2 95-3302. Powers of the department. The department
3 may: (1) appoint probation and parole officers and other
4 employees necessary to administer this chapter;

5 (2) adopt rules for the conduct of persons placed on
6 parole or probation, except that the department may not make
7 any rule conflicting with conditions of parole imposed by
8 the board or conditions of probation imposed by a court.

9 Section 8. Section 95-3210, R.C.M. 1947, is
10 renumbered 95-3303, and is amended to read as follows:

11 ~~"95-3210~~ 95-3303. Duties of the administrator
12 ~~department. The--administrator-is-the-executive-officer-of~~
13 ~~the--board,---He~~ The department is responsible for any
14 investigation and supervision requested by the board or the
15 courts. The administrator, ~~subject-to-the-direction-and~~
16 ~~supervision--of-the~~ department under section ~~82A-106~~, shall:

17 (1) ~~Subject-to-the-approval-of-the-board, divide~~ Divide
18 the state into districts, and assign probation and parole
19 officers to serve in these districts and courts;

20 (2) Obtain any necessary office quarters for the staff
21 in each district;

22 (3) Assign the secretarial, bookkeeping, and accounting
23 work to the clerical employees, including receipt and
24 disbursement of money;

25 (4) Direct the work of the probation and parole

1 officers and other employees ~~assigned-to-him~~;

2 (5) Formulate methods of investigation, supervision,
3 recordkeeping, and reports;

4 (6) Conduct training courses for the staff;

5 (7) Co-operate with all agencies, public and private,
6 which are concerned with the treatment or welfare of persons
7 on probation or parole;

8 (8) Administer the interstate compact for the
9 supervision of parolees and probationers."

10 Section 9. There is a new R.C.M. section numbered
11 95-3304 that reads as follows:

12 95-3304. Supervision on probation. (1) The department
13 shall supervise persons during their probation period in
14 accord with the conditions set by a court.

15 (2) A copy of the conditions of probation shall be
16 signed by the probationer and given to him and his probation
17 and parole officer who shall report on his progress under
18 rules of the court.

19 (3) The probation and parole officer shall regularly
20 advise and consult with the probationer to encourage him to
21 improve his condition and conduct, and inform him of
22 restoration of his rights on successful completion of his
23 sentence.

24 (4) The probation and parole officer may recommend and
25 a court may modify any condition of probation or suspension

1 of sentence at any time. Notice shall be given to the
 2 probation and parole officer before any condition is
 3 modified and he shall be given an opportunity to present his
 4 ideas or recommendations on any modification. A copy of a
 5 modification of conditions shall be delivered to the
 6 probation and parole officer and the probationer.

7 (5) The probation and parole officer shall keep
 8 records as the department or the court may require.

9 Section 10. There is a new R.C.M. section numbered
 10 95-3306 that reads as follows:

11 95-3306. Supervision on parole. (1) The department
 12 shall retain custody of all persons placed on parole and
 13 shall supervise the persons during their parole period in
 14 accord with the conditions set by the board.

15 (2) The department shall assign personnel to assist
 16 persons eligible for parole in preparing a parole plan.
 17 Department personnel shall make a report of their efforts
 18 and findings to the board prior to its consideration of the
 19 case of the eligible person.

20 (3) A copy of the conditions of his parole shall be
 21 signed by the parolee and given to him and to his probation
 22 and parole officer who shall report on his progress under
 23 the rules of the board.

24 (4) The probation and parole officer shall regularly
 25 advise and consult with the parolee, assist him in adjusting

1 to community life, inform him of the restoration of his
 2 rights on successful completion of sentence.

3 (5) The probation and parole officer shall keep such
 4 records as the board or department may require. All records
 5 shall be entered in the master file of the individual.

6 Section 11. There is a new R.C.M. section numbered
 7 95-3307 that reads as follows:

8 95-3307. Parole services. To assist parolees the
 9 department may, in addition to other services, provide the
 10 following: (1) employment counseling, job placement, and
 11 assistance in residential placement;

12 (2) family and individual counseling and treatment
 13 placement;

14 (3) financial counseling;

15 (4) vocational and educational counseling and
 16 placement; and

17 (5) referral services to any other state or local
 18 agencies.

19 The department may purchase necessary services for a
 20 parolee if they are otherwise unavailable and the parolee is
 21 unable to pay for them. It may assess all or part of the
 22 costs of such services to a parolee in accordance with his
 23 ability to pay for them.

24 Section 12. Section 95-3220, R.C.M. 1947, is
 25 renumbered 95-3308, and is amended to read as follows:

1 ~~"95-3220~~ 95-3308. Return of parole violator. (1) At
 2 any time during release on parole or conditional release the
 3 ~~board~~ department may issue a warrant for the arrest of the
 4 released prisoner for violations of any of the conditions of
 5 release, or a notice to appear to answer to a charge of
 6 violation. Such notice shall be served personally upon the
 7 prisoner. The warrant shall authorize all officers named
 8 therein to return such prisoner to the actual custody of the
 9 penal institution from which he was released, or to any
 10 other suitable detention facility designated by the ~~board~~
 11 department. Any probation and parole officer may arrest such
 12 prisoner without a warrant, or may deputize any other
 13 officer with power to arrest to do so by giving him a
 14 written statement setting forth that the prisoner has, in
 15 the judgment of said probation and parole officer, violated
 16 the conditions of his release. Such written statement
 17 delivered with the prisoner by the arresting officer to the
 18 official in charge of the institution from which the
 19 prisoner was released or other place of detention, shall be
 20 sufficient warrant for the detention of the parolee or
 21 conditional releasee. The probation and parole officer,
 22 after making an arrest, shall present to the detaining
 23 authorities a similar statement of the circumstances of
 24 violation. Pending hearing, as hereinafter provided, upon
 25 any charge of violation, the prisoner may, if circumstances

1 warrant, be incarcerated in such institution.

2 (2) After the arrest of said prisoner, a hearing shall
 3 be held within a reasonable time, unless such hearing is
 4 waived by the parolee, to determine whether there is
 5 probable cause or reasonable grounds to believe that the
 6 arrested parolee has committed acts which would constitute a
 7 violation of parole conditions. An independent officer, who
 8 need not be a judicial officer, must preside over this
 9 hearing. This hearing must be conducted at or reasonably
 10 near the place of the alleged parole violation or arrest and
 11 as promptly as convenient after arrest. The parolee must be
 12 given notice of this hearing and must be allowed to appear
 13 and speak in his own behalf and introduce relevant
 14 information to the hearings officer.

