

CHAPTER NO. 635.

HOUSE BILL NO. 248

INTRODUCED BY MENAHAN

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE HOUSE

January 18, 1979	Introduced and referred to Committee on Judiciary.
January 29, 1979	Committee recommend bill do pass as amended. Report adopted.
January 30, 1979	Printed and placed on members' desks.
January 31, 1979	Second reading, do pass as amended.
February 1, 1979	Correctly engrossed.
February 2, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 3, 1979	Introduced and referred to Committee on Judiciary.
March 10, 1979	Committee recommend bill be concurred in as amended. Report adopted. Statement of Intent adopted.
March 13, 1979	Second reading, pass consideration.
March 14, 1979	Second reading, concurred in.
March 17, 1979	Third reading, concurred in as amended.

1 HOUSE BILL NO. 248
 2 INTRODUCED BY Manahan
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; AMENDING
 7 SECTIONS 45-7-306, 46-23-401 THROUGH 46-23-405, 46-23-411
 8 THROUGH 46-23-413, AND 46-23-415 THROUGH 46-23-426, MCA; AND
 9 REPEALING SECTION 46-23-414, MCA."

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

12 Section 1. Section 46-23-401, MCA, is amended to read:
 13 "46-23-401. Definitions. Unless ~~the context requires~~
 14 otherwise specified, ~~in this part~~ the following definitions
 15 apply in this part:

16 (1) "Applicant" means any prisoner who has ~~signed an~~
 17 application applied to participate in the prisoner furlough
 18 program.

19 (2) "Application" means the forms provided by the
 20 department accompanied by supporting documents.

21 (3) "Board" means the board of pardons provided for
 22 in 2-15-2302.

23 (4) "Department" means the department of
 24 institutions provided for in 2-15-2301.

25 (5) "Jail" means ~~any county jail or tribal jail~~

1 (5) "Escape" means an unexcused departure from
 2 supervision or approved activity by a prisoner on furlough.

3 (6) "Furlough" means a prisoner's participation in a
 4 work, school, or treatment program, not within prison, prior
 5 to the prisoner's release on parole.

6 (7) "Plan" means a complete program of furlough
 7 activity proposed by a prisoner.

8 (8) "Prison" means a correctional facility for adults,
 9 which is under the direction of or under contract with the
 10 department.

11 (9) "Prisoner" means a person sentenced by a
 12 ~~district court of this state~~ to a term of confinement in the
 13 state prison.

14 (10) "State prison" means ~~the Montana state prison at~~
 15 ~~Deer Lodge and any adult correctional facility under the~~
 16 ~~direction of the department.~~

17 (11) "Supervising agency" means ~~any federal, state,~~
 18 ~~county, local, or private agency, Indian tribe, and~~
 19 ~~reservation, or any person, group, association, or~~
 20 ~~organization~~ agency approved by the department to undertake
 21 ~~and maintain~~ the supervision of prisoners ~~participating in~~
 22 ~~the~~ a prisoner on furlough program.

23 Section 2. Section 46-23-402, MCA, is amended to read:

24 "46-23-402. Purpose of prisoner furlough program. (1)
 25 The purpose and intent of this part is to:

1 (a) establish a program under the direction of the
 2 department for the rehabilitation, education, and betterment
 3 advancement of selected prisoners ~~confined in the state~~
 4 persons serving sentences in prison ~~placing the~~
 5 establishment's regulation, guidance, and control of such
 6 program under the direction of the department of
 7 institutions;

8 (b) ~~increase their responsibility to society~~ provide
 9 qualified persons with the opportunity to become more
 10 responsible members of society by aiding in the support of
 11 their dependents and/or continuing their education and
 12 training;

13 (c) ~~provide for the minimum hourly wage required by~~
 14 ~~law or the prevailing rate of pay for persons employed in~~
 15 ~~similar occupations by the same employer to be paid to said~~
 16 ~~convicts while so employed~~ help relieve the substantial cost
 17 to the state of providing for the care and needs of selected
 18 persons;

19 (d) ~~make it possible that they may work gainfully to~~
 20 ~~support their dependents in whole or in part while serving~~
 21 ~~their sentences, continue their education or training, and~~
 22 ~~at the same time fulfill the obligations of the sentence of~~
 23 ~~imprisonment imposed;~~

24 (2) The prisoner furlough program shall operate ~~by~~
 25 supplementing and not replacing established penal procedures

1 ~~now or hereafter established by law and shall serve to~~
 2 ~~extend the limits of confinement for treatment as well as~~
 3 ~~jurisdictional purposes~~ be considered an extension of the
 4 boundaries of confinement of selected persons.

5 (3) This part is to be liberally construed to effect
 6 the overall objectives set forth in this section."

7 Section 3. Section 46-23-403, MCA, is amended to read:

8 "46-23-403. Prisoner not agent or involuntary servant.
 9 No prisoner ~~in the community under the provisions of this~~
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 11 involuntary servant of the department or of the his
 12 supervising agency while released from confinement pursuant
 13 to the terms of the furlough program. Abuse of authority
 14 over a prisoner on furlough by a state officer is official
 15 misconduct punishable as provided in 45-7-401. Mistreatment
 16 of a prisoner on furlough by a state officer is punishable
 17 as provided in 45-5-204."

18 Section 4. Section 46-23-404, MCA, is amended to read:

19 "46-23-404. No ~~effect~~ Effect on eligibility for
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 22 program shall be considered ~~as a~~ part of the imposed
 23 prisoner's sentence of such prisoner. Good time shall
 24 accrue as provided in 53-30-105."

25 Section 5. Section 46-23-405, MCA, is amended to read:

1 "46-23-405. Establishing program -- rules. The
2 department is authorized and directed to establish a
3 furlough program and make rules in accordance with Title 2,
4 chapter 4, to implement and control the ~~same program~~. Rules
5 shall include ~~provisions~~ guidelines for:

6 (1) ~~working-at-paid-employment-for-a-rate-of-pay-not~~
7 ~~less-than-the-minimum-hourly-wage-as-required-by-law-or-the~~
8 ~~prevailing-rate-of-pay-for-persons-employed-in-similar~~
9 ~~occupations-by-the-same-employer~~ prisoner eligibility;

10 (2) participating in an educational, treatment, or
11 training program;

12 (3) financial arrangements with respect to paid
13 employment and/or residence housing;

14 ~~(3)(4)~~ approval of supervising agency agencies; and

15 ~~(4)(5)~~ review of ~~determinations---~~ in furlough
16 application applications."

