

1 *Senate* BILL NO. *318*  
 2 INTRODUCED BY *Eric Damm, Lockwood Brown*  
 3 *Murray Double McAnise, Jackson, Hagan, Turnage*  
 4 *Manning, Math, McCallister, Theobald*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE EXISTING  
 5 PAROLE SYSTEM AS TO PRISONERS WHOSE PROSECUTION WAS  
 6 COMMENCED ON OR AFTER JULY 1, 1977; TO PROVIDE FOR FIXED  
 7 SENTENCES FOR SUCH PRISONERS, ONE-HALF TO BE SERVED IN THE  
 8 STATE PRISON AND ONE-HALF TO BE SERVED UNDER THE SUPERVISION  
 9 OF THE DEPARTMENT OF INSTITUTIONS; AND TO PRESCRIBE THE  
 10 MANNER IN WHICH SUCH DEPARTMENT SHALL SUPERVISE PRISONERS;  
 11 AMENDING SECTIONS 95-2206, 95-2210, 95-3214, 95-3301,  
 12 95-3302, 95-3303, 95-3306, AND 95-3308, R.C.M. 1947."

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

15 Section 1. Section 95-2206, R.C.M. 1947, is amended to  
 16 read as follows:

17 "95-2206. Sentence. (1) Whenever any person has been  
 18 found guilty of a crime or offense upon a verdict or a plea  
 19 of guilty the court may:

20 (1)(a) Defer ~~defer~~ imposition of sentence for a period  
 21 not to exceed one-(1) year for any misdemeanor; for a period  
 22 not to exceed three-(3) years for any felony. The sentencing  
 23 judge may impose upon the defendant any reasonable  
 24 restrictions or conditions during the period of the deferred  
 25 imposition. Such reasonable restrictions or conditions may

1 include:  
 2 (a)(ii) jail base release;  
 3 (b)(iii) jail time not to exceed ninety-(90) days;  
 4 (c)(iii) conditions for probation;  
 5 (d)(iv) restitution;  
 6 (e)(v) any other reasonable conditions deemed  
 7 necessary for rehabilitation or for the protection of  
 8 society;

9 (f)(vi) any combination of the above;  
 10 (2)(b) Suspend ~~suspend~~ execution of sentence up to the  
 11 maximum sentence allowed for the particular offense. The  
 12 sentencing judge may impose on the defendant any reasonable  
 13 restrictions during the period of suspended sentence. Such  
 14 reasonable restrictions may include:

15 (a)(i) jail base release;  
 16 (b)(iii) jail time not to exceed (90) days;  
 17 (c)(iii) conditions for probation;  
 18 (d)(iv) restitution;  
 19 (e)(v) any other reasonable conditions deemed  
 20 necessary for rehabilitation or for the protection of  
 21 society;

22 (f)(vi) any combination of the above.

23 If any restrictions or conditions are violated, any  
 24 elapsed time, except jail time, shall not be a credit  
 25 against the sentence, unless the court shall otherwise

1 order.

2 ~~(3)(c)~~ ~~impose~~ ~~impose~~ a fine as provided by law for the

3 offense;

4 ~~(4)(d)~~ ~~Commit~~ ~~commit~~ the defendant to a correctional

5 institution with or without fine by law for the offense;

6 ~~(5)(e)~~ ~~impose~~ ~~impose~~ any combination of subsections

7 ~~(2)~~ ~~(1)(b)~~, ~~(3)~~ ~~(1)(c)~~, or ~~(4)~~ ~~(1)(d)~~ above.

8 ~~(6)(2)~~ The district court may also impose any of the

9 following restrictions or conditions on the above sentence

10 which it deems necessary to obtain the objective of

11 rehabilitation and the protection of society:

12 (a) prohibit the defendant the right to hold public

13 office;

14 (b) prohibit the defendant the right to own or carry a

15 dangerous weapon;

16 (c) prohibit freedom of association;

17 (d) prohibit freedom of movement;

18 (e) any other limitation reasonably related to the

19 objectives of rehabilitation or the protection of society.

20 ~~(7)(3)~~ The judge in the justice court shall not have

21 the authority to restrict an individual's rights as

22 enumerated in subsection ~~(6)(2)~~.

23 (4) Any judge who has suspended the execution of a

24 sentence or deferred the imposition of a sentence of

25 imprisonment under this section, or his successor, is

1 authorized thereafter, in his discretion, during the period

2 of such suspended sentence or deferred imposition of

3 sentence to revoke such suspension or impose sentence and

4 order such person committed, or may, in his discretion,

5 order the prisoner placed under the jurisdiction of the

6 state board of pardons as provided by law, or retain such

7 jurisdiction with this court. Prior to the revocation of an

8 order suspending or deferring the imposition of sentence,

9 the person affected shall be given a hearing.