15 (3) The hearings officer shall make a summary of what
 16 transpires at the hearing in terms of the responses of the
 17 parolee and the substance of the documents or evidence given
 18 in support of parole revocation and of the parolee's
 19 position. Based on the information given to him, the
 20 hearings officer must determine whether there is probable
 21 cause to hold the parolee for the final decision of the
 22 board of pardons as specified in section 95-3217.

23 If the hearings officer determines that there is
 24 probable cause to believe that the prisoner has violated a
 25 condition of his parole, the probation and parole officer

1 shall immediately notify the board and shall submit in
 2 writing a report showing in what manner the prisoner has
 3 violated the conditions of release and this report shall be
 4 accompanied by the findings of the hearings officer.
 5 Thereupon, the board shall cause the prisoner to be promptly
 6 brought before it for a hearing on the violation charged,
 7 under such rules and regulations as the board may adopt. If
 8 the violation is established, the board may continue or
 9 revoke the parole or conditional release, or enter such
 10 other order as it may see fit.

11 (4) A prisoner for whose return a warrant has been
 12 issued ~~by the board~~ shall, after the issuance of such
 13 warrant, if it is found that the warrant cannot be served,
 14 be deemed a fugitive or to have fled from justice. If it
 15 shall appear that he has violated the provisions of his
 16 release, whether the time from the issuing of such warrant
 17 to the date of his arrest, or any part of it, shall be
 18 counted as time served under the sentence, shall be
 19 determined by the board."

20 Section 13. There is a new R.C.M. section numbered
 21 95-3309 that reads as follows:

22 95-3309. Cases of juveniles excluded. The provisions
 23 of this chapter shall not apply to probation in the juvenile
 24 court or to parole from state institutions for juveniles.

25 Section 14. Section 95-3213, R.C.M. 1947, is

1 renumbered 95-3305.

2 Section 15. Sections 95-3207, 95-3211, 95-3212, and
 3 5-3219, R.C.M. 1947, are repealed.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 646

INTRODUCED BY MCKITTRICK, HOLMES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ~~WHAT--ONE~~
~~MEMBER--OF~~ QUALIFICATIONS FOR THE BOARD OF PARDONS SERVE
~~FULL-TIME-AND-THAT~~ AND PLACE THE RESPONSIBILITY FOR FIELD
~~BE--TRANSFERRED--TO~~ IN
THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 82A-804,
95-3203 THROUGH 95-3206, R.C.M. 1947; RENUMBERING AND
AMENDING SECTIONS 95-3210, 95-3213 AND 95-3220, R.C.M. 1947;
AND REPEALING SECTIONS 95-3207, 95-3211, 95-3212, AND
95-3219, R.C.M. 1947."

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

Section 1. Section 82A-804, R.C.M. 1947, is amended to
read as follows:

'82A-804. Board of pardons -- composition --
allocation -- designation. (1) There is a board of pardons.

(2) The board consists of three (3) members AT LEAST
ONE OF WHOM SHALL HAVE A MASTER'S DEGREE IN EITHER
SOCIOLOGY, CRIMINOLOGY, PSYCHOLOGY, CULTURAL ANTHROPOLOGY,
POLITICAL SCIENCE, SOCIAL WORK, GUIDANCE AND COUNSELING, OR
RELATED DISCIPLINE, AND AT LEAST ONE OF WHOM SHALL HAVE
PARTICULAR KNOWLEDGE OF INDIAN CULTURE AND PROBLEMS.

~~(3)--At-least-one-of-the-board-members--shall--serve~~

~~full-time-as--determined-by-the-governor~~

~~(3)~~ (4) The board is allocated to the department for
administrative purposes only as prescribed in section
82A-108. However, the board may hire its own personnel, and
section 82A-108 (2) (d) does not apply.

~~(4)~~ (5) The board is designated as a quasi-judicial
board for purposes of section 82A-112."

Section 2. Section 95-3203, R.C.M. 1947, is amended to
read as follows:

"95-3203. Act, how cited. This act shall be known and
may be cited as the "Probation, Parole and Executive
Clemency Act"."

Section 3. Section 95-3204, R.C.M. 1947, is amended to
read as follows:

"95-3204. Board of pardons. (1) The board of
pardons ~~shall--administer--the~~ is responsible for executive
~~probation and parole system~~ as provided in this
chapter. ~~and--shall--endeavor--to--secure--the--effective~~
~~application-and-improvement-of-that-system-and-the-laws-upon~~
~~which-it-is-based.~~

(2) The board shall meet at least ~~once~~ TWICE each month
at the state prison.

(3) The principal office of the board shall be in Deer
Lodge."

SECTION 4. THERE IS A NEW R.C.M. SECTION THAT READS AS

SECOND READING

1 FOLLOWS:

2 Qualifications of probation and parole officers.
 3 Probation and parole officers shall have at least a college
 4 degree and shall have received at least some formal training
 5 in behavioral sciences. Exceptions to this rule must be
 6 approved by the department. All present employees will be
 7 exempt from this requirement but are encouraged to further
 8 their education at the earliest opportunity.

9 Section 5, Section 95-3205, R.C.M. 1947, is amended to
 10 read as follows:

11 "95-3205. Definitions. Unless the context requires
 12 otherwise, in this act chapter:

13 (1) "Board" means the board of pardons provided for in
 14 section 82A-804.

15 (2) ~~"Probation" means the release by the court without~~
 16 ~~imprisonment except as otherwise provided by law of a~~
 17 ~~defendant found guilty of a crime upon verdict or plea,~~
 18 ~~subject to conditions imposed by the court and subject to~~
 19 ~~the supervision of the board upon direction of the court.~~

20 "Department" means the department of institutions provided
 21 for in Title 82A, chapter 8.

22 (3) "Parole" means the release to the community of a
 23 prisoner by the decision of the board prior to the
 24 expiration of his term, subject to conditions imposed by the
 25 board and subject to ~~its~~ supervision of the department of

1 institutions.

2 (4) "Executive clemency" refers to the powers of the
 3 governor as provided by section 12 of article VI of the
 4 constitution of Montana."

5 Section 6, Section 95-3206, R.C.M. 1947, is amended to
 6 read as follows:

7 "95-3206. Orders, records, report. Decisions of the
 8 board shall be by majority vote. The orders of the board are
 9 not reviewable except as to compliance of terms of this act.
 10 The department of institutions shall keep a record of the
 11 board's acts and decisions available to the public. However,
 12 all social records, including the pre-sentence report, the
 13 pre-parole report and the supervision history obtained in
 14 the discharge of official duty by ~~any member or employee of~~
 15 ~~the board~~ the department, shall be confidential and shall
 16 not be disclosed directly or indirectly to anyone other than
 17 the members of the board or a judge. The board or a court
 18 may in its discretion, when the best interest or welfare of
 19 a particular defendant or prisoner makes such action
 20 desirable or helpful, permit the inspection of the report or
 21 any parts thereof by the prisoner or his attorney."

