

1 *Senate* BILL NO. *385*
 2 INTRODUCED BY *Thomas Mahan Neely Lee Reardon*
 3 *Aber McCallum*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
 5 REGARDING ELIGIBILITY FOR PAROLE AND THE MERGER OF SENTENCES
 6 WHEN A SECOND CRIME IS COMMITTED WHILE IN PRISON OR ON
 7 PAROLE OR FURLOUGH; AMENDING SECTIONS 95-2213, 95-3214, AND
 8 95-3215, R.C.M. 1947; REPEALING SECTION 95-2206.5, R.C.M.
 9 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. There is a new R.C.M. section that reads as
 13 follows:

14 Judicial designation as nondangerous offender for
 15 purposes of parole eligibility. (1) The sentencing court
 16 shall designate an offender a nondangerous offender for
 17 purposes of eligibility for parole under 95-3214 if:

18 (a) during the 5 years preceding the commission of the
 19 offense for which the offender is being sentenced, the
 20 offender was neither convicted of nor incarcerated for an
 21 offense committed in this state or any other jurisdiction
 22 for which a sentence to a term of imprisonment in excess of
 23 1 year could have been imposed; and

24 (b) the court has determined, based on any presentence
 25 report and the evidence presented at the trial and the

1 sentencing hearing, that the offender does not represent a
 2 substantial danger to other persons or society.

3 (2) A conviction or incarceration may not be
 4 considered under subsection (1)(a) if:

5 (a) the offender was less than 18 years of age at the
 6 time of the commission of the present offense; or

7 (b) the offender has been pardoned for the previous
 8 offense on the grounds of innocence or the conviction for
 9 such offense has been set aside in a postconviction hearing.

10 Section 2. Section 95-2213, R.C.M. 1947, is amended to
 11 read as follows:

12 *95-2213. Merger of sentences. (a) Unless the judge
 13 otherwise orders, (1) when a person serving a term of
 14 commitment imposed by a court in this state is committed for
 15 another offense, the shorter term or shorter remaining term
 16 shall be merged in the other term, and (2) when a person
 17 under suspended sentence or on probation ~~or parole~~ for an
 18 offense committed in this state is sentenced for another
 19 offense, the period still to be served on suspended
 20 sentence, or probation, ~~or parole~~ shall be merged in any new
 21 sentence of commitment or probation.

22 (b) The court merging the sentences shall forthwith
 23 furnish each of the other courts and penal institutions in
 24 which the defendant is confined under sentence with
 25 authenticated copies of its sentence, which shall cite the

1 sentences being merged.

2 (c) If an unexpired sentence is merged pursuant to
3 subdivision (a), the court which imposed such sentence shall
4 modify it in accordance with the effect of the merger.

5 (d) Separate sentences of two (2) or more crimes shall
6 run concurrently unless the court otherwise orders.

7 (e) Except as provided in this subsection, when a
8 prisoner is sentenced for an offense committed while he was
9 imprisoned in the state prison or while he was released on
10 parole or under the prisoner furlough program, the new
11 sentence runs consecutively with the remainder of the
12 original sentence. The prisoner starts serving the new
13 sentence when the original sentence has expired or when he
14 is released on parole under 95-3214 in regard to the
15 original sentence, whichever is sooner. In the latter case,
16 the sentences run concurrently from the time of his release
17 on parole."

18 Section 3. Section 95-3214, R.C.M. 1947, is amended to
19 read as follows:

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

1 (a) That no convict serving a time sentence shall be
2 paroled until he has served at least ~~one-quarter (1/4)~~
3 one-half of his full term, less the good time allowances
4 ~~off, as allowance~~ provided for in ~~section~~ 80-1905; except
5 that ~~no convict designated a persistent felony offender~~
6 ~~under section 95-2206.5 may be paroled until he has served~~
7 ~~at least one-third (1/3) of his full term, less good time~~
8 ~~allowances off, as provided in section 80-1905 a convict~~
9 designated as a nondangerous offender under [section 1] may
10 be paroled after he has served one-quarter of his full term,
11 less the good time allowance provided for in 80-1905. *
12 ~~first offender serving a time sentence may be paroled after~~
13 ~~he has served, upon his term of sentence, twelve and~~
14 ~~one-half (12 1/2) years. A persistent felony Any offender~~
15 ~~as defined in section 95-2206.5 serving a time sentence may~~
16 be paroled after he has served, upon his term of sentence,
17 seventeen and one-half (17 1/2) years.