10 ~~(5) (a) Every sentence of imprisonment in the state~~

11 ~~prison which exceeds 6 months and the imposition or~~

12 ~~execution of which is not deferred or suspended under~~

13 ~~subsection (1)(a) or (1)(b) shall be in the form prescribed~~

14 ~~in this subsection (5). The first half of the sentence shall~~

15 ~~be served in the state prison without possibility of parole~~

16 ~~and shall be considered punishment. The second half of the~~

17 ~~sentence shall be served under the continuing supervision of~~

18 ~~the state, as prescribed in Title 95, chapter 33, and shall~~

19 ~~be considered rehabilitation.~~

20 ~~(b) The judgment shall read substantially as follows:~~

21 ~~"The defendant ~~is~~ sentenced for a period of ~~\*\*\*\*~~~~

22 ~~years. One-half of this time shall be served in the state~~

23 ~~prison, and one-half shall be served under the supervision~~

24 ~~of the department of institutions." In order to avoid~~

25 ~~inequities during the transition period, any judgment~~

1 rendered before July 1, 1980, shall contain a statement that  
 2 the court is aware that the defendant has been sentenced  
 3 under this subsection (5) and consequently will not be  
 4 eligible for parole. Failure to include this statement  
 5 nullifies the application of this subsection (5) and makes  
 6 the defendant eligible for parole as if the prosecution had  
 7 been commenced before July 1, 1977.

8 (c) This subsection (5) applies to any prosecution  
 9 which is commenced on or after July 1, 1977."

10 Section 2. Section 95-2210, R.C.M. 1947, is amended to  
 11 read as follows:

12 "95-2210. Information from courts. (1) It shall be the  
 13 duty of the court disposing of any criminal case to cause to  
 14 be transmitted to the board of pardons statistical data in  
 15 accordance with regulations issued by the board regarding  
 16 all dispositions of defendants whether found guilty or  
 17 discharged.

18 (2) Each court which disposes of criminal cases shall  
 19 cause to be transmitted to the department of institutions  
 20 statistical data in accordance with regulations issued by  
 21 the department regarding all dispositions of defendants  
 22 whether found guilty or discharged."

23 Section 3. There is a new R.C.M. section numbered  
 24 95-3202.5 that reads as follows:

25 95-3202.5. Applicability to persons released under the

1 supervision of the department of institutions. The  
 2 provisions of 95-3201, 95-3202, and 95-3202.1 through  
 3 95-3202.4 apply to persons released under the supervision of  
 4 the department of institutions pursuant to a sentence  
 5 imposed under 95-2206(5).

6 Section 4. Section 95-3214, R.C.M. 1947, is amended to  
 7 read as follows:

8 "95-3214. Parole authority and procedure. (1) The  
 9 board shall release on parole, by appropriate order, any  
 10 person confined in the Montana state prison, except persons  
 11 under sentence of death and persons ineligible for parole by  
 12 virtue of 95-2206(5), when in its opinion there is  
 13 reasonable probability that the prisoner can be released  
 14 without detriment to himself or to the community, provided:

15 (a) That no convict serving a time sentence shall be  
 16 paroled until he has served at least one-quarter ~~(1/4)~~ of  
 17 his full term, less good time allowances off, as provided in  
 18 section 80-1905; except that no convict designated a  
 19 persistent felony offender under section 95-2206.5 may be  
 20 paroled until he has served at least one-third ~~(1/3)~~ of his  
 21 full term, less good time allowances off, as provided in  
 22 section 80-1905. A first offender serving a time sentence  
 23 may be paroled after he has served, upon his term of  
 24 sentence, ~~twelve and one-half (12 1/2)~~ years. A persistent  
 25 felony offender as defined in section 95-2206.5 may be

1 paroled after he has served, upon his term of sentence,  
2 ~~seventeen-and-one-half-(17 1/2) years.~~

3 (b) No convict serving a life sentence shall be  
4 paroled ~~until he has served thirty (30) years, less the good~~  
5 ~~time allowances off, as provided in section 80-1905.~~

6 (2) Within two (2) months after his admission and at  
7 such intervals thereafter as it determines, the board shall  
8 consider all pertinent information regarding each prisoner,  
9 including the circumstances of his offense, his previous  
10 social history and criminal record, his conduct, employment,  
11 and attitude in prison, and the reports of and physical and  
12 mental examinations which have been made.

13 (3) Before ordering the parole of any prisoner, the  
14 board shall interview him. A parole shall be ordered only  
15 for the best interest of society, not as an award of  
16 clemency or a reduction of sentence or pardon. A prisoner  
17 shall be placed on parole only when the board believes that  
18 he is able and willing to fulfill the obligations of a  
19 law-abiding citizen. Every prisoner while on parole shall  
20 remain in the legal custody of the institution from which he  
21 was released, but shall be subject to the orders of the  
22 board.

23 (4) The board may adopt other rules it considers  
24 proper or necessary, with respect to the eligibility of  
25 prisoners for parole, and the conduct of parole hearings and

1 hearings on appeals authorized by 95-3307.3 or conditions to  
2 be imposed upon parolees. When an order for parole is issued  
3 it shall recite the conditions thereof."

4 Section 5. Section 95-3301, R.C.M. 1947, is amended to  
5 read as follows:

6 "95-3301. Definitions. As used in this chapter, unless  
7 the context requires otherwise:

8 (1) "~~Board board~~" means the board of pardons provided  
9 for in section 82A-804*1*;

10 (2) "~~Department department~~" means the department of  
11 institutions provided for in Title 82A, chapter 8*1*;

12 (3) "~~director~~" means the head administrator of the  
13 corrections division of the department of institutions;

14 (3)(4) "~~Probation probation~~" means the release by the  
15 court without imprisonment except as otherwise provided by  
16 law, of a defendant found guilty of a crime upon verdict or  
17 plea, subject to conditions imposed by the court and subject  
18 to the supervision of the department upon direction of the  
19 court*1*;

20 (4)(5) "~~Parole parole~~" means the release to the  
21 community of a prisoner by the decision of the board prior  
22 to the expiration of his term, subject to conditions imposed  
23 by the board and subject to supervision of the department,  
24 or the release to the community of a prisoner sentenced  
25 under 95-2206(5), subject to the supervision of the