22 Section 7, There is a new R.C.M. section numbered
 23 95-3301 that reads as follows:

24 95-3301. Definitions. As used in this chapter, unless
 25 the context requires otherwise: (1) "Board" means the board

1 of pardons provided for in section 82A-804.

2 (2) "Department" means the department of institutions
3 provided for in Title 82A, chapter 8.

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5 imprisonment except as otherwise provided by law, of a
6 defendant found guilty of a crime upon verdict or plea,
7 subject to conditions imposed by the court and subject to
8 the supervision of the department upon direction of the
9 court.

10 (4) "Parole" means the release to the community of a
11 prisoner by the decision of the board prior to the
12 expiration of his term, subject to conditions imposed by the
13 board and subject to supervision of the department.

14 Section 8. There is a new R.C.M. section numbered
15 95-3302 that reads as follows:

16 95-3302. Powers of the department. The department
17 may: (1) appoint probation and parole officers and other
18 employees necessary to administer this chapter;

19 (2) adopt rules for the conduct of persons placed on
20 parole or probation, except that the department may not make
21 any rule conflicting with conditions of parole imposed by
22 the board or conditions of probation imposed by a court.

23 Section 9. Section 95-3210, R.C.M. 1947, is
24 renumbered 95-3303, and is amended to read as follows:

25 "~~95-3210~~ 95-3303. Duties of the administrator

1 ~~department. The--administrator-is-the-executive-officer-of~~
2 ~~the--board---~~ The department is responsible for any
3 investigation and supervision requested by the board or the
4 courts. ~~The administrator,--subject--to--the--direction--and~~
5 ~~supervision--of-the~~ department ~~under-section-82A-100,~~ shall:

6 (1) ~~Subject-to-the-approval-of-the-board, divide~~ Divide
7 the state into districts, and assign probation and parole
8 officers to serve in these districts and courts;

9 (2) Obtain any necessary office quarters for the staff
10 in each district;

11 (3) Assign the secretarial, bookkeeping, and accounting
12 work to the clerical employees, including receipt and
13 disbursement of money;

14 (4) Direct the work of the probation and parole
15 officers and other employees ~~assigned-to-him~~;

16 (5) Formulate methods of investigation, supervision,
17 recordkeeping, and reports;

18 (6) Conduct training courses for the staff;

19 (7) Co-operate with all agencies, public and private,
20 which are concerned with the treatment or welfare of persons
21 on probation or parole;

22 (8) Administer the interstate compact for the
23 supervision of parolees and probationers."

24 Section 10. There is a new R.C.M. section numbered
25 95-3304 that reads as follows:

1 95-3304. Supervision on probation. (1) The department
2 shall supervise persons during their probation period in
3 accord with the conditions set by a court.

4 (2) A copy of the conditions of probation shall be
5 signed by the probationer and given to him and his probation
6 and parole officer who shall report on his progress under
7 rules of the court.

8 (3) The probation and parole officer shall regularly
9 advise and consult with the probationer to encourage him to
10 improve his condition and conduct, and inform him of
11 restoration of his rights on successful completion of his
12 sentence.

13 (4) The probation and parole officer may recommend and
14 a court may modify any condition of probation or suspension
15 of sentence at any time. Notice shall be given to the
16 probation and parole officer before any condition is
17 modified and he shall be given an opportunity to present his
18 ideas or recommendations on any modification. A copy of a
19 modification of conditions shall be delivered to the
20 probation and parole officer and the probationer.

21 (5) The probation and parole officer shall keep
22 records as the department or the court may require.

23 Section 11. There is a new R.C.M. section numbered
24 95-3306 that reads as follows:

25 95-3306. Supervision on parole. (1) The department

1 shall retain custody of all persons placed on parole and
2 shall supervise the persons during their parole period in
3 accord with the conditions set by the board.

4 (2) The department shall assign personnel to assist
5 persons eligible for parole in preparing a parole plan.
6 Department personnel shall make a report of their efforts
7 and findings to the board prior to its consideration of the
8 case of the eligible person.

9 (3) A copy of the conditions of his parole shall be
10 signed by the parolee and given to him and to his probation
11 and parole officer who shall report on his progress under
12 the rules of the board.

13 (4) The probation and parole officer shall regularly
14 advise and consult with the parolee, assist him in adjusting
15 to community life, inform him of the restoration of his
16 rights on successful completion of sentence.

17 (5) The probation and parole officer shall keep such
18 records as the board or department may require. All records
19 shall be entered in the master file of the individual.

20 Section 12. There is a new R.C.M. section numbered
21 95-3307 that reads as follows:

22 95-3307. Parole services. To assist parolees the
23 department may, in addition to other services, provide the
24 following: (1) employment counseling, job placement, and
25 assistance in residential placement;

1 (2) family and individual counseling and treatment
2 placement;

3 (3) financial counseling;

4 (4) vocational and educational counseling and
5 placement; and

6 (5) referral services to any other state or local
7 agencies.

8 The department may purchase necessary services for a
9 parolee if they are otherwise unavailable and the parolee is
10 unable to pay for them. It may assess all or part of the
11 costs of such services to a parolee in accordance with his
12 ability to pay for them.

13 Section 13. Section 95-3220, R.C.M. 1947, is
14 renumbered 95-3308, and is amended to read as follows:

15 "~~95-3220~~ 95-3308. Return of parole violator. (1) At
16 any time during release on parole or conditional release the
17 board department may issue a warrant for the arrest of the
18 released prisoner for violations of any of the conditions of
19 release, or a notice to appear to answer to a charge of
20 violation. Such notice shall be served personally upon the
21 prisoner. The warrant shall authorize all officers named
22 therein to return such prisoner to the actual custody of the
23 penal institution from which he was released, or to any
24 other suitable detention facility designated by the board
25 department. Any probation and parole officer may arrest such

1 prisoner without a warrant, or may deputize any other
2 officer with power to arrest to do so by giving him a
3 written statement setting forth that the prisoner has, in
4 the judgment of said probation and parole officer, violated
5 the conditions of his release. Such written statement
6 delivered with the prisoner by the arresting officer to the
7 official in charge of the institution from which the
8 prisoner was released or other place of detention, shall be
9 sufficient warrant for the detention of the parolee or
10 conditional releasee. The probation and parole officer,
11 after making an arrest, shall present to the detaining
12 authorities a similar statement of the circumstances of
13 violation. Pending hearing, as hereinafter provided, upon
14 any charge of violation, the prisoner may, if circumstances
15 warrant, be incarcerated in such institution.