17 Section 6. Section 46-23-411, MCA, is amended to read:

18 "46-23-411. Application to participate -- eligibility.
19 Any prisoner ~~confined-in-the-state-prison~~, except a prisoner
20 serving a sentence imposed under 46-18-202(2), may ~~make~~
21 submit an application to participate in the furlough program
22 ~~at-least-by-the-time-the-inmate-has-served-one-half-of-the~~
23 ~~time-required-to-be-considered-for-parole~~ if he is within 2
24 years of his parole eligibility or discharge date and
25 qualifies under the rules established by the department.

1 However, if a prisoner is returned on a parole violation and
2 the board determines that his parole will be revoked and
3 that he will be ineligible to reapply for parole, he is not
4 eligible to participate in the furlough program."

5 Section 7. Section 46-23-412, MCA, is amended to read:

6 "46-23-412. Board's action on application. (1) ~~At the~~
7 ~~meeting-of-the-board-following-the-signing-of-any-prisoner's~~
8 ~~application--the~~ The board shall approve or deny the
9 application of each prisoner after careful study of the
10 prisoner's furlough ~~plans~~ plan, criminal history, and all
11 other pertinent case material. ~~The following rules shall be~~
12 ~~observed when the board~~ shall observe the following rules
13 when it meets to consider an application:

14 (a) Each applicant may call two witnesses from outside
15 or inside the institution to testify ~~as~~ with respect to the
16 applicant's general attitude, participation in self-help
17 activities, ~~or-his~~ character, or job references.

18 (b) An applicant may ~~remain~~ be present during the
19 board proceedings on his application; however, the board may
20 meet in executive session without the applicant present for
21 final decision on the application.

22 (c) Each applicant shall be viewed singly and ~~shall be~~
23 recognized as an individual.

24 (d) Each applicant shall be allowed to discuss any
25 specific problem areas with any member of the board.

1 (e) The board shall ~~cause notify~~ the applicant ~~to--be~~
 2 notified of its decision ~~immediatety~~ and shall provide the
 3 applicant with a written decision, including ~~a--thorough~~
 4 ~~statement--of~~ the reasons for the decision, within 2 days
 5 following adjournment.

6 (2) ~~Except as provided in 46-23-413, final authority~~
 7 ~~in granting or revoking prisoner furloughs rests with the~~
 8 ~~board.~~ Final authority in all ~~uther~~ matters pertaining
 9 relating to prisoner furloughs is in the department."

10 Section 8. Section 46-23-413, MCA, is amended to read:

11 "46-23-413. Reapplication where denied. If the a
 12 ~~prisoner's~~ application is denied ~~by the board,~~ the prisoner
 13 may reapply after 6 months~~^~~-time ~~months have passed.~~ After
 14 an applicant has been denied three times, he may appeal to
 15 ~~the director of~~ the department for a hearing. ~~An applicant~~
 16 ~~who has unsuccessfully appealed to the director of the~~
 17 ~~department may not reapply until 1 year has passed from the~~
 18 ~~date of the appeal hearing."~~

19 Section 9. Section 46-23-415, MCA, is amended to read:

20 "46-23-415. Disposition of prisoner's earnings --
 21 payment of expenses. (1) A prisoner~~--employed--in--the~~
 22 ~~community under a work~~ prisoner's furlough plan shall enter
 23 into ~~include~~ a written financial agreement with the
 24 supervising agency ~~and--the--department~~ concerning the
 25 acquisition and disposition of his~~--earnings funds.~~ This

1 financial agreement shall provide for the payment of:

2 (a) a standard charge for ~~providing~~ food, lodging, and
 3 clothing for the prisoner, ~~if incurred and~~ if applicable;

4 (b) ~~the actual and~~ necessary travel and other expenses
 5 of the prisoner ~~under while on~~ furlough ~~from--actual~~
 6 ~~confinement under the program;~~

7 (c) an amount ~~to--pay~~ for the support of his
 8 dependents, ~~which amount shall be paid--to--the--dependents;~~
 9 and

10 ~~(d) court ordered restitution or other debts of the~~
 11 ~~prisoner; and~~

12 ~~(e) an allowance for personal items and other~~
 13 ~~expenses or--disbursements~~ agreed upon by the prisoner, and
 14 the supervising agency, ~~and the department.~~

15 (2) Unless the financial agreement specifically
 16 provides ~~for other disbursement of the money otherwise,~~ any
 17 balance remaining after ~~deductions and~~ making such payments
 18 shall be deposited to ~~in~~ an interest-bearing account held in
 19 trust for the prisoner and shall be paid to him ~~upon release~~
 20 ~~when his furlough terminates.~~

21 ~~(3)--if no other sources of support are available--the~~
 22 ~~costs--of--a--prisoner--under furlough who is in training or~~
 23 ~~school shall be the responsibility of the state."~~

24 Section 10. Section 46-23-421, MCA, is amended to
 25 read:

1 "46-23-421. Responsibility of department and
 2 supervising agency. The department shall be responsible for
 3 the activities of a prisoner ~~participating in a~~ on furlough
 4 program ~~under this part~~. The department may delegate
 5 jurisdictional supervision of work prisoners on furlough
 6 participants to the adult parole and probation field
 7 service. The supervising agency shall be responsible for
 8 those activities of a furloughed prisoner on furlough for
 9 ~~which it is responsible~~ as provided in the written furlough
 10 agreement."

11 Section 11. Section 46-23-422, MCA, is amended to
 12 read:

13 "46-23-422. Violation of furlough agreement by
 14 prisoner. (1) If any prisoner ~~released from actual~~ prison
 15 confinement ~~under the~~ on furlough program fails to comply
 16 with the rules of the furlough agreement, he shall be called
 17 by the department ~~or by~~ and the supervising agency to appear
 18 before the department ~~or and the~~ supervising agency for a
 19 conference.