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

21 (2) Within two (2) months after his admission and at
22 such intervals thereafter as it determines, the board shall
23 consider all pertinent information regarding each prisoner,
24 including the circumstances of his offense, his previous
25 social history and criminal record, his conduct, employment,

1 and attitude in prison, and the reports of and physical and
2 mental examinations which have been made.

3 (3) Before ordering the parole of any prisoner, the
4 board shall interview him. A parole shall be ordered only
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6 clemency or a reduction of sentence or pardon. A prisoner
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8 he is able and willing to fulfill the obligations of a
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11 was released, but shall be subject to the orders of the
12 board.

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14 proper or necessary, with respect to the eligibility of
15 prisoners for parole, and the conduct of parole hearings or
16 conditions to be imposed upon parolees. When an order for
17 parole is issued it shall recite the conditions thereof."

18 Section 4. Section 95-3215, R.C.M. 1947, is amended to
19 read as follows:

20 "95-3215. Conditional release. A prisoner on parole
21 who has served ~~one-fourth (1/4)~~ one-half of his term or
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1 good time allowances, is considered released on parole until
2 the expiration of the maximum term or terms for which he was
3 sentenced, less good time allowances as provided in section
4 80-1905."

5 Section 5. Repealer. Section 95-2206.5, R.C.M. 1947,
6 is repealed.

-End-

STATE OF MONTANA

REQUEST NO. 594-77

FISCAL NOTE

Form BD 15

In compliance with a written request received February 22, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 385 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.

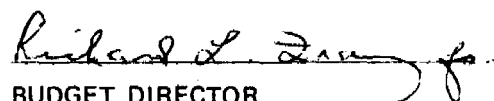
DESCRIPTION OF PROPOSED LEGISLATION:

An act to revise the law regarding eligibility for parole and the merger of sentences when a second crime is committed while in prison or on parole or furlough.

FISCAL IMPACT:

Within the time limit given, there cannot be accurate data compiled. Time would be needed to assess the number of people who committed crimes while in prison or on parole and calculate the length of the original sentence, plus the additional sentence for the new crime.

41% of the current population (207 people) are in the prison as the result of committing a violent crime. If they were not eligible for parole until serving one-half of their sentence, then the prison population would increase due to the length of stay for these 41% being increased. The per diem cost at the prison is currently \$26.87 per day. Also, additional rehabilitation programs on work programs would have to be implemented at the prison to serve this increase in population.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-22-77

Approved by Committee
on Judiciary

Senate BILL NO. 385

2 INTRODUCED BY *Thomas Nelson* *Healy Lee* *Reardon*
3 *Aber McCallum*

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19 offense for which the offender is being sentenced, the
20 offender was neither convicted of nor incarcerated for an
21 offense committed in this state or any other jurisdiction
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23 1 year could have been imposed; and

24 (b) the court has determined, based on any presentence
25 report and the evidence presented at the trial and the

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2 substantial danger to other persons or society.

3 (2) A conviction or incarceration may not be
4 considered under subsection (1) (a) if:

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6 time of the commission of the present offense; or

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17 under suspended sentence or on probation ~~or parole~~ for an
18 offense committed in this state is sentenced for another
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25 without detriment to himself or to the community, provided:

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5 that ~~no convict designated a persistent felony offender~~
6 ~~under section 95-2206.5 may be paroled until he has served~~
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19 paroled until he has served thirty (30) years, less the good
20 time allowances off, as provided in section 80-1905.

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22 such intervals thereafter as it determines, the board shall
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5 Section 5. Repealer. Section 95-2206.5, R.C.M. 1947,
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-End-

Approved by Committee
on Finance & Claims

SENATE BILL NO. 385

INTRODUCED BY THOMAS, MEHRENS,

HEALY, PETERSON, ABER, McCALLUM, LEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW REGARDING ELIGIBILITY FOR PAROLE AND THE MERGER OF SENTENCES WHEN A SECOND CRIME IS COMMITTED WHILE IN PRISON OR ON PAROLE OR FURLOUGH; AMENDING SECTIONS 95-2213, 95-3214, AND 95-3215, R.C.M. 1947; REPEALING SECTION 95-2206.5, R.C.M. 1947."