16 (2) After the arrest of said prisoner, a hearing shall
17 be held within a reasonable time, unless such hearing is
18 waived by the parolee, to determine whether there is
19 probable cause or reasonable grounds to believe that the
20 arrested parolee has committed acts which would constitute a
21 violation of parole conditions. An independent officer, who
22 need not be a judicial officer, must preside over this
23 hearing. This hearing must be conducted at or reasonably
24 near the place of the alleged parole violation or arrest and
25 as promptly as convenient after arrest. The parolee must be

1 given notice of this hearing and must be allowed to appear
2 and speak in his own behalf and introduce relevant
3 information to the hearings officer.

4 (3) The hearings officer shall make a summary of what
5 transpires at the hearing in terms of the responses of the
6 parolee and the substance of the documents or evidence given
7 in support of parole revocation and of the parolee's
8 position. Based on the information given to him, the
9 hearings officer must determine whether there is probable
10 cause to hold the parolee for the final decision of the
11 board of pardons as specified in section 95-3217.

12 If the hearings officer determines that there is
13 probable cause to believe that the prisoner has violated a
14 condition of his parole, the probation and parole officer
15 shall immediately notify the board and shall submit in
16 writing a report showing in what manner the prisoner has
17 violated the conditions of release and this report shall be
18 accompanied by the findings of the hearings officer.
19 Thereupon, the board shall cause the prisoner to be promptly
20 brought before it for a hearing on the violation charged,
21 under such rules and regulations as the board may adopt. If
22 the violation is established, the board may continue or
23 revoke the parole or conditional release, or enter such
24 other order as it may see fit.

25 (4) A prisoner for whose return a warrant has been

1 issued ~~by the board~~ shall, after the issuance of such
2 warrant, if it is found that the warrant cannot be served,
3 be deemed a fugitive or to have fled from justice. If it
4 shall appear that he has violated the provisions of his
5 release, whether the time from the issuing of such warrant
6 to the date of his arrest, or any part of it, shall be
7 counted as time served under the sentence, shall be
8 determined by the board."

9 Section 14. There is a new R.C.M. section numbered
10 95-3309 that reads as follows:

11 95-3309. Cases of juveniles excluded. The provisions
12 of this chapter shall not apply to probation in the juvenile
13 court or to parole from state institutions for juveniles.

14 Section 15. Section 95-3213, R.C.M. 1947, is
15 renumbered 95-3305.

16 Section 16. Sections 95-3207, 95-3211, 95-3212, and
17 95-3219, R.C.M. 1947, are repealed.

-End-

1 HOUSE BILL NO. 646

2 INTRODUCED BY MCKITTRICK, HOLMES

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ~~THAT--ONE~~
5 ~~MEMBER--OF~~ QUALIFICATIONS FOR THE BOARD OF PARDONS SERVE
6 FULL-TIME-AND-THAT AND PLACE THE RESPONSIBILITY FOR FIELD
7 SERVICES STAFF FOR PROBATION AND PAROLE ~~BE-TRANSFERRED-TO~~ IN
8 THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 82A-804,
9 95-3203 THROUGH 95-3206, R.C.M. 1947; RENUMBERING AND
10 AMENDING SECTIONS 95-3210, 95-3213 AND 95-3220, R.C.M. 1947;
11 AND REPEALING SECTIONS 95-3207, 95-3211, 95-3212, AND
12 95-3219, R.C.M. 1947."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 82A-804, R.C.M. 1947, is amended to
16 read as follows:

17 "82A-804. Board of pardons -- composition --
18 allocation -- designation. (1) There is a board of pardons.

19 (2) The board consists of three (3) members AT LEAST
20 ONE OF WHOM SHALL HAVE A MASTER'S DEGREE IN EITHER
21 SOCIOLOGY, CRIMINOLOGY, PSYCHOLOGY, CULTURAL ANTHROPOLOGY,
22 POLITICAL SCIENCE, SOCIAL WORK, GUIDANCE AND COUNSELING, OR
23 RELATED DISCIPLINE, AND AT LEAST ONE OF WHOM SHALL HAVE
24 PARTICULAR KNOWLEDGE OF INDIAN CULTURE AND PROBLEMS.

25 ~~{3}--At-least-one-of--the--board--members--shall--serve~~

1 ~~full-time-as--determined-by-the-governor,~~

2 ~~{3}~~ (4) The board is allocated to the department for
3 administrative purposes only as prescribed in section
4 82A-108. However, the board may hire its own personnel, and
5 section 82A-108 (2) (d) does not apply.

6 ~~{4}~~ (5) The board is designated as a quasi-judicial
7 board for purposes of section 82A-112."

8 Section 2. Section 95-3203, R.C.M. 1947, is amended to
9 read as follows:

10 "95-3203. Act, now cited. This act shall be known and
11 may be cited as the "~~Probation~~ Parole and Executive
12 Clemency Act"."

13 Section 3. Section 95-3204, R.C.M. 1947, is amended to
14 read as follows:

15 "95-3204. Board of pardons. (1) The board of
16 pardons ~~shall--administer--the~~ is responsible for executive
17 clemency,~~probation~~ and parole ~~system,~~ as provided in this
18 chapter. ~~and--shall--endeavor--to--secure--the--effective~~
19 ~~application-and-improvement-of-that-system-and-the-laws-upon~~
20 ~~which-it-is-based.~~

21 (2) The board shall meet at least ~~once~~ TWICE each month
22 at the state prison.

23 (3) The principal office of the board shall be in Deer
24 Lodge."

25 SECTION 4. THERE IS A NEW R.C.M. SECTION THAT READS AS

FOLLOWS:

Qualifications of probation and parole officers. Probation and parole officers shall have at least a college degree and shall have received at least some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

Section 6. Section 95-3205, R.C.M. 1947, is amended to read as follows:

"95-3205. Definitions. Unless the context requires otherwise, in this act chapter:

(1) "Board" means the board of pardons provided for in section 82A-804.

~~(2) "Probation" means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.~~

"Department" means the department of institutions provided for in Title 82A, chapter 8.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to ~~its~~ supervision of the department of

institutions.

(4) "Executive clemency" refers to the powers of the governor as provided by section 12 of article VI of the constitution of Montana."

Section 6. Section 95-3206, R.C.M. 1947, is amended to read as follows:

"95-3206. Orders, records, report. Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance of terms of this act. The department of institutions shall keep a record of the board's acts and decisions available to the public. However, all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by ~~any member or employee of the board~~ the department, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in its discretion, when the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney."