20 (2) If a conference is not sufficient to resolve the
 21 situation problem and if the prisoner continues persist in
 22 his noncompliance, the prisoner shall be granted a due
 23 process hearing on with respect to the violation within a
 24 reasonable time on or near the site of the alleged violation
 25 to determine whether ~~a violation of~~ there is probable cause

1 to believe the prisoner has violated the furlough agreement
 2 exists. The prisoner is entitled to have counsel appointed
 3 to represent him at the hearing at his expense. The hearing
 4 shall be conducted by a hearing hearings officer of the
 5 board of pardons department. The prisoner ~~on furlough~~ shall
 6 have all opportunities provided under 46-23-1024 and
 7 46-23-1025 pertaining with respect to on-site hearings for
 8 parole revocation. If ~~reasonable grounds are~~ probable cause
 9 is established for violation of the furlough agreement, the
 10 furlough shall be ~~cancelled~~ suspended and the prisoner shall
 11 be returned to the prison.

12 (3) At the next meeting of the board ~~of pardons after~~
 13 following the prisoner's return ~~of the prisoner~~ to the
 14 prison, the prisoner shall be granted a due process
 15 revocation hearing in order to determine if the prisoner has
 16 in fact violated the terms of ~~the prisoner's~~ his furlough
 17 release agreement. If it is determined that the prisoner
 18 has in fact violated the terms ~~of the prisoner's~~ furlough
 19 agreement, ~~the prisoner~~ his furlough shall ~~remain at the~~
 20 prison be terminated. If the terms ~~of the prisoner's~~
 21 release have furlough agreement has not been violated, the
 22 prisoner's case furlough shall be assigned to a parole agent
 23 and a new furlough arrangement shall be worked out
 24 reinstated if the conditions of the agreement remain
 25 applicable."

1 Section 12. Section 46-23-423, MCA, is amended to
2 read:

3 "46-23-423. Immediate reincarceration if threat to
4 community. If the department determines, after having--been
5 being advised by the supervising agency or the adult parole
6 and probation field service, that a prisoner on furlough
7 presents ~~an--immediate~~ a grave threat to the community in
8 which he is furloughed, it may order the prisoner returned
9 to prison before a hearing is held. In this case, a hearing
10 on the charges against the prisoner, as provided for in
11 46-23-422, must be held by the board no later than 30 days
12 after the prisoner's ~~return of the prisoner to the state~~
13 prison."

14 Section 13. Section 46-23-424, MCA, is amended to
15 read:

16 "46-23-424. When prisoner dissatisfied with program.
17 If, after ~~a--reasonable--time~~ 30 days, a furloughed prisoner
18 on furlough determines finds that his furlough plan is
19 unsatisfactory due to a personality conflict, a violation of
20 his rights by his ~~supervisor~~ supervising agency, or a change
21 of interest or employment status, the department shall grant
22 him a hearing to determine whether ~~or--not~~ a new furlough
23 plan should be ~~executed~~ developed."

24 Section 14. Section 46-23-425, MCA, is amended to
25 read:

1 "46-23-425. When prisoner not benefiting from program.
2 (1) The prisoner, the department, or the supervising agency
3 may request that a conference be held with the department,
4 the prisoner, and a representative of the supervising agency
5 to consider the problem of the prisoner's unemployment,
6 disability, or inability to benefit from schooling or
7 training if the prisoner:

8 (a) while not disabled from working by temporary
9 illness, is unemployed for a period of 30 days or more after
10 ~~his--availability--for--employment--is--reported--in--writing--by~~
11 ~~the--supervising--agency--to--the--department--of--labor--and~~
12 ~~industry--office--serving--the--area--in--which--the--prisoner--is~~
13 ~~furloughed--and--to--any--union--to--which--the--prisoner--belongs;~~

14 (b) has become so disabled as to be unemployable; or
15 (c) ~~is--on--an--educational--furlough--and~~ has demonstrated
16 for a period of 6 weeks or more that he is unable to benefit
17 from schooling, treatment, or training.

18 (2) At this conference the prisoner may request that
19 supervision be transferred to another supervising agency,
20 and a representative of the new agency may ~~be--at~~ attend
21 the conference.

22 (3) If the problem is not resolved at the conference
23 ~~does--not--result--in--a--resolution--of--the--problem--of--the~~
24 ~~prisoner's--unemployment--disability--or--inability--to~~
25 ~~benefit~~, the department may request a hearing by the board

1 of--pardon--to--determine-an-alternate-proposal. in At this
 2 hearing the prisoner is-entitled-to-have may be represented
 3 by counsel appointed--to-represent-him at his own expense.
 4 Upon-determining if the board determines that the prisoner
 5 is not benefiting from the furlough program and will not
 6 benefit from continued participation in the program, the
 7 board shall order the prisoner returned to the prison."

8 Section 15. Section 46-23-426, MCA, is amended to
 9 read:

10 "46-23-426. Escape. ~~For the purpose of this part, the~~
 11 ~~provisions relating to escape~~ Escape, as defined in
 12 46-23-401(5), is punishable as provided in 45-7-306 ~~shall~~
 13 ~~apply unless aggravating circumstances require a more severe~~
 14 ~~penalty."~~

15 Section 16. Section 45-7-306, MCA, is amended to read:

16 "45-7-306. Escape. (1) "Official detention" means
 17 imprisonment which resulted from a conviction for an
 18 offense, confinement for an offense, confinement of a person
 19 charged with an offense, detention by a peace officer
 20 pursuant to arrest, detention for extradition or
 21 deportation, supervision of a prisoner on furlough, or any
 22 lawful detention for the purpose of the protection of the
 23 welfare of the person detained or for the protection of
 24 society. "Official detention" does not include supervision
 25 of probation or parole, constraint incidental to release on

1 bail, or an unlawful arrest unless the person arrested
 2 employed physical force, a threat of physical force, or a
 3 weapon to escape.

4 (2) A person subject to official detention commits the
 5 offense of escape if he knowingly or purposely removes
 6 himself from official detention or fails to return to
 7 official detention following temporary leave granted for a
 8 specific purpose or limited time.