1 ~~department.~~"

2 Section 6. Section 95-3302, R.C.M. 1947, is amended to  
3 read as follows:

4 "95-3302. Powers of the department. The department  
5 may:

6 (1) appoint probation and parole officers and other  
7 employees necessary to administer this chapter;

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

12 ~~(3) adopt rules for the conduct and supervision of~~  
13 ~~persons placed under its supervision as part of a sentence~~  
14 ~~imposed under 95-2206(5)."~~

15 Section 7. Section 95-3303, R.C.M. 1947, is amended to  
16 read as follows:

17 "95-3303. Duties of the department. (1) The department  
18 is responsible for any investigation and supervision  
19 requested by the board or the courts. The department shall:

20 ~~(1)(a) Divide divide~~ the state into districts, and  
21 assign probation and parole officers to serve in these  
22 districts and courts;

23 ~~(2)(b) Obtain obtain~~ any necessary office quarters for  
24 the staff in each district;

25 ~~(3)(c) Assign assign~~ the secretarial, bookkeeping, and

1 accounting work to the clerical employees, including receipt  
2 and disbursement of money;

3 ~~(d) assign a probation and parole officer to each~~  
4 ~~parolee;~~

5 ~~(4)(e) Direct direct~~ the work of the probation and  
6 parole officers and other employees;

7 ~~(5)(f) Formulate formulate~~ methods of investigation,  
8 supervision, recordkeeping, and reports;

9 ~~(6)(g) Conduct conduct~~ training courses for the staff;

10 ~~(7)(h) Co-operate cooperate~~ with all agencies, public  
11 and private, which are concerned with the treatment or  
12 welfare of persons on probation or parole;

13 ~~(8)(i) Administer administer~~ the interstate compact  
14 for the supervision of parolees and probationers.

15 ~~(2) The department shall have custody of and supervise~~  
16 ~~persons serving the second half of sentences imposed under~~  
17 ~~95-2206(5)."~~

18 Section 8. Section 95-3306, R.C.M. 1947, is amended to  
19 read as follows:

20 "95-3306. Supervision on parole. (1) The department  
21 shall retain custody of all persons placed on parole and  
22 shall supervise the persons during their parole period in  
23 accord with the conditions set by the board ~~or the~~  
24 ~~department, whichever has jurisdiction.~~

25 (2) The department shall assign personnel to assist

1 persons eligible for parole in preparing a parole plan.  
 2 ~~When the board has authority to grant parole, Department~~  
 3 ~~department~~ personnel shall make a report of their efforts  
 4 and findings to the board prior to its consideration of the  
 5 case of the eligible person.

6 (3) A copy of the conditions of his parole shall be  
 7 signed by the parolee and given to him and to his probation  
 8 and parole officer who shall report on his progress under  
 9 the rules of the board ~~or the department, whichever has~~  
 10 ~~jurisdiction.~~

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

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

18 Section 9. There is a new R.C.M. section numbered  
 19 95-3307.1 that reads as follows:

20 95-3307.1. Halfway houses. Whenever a halfway house is  
 21 available and the circumstances warrant it, the department  
 22 shall assign a prisoner under its supervision by virtue of  
 23 95-3303(2) to a halfway house upon his release from the  
 24 state prison. The department may authorize the administrator  
 25 of each halfway house to impose on prisoners assigned to him

1 under this section whatever restrictions, consistent with  
 2 sound rehabilitative practices, he considers necessary to  
 3 ensure proper accountability.

4 Section 10. There is a new R.C.M. section numbered  
 5 95-3307.2 that reads as follows:

6 95-3307.2. Termination of supervision. (1) State  
 7 supervision exercised under 95-3303(2) may be terminated by  
 8 the administrator of the halfway house to which the prisoner  
 9 has been assigned or by the director at any time if the  
 10 administrator or director certifies that the prisoner is  
 11 fully rehabilitated, is contributing to the community in  
 12 which he is living, and is not likely to commit another  
 13 crime. State supervision must be terminated upon the  
 14 completion of the period of time prescribed in the sentence.

15 (2) Upon termination, the department shall issue a  
 16 certificate of discharge to the prisoner.

17 Section 11. There is a new R.C.M. section numbered  
 18 95-3307.3 that reads as follows:

19 95-3307.3. Appeal of restrictions or refusal to  
 20 terminate supervision. (1) A prisoner may appeal to the  
 21 director from a decision of the administrator of a halfway  
 22 house involving the restrictions to be placed on the  
 23 prisoner or a refusal to terminate supervision. If the  
 24 director determines that the decision appealed from was  
 25 unreasonable, he shall modify it accordingly.

1 (2) Decisions of the director made under subsection  
 2 (1) and his decisions regarding restrictions on or the  
 3 termination of supervision over prisoners who have not been  
 4 assigned to a halfway house may be appealed to the board.  
 5 The board shall hold a hearing to decide the issue in  
 6 accordance with 95-3217, 95-3218, and the rules of the  
 7 board. If it determines that the decision appealed from was  
 8 unreasonable, it shall modify the decision accordingly.