Section 7. There is a new R.C.M. section numbered 95-3301 that reads as follows:

95-3301. Definitions. As used in this chapter, unless the context requires otherwise: (1) "Board" means the board

1 of pardons provided for in section 82A-804.

2 (2) "Department" means the department of institutions
3 provided for in Title 82A, chapter 8.

4 (3) "Probation" means the release by the court without
5 imprisonment except as otherwise provided by law, of a
6 defendant found guilty of a crime upon verdict or plea,
7 subject to conditions imposed by the court and subject to
8 the supervision of the department upon direction of the
9 court.

10 (4) "Parole" means the release to the community of a
11 prisoner by the decision of the board prior to the
12 expiration of his term, subject to conditions imposed by the
13 board and subject to supervision of the department.

14 Section 8. There is a new R.C.M. section numbered
15 95-3302 that reads as follows:

16 95-3302. Powers of the department. The department
17 may: (1) appoint probation and parole officers and other
18 employees necessary to administer this chapter;

19 (2) adopt rules for the conduct of persons placed on
20 parole or probation, except that the department may not make
21 any rule conflicting with conditions of parole imposed by
22 the board or conditions of probation imposed by a court.

23 Section 9. Section 95-3210, R.C.M. 1947, is
24 renumbered 95-3303, and is amended to read as follows:

25 "~~95-3210~~ 95-3303. Duties of the administrator

1 department. ~~The--administrator-is-the-executive-officer-of~~
2 ~~the--board;---He~~ The department is responsible for any
3 investigation and supervision requested by the board or the
4 courts. ~~The administrator,--subject--to--the--direction--and~~
5 ~~supervision--of-the~~ department under ~~section-82A-100~~, shall:

6 (1) ~~Subject-to-the-approval-of-the-board, divide~~ Divide
7 the state into districts, and assign probation and parole
8 officers to serve in these districts and courts;

9 (2) Obtain any necessary office quarters for the staff
10 in each district;

11 (3) Assign the secretarial, bookkeeping, and accounting
12 work to the clerical employees, including receipt and
13 disbursement of money;

14 (4) Direct the work of the probation and parole
15 officers and other employees ~~assigned-to-him~~;

16 (5) Formulate methods of investigation, supervision,
17 recordkeeping, and reports;

18 (6) Conduct training courses for the staff;

19 (7) Co-operate with all agencies, public and private,
20 which are concerned with the treatment or welfare of persons
21 on probation or parole;

22 (8) Administer the interstate compact for the
23 supervision of parolees and probationers."

24 Section 10. There is a new R.C.M. section numbered
25 95-3304 that reads as follows:

1 95-3304. Supervision on probation. (1) The department
2 shall supervise persons during their probation period in
3 accord with the conditions set by a court.

4 (2) A copy of the conditions of probation shall be
5 signed by the probationer and given to him and his probation
6 and parole officer who shall report on his progress under
7 rules of the court.

8 (3) The probation and parole officer shall regularly
9 advise and consult with the probationer to encourage him to
10 improve his condition and conduct, and inform him of
11 restoration of his rights on successful completion of his
12 sentence.

13 (4) The probation and parole officer may recommend and
14 a court may modify any condition of probation or suspension
15 of sentence at any time. Notice shall be given to the
16 probation and parole officer before any condition is
17 modified and he shall be given an opportunity to present his
18 ideas or recommendations on any modification. A copy of a
19 modification of conditions shall be delivered to the
20 probation and parole officer and the probationer.

21 (5) The probation and parole officer shall keep
22 records as the department or the court may require.

23 Section 11. There is a new R.C.M. section numbered
24 95-3306 that reads as follows:

25 95-3306. Supervision on parole. (1) The department

1 shall retain custody of all persons placed on parole and
2 shall supervise the persons during their parole period in
3 accord with the conditions set by the board.

4 (2) The department shall assign personnel to assist
5 persons eligible for parole in preparing a parole plan.
6 Department personnel shall make a report of their efforts
7 and findings to the board prior to its consideration of the
8 case of the eligible person.

9 (3) A copy of the conditions of his parole shall be
10 signed by the parolee and given to him and to his probation
11 and parole officer who shall report on his progress under
12 the rules of the board.

13 (4) The probation and parole officer shall regularly
14 advise and consult with the parolee, assist him in adjusting
15 to community life, inform him of the restoration of his
16 rights on successful completion of sentence.

17 (5) The probation and parole officer shall keep such
18 records as the board or department may require. All records
19 shall be entered in the master file of the individual.

20 Section 12. There is a new R.C.M. section numbered
21 95-3307 that reads as follows:

22 95-3307. Parole services. To assist parolees the
23 department may, in addition to other services, provide the
24 following: (1) employment counseling, job placement, and
25 assistance in residential placement;

1 (2) family and individual counseling and treatment
2 placement;

3 (3) financial counseling;

4 (4) vocational and educational counseling and
5 placement; and

6 (5) referral services to any other state or local
7 agencies.

8 The department may purchase necessary services for a
9 parolee if they are otherwise unavailable and the parolee is
10 unable to pay for them. It may assess all or part of the
11 costs of such services to a parolee in accordance with his
12 ability to pay for them.

13 Section 13, Section 95-3220, R.C.M. 1947, is
14 renumbered 95-3308, and is amended to read as follows:

15 "~~95-3220~~ 95-3308. Return of parole violator. (1) At
16 any time during release on parole or conditional release the
17 ~~board~~ department may issue a warrant for the arrest of the
18 released prisoner for violations of any of the conditions of
19 release, or a notice to appear to answer to a charge of
20 violation. Such notice shall be served personally upon the
21 prisoner. The warrant shall authorize all officers named
22 therein to return such prisoner to the actual custody of the
23 penal institution from which he was released, or to any
24 other suitable detention facility designated by the ~~board~~
25 department. Any probation and parole officer may arrest such

1 prisoner without a warrant, or may deputize any other
2 officer with power to arrest to do so by giving him a
3 written statement setting forth that the prisoner has, in
4 the judgment of said probation and parole officer, violated
5 the conditions of his release. Such written statement
6 delivered with the prisoner by the arresting officer to the
7 official in charge of the institution from which the
8 prisoner was released or other place of detention, shall be
9 sufficient warrant for the detention of the parolee or
10 conditional releasee. The probation and parole officer,
11 after making an arrest, shall present to the detaining
12 authorities a similar statement of the circumstances of
13 violation. Pending hearing, as hereinafter provided, upon
14 any charge of violation, the prisoner may, if circumstances
15 warrant, be incarcerated in such institution.