9 (3) A person convicted of the offense of escape shall
 10 be:

11 (a) imprisoned in the state prison for a term not to
 12 exceed 20 years if he escapes from a state prison, county
 13 jail, or city jail by the use or threat of force, physical
 14 violence, weapon, or simulated weapon;

15 (b) imprisoned in the state prison for a term not to
 16 exceed 10 years if he:

17 (i) escapes from a state prison, county jail, or city
 18 jail; or

19 (ii) escapes from another official detention by the use
 20 or threat of force, physical violence, weapon, or simulated
 21 weapon; or

22 (iii) escapes while on furlough pursuant to Title 46,
 23 chapter 23, part 4; or

24 (c) fined not to exceed \$500 or imprisoned in the
 25 county jail for a term not to exceed 6 months, or both, if

LC 0443/01

1 he commits escape under circumstances other than (a) and (b)
2 of this subsection."
3 Section 17. Repealer. Section 46-23-414, MCA, is
4 repealed.

-End-

Approved by Committee
on Judiciary

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A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; AMENDING SECTIONS 45-7-306, 46-23-401 THROUGH 46-23-405, 46-23-411 THROUGH 46-23-413, AND 46-23-415 THROUGH 46-23-426, MCA; AND REPEALING SECTION 46-23-414, MCA."

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(2) "Application" means the forms provided by the department accompanied by supporting documents.

(3) "Board" means the board of pardons provided for in 2-15-2302.

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(8) "Prison" means a correctional facility for adults, which is under the direction of or under contract with the department.

(9) "Prisoner" means a person sentenced by a district court of this state to a term of confinement in the state prison.

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

(11) "RECORD" MEANS THE VERBATIM RECORD OF ALL TESTIMONY RECORDED BY SHORTHAND, MACHINE, OR ELECTRONIC RECORDING DEVICE.

(12) "Supervising agency" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake and maintain the supervision of prisoners participating in the prisoner on furlough program.

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18 an applicant has been denied three times, he may appeal to
19 the director of the department for a hearing. An applicant
20 who has unsuccessfully appealed to the director of the
21 department may not reapply until 1 year has passed from the
22 date of the appeal hearing."

23 Section 9. Section 46-23-415, MCA, is amended to read:

24 "46-23-415. Disposition of prisoner's earnings --
25 payment of expenses. (1) A prisoner ~~employed in the~~

1 ~~community under a work prisoner's~~ furlough plan shall enter
2 ~~into~~ include a written financial agreement with the
3 supervising agency ~~and the department~~ concerning the
4 acquisition and disposition of ~~his earnings funds~~. This
5 financial agreement shall provide for the payment of:

6 (a) a standard charge for providing food, lodging, and
7 clothing for the prisoner, ~~if incurred and~~ if applicable;

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

11 (c) an amount ~~to pay~~ for the support of his
12 dependents, ~~which amount shall be paid to the dependents;~~
13 ~~and~~

14 (d) court ordered restitution or other debts of the
15 prisoner; and

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

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

25 ~~(3) if no other sources of support are available, the~~

1 ~~costs of a prisoner under furlough who is in training or~~
2 ~~school shall be the responsibility of the state."~~

3 Section 10. Section 46-23-421, MCA, is amended to
4 read:

5 "46-23-421. Responsibility of department and
6 supervising agency. The department shall be responsible for
7 the activities of a prisoner participating in a on furlough
8 program under this part. The department may delegate
9 jurisdictional supervision of work prisoners on furlough
10 participants to the adult parole and probation field
11 service. The supervising agency shall be responsible for
12 those activities of a furloughed prisoner on furlough for
13 which it is responsible as provided in the written furlough
14 agreement."

15 Section 11. Section 46-23-422, MCA, is amended to
16 read:

17 "46-23-422. Violation of furlough agreement by
18 prisoner. (1) If any prisoner ~~released from actual~~ prison
19 confinement under the on furlough program fails to comply
20 with the rules of the furlough agreement, he shall be called
21 by the department ~~or by~~ and the supervising agency to appear
22 before the department ~~or and~~ the supervising agency for a
23 conference.

24 ~~{2} If a conference is not sufficient to resolve the~~
25 situation problem and if the prisoner continues persists in

1 ~~his noncompliance, the prisoner shall be granted a due~~
2 ~~process hearing on with respect to the violation within a~~
3 ~~reasonable time on or near the site of the alleged violation~~
4 ~~to determine whether a violation of there is probable cause~~
5 ~~to believe the prisoner has violated the furlough agreement~~
6 ~~exists. The prisoner is entitled to have counsel appointed~~
7 ~~to represent him at the hearing at his expense. The hearing~~
8 ~~shall be conducted by a hearing hearings officer of the~~
9 ~~board of pardons department. The prisoner on furlough shall~~
10 ~~have all opportunities provided under 46-23-1024 and~~
11 ~~46-23-1025 pertaining with respect to on-site hearings for~~
12 ~~parole revocation. If reasonable grounds are probable cause~~
13 ~~is established for violation of the furlough agreement, the~~
14 ~~furlough shall be cancelled suspended and the prisoner shall~~
15 ~~be returned to the prison.~~

16 ~~{3} {2} IF A CONFERENCE IS NOT SUFFICIENT TO RESOLVE~~
17 ~~THE PROBLEM, THE PRISONER SHALL BE RETURNED TO THE PRISON.~~

18 At the next meeting of the board of pardons after following
19 the prisoner's return of the prisoner to the prison, the
20 prisoner shall be granted a due process revocation DUE
21 PROCESS hearing in order to determine if the prisoner has in
22 fact violated the terms of the prisoner's his furlough
23 release agreement. If it is determined that the prisoner
24 has in fact violated the terms of the prisoner's furlough
25 agreement, the prisoner his furlough shall remain at the

1 ~~prison be terminated. If the terms of the prisoner's~~
 2 ~~release have furlough agreement has not been violated, the~~
 3 ~~prisoner's case furlough shall be assigned to a parole agent~~
 4 ~~and a new furlough arrangement shall be worked out~~
 5 ~~reinstated if the conditions of the agreement remain~~
 6 ~~applicable~~ OR REVISED. THE PRISONER IS ENTITLED TO HAVE
 7 COUNSEL AT THE HEARING AT HIS OWN EXPENSE.

8 Section 12. Section 46-23-423, MCA, is amended to
 9 read:

10 "46-23-423. Immediate reincarceration if threat to
 11 community. If the department determines, after ~~having been~~
 12 ~~being~~ advised by the supervising agency or the adult parole
 13 and probation field service, that a prisoner on furlough
 14 ~~on immediate~~ a grave threat to the community in
 15 which he is furloughed, it may order the prisoner returned
 16 to prison before a hearing is held. In this case, a hearing
 17 on THE RECORD OF the charges against the prisoner, as
 18 provided for in 46-23-422, must be held by the board no
 19 later than 30 days after the prisoner's return of the
 20 prisoner to the state prison."