9 Section 12. Section 95-3308, R.C.M. 1947, is amended  
 10 to read as follows:

11 \*95-3308. Return of parole violator. (1) At any time  
 12 during release on parole or conditional release the  
 13 department may issue a warrant for the arrest of the  
 14 released prisoner for violations of any of the conditions of  
 15 release, or a notice to appear to answer to a charge of  
 16 violation. Such notice shall be served personally upon the  
 17 prisoner. The warrant shall authorize all officers named  
 18 therein to return such prisoner to the actual custody of the  
 19 penal institution from which he was released, or to any  
 20 other suitable detention facility designated by the  
 21 department. Any probation and parole officer may arrest such  
 22 prisoner without a warrant, or may deputize any other  
 23 officer with power to arrest to do so by giving him a  
 24 written statement setting forth that the prisoner has, in  
 25 the judgment of said probation and parole officer, violated

1 the conditions of his release. Such written statement  
 2 delivered with the prisoner by the arresting officer to the  
 3 official in charge of the institution from which the  
 4 prisoner was released or other place of detention, shall be  
 5 sufficient warrant for the detention of the parolee or  
 6 conditional releasee. The probation and parole officer,  
 7 after making an arrest, shall present to the detaining  
 8 authorities a similar statement of the circumstances of  
 9 violation. Pending hearing, as hereinafter provided, upon  
 10 any charge of violation, the prisoner may, if circumstances  
 11 warrant, be incarcerated in such institution.

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

25 (3) The hearings officer shall make a summary of what

1 transpires at the hearing in terms of the responses of the  
 2 parolee and the substance of the documents or evidence given  
 3 in support of parole revocation and of the parolee's  
 4 position. Based on the information given to him, the  
 5 hearings officer must determine whether there is probable  
 6 cause to hold the parolee for the final decision of the  
 7 board of pardons ~~as specified in section 95-3217~~ or the  
 8 director, whichever has jurisdiction.

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

23 (5) (a) When the department has jurisdiction, the  
 24 director shall determine what further restrictions, if any,  
 25 should be placed on the prisoner. If he determines that

1 reincarceration is advisable, he shall request that the  
 2 court which originally sentenced the prisoner or, if the  
 3 prisoner is residing in a different county, the district  
 4 court of the county in which the prisoner resides recommit  
 5 the prisoner to the state prison for a specified period of  
 6 time.

7 (b) Upon receiving such a request, the court shall  
 8 hold a hearing to determine the disposition of the prisoner.  
 9 At the hearing, the prisoner shall be permitted to present  
 10 evidence and speak on his own behalf and may be represented  
 11 by counsel. If the court finds that reincarceration is not  
 12 appropriate, it shall recommit the prisoner to the custody  
 13 and supervision of the department. If it finds that  
 14 reincarceration is appropriate, it shall order that the  
 15 prisoner be committed to the state prison, without  
 16 possibility of parole for any period of time which,  
 17 together with the time already spent under supervision, does  
 18 not exceed the period of supervision prescribed by the  
 19 original sentence. Upon the expiration of the period of  
 20 reincarceration, the prisoner shall again be under the  
 21 supervision of the department for a period of time which,  
 22 together with the time previously spent under supervision  
 23 and the period of reincarceration, does not exceed the  
 24 period of supervision prescribed by the original sentence.

25 (4)(6) A prisoner for whose return a warrant has been



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

10 Section 13. There is a new R.C.M. section numbered  
11 95-3308.1 that reads as follows:

12 95-3308.1. Service of term for additional offense. A  
13 prisoner who commits an offense while under the supervision  
14 of the department by virtue of 95-3303(2) and who is  
15 convicted and sentenced therefor shall serve the sentence  
16 for the new offense concurrently with any period remaining  
17 of the original sentence unless otherwise ordered by the  
18 court sentencing for the new offense.

-End-

STATE OF MONTANA

REQUEST NO. 477-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 318 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to abolish the existing parole system as to certain prisoners; provide for fixed sentences; prescribe manner of supervision.

ASSUMPTIONS:

1. Based on the prison population of 492 in January, 1977, if these persons were to serve one-half their time, 29 fewer inmates, or 6%, would have been released under the proposed law.
2. Based on the budgeted population of 500 in FY 78 and 550 in FY 79, there would be a 6% additional increase in population, or 30, in FY 78 and 33 in FY 79.
3. The per diem cost in the prison would be \$27.52 in FY 78 and \$25.87 in FY 79. Per diem cost on parole is \$0.65.
4. Housing facilities can be provided for the increased population.
5. All other sentencing laws and practices would not change.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Additional cost of proposed legislation	<u>\$294,226</u>	<u>\$303,775</u>

LONG-RANGE IMPACT:

The major impact would probably be felt in subsequent bienniums. The proposed law has the effect of increasing prison stay by 2.8 times. As existing facilities are inadequate for the current population, additional housing would have to be built.

*Richard L. Drayton*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77

Approved by Committee  
on Judiciary

SENATE BILL NO. 318

INTRODUCED BY TOWE, DEVINE, LOCKREM,

MURRAY, DUNKLE, McOMBER, MATHERS, BROWN,

MANNING, McCALLUM, JERGESON, HAGER, THIESSEN, TURNAGE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE EXISTING PAROLE SYSTEM AS TO PRISONERS WHOSE PROSECUTION WAS COMMENCED ON OR AFTER JULY 1, 1977; TO PROVIDE FOR FIXED SENTENCES FOR SUCH PRISONERS, ONE-HALF TO BE SERVED IN THE STATE PRISON AND ONE-HALF TO BE SERVED UNDER THE SUPERVISION OF THE DEPARTMENT OF INSTITUTIONS; AND TO PRESCRIBE THE MANNER IN WHICH SUCH DEPARTMENT SHALL SUPERVISE PRISONERS; AND TO PROVIDE THAT NO MORE THAN 15 DAYS GOOD TIME ALLOWANCE PER MONTH MAY BE GRANTED TO A PRISONER; AMENDING SECTIONS 80-1905, 95-2206, 95-2210, 95-3214, 95-3301, 95-3302, 95-3303, 95-3306, AND 95-3308, R.C.M. 1947."