16 (2) After the arrest of said prisoner, a hearing shall
17 be held within a reasonable time, unless such hearing is
18 waived by the parolee, to determine whether there is
19 probable cause or reasonable grounds to believe that the
20 arrested parolee has committed acts which would constitute a
21 violation of parole conditions. An independent officer, who
22 need not be a judicial officer, must preside over this
23 hearing. This hearing must be conducted at or reasonably
24 near the place of the alleged parole violation or arrest and
25 as promptly as convenient after arrest. The parolee must be

1 given notice of this hearing and must be allowed to appear
2 and speak in his own behalf and introduce relevant
3 information to the hearings officer.

4 (3) The hearings officer shall make a summary of what
5 transpires at the hearing in terms of the responses of the
6 parolee and the substance of the documents or evidence given
7 in support of parole revocation and of the parolee's
8 position. Based on the information given to him, the
9 hearings officer must determine whether there is probable
10 cause to hold the parolee for the final decision of the
11 board of pardons as specified in section 95-3217.

12 If the hearings officer determines that there is
13 probable cause to believe that the prisoner has violated a
14 condition of his parole, the probation and parole officer
15 shall immediately notify the board and shall submit in
16 writing a report showing in what manner the prisoner has
17 violated the conditions of release and this report shall be
18 accompanied by the findings of the hearings officer.
19 Thereupon, the board shall cause the prisoner to be promptly
20 brought before it for a hearing on the violation charged,
21 under such rules and regulations as the board may adopt. If
22 the violation is established, the board may continue or
23 revoke the parole or conditional release, or enter such
24 other order as it may see fit.

25 (4) A prisoner for whose return a warrant has been

1 issued ~~by the board~~ shall, after the issuance of such
2 warrant, if it is found that the warrant cannot be served,
3 be deemed a fugitive or to have fled from justice. If it
4 shall appear that he has violated the provisions of his
5 release, whether the time from the issuing of such warrant
6 to the date of his arrest, or any part of it, shall be
7 counted as time served under the sentence, shall be
8 determined by the board."

9 Section 14. There is a new R.C.M. section numbered
10 95-3309 that reads as follows:

11 95-3309. Cases of juveniles excluded. The provisions
12 of this chapter shall not apply to probation in the juvenile
13 court or to parole from state institutions for juveniles.

14 Section 15. Section 95-3213, R.C.M. 1947, is
15 renumbered 95-3305.

16 Section 16. Sections 95-3207, 95-3211, 95-3212, and
17 95-3219, R.C.M. 1947, are repealed.

-End-

March 17, 1975

SENATE COMMITTEE ON STATE ADMINISTRATION

AMENDMENTS TO HOUSE BILL NO. 646

That House Bill No. 646, third reading, be amended as follows:

1. Amend page 1, section 1, lines 20 through 24.
Following: "HAVE"
Strike: "A MASTER'S DEGREE IN EITHER SOCIOLOGY, CRIMINOLOGY, PSYCHOLOGY, CULTURAL ANTHROPOLOGY, POLITICAL SCIENCE, SOCIAL WORK, GUIDANCE AND COUNSELING, OR RELATED DISCIPLINE, AND AT LEAST ONE OF WHOM SHALL HAVE PARTICULAR KNOWLEDGE OF INDIAN CULTURE AND PROBLEMS"
Insert: "particular knowledge of Indian culture and problems. Members of the board shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements"
2. Amend page 2, section 1, line 2.
Following: "{3}"
Strike: "(4)"
Insert: "(3)"
Renumber: Subsequent subsection
3. Amend page 2, section 1, line 7.
Following: "82A-112"
Insert: ", except board members shall be compensated as provided by legislative appropriation"
4. Amend page 3, section 4, line 6.
Following: "department."
Insert: "Related work experience in the areas listed in section 1, subsection (2) of this act may be substituted for educational requirements at the rate of one (1) year of experience for nine (9) months formal education, if approved by the department."
5. Amend page 12, section 15, line 15.
Following: line 15
Insert: "Section 16. The provisions of sections 82A-116 through 82A-122 are applicable to this act."
Renumber: Subsequent section

HOUSE BILL NO. 646

INTRODUCED BY MCKITTRICK, HOLMES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ~~WHAT--ONE~~ MEMBER--OF QUALIFICATIONS FOR THE BOARD OF PARDONS SERVE FULL-TIME-AND-THAT AND PLACE THE RESPONSIBILITY FOR FIELD SERVICES STAFF FOR PROBATION AND PAROLE ~~BE-TRANSFERRED-TO~~ IN THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 82A-804, 95-3203 THROUGH 95-3206, R.C.M. 1947; RENUMBERING AND AMENDING SECTIONS 95-3210, 95-3213 AND 95-3220, R.C.M. 1947; AND REPEALING SECTIONS 95-3207, 95-3211, 95-3212, AND 95-3219, R.C.M. 1947."

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

Section 1. Section 82A-804, R.C.M. 1947, is amended to read as follows:

"82A-804. Board of pardons -- composition -- allocation -- designation. (1) There is a board of pardons.

(2) The board consists of three (3) members AT LEAST ONE OF WHOM SHALL HAVE A--MASTER'S--DEGREE--IN--EITHER SOCIOLOGY, CRIMINOLOGY, PSYCHOLOGY,--CULTURAL--ANTHROPOLOGY, POLITICAL--SCIENCE,--SOCIAL-WORK,--GUIDANCE-AND-COUNSELING,--OR RELATED-DISCIPLINE,--AND-AT-LEAST--ONE--OF--WHOM--SHALL--HAVE PARTICULAR--KNOWLEDGE--OF--INDIAN--CULTURE--AND--PROBLEMS PARTICULAR KNOWLEDGE OF INDIAN CULTURE AND PROBLEMS.

MEMBERS OF THE BOARD SHALL POSSESS ACADEMIC TRAINING WHICH HAS QUALIFIED THEM FOR PROFESSIONAL PRACTICE IN A FIELD SUCH AS CRIMINOLOGY, EDUCATION, PSYCHIATRY, PSYCHOLOGY, LAW, SOCIAL WORK, SOCIOLOGY, OR GUIDANCE AND COUNSELING. RELATED WORK EXPERIENCE IN THE AREAS LISTED MAY BE SUBSTITUTED FOR THESE EDUCATIONAL REQUIREMENTS.

~~(3)--At-least-one-of--the--board--members--shall--serve full-time-as--determined-by-the-governor.~~

~~(3)~~(4) (3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108 (2) (d) does not apply.