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(b) the court has determined, based on any presentence

report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

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(b) The court merging the sentences shall forthwith furnish each of the other courts and penal institutions in which the defendant is confined under sentence with

SECOND READING

SECOND PRINTING

1 authenticated copies of its sentence, which shall cite the
2 sentences being merged.

3 (c) If an unexpired sentence is merged pursuant to
4 subdivision (a), the court which imposed such sentence shall
5 modify it in accordance with the effect of the merger.

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6 SECTION 5. APPLICATION OF ACT. THIS ACT APPLIES TO
7 ANY OFFENDER SENTENCED AFTER JULY 1, 1977. (SECTION 2 OF
8 THIS ACT) APPLIES TO ANY PRISONER WHO, AFTER JULY 1, 1977,
9 COMMITTS AN OFFENSE WHILE HE IS IMPRISONED IN THE STATE
10 PRISON OR WHILE HE IS RELEASED ON PAROLE OR UNDER THE
11 PRISONER FURLOUGH PROGRAM.

12 Section 6. Repealer. Section 95-2206.5, R.C.M. 1947,
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14 (4) The board may adopt other rules it considers
15 proper or necessary, with respect to the eligibility of
16 prisoners for parole, and the conduct of parole hearings or
17 conditions to be imposed upon parolees. When an order for
18 parole is issued it shall recite the conditions thereof."

19 Section 4. Section 95-3215, R.C.M. 1947, is amended to
20 read as follows:

21 "95-3215. Conditional release. A prisoner on parole
22 who has served ~~one-fourth~~ ~~(1/4)~~ one-half of his term or
23 terms, less good time allowances, or a ~~persistent~~ ~~felony~~
24 ~~offender who has served one-third~~ ~~(1/3)~~ ~~of his term or~~
25 ~~terms, less good time allowances~~ nondangerous offender on

1 ~~parole who has served one-quarter of his term or terms, less~~
2 ~~good time allowances,~~ is considered released on parole until
3 the expiration of the maximum term or terms for which he was
4 sentenced, less good time allowances as provided in section
5 80-1905.*

6 SECTION 5. APPLICATION OF ACT. THIS ACT APPLIES TO
7 ANY OFFENDER SENTENCED AFTER JULY 1, 1977. (SECTION 2 OF
8 THIS ACT) APPLIES TO ANY PRISONER WHO, AFTER JULY 1, 1977,
9 COMMITTS AN OFFENSE WHILE HE IS IMPRISONED IN THE STATE
10 PRISON OR WHILE HE IS RELEASED ON PAROLE OR UNDER THE
11 PRISONER FURLOUGH PROGRAM.

12 Section 6. Repealer. Section 95-2206.5, R.C.M. 1947,
13 is repealed.

-End-

1 SENATE BILL NO. 385

2 INTRODUCED BY THOMAS, MEHRENS,

3 HEALY, PETERSON, ABER, MCCALLUM, LEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
6 REGARDING ELIGIBILITY FOR PAROLE AND THE MERGER OF SENTENCES
7 WHEN A SECOND CRIME IS COMMITTED WHILE IN PRISON OR ON
8 PAROLE OR FURLOUGH; AMENDING SECTIONS 95-2213, 95-3214, AND
9 95-3215, R.C.M. 1947; REPEALING SECTION 95-2206.5, R.C.M.
10 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. There is a new R.C.M. section that reads as
14 follows:

15 Judicial designation as nondangerous offender for
16 purposes of parole eligibility. (1) The sentencing court
17 shall designate an offender a nondangerous offender for
18 purposes of eligibility for parole under 95-3214 if:

19 (a) during the 5 years preceding the commission of the
20 offense for which the offender is being sentenced, the
21 offender was neither convicted of nor incarcerated for an
22 offense committed in this state or any other jurisdiction
23 for which a sentence to a term of imprisonment in excess of
24 1 year could have been imposed; and OR

25 (b) the court has determined, based on any presentence

1 report and the evidence presented at the trial and the
2 sentencing hearing, that the offender does not represent a
3 substantial danger to other persons or society.

4 (2) A conviction or incarceration may not be
5 considered under subsection (1)(a) if:

6 (a) the offender was less than 18 years of age at the
7 time of the commission of the present offense; or

8 (b) the offender has been pardoned for the previous
9 offense on the grounds of innocence or the conviction for
10 such offense has been set aside in a postconviction hearing.