21 Section 13. Section 46-23-424, MCA, is amended to
 22 read:

23 "46-23-424. When prisoner dissatisfied with program.
 24 If, after a reasonable time 30 days, a furloughed prisoner
 25 on furlough determines finds that his furlough plan is

1 unsatisfactory due to a personality conflict, a violation of
 2 his rights by his supervisor supervising agency, or a change
 3 of interest or employment status, the department shall grant
 4 him a hearing to determine whether or not a new furlough
 5 plan should be executed developed."

6 Section 14. Section 46-23-425, MCA, is amended to
 7 read:

8 "46-23-425. When prisoner not benefiting from program.

9 (1) The prisoner, the department, or the supervising agency
 10 may request that a conference be held with the department,
 11 the prisoner, and a representative of the supervising agency
 12 to consider the problem of the prisoner's unemployment,
 13 disability, or inability to benefit from schooling or
 14 training if the prisoner:

15 (a) while not disabled from working by temporary
 16 illness, is unemployed for a period of 30 days or more after
 17 ~~his availability for employment is reported in writing by~~
 18 ~~the supervising agency to the department of labor and~~
 19 ~~industry office serving the area in which the prisoner is~~
 20 ~~furloughed and to any union to which the prisoner belongs;~~

21 (b) has become so disabled as to be unemployable; or

22 (c) ~~is on an educational furlough~~ and has demonstrated
 23 for a period of 6 weeks or more that he is unable to benefit
 24 from schooling, treatment, or training.

25 (2) At this conference the prisoner may request what

1 supervision be transferred to another supervising agency,
2 and a representative of the new agency may be ~~at~~ attend the
3 conference.

4 (3) If ~~the problem is not resolved at~~ the conference
5 ~~does not result in a resolution of the problem of the~~
6 ~~prisoner's unemployment, disability, or inability to~~
7 ~~benefit, the department may request a hearing ON THE RECORD~~
8 ~~by the board of pardons to determine an alternate proposal.~~
9 ~~in At this hearing the prisoner is entitled to have~~ may be
10 represented by counsel appointed to represent him at his own
11 expense. Upon ~~determining~~ if the board determines that the
12 prisoner is not benefiting from the furlough program and
13 will not benefit from continued participation in the
14 program, the board shall order the prisoner returned to the
15 prison."

16 Section 15. Section 46-23-426, MCA, is amended to
17 read:

18 "46-23-426. Escape. ~~For the purpose of this part, the~~
19 ~~provisions relating to escape~~ Escape, as defined in
20 46-23-401(5), is punishable as provided in 45-7-306 shall
21 apply unless aggravating circumstances require a more severe
22 penalty."

23 Section 16. Section 45-7-306, MCA, is amended to read:

24 "45-7-306. Escape. (1) "Official detention" means
25 imprisonment which resulted from a conviction for an

1 offense, confinement for an offense, confinement of a person
2 charged with an offense, detention by a peace officer
3 pursuant to arrest, detention for extradition or
4 deportation, supervision of a prisoner on furlough, or any
5 lawful detention for the purpose of the protection of the
6 welfare of the person detained or for the protection of
7 society. "Official detention" does not include supervision
8 of probation or parole, constraint incidental to release on
9 bail, or an unlawful arrest unless the person arrested
10 employed physical force, a threat of physical force, or a
11 weapon to escape.

12 (2) A person subject to official detention commits the
13 offense of escape if he knowingly or purposely removes
14 himself from official detention or fails to return to
15 official detention following temporary leave granted for a
16 specific purpose or limited time.

17 (3) A person convicted of the offense of escape shall
18 be:

19 (a) imprisoned in the state prison for a term not to
20 exceed 20 years if he escapes from a state prison, county
21 jail, or city jail by the use or threat of force, physical
22 violence, weapon, or simulated weapon;

23 (b) imprisoned in the state prison for a term not to
24 exceed 10 years if he:

25 (i) escapes from a state prison, county jail, or city

1 jail; or

2 (ii) escapes from another official detention by the use
3 or threat of force, physical violence, weapon, or simulated
4 weapon; or

5 (iii) escapes while on furlough pursuant to Title 46,
6 chapter 23, part 4; or

7 (c) fined not to exceed \$500 or imprisoned in the
8 county jail for a term not to exceed 6 months, or both, if
9 he commits escape under circumstances other than (a) and (b)
10 of this subsection."

11 Section 17. Repealer. Section 46-23-414, MCA, is
12 repealed.

-End-

HOUSE BILL NO. 248

INTRODUCED BY MENAHAN

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; AMENDING SECTIONS 45-7-306, 46-23-401 THROUGH 46-23-405, 46-23-411 THROUGH 46-23-413, AND 46-23-415 THROUGH 46-23-426, MCA; AND REPEALING SECTION 46-23-414, MCA."

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

Section 1. Section 46-23-401, MCA, is amended to read:

"46-23-401. Definitions. Unless the context requires otherwise specified, in this part the following definitions apply in this part:

(1) "Applicant" means any prisoner who has signed an application applied to participate in the prisoner furlough program.

(2) "Application" means the forms provided by the department accompanied by supporting documents.

(3) "Board" means the board of pardons provided for in 2-15-2302.

(4) "Department" means the department of institutions provided for in 2-15-2301.

(5) "Jail" means any county jail or tribal jail.

(5) "Escape" means an unexcused departure from supervision or approved activity by a prisoner on furlough.

(6) "Furlough" means a prisoner's participation in a work, school, or treatment AN EDUCATIONAL, TREATMENT, OR TRAINING program, not within prison, prior to the prisoner's release on parole.

(7) "Plan" means a complete program of furlough activity proposed by a prisoner.

(8) "Prison" means a correctional facility for adults, which is under the direction of or under contract with the department.

(9) "Prisoner" means a person sentenced by a district court of this state to a term of confinement in the state prison.

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

(11) "RECORD" MEANS THE VERBATIM RECORD OF ALL TESTIMONY RECORDED BY SHORTHAND, MACHINE, OR ELECTRONIC RECORDING DEVICE.