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

Section 1. Section 95-2206, R.C.M. 1947, is amended to read as follows:

"95-2206. Sentence. (1) Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty the court may:

(a) ~~defer~~ ~~defer~~ impose imposition of sentence for a period not to exceed ~~one~~-~~1~~ year for any misdemeanor; for a period

not to exceed ~~three~~-~~3~~ years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not to exceed ~~ninety~~-~~90~~ days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above;

(b) ~~Suspend~~ ~~suspend~~ execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

- (i) jail base release;
- (ii) jail time not to exceed ~~90~~ days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

SECOND READING

1 ~~(f)(vi)~~ any combination of the above.

2 If any restrictions or conditions are violated, any  
3 elapsed time, except jail time, shall not be a credit  
4 against the sentence, unless the court shall otherwise  
5 order.

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

8 ~~(4)(d)~~ ~~Commit commit~~ the defendant to a correctional  
9 institution with or without fine by law for the offense;

10 ~~(5)(e)~~ ~~impose impose~~ any combination of subsections  
11 ~~(2) (1)(b), (3) (1)(c), or (4) (1)(d)~~ above.

12 ~~(6)(2)~~ The district court may also impose any of the  
13 following restrictions or conditions on the above sentence  
14 which it deems necessary to obtain the objective of  
15 rehabilitation and the protection of society:

16 (a) prohibit the defendant the right to hold public  
17 offices;

18 (b) prohibit the defendant the right to own or carry a  
19 dangerous weapon;

20 (c) prohibit freedom of association;

21 (d) prohibit freedom of movement;

22 (e) any other limitation reasonably related to the  
23 objectives of rehabilitation or the protection of society.

24 ~~(7)(3)~~ The judge in the justice court shall not have  
25 the authority to restrict an individual's rights as

1 enumerated in subsection ~~(6)(2)~~.

2 ~~(4)~~ Any judge who has suspended the execution of a  
3 sentence or deferred the imposition of a sentence of  
4 imprisonment under this section, or his successor, is  
5 authorized thereafter, in his discretion, during the period  
6 of such suspended sentence or deferred imposition of  
7 sentence to revoke such suspension or impose sentence and  
8 order such person committed, or may, in his discretion,  
9 order the prisoner placed under the jurisdiction of the  
10 state board of pardons as provided by law, or retain such  
11 jurisdiction with this court. Prior to the revocation of an  
12 order suspending or deferring the imposition of sentence,  
13 the person affected shall be given a hearing.

14 ~~(5) (a) Every sentence of imprisonment in the state~~  
15 ~~prison which exceeds 6 months and the imposition or~~  
16 ~~execution of which is not deferred or suspended under~~  
17 ~~subsection (1)(a) or (1)(b) shall be in the form prescribed~~  
18 ~~in this subsection (5). The first half of the sentence shall~~  
19 ~~be served in the state prison without possibility of parole~~  
20 ~~and shall be considered punishment. The second half of the~~  
21 ~~sentence shall be served under the continuing supervision of~~  
22 ~~the state, as prescribed in Title 95, chapter 33, and shall~~  
23 ~~be considered rehabilitation.~~

24 ~~(b) The judgment shall read substantially as follows.~~  
25 ~~"The defendant \_\_\_\_\_ is sentenced for a period of \_\_\_\_\_~~

1 years. One-half of this time shall be served in the state  
 2 prison, and one-half shall be served under the supervision  
 3 of the department of institutions." In order to avoid  
 4 inequities during the transition period, any judgment  
 5 rendered before July 1, 1980, shall contain a statement that  
 6 the court is aware that the defendant has been sentenced  
 7 under this subsection (5) and consequently will not be  
 8 eligible for parole. Failure to include this statement  
 9 nullifies the application of this subsection (5) and makes  
 10 the defendant eligible for parole as if the prosecution had  
 11 been commenced before July 1, 1977.

12 (C) THIS SUBSECTION (5) DOES NOT AFFECT ELIGIBILITY  
 13 FOR THE PRISONER FURLOUGH PROGRAM OR THE GOOD TIME ALLOWANCE  
 14 PROVIDED FOR IN 80-1905.

15 to (D) This subsection (5) applies to any prosecution  
 16 which is commenced on or after July 1, 1977."

17 Section 2. Section 95-2210, R.C.M. 1947, is amended to  
 18 read as follows:

19 "95-2210. Information from courts. (1) It shall be the  
 20 duty of the court disposing of any criminal case to cause to  
 21 be transmitted to the board of pardons statistical data in  
 22 accordance with regulations issued by the board regarding  
 23 all dispositions of defendants whether found guilty or  
 24 discharged.

25 (2) Each court which disposes of criminal cases shall

1 cause to be transmitted to the department of institutions  
 2 statistical data in accordance with regulations issued by  
 3 the department regarding all dispositions of defendants  
 4 whether found guilty or discharged."