11 Section 2. Section 95-2213, R.C.M. 1947, is amended to
12 read as follows:

13 "95-2213. Merger of sentences. (a) Unless the judge
14 otherwise orders, (1) when a person serving a term of
15 commitment imposed by a court in this state is committed for
16 another offense, the shorter term or shorter remaining term
17 shall be merged in the other term, and (2) when a person
18 under suspended sentence or on probation ~~or parole~~ for an
19 offense committed in this state is sentenced for another
20 offense, the period still to be served on suspended
21 sentence ~~or probation or parole~~ shall be merged in any new
22 sentence of commitment or probation.

23 (b) The court merging the sentences shall forthwith
24 furnish each of the other courts and penal institutions in
25 which the defendant is confined under sentence with

1 authenticated copies of its sentence, which shall cite the
2 sentences being merged.

3 (c) If an unexpired sentence is merged pursuant to
4 subdivision (a), the court which imposed such sentence shall
5 modify it in accordance with the effect of the merger.

6 (d) Separate sentences of two (2) or more crimes shall
7 run concurrently unless the court otherwise orders.

8 (e) Except as provided in this subsection, when a
9 prisoner is sentenced for an offense committed while he was
10 imprisoned in the state prison or while he was released on
11 parole or under the prisoner furlough program, the new
12 sentence runs consecutively with the remainder of the
13 original sentence. The prisoner starts serving the new
14 sentence when the original sentence has expired or when he
15 is released on parole under 95-3214 in regard to the
16 original sentence, whichever is sooner. In the latter case,
17 the sentences run concurrently from the time of his release
18 on parole."

19 Section 3. Section 95-3214, R.C.M. 1947, is amended to
20 read as follows:

21 "95-3214. Parole authority and procedure. (1) The
22 board shall release on parole, by appropriate order, any
23 person confined in the Montana state prison, except persons
24 under sentence of death, when in its opinion there is
25 reasonable probability that the prisoner can be released

1 without detriment to himself or to the community, provided:

2 (a) That no convict serving a time sentence shall be
3 paroled until he has served at least ~~one-quarter (1/4)~~
4 ~~one-half~~ of his full term, less the good time allowances
5 ~~off, as allowance~~ provided for in section 80-1905; except
6 that ~~no convict designated a persistent felony offender~~
7 ~~under section 95-2206.5 may be paroled until he has served~~
8 ~~at least one-third (1/3) of his full term, less good time~~
9 ~~allowances off, as provided in section 80-1905~~ a convict
10 ~~designated as a nondangerous offender under [section 1] may~~
11 ~~be paroled after he has served one-quarter of his full term,~~
12 ~~less the good time allowance provided for in 80-1905. *~~
13 ~~first offender serving a time sentence may be paroled after~~
14 ~~he has served, upon his term of sentence, twelve and~~
15 ~~one-half (12 1/2) years. *~~ Any offender
16 as defined in section 95-2206.5 serving a time sentence may
17 be paroled after he has served, upon his term of sentence,
18 seventeen and one-half (17 1/2) years.

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

22 (2) Within two (2) months after his admission and at
23 such intervals thereafter as it determines, the board shall
24 consider all pertinent information regarding each prisoner,
25 including the circumstances of his offense, his previous

1 social history and criminal record, his conduct, employment,
2 and attitude in prison, and the reports of and physical and
3 mental examinations which have been made.

4 (3) Before ordering the parole of any prisoner, the
5 board shall interview him. A parole shall be ordered only
6 for the best interest of society, not as an award of
7 clemency or a reduction of sentence or pardon. A prisoner
8 shall be placed on parole only when the board believes that
9 he is able and willing to fulfill the obligations of a
10 law-abiding citizen. Every prisoner while on parole shall
11 remain in the legal custody of the institution from which he
12 was released, but shall be subject to the orders of the
13 board.

14 (4) The board may adopt other rules it considers
15 proper or necessary, with respect to the eligibility of
16 prisoners for parole, and the conduct of parole hearings or
17 conditions to be imposed upon parolees. When an order for
18 parole is issued it shall recite the conditions thereof."

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25 ~~terms--less--good--time--allowances~~ nondangerous offender on

1 parole who has served one-quarter of his term or terms, less
2 good time allowances, is considered released on parole until
3 the expiration of the maximum term or terms for which he ~~was~~
4 sentenced, less good time allowances as provided in section
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12 Section 6. Repealer. Section 95-2206.5, R.C.M. 1947,
13 is repealed.

-End-