(12) "Supervising agency" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization agency approved by the department to undertake and maintain the supervision of prisoners participating in

1 the ~~a prisoner on~~ furlough program."

2 Section 2. Section 46-23-402, MCA, is amended to read:

3 "46-23-402. Purpose of prisoner furlough program. (1)

4 The purpose and intent of this part is to:

5 (a) establish a program under the direction of the
 6 department for the rehabilitation, education, and betterment
 7 advancement of selected prisoners ~~confined in the state~~
 8 ~~persons serving sentences in prison~~ PRISONERS, ~~placing the~~
 9 ~~establishment, regulation, guidance, and control of such~~
 10 ~~program under the direction of the department of~~
 11 ~~institutions;~~

12 (b) ~~increase their responsibility to society provide~~
 13 qualified persons PRISONERS with the opportunity to become
 14 more responsible members of society by aiding in the support
 15 of their dependents and/or continuing their education and
 16 training;

17 (c) ~~provide for the minimum hourly wage required by~~
 18 ~~law or the prevailing rate of pay for persons employed in~~
 19 ~~similar occupations by the same employer to be paid to said~~
 20 ~~convicts while so employed~~ help relieve the substantial cost
 21 to the state of providing for the care and needs of selected
 22 persons PRISONERS;

23 (d) ~~make it possible that they may work gainfully to~~
 24 ~~support their dependents in whole or in part while serving~~
 25 ~~their sentences, continue their education or training, and~~

1 ~~at the same time fulfill the obligations of the sentence of~~
 2 ~~imprisonment imposed;~~

3 (2) The prisoner furlough program shall operate ~~by~~
 4 ~~supplementing and not replacing established penal procedures~~
 5 ~~now or hereafter established by law and shall serve to~~
 6 ~~extend the limits of confinement for treatment as well as~~
 7 ~~jurisdictional purposes~~ be considered an extension of the
 8 boundaries of confinement of selected persons PRISONERS.

9 (3) This part is to be liberally construed to effect
 10 the overall objectives set forth in this section."

11 Section 3. Section 46-23-403, MCA, is amended to read:

12 "46-23-403. Prisoner not agent or involuntary servant.
 13 No prisoner ~~in the community under the provisions of this~~
 14 ~~part on furlough~~ may be considered to be an agent or
 15 involuntary servant of the department or of the his
 16 supervising agency while released from confinement pursuant
 17 to the terms of the furlough program. Abuse of authority,
 18 over a prisoner on furlough by a state officer is official
 19 misconduct punishable as provided in 45-7-401. Mistreatment
 20 of a prisoner on furlough by a state officer is punishable
 21 as provided in 45-5-204."

22 Section 4. Section 46-23-404, MCA, is amended to read:

23 "46-23-404. No ~~effect~~ Effect on eligibility for
 24 parole. Nothing in this part shall be construed to affect
 25 eligibility for parole. Time served ~~in the~~ on furlough

1 program shall be considered as--a part of the imposed
 2 PRISONER'S sentence of--such--prisoner. Good time shall
 3 accrue as provided in 53-30-102."

4 Section 5. Section 46-23-405, MCA, is amended to read:
 5 "46-23-405. Establishing program -- rules. The
 6 department is authorized and directed to establish a
 7 furlough program and make rules in accordance with Title 2,
 8 chapter 4, to implement and control the same program. Rules
 9 shall include provisions guidelines for:

10 (1) ~~working-at-paid-employment-for-a-rate-of--pay--not~~
 11 ~~less--than-the-minimum-hourly-wage-as-required-by-law-or-the~~
 12 ~~prevailing-rate-of--pay--for--persons--employed--in--similar~~
 13 ~~occupations-by-the-same-employer~~ prisoner eligibility;

14 (2) participating in an educational, treatment, or
 15 training program;

16 (3) financial arrangements with respect to paid
 17 employment and/or residence housing;

18 (4) ~~approval of supervising agency agencies; and~~

19 (5) ~~review of determinations----in~~ furlough
 20 ~~application applications."~~

21 Section 6. Section 46-23-411, MCA, is amended to read:
 22 "46-23-411. Application to participate -- eligibility.
 23 Any prisoner ~~confined-in-the-state-prison,~~ except a prisoner
 24 serving a sentence imposed under 46-18-202(2), may make
 25 submit an application to participate in the furlough program

1 ~~at--least--by-the-time-the-inmate-has-served-one-half-of-the~~
 2 ~~time-required-to-be-considered-for-parole-if-he-IS-WITHIN-2~~
 3 ~~YEARS-OF-HIS-PAROLE-ELIGIBILITY-AND-is-within-2-years-of-his~~
 4 ~~parole--eligibility--or--discharge--date~~ HAS SERVED AT LEAST
 5 ONE-HALF OF THE TIME REQUIRED FOR PAROLE and qualifies under
 6 the rules established by the department. ~~However--if--a~~
 7 ~~prisoner--is--returned--on--a-parole-violation-and-the-board~~
 8 ~~determines-that-his-parole-will-be-revoked-and-that-he--will~~
 9 ~~be--ineligible--to-reapply-for-parole--he-is-not-eligible-to~~
 10 ~~participate-in-the-furlough-program."~~

11 Section 7. Section 46-23-412, MCA, is amended to read:
 12 "46-23-412. Board's action on application. (1) ~~At--the~~
 13 ~~meeting-of-the-board-following-the-signing-of-any-prisoner's~~
 14 ~~application--the~~ the board shall approve or deny the
 15 application of each prisoner after careful study of the
 16 prisoner's furlough plans plan, criminal history, and all
 17 other pertinent case material. The ~~following-rules-shall--be~~
 18 ~~observed--when--the~~ board shall observe the following rules
 19 ~~when it~~ meets to consider an application:

20 (a) Each applicant may call two witnesses from outside
 21 or inside the institution to testify as with respect to the
 22 applicant's general attitude, participation in self-help
 23 activities, or his character, or job references.

24 (b) An applicant may remain be present during the
 25 board proceedings on his application; however, the board may

1 meet in executive session without the applicant present for
 2 final decision on the application.

3 (c) Each applicant shall be viewed singly and ~~shall be~~
 4 recognized as an individual.

5 (d) Each applicant shall be allowed to discuss any
 6 specific problem areas with any member of the board.