5 Section 3. There is a new R.C.M. section numbered  
 6 95-3202.5 that reads as follows:

7 95-3202.5. Applicability to persons released under the  
 8 supervision of the department of institutions. The  
 9 provisions of 95-3201, 95-3202, and 95-3202.1 through  
 10 95-3202.4 apply to persons released under the supervision of  
 11 the department of institutions pursuant to a sentence  
 12 imposed under 95-2206(5).

13 Section 4. Section 95-3214, R.C.M. 1947, is amended to  
 14 read as follows:

15 "95-3214. Parole authority and procedure. (1) The  
 16 board shall release on parole, by appropriate order, any  
 17 person confined in the Montana state prison, except persons  
 18 under sentence of death and persons ineligible for parole by  
 19 virtue of 95-2206(5), when in its opinion there is  
 20 reasonable probability that the prisoner can be released  
 21 without detriment to himself or to the community, provided:

22 (a) That no convict serving a time sentence shall be  
 23 paroled until he has served at least one-quarter ~~(1/4)~~ of  
 24 his full term, less good time allowances off, as provided in  
 25 ~~section~~ 80-1905; except that no convict designated a

1 persistent felony offender under ~~section~~ 95-2206.5 may be  
 2 paroled until he has served at least one-third ~~(1/3)~~ of his  
 3 full term, less good time allowances off, as provided in  
 4 ~~section~~ 80-1905. A first offender serving a time sentence  
 5 may be paroled after he has served, upon his term of  
 6 sentence, ~~twelve-and-one-half-(12 1/2)~~ years. A persistent  
 7 felony offender as defined in ~~section~~ 95-2206.5 may be  
 8 paroled after he has served, upon his term of sentence,  
 9 ~~seventeen-and-one-half-(17 1/2)~~ years.

10 (b) No convict serving a life sentence shall be  
 11 paroled until he has served thirty (30) years, less the good  
 12 time allowances off, as provided in section 80-1905.

13 (2) Within two (2) months after his admission and at  
 14 such intervals thereafter as it determines, the board shall  
 15 consider all pertinent information regarding each prisoner,  
 16 including the circumstances of his offense, his previous  
 17 social history and criminal record, his conduct, employment,  
 18 and attitude in prison, and the reports of and physical and  
 19 mental examinations which have been made.

20 (3) Before ordering the parole of any prisoner, the  
 21 board shall interview him. A parole shall be ordered only  
 22 for the best interest of society, not as an award of  
 23 clemency or a reduction of sentence or pardon. A prisoner  
 24 shall be placed on parole only when the board believes that  
 25 he is able and willing to fulfill the obligations of a

1 law-abiding citizen. Every prisoner while on parole shall  
 2 remain in the legal custody of the institution from which he  
 3 was released, but shall be subject to the orders of the  
 4 board.

5 (4) The board may adopt other rules it considers  
 6 proper or necessary, with respect to the eligibility of  
 7 prisoners for parole, and the conduct of parole hearings and  
 8 hearings on appeals authorized by 95-3307.3 or conditions to  
 9 be imposed upon parolees. When an order for parole is issued  
 10 it shall recite the conditions thereof."

11 Section 5. Section 95-3301, R.C.M. 1947, is amended to  
 12 read as follows:

13 "95-3301. Definitions. As used in this chapter, unless  
 14 the context requires otherwise:

15 (1) "~~Board~~ board" means the board of pardons provided  
 16 for in ~~section~~ 82A-804*i*

17 (2) "~~Department~~ department" means the department of  
 18 institutions provided for in Title 82A, chapter 8*i*

19 (3) "~~director~~ means the head administrator of the  
 20 corrections division of the department of institutions;

21 (3)(4) "~~Probation~~ probation" means the release by the  
 22 court without imprisonment except as otherwise provided by  
 23 law, of a defendant found guilty of a crime upon verdict or  
 24 plea, subject to conditions imposed by the court and subject  
 25 to the supervision of the department upon direction of the

1 court;

2 ~~{4}{5}~~ "Parole parole" means the release to the  
3 community of a prisoner by the decision of the board prior  
4 to the expiration of his term, subject to conditions imposed  
5 by the board and subject to supervision of the department,  
6 or the release to the community of a prisoner sentenced  
7 under 95-2206(5), subject to the supervision of the  
8 department."

9 Section 6. Section 95-3302, R.C.M. 1947, is amended to  
10 read as follows:

11 "95-3302. Powers of the department. The department  
12 may:

13 (1) appoint probation and parole officers and other  
14 employees necessary to administer this chapter;

15 (2) adopt rules for the conduct of persons placed on  
16 parole or probation, except that the department may not make  
17 any rule conflicting with conditions of parole imposed by  
18 the board or conditions of probation imposed by a court;

19 {3} adopt rules for the conduct and supervision of  
20 persons placed under its supervision as part of a sentence  
21 imposed under 95-2206(5)."