~~(4)~~(5) (4) The board is designated as a quasi-judicial board for purposes of section 82A-112, EXCEPT BOARD MEMBERS SHALL BE COMPENSATED AS PROVIDED BY LEGISLATIVE APPROPRIATION."

Section 2. Section 95-3203, R.C.M. 1947, is amended to read as follows:

"95-3203. Act, how cited. This act shall be known and may be cited as the "Probation, Parole and Executive Clemency Act"."

Section 3. Section 95-3204, R.C.M. 1947, is amended to read as follows:

"95-3204. Board of pardons. (1) The board of pardons ~~shall-administer-the~~ is responsible for executive clemency

REFERENCE BILL
Corrected 11/2/75

1 ~~probation and parole system, as provided in this chapter.~~
 2 ~~and--shall--endeavor-to-secure-the-effective-application-and~~
 3 ~~improvement-of-that-system-and-the-law--upon--which--it--is~~
 4 ~~based.~~

5 (2) The board shall meet at least ~~once~~ TWICE each month
 6 at the state prison.

7 (3) The principal office of the board shall be in Deer
 8 Lodge."

9 SECTION 4. THERE IS A NEW R.C.M. SECTION THAT READS AS
 10 FOLLOWS:

11 Qualifications of probation and parole officers.
 12 Probation and parole officers shall have at least a college
 13 degree and shall have received at least some formal training
 14 in behavioral sciences. Exceptions to this rule must be
 15 approved by the department. RELATED WORK EXPERIENCE IN THE
 16 AREAS LISTED IN SECTION 1, SUBSECTION (2) OF THIS ACT MAY BE
 17 SUBSTITUTED FOR EDUCATIONAL REQUIREMENTS AT THE RATE OF ONE

18 (1) YEAR OF EXPERIENCE FOR NINE (9) MONTHS FORMAL EDUCATION,
 19 IF APPROVED BY THE DEPARTMENT. All present employees will
 20 be exempt from this requirement but are encouraged to
 21 further their education at the earliest opportunity.

22 Section 5. Section 95-3205, R.C.M. 1947, is amended to
 23 read as follows:

24 "95-3205. Definitions. Unless the context requires
 25 otherwise, in this ~~act~~ chapter:

1 (1) "Board" means the board of pardons provided for in
 2 section 82A-804.

3 (2) ~~"Probation" means the release by the court without~~
 4 ~~imprisonment except as otherwise provided by law, of a~~
 5 ~~defendant found guilty of a crime upon verdict or plea,~~
 6 ~~subject to conditions imposed by the court and subject to~~
 7 ~~the supervision of the board upon direction of the court.~~
 8 "Department" means the department of institutions provided
 9 for in Title 82A, chapter 8.

10 (3) "Parole" means the release to the community of a
 11 prisoner by the decision of the board prior to the
 12 expiration of his term, subject to conditions imposed by the
 13 board and subject to ~~its~~ supervision of the department of
 14 institutions.

15 (4) "Executive clemency" refers to the powers of the
 16 governor as provided by section 12 of article VI of the
 17 constitution of Montana."

18 Section 6. Section 95-3206, R.C.M. 1947, is amended to
 19 read as follows:

20 "95-3206. Orders, records, report. Decisions of the
 21 board shall be by majority vote. The orders of the board are
 22 not reviewable except as to compliance of terms of this act.
 23 The department of institutions shall keep a record of the
 24 board's acts and decisions available to the public. However,
 25 all social records, including the pre-sentence report, the

1 pre-parole report and the supervision history obtained in
 2 the discharge of official duty by ~~any member or employee of~~
 3 ~~the board~~ the department, shall be confidential and shall
 4 not be disclosed directly or indirectly to anyone other than
 5 the members of the board or a judge. The board or a court
 6 may in its discretion, when the best interest or welfare of
 7 a particular defendant or prisoner makes such action
 8 desirable or helpful, permit the inspection of the report or
 9 any parts thereof by the prisoner or his attorney."

10 Section 7. There is a new R.C.M. section numbered
 11 95-3301 that reads as follows:

12 95-3301. Definitions. As used in this chapter, unless
 13 the context requires otherwise: (1) "Board" means the board
 14 of pardons provided for in section 82A-204.

15 (2) "Department" means the department of institutions
 16 provided for in Title 82A, chapter 8.

17 (3) "Probation" means the release by the court without
 18 imprisonment except as otherwise provided by law, of a
 19 defendant found guilty of a crime upon verdict or plea,
 20 subject to conditions imposed by the court and subject to
 21 the supervision of the department upon direction of the
 22 court.

23 (4) "Parole" means the release to the community of a
 24 prisoner by the decision of the board prior to the
 25 expiration of his term, subject to conditions imposed by the

1 board and subject to supervision of the department.

2 Section 8. There is a new R.C.M. section numbered
 3 95-3302 that reads as follows:

4 95-3302. Powers of the department. The department
 5 may: (1) appoint probation and parole officers and other
 6 employees necessary to administer this chapter;

7 (2) adopt rules for the conduct of persons placed on
 8 parole or probation, except that the department may not make
 9 any rule conflicting with conditions of parole imposed by
 10 the board or conditions of probation imposed by a court.

11 Section 9. Section 95-3210, R.C.M. 1947, is
 12 renumbered 95-3303, and is amended to read as follows:

13 ~~"95-3210~~ 95-3303. Duties of the ~~administrator~~
 14 ~~department. The administrator is the executive officer of~~
 15 ~~the board. He~~ The department is responsible for any
 16 investigation and supervision requested by the board or the
 17 courts. The ~~administrator, subject to the direction and~~
 18 ~~supervision of the~~ department ~~under section 82A-100,~~ shall:

19 (1) ~~Subject to the approval of the board, divide~~ Divide
 20 the state into districts, and assign probation and parole
 21 officers to serve in these districts and courts;

22 (2) Obtain any necessary office quarters for the staff
 23 in each district;

24 (3) Assign the secretarial, bookkeeping, and accounting
 25 work to the clerical employees, including receipt and

1 disbursement of money;

2 (4) Direct the work of the probation and parole
3 officers and other employees ~~assigned-to-him~~;

4 (5) Formulate methods of investigation, supervision,
5 recordkeeping, and reports;

6 (6) Conduct training courses for the staff;

7 (7) Co-operate with all agencies, public and private,
8 which are concerned with the treatment or welfare of persons
9 on probation or parole;

10 (8) Administer the interstate compact for the
11 supervision of parolees and probationers."

12 Section 10. There is a new R.C.M. section numbered
13 95-3304 that reads as follows:

14 95-3304. Supervision on probation. (1) The department
15 shall supervise persons during their probation period in
16 accord with the conditions set by a court.