7 (e) The board shall ~~cease notify~~ the applicant to be
 8 notified of its decision immediately and shall provide the
 9 applicant with a written decision, including a ~~thorough~~
 10 statement of the reasons for the decision, within 2 days
 11 following adjournment.

12 (2) Except as provided in 46-23-413, final authority
 13 in granting or revoking prisoner furloughs rests with the
 14 board. Final authority in all other matters pertaining
 15 relating to prisoner furloughs is in the department."

16 Section 8. Section 46-23-413, MCA, is amended to read:

17 "46-23-413. Reapplication where denied. If the a
 18 prisoner's application is denied by the board, the prisoner
 19 may reapply after 6 months~~^~~-time months have passed. After
 20 an applicant has been denied three times, he may appeal to
 21 the director of the department for a hearing. An applicant
 22 who has unsuccessfully appealed to the director of the
 23 department may not reapply until 1 year has passed from the
 24 date of the appeal hearing."

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 6 acquisition and disposition of his ~~earnings funds.~~ This
 7 financial agreement shall provide for the payment of:

8 (a) a standard charge for ~~providing~~ food, lodging, and
 9 clothing for the prisoner, ~~if incurred and if applicable;~~

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 11 ~~of the prisoner under while on furlough from--actual~~
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 14 dependents, ~~which amount shall be paid to the dependents;~~
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 17 prisoner; and

18 ~~(d)(i)~~ an allowance for personal items and other
 19 expenses ~~or disbursements~~ agreed upon by the prisoner, and
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 22 provides for ~~other disbursement of the money otherwise,~~ any
 23 balance remaining after ~~deductions and making such~~ payments
 24 shall be deposited to in an interest-bearing account held in
 25 trust for the prisoner and shall be paid to him ~~upon release~~

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 22 with the rules of the furlough agreement, he shall be called
 23 by the department or by and the supervising agency to appear
 24 before the department or and the supervising agency for a
 25 conference.

1 ~~{2}--if-a-conference-is-not-sufficient-to-resolve-the~~
 2 ~~situation-problem-and-if-the-prisoner-continues-persists--in~~
 3 ~~his--noncompliance--the--prisoner--shall--be--granted-a--due~~
 4 ~~process-hearing-on-with-respect-to-the--violation--within--a~~
 5 ~~reasonable-time-on-or-near-the-site-of-the-alleged-violation~~
 6 ~~to--determine-whether-a-violation-of--there-is-probable-cause~~
 7 ~~to-believe-the-prisoner-has-violated-the-furlough--agreement~~
 8 ~~exists--The--prisoner-is-entitled-to-have-counsel--appointed~~
 9 ~~to-represent-him-at-the-hearing-at-his-expense--The--hearing~~
 10 ~~shall--be--conducted--by--a--hearing--hearings--officer-of-the~~
 11 ~~board-of-pardons--department--The-prisoner-on-furlough-shall~~
 12 ~~have--all--opportunities--provided--under--46-23-1024--and~~
 13 ~~46-23-1025--pertaining--with-respect-to-on-site-hearings-for~~
 14 ~~parole-revocations--if-reasonable-grounds-are-probable--cause~~
 15 ~~is--established-for-violation-of-the-furlough-agreement--the~~
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- 18 illness, is unemployed for a period of 30 days or more after
- 19 his--availability--for--employment--is--reported--in--writing--by
- 20 the-supervising--agency--to--the--department--of--labor--and
- 21 industry--office--serving--the--area--in--which--the--prisoner--is
- 22 furloughed-and-to-any-union-to-which-the--prisoner--belongs;
- 23 (b) has become so disabled as to be unemployable; or
- 24 (c) is-on-an-educational-furlough-and has demonstrated
- 25 for a period of 6 weeks or more that he is unable to benefit

1 from schooling, treatment, or training.

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25 Section 16. Section 45-7-306, MCA, is amended to read:

1 "45-7-306. Escape. (1) "Official detention" means
2 imprisonment which resulted from a conviction for an
3 offense, confinement for an offense, confinement of a person
4 charged with an offense, detention by a peace officer
5 pursuant to arrest, detention for extradition or
6 deportation, supervision of a prisoner on furlough, or any
7 lawful detention for the purpose of the protection of the
8 welfare of the person detained or for the protection of
9 society. "Official detention" does not include supervision
10 of probation or parole, constraint incidental to release on
11 bail, or an unlawful arrest unless the person arrested
12 employed physical force, a threat of physical force, or a
13 weapon to escape.

14 (2) A person subject to official detention commits the
15 offense of escape if he knowingly or purposely removes
16 himself from official detention or fails to return to
17 official detention following temporary leave granted for a
18 specific purpose or limited time.

19 (3) A person convicted of the offense of escape shall
20 be:

21 (a) imprisoned in the state prison for a term not to
22 exceed 20 years if he escapes from a state prison, county
23 jail, or city jail by the use or threat of force, physical
24 violence, weapon, or simulated weapon;

25 (b) imprisoned in the state prison for a term not to

1 exceed 10 years if he:

2 (i) escapes from a state prison, county jail, or city
3 jail; or

4 (ii) escapes from another official detention by the use
5 or threat of force, physical violence, weapon, or simulated
6 weapon; or

7 (iii) escapes while on furlough pursuant to Title 46,
8 chapter 23, part 4; or

9 (c) fined not to exceed \$500 or imprisoned in the
10 county jail for a term not to exceed 6 months, or both, if
11 he commits escape under circumstances other than (a) and (b)
12 of this subsection."

13 Section 17. Repealer. Section 46-23-414, MCA, is
14 repealed.

-End-

1 STATEMENT OF INTENT RE: HB 248

2

3

4 A statement of intent is required for this bill in that
5 it delegates authority to adopt rules in section 2.

6 Section 2 (section 46-23-405, MCA) directs the
7 Department of Institutions to adopt rules which include
8 guidelines concerning prisoner eligibility to participate in
9 the prisoner furlough program. Such guidelines are intended
10 to provide objective criteria for evaluating each
11 individual's chance for success such as the type of crime
12 for which he is incarcerated, prior felonies, revocations of
13 parole, escapes, and time to parole eligibility. Each
14 prisoner is to be given points under each criterion, and
15 each criterion is to be weighted in accordance with its
16 relative importance.