22 Section 7. Section 95-3303, R.C.M. 1947, is amended to  
23 read as follows:

24 "95-3303. Duties of the department. ~~{1}~~ The department  
25 is responsible for any investigation and supervision

1 requested by the board or the courts. The department shall:

2 ~~{1}{a}~~ ~~Divide divide~~ the state into districts, and  
3 assign probation and parole officers to serve in these  
4 districts and courts;

5 ~~{2}{b}~~ ~~Obtain obtain~~ any necessary office quarters for  
6 the staff in each district;

7 ~~{3}{c}~~ ~~Assign assign~~ the secretarial, bookkeeping, and  
8 accounting work to the clerical employees, including receipt  
9 and disbursement of money;

10 {d} assign EACH PAROLEE TO a probation and parole  
11 officer to each parolee;

12 ~~{4}{e}~~ ~~Direct direct~~ the work of the probation and  
13 parole officers and other employees;

14 ~~{5}{f}~~ ~~Formulate formulate~~ methods of investigation,  
15 supervision, recordkeeping, and reports;

16 ~~{6}{g}~~ ~~Conduct conduct~~ training courses for the staff;

17 ~~{7}{h}~~ ~~Co-operate cooperate~~ with all agencies, public  
18 and private, which are concerned with the treatment or  
19 welfare of persons on probation or parole;

20 ~~{8}{i}~~ ~~Administer administer~~ the interstate compact  
21 for the supervision of parolees and probationers.

22 {2} The department shall have custody of and supervise  
23 persons serving the second half of sentences imposed under  
24 95-2206(5)."

25 Section 8. Section 95-3306, R.C.M. 1947, is amended to

1 read as follows:

2 "95-3306. Supervision on parole. (1) The department  
3 shall retain custody of all persons placed on parole and  
4 shall supervise the persons during their parole period in  
5 accord with the conditions set by the board or the  
6 department, whichever has jurisdiction.

7 (2) The department shall assign personnel to assist  
8 persons eligible for parole in preparing a parole plan.  
9 When the board has authority to grant parole, Department  
10 department personnel shall make a report of their efforts  
11 and findings to the board prior to its consideration of the  
12 case of the eligible person.

13 (3) A copy of the conditions of his parole shall be  
14 signed by the parolee and given to him and to his probation  
15 and parole officer who shall report on his progress under  
16 the rules of the board or the department, whichever has  
17 jurisdiction.

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

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

25 ~~Section 9. There is a new R.C.M. section numbered~~

1 ~~95-3307.1 that reads as follows:~~

2 ~~95-3307.1. Halfway houses. Whenever a halfway house~~  
3 ~~is available and the circumstances warrant it, the~~  
4 ~~department shall assign a prisoner under its supervision by~~  
5 ~~virtue of 95-3303(2) to a halfway house upon his release~~  
6 ~~from the state prison. The department may authorize the~~  
7 ~~administrator of each halfway house to impose on prisoners~~  
8 ~~assigned to him under this section whatever restrictions,~~  
9 ~~consistent with sound rehabilitative practices, he considers~~  
10 ~~necessary to ensure proper accountability.~~

11 Section 9. There is a new R.C.M. section numbered  
12 95-3307.2 that reads as follows:

13 95-3307.2. Termination of supervision. (1) State  
14 supervision exercised under 95-3303(2) may be terminated by  
15 ~~the administrator of the halfway house to which the prisoner~~  
16 ~~has been assigned or by the director at any time if the~~  
17 ~~administrator or director certifies that the prisoner is~~  
18 ~~fully rehabilitated, is contributing to the community in~~  
19 ~~which he is living, and is not likely to commit another~~  
20 ~~crime. State supervision must be terminated upon the~~  
21 ~~completion of the period of time prescribed in the sentence.~~

22 (2) Upon termination, the department shall issue a  
23 certificate of discharge to the prisoner.

24 Section 10. There is a new R.C.M. section numbered  
25 95-3307.3 that reads as follows:



1 95-3307.3. Appeal of restrictions or refusal to  
 2 terminate supervision. ~~{1} A prisoner may appeal to the~~  
 3 ~~director from a decision of the administrator of a halfway~~  
 4 ~~house involving the restrictions to be placed on the~~  
 5 ~~prisoner or a refusal to terminate supervision. If the~~  
 6 ~~director determines that the decision appealed from was~~  
 7 ~~unreasonable, he shall modify it accordingly.~~

8 {2} Decisions of the director ~~made under subsection~~  
 9 ~~{1} and his decisions~~ regarding restrictions on or the  
 10 termination of supervision over prisoners ~~who have not been~~  
 11 ~~assigned to a halfway house~~ may be appealed to the board.  
 12 The board shall hold a hearing to decide the issue in  
 13 accordance with 95-3217, 95-3218, and the rules of the  
 14 board. If it determines that the decision appealed from was  
 15 unreasonable, it shall modify the decision accordingly.

16 Section 11. Section 95-3308, R.C.M. 1947, is amended  
 17 to read as follows:

18 "95-3308. Return of parole violator. (1) At any time  
 19 during release on parole or conditional release the  
 20 department may issue a warrant for the arrest of the  
 21 released prisoner for violations of any of the conditions of  
 22 release, or a notice to appear to answer to a charge of  
 23 violation. Such notice shall be served personally upon the  
 24 prisoner. The warrant shall authorize all officers named  
 25 therein to return such prisoner to the actual custody of the

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

19 (2) After the arrest of said prisoner, a hearing shall  
 20 be held within a reasonable time, unless such hearing is  
 21 waived by the parolee, to determine whether there is  
 22 probable cause or reasonable grounds to believe that the  
 23 arrested parolee has committed acts which would constitute a  
 24 violation of parole conditions. An independent officer, who  
 25 need not be a judicial officer, must preside over this

1 hearing. This hearing must be conducted at or reasonably  
 2 near the place of the alleged parole violation or arrest and  
 3 as promptly as convenient after arrest. The parolee must be  
 4 given notice of this hearing and must be allowed to appear  
 5 and speak in his own behalf and introduce relevant  
 6 information to the hearings officer.