17 (2) A copy of the conditions of probation shall be
18 signed by the probationer and given to him and his probation
19 and parole officer who shall report on his progress under
20 rules of the court.

21 (3) The probation and parole officer shall regularly
22 advise and consult with the probationer to encourage him to
23 improve his condition and conduct, and inform him of
24 restoration of his rights on successful completion of his
25 sentence.

1 (4) The probation and parole officer may recommend and
2 a court may modify any condition of probation or suspension
3 of sentence at any time. Notice shall be given to the
4 probation and parole officer before any condition is
5 modified and he shall be given an opportunity to present his
6 ideas or recommendations on any modification. A copy of a
7 modification of conditions shall be delivered to the
8 probation and parole officer and the probationer.

9 (5) The probation and parole officer shall keep
10 records as the department or the court may require.

11 Section 11. There is a new R.C.M. section numbered
12 95-3306 that reads as follows:

13 95-3306. Supervision on parole. (1) The department
14 shall retain custody of all persons placed on parole and
15 shall supervise the persons during their parole period in
16 accord with the conditions set by the board.

17 (2) The department shall assign personnel to assist
18 persons eligible for parole in preparing a parole plan.
19 Department personnel shall make a report of their efforts
20 and findings to the board prior to its consideration of the
21 case of the eligible person.

22 (3) A copy of the conditions of his parole shall be
23 signed by the parolee and given to him and to his probation
24 and parole officer who shall report on his progress under
25 the rules of the board.

1 (4) The probation and parole officer shall regularly
2 advise and consult with the parolee, assist him in adjusting
3 to community life, inform him of the restoration of his
4 rights on successful completion of sentence.

5 (5) The probation and parole officer shall keep such
6 records as the board or department may require. All records
7 shall be entered in the master file of the individual.

8 Section 12. There is a new R.C.M. section numbered
9 95-3307 that reads as follows:

10 95-3307. Parole services. To assist parolees the
11 department may, in addition to other services, provide the
12 following: (1) employment counseling, job placement, and
13 assistance in residential placement;

14 (2) family and individual counseling and treatment
15 placement;

16 (3) financial counseling;

17 (4) vocational and educational counseling and
18 placement; and

19 (5) referral services to any other state or local
20 agencies.

21 The department may purchase necessary services for a
22 parolee if they are otherwise unavailable and the parolee is
23 unable to pay for them. It may assess all or part of the
24 costs of such services to a parolee in accordance with his
25 ability to pay for them.

1 Section 13. Section 95-3220, R.C.M. 1947, is
2 renumbered 95-3308, and is amended to read as follows:

3 "~~95-3220~~ 95-3308. Return of parole violator. (1) At
4 any time during release on parole or conditional release the
5 ~~board~~ department may issue a warrant for the arrest of the
6 released prisoner for violations of any of the conditions of
7 release, or a notice to appear to answer to a charge of
8 violation. Such notice shall be served personally upon the
9 prisoner. The warrant shall authorize all officers named
10 therein to return such prisoner to the actual custody of the
11 penal institution from which he was released, or to any
12 other suitable detention facility designated by the ~~board~~
13 department. Any probation and parole officer may arrest such
14 prisoner without a warrant, or may deputize any other
15 officer with power to arrest to do so by giving him a
16 written statement setting forth that the prisoner has, in
17 the judgment of said probation and parole officer, violated
18 the conditions of his release. Such written statement
19 delivered with the prisoner by the arresting officer to the
20 official in charge of the institution from which the
21 prisoner was released or other place of detention, shall be
22 sufficient warrant for the detention of the parolee or
23 conditional releasee. The probation and parole officer,
24 after making an arrest, shall present to the detaining
25 authorities a similar statement of the circumstances of

1 violation. Pending hearing, as hereinafter provided, upon
2 any charge of violation, the prisoner may, if circumstances
3 warrant, be incarcerated in such institution.

4 (2) After the arrest of said prisoner, a hearing shall
5 be held within a reasonable time, unless such hearing is
6 waived by the parolee, to determine whether there is
7 probable cause or reasonable grounds to believe that the
8 arrested parolee has committed acts which would constitute a
9 violation of parole conditions. An independent officer, who
10 need not be a judicial officer, must preside over this
11 hearing. This hearing must be conducted at or reasonably
12 near the place of the alleged parole violation or arrest and
13 as promptly as convenient after arrest. The parolee must be
14 given notice of this hearing and must be allowed to appear
15 and speak in his own behalf and introduce relevant
16 information to the hearings officer.

17 (3) The hearings officer shall make a summary of what
18 transpires at the hearing in terms of the responses of the
19 parolee and the substance of the documents or evidence given
20 in support of parole revocation and of the parolee's
21 position. Based on the information given to him, the
22 hearings officer must determine whether there is probable
23 cause to hold the parolee for the final decision of the
24 board of pardons as specified in section 95-3217.

25 If the hearings officer determines that there is

1 probable cause to believe that the prisoner has violated a
2 condition of his parole, the probation and parole officer
3 shall immediately notify the board and shall submit in
4 writing a report showing in what manner the prisoner has
5 violated the conditions of release and this report shall be
6 accompanied by the findings of the hearings officer.
7 Thereupon, the board shall cause the prisoner to be promptly
8 brought before it for a hearing on the violation charged,
9 under such rules and regulations as the board may adopt. If
10 the violation is established, the board may continue or
11 revoke the parole or conditional release, or enter such
12 other order as it may see fit.

13 (4) A prisoner for whose return a warrant has been
14 issued ~~by--the--board~~ shall, after the issuance of such
15 warrant, if it is found that the warrant cannot be served,
16 be deemed a fugitive or to have fled from justice. If it
17 shall appear that he has violated the provisions of his
18 release, whether the time from the issuing of such warrant
19 to the date of his arrest, or any part of it, shall be
20 counted as time served under the sentence, shall be
21 determined by the board."

22 Section 14. There is a new R.C.M. section numbered
23 95-3309 that reads as follows:

24 95-3309. Cases of juveniles excluded. The provisions
25 of this chapter shall not apply to probation in the juvenile

1 court or to parole from state institutions for juveniles.

2 Section 15. Section 95-3213, R.C.M. 1947, is
3 renumbered 95-3305.

4 SECTION 16. THE PROVISIONS OF SECTIONS 82A-116 THROUGH
5 82A-122 ARE APPLICABLE TO THIS ACT.

6 Section 17. Sections 95-3207, 95-3211, 95-3212, and
7 95-3219, R.C.M. 1947, are repealed.

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