17 First adopted by the SENATE COMMITTEE ON JUDICIARY on
18 March 8, 1979.

HE 248

HOUSE BILL NO. 248

INTRODUCED BY MENAHAN

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM BY ALLOWING MORE FLEXIBILITY IN THE AMOUNT OF COMPENSATION A FURLONGHEE MUST RECEIVE, REQUIRING A FURLONGHEE TO PAY FOR COUNSEL TO REPRESENT HIM AT HEARINGS, AND CLARIFYING ELIGIBILITY TO PARTICIPATE; AMENDING SECTIONS ~~45-7-306, 46-23-401, THROUGH 46-23-402,~~ 46-23-405, 46-23-411, ~~THROUGH 46-23-413~~ 46-23-422, AND 46-23-425 ~~THROUGH 46-23-426~~ 46-23-425, MCA; AND REPEALING SECTION ~~46-23-414, MCA.~~"

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

Refer to Third Reading

(Strike everything after the enacting clause and insert:)

Section 1. Section 46-23-402, MCA, is amended to read:

"46-23-402. Purpose of prisoner furlough program. (1)

The purpose and intent of this part is to:

- (a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase their responsibility to society;

~~(c) provide for the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer to be paid to said convicts while so employed;~~

~~(d) make it possible that they may work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.~~

(2) The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

(3) This part is to be liberally construed to effect the overall objectives set forth in this section."

Section 2. Section 46-23-405, MCA, is amended to read:

"46-23-405. Establishing program -- rules. The department is authorized and directed to establish a furlough program and make rules in accordance with Title 2, chapter 4, to implement and control the same. Rules shall include provisions guidelines for:

- (1) working ~~at paid employment for a rate of pay not less than the minimum hourly wage as required by law or the~~

1 ~~prevailing--rate--of--pay--for--persons--employed--in--similar~~
2 ~~occupations--by--the--same--employer~~ prisoner eligibility:

3 (2) participating in an educational, treatment, or
4 training program;

5 (3) approval of supervising agency; and

6 (4) review of determinations in furlough application."

7 Section 3. Section 46-23-411, MCA, is amended to read:

8 "46-23-411. Application to participate ~~is~~ ELIGIBILITY.

9 Any prisoner confined in the state prison, except a prisoner
10 serving a sentence imposed under 46-18-202(2), may make
11 application to participate in the furlough program ~~at--least~~
12 ~~by--the--time--the--inmate~~ if he has served at least one-half of
13 the time required to be considered for parole and qualifies
14 under the rules established by the department."

15 Section 4. Section 46-23-422, MCA, is amended to read:

16 "46-23-422. Violation of furlough agreement by
17 prisoner. (1) If any prisoner released from actual prison
18 confinement under the furlough program fails to comply with
19 the rules of the furlough agreement, he shall be called by
20 the department or by the supervising agency to appear before
21 the department or supervising agency.

22 (2) If a conference is not sufficient to resolve the
23 situation and if the prisoner continues in his
24 noncompliance, the prisoner shall be granted a hearing on
25 the violation within a reasonable time on or near the site

1 of the alleged violation to determine whether a violation of
2 the furlough agreement exists. The prisoner ~~is--entitled--to~~
3 ~~have~~ may be represented by counsel appointed to represent
4 him at the hearing at his own expense. The hearing shall be
5 conducted by a hearing officer of the board of pardons. The
6 prisoner on furlough shall have all opportunities provided
7 under 46-23-1024 and 46-23-1025 pertaining to on-site
8 hearings for parole revocation. If reasonable grounds are
9 established for violation of the furlough agreement, the
10 furlough shall be cancelled and the prisoner shall be
11 returned to the prison.

12 (3) At the next meeting of the board of pardons after
13 the return of the prisoner to the prison, the prisoner shall
14 be granted a due process hearing in order to determine if
15 the prisoner has in fact violated the terms of the
16 prisoner's furlough release. If it is determined that the
17 prisoner has in fact violated the terms of the prisoner's
18 furlough, the prisoner shall remain at the prison. If the
19 terms of the prisoner's release have not been violated, the
20 prisoner's case shall be assigned to a parole agent and a
21 new furlough arrangement shall be worked out."

22 Section 5. Section 46-23-425, MCA, is amended to read:

23 "46-23-425. When prisoner not benefiting from program.

24 (1) The prisoner, the department, or the supervising agency
25 may request that a conference be held with the department,

1 the prisoner, and a representative of the supervising agency
 2 to consider the problem of the prisoner's unemployment,
 3 disability, or inability to benefit from schooling or
 4 training if the prisoner:

5 (a) while not disabled from working by temporary
 6 illness, is unemployed for a period of 30 days or more after
 7 his availability for employment is reported in writing by
 8 the supervising agency to the department of labor and
 9 industry office serving the area in which the prisoner is
 10 furloughed and to any union to which the prisoner belongs;

11 (b) has become so disabled as to be unemployable; or

12 (c) is on an educational furlough and has demonstrated
 13 for a period of 6 weeks or more that he is unable to benefit
 14 from schooling, treatment, or training.

15 (2) At this conference the prisoner may request that
 16 supervision be transferred to another supervising agency,
 17 and a representative of the new agency may be at the
 18 conference.

19 (3) If the conference does not result in a resolution
 20 of the problem of the prisoner's unemployment, disability,
 21 or inability to benefit, the department may request a
 22 hearing by the board of pardons to determine an alternate
 23 proposal. In this hearing the prisoner ~~is entitled to have~~
 24 may be represented by counsel ~~appointed to represent him at~~
 25 his own expense. Upon determining that the prisoner is not

1 benefiting from the furlough program and will not benefit
 2 from continued participation in the program, the board shall
 3 order the prisoner returned to the prison."

-End-

March 10, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 248 be amended as follows:

1. Title, line 5.

Strike: "GENERALLY"

2. Title, line 6.

Following: "PROGRAM"

Insert: "BY ALLOWING MORE FLEXIBILITY IN THE AMOUNT OF COMPENSATION A FURLOUGHEE MUST RECEIVE, REQUIRING A FURLOUGHEE TO PAY FOR COUNSEL TO REPRESENT HIM AT HEARINGS, AND CLARIFYING ELIGIBILITY TO PARTICIPATE"