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

16 (4) If the hearings officer determines that there is  
 17 probable cause to believe that the prisoner has violated a  
 18 condition of his parole, the probation and parole officer  
 19 shall immediately notify the board or the director,  
 20 whichever has jurisdiction, and shall submit in writing a  
 21 report showing in what manner the prisoner has violated the  
 22 conditions of release, and this report shall be accompanied  
 23 by the findings of the hearings officer. Thereupon, when it  
 24 has jurisdiction, the board shall cause the prisoner to be  
 25 promptly brought before it for a hearing on the violation

1 charged, under such rules and regulations as the board may  
 2 adopt. If the violation is established, the board may  
 3 continue or revoke the parole or conditional release, or  
 4 enter such other order as it may see fit.

5 (5) (a) When the department has jurisdiction, the  
 6 director shall determine what further restrictions, if any,  
 7 should be placed on the prisoner. If he determines that  
 8 reincarceration is advisable, he shall request that the  
 9 court which originally sentenced the prisoner or, if the  
 10 prisoner is residing in a different county, the district  
 11 court of the county in which the prisoner resides recommit  
 12 the prisoner to the state prison for a specified period of  
 13 time.

14 (b) Upon receiving such a request, the court shall  
 15 hold a hearing to determine the disposition of the prisoner.  
 16 At the hearing, the prisoner shall be permitted to present  
 17 evidence and speak on his own behalf and may be represented  
 18 by counsel. If the court finds that reincarceration is not  
 19 appropriate, it shall recommit the prisoner to the custody  
 20 and supervision of the department. If it finds that  
 21 reincarceration is appropriate, it shall order that the  
 22 prisoner be committed to the state prison, without  
 23 possibility of parole, for any period of time which,  
 24 together with the time already spent under supervision, does  
 25 not exceed the period of supervision prescribed by the

1 original sentence. Upon the expiration of the period of  
 2 reincarceration, the prisoner shall again be under the  
 3 supervision of the department for a period of time which,  
 4 together with the time previously spent under supervision  
 5 and the period of reincarceration, does not exceed the  
 6 period of supervision prescribed by the original sentence.

7 ~~(4)~~(6) A prisoner for whose return a warrant has been  
 8 issued shall, after the issuance of such warrant, if it is  
 9 found that the warrant cannot be served, be deemed a  
 10 fugitive or to have fled from justice. If it shall appear  
 11 that he has violated the provisions of his release, whether  
 12 the time from the issuing of such warrant to the date of his  
 13 arrest, or any part of it, shall be counted as time served  
 14 under the sentence, shall be determined by the board, the  
 15 director, or the court, whichever is making the final  
 16 decision as to the disposition of the prisoner."

17 Section 12. There is a new R.C.M. section numbered  
 18 95-3308.1 that reads as follows:

19 95-3308.1. Service of term for additional offense. A  
 20 prisoner who commits an offense while under the supervision  
 21 of the department by virtue of 95-3303(2) and who is  
 22 convicted and sentenced therefor shall serve the sentence  
 23 for the new offense concurrently with any period remaining  
 24 of the original sentence unless otherwise ordered by the  
 25 court sentencing for the new offense.

1 SECTION 13. SECTION 80-1905, R.C.M. 1947, IS AMENDED  
 2 TO READ AS FOLLOWS:

3 "80-1905. Good time allowance -- forfeiture --  
 4 probationers and parolees -- application of prior law. (1)  
 5 The state department of institutions shall adopt rules and  
 6 regulations providing for the granting of good time  
 7 allowance for inmates employed in any prison work or  
 8 activity. The good time allowance shall operate as a credit  
 9 on his sentence as imposed by the court, conditioned upon  
 10 the inmate's good behavior and compliance with the rules and  
 11 regulations made by the department or the warden. The rules  
 12 adopted by the department may not grant good time allowance  
 13 to exceed:

14 (a) ten (10) days per month for inmates assigned  
 15 within the confines of the walls of the prison;

16 (b) thirteen (13) days per month for those inmates  
 17 placed outside the confines of the walls of the prison;

18 (c) fifteen (15) days per month for those inmates who  
 19 have been assigned outside the walls of the prison for an  
 20 uninterrupted period of one year on a minimum status;

21 (d) thirteen (13) days per month for those inmates  
 22 enrolled in school inside the walls who successfully  
 23 complete the course of study or who while so enrolled are  
 24 released from prison by discharge or parole;

25 (e) ten (10) days for each pint of blood donated by an

1 inmate;

2 (f) five (5) days per month for those inmates  
3 participating in self-improvement activities designated by  
4 the department of institutions.

5 ~~(2) Effective July 1, 1977, no inmate may be granted~~  
6 ~~more than a total of 15 days good time allowance per month.~~

7 ~~(2)(3)~~ In the event of an attempted escape by an  
8 inmate, or a violation of the rules and regulations  
9 prescribed by the department or warden, the inmate may be  
10 punished by the forfeiture of part or all good time  
11 allowances. The warden of the state prison shall advise the  
12 department of institutions of any attempted escape or  
13 violation of rules and regulations on the part of the  
14 inmate. Any punishment by forfeiture of good time allowance  
15 must be approved by the department.

16 ~~(3)(4)~~ This section applies to all persons who are on  
17 probation or parole or eligible to be placed on probation or  
18 parole. No person convicted and sentenced before April 1,  
19 1955, shall have his good time allowance reduced as a result  
20 of this section."

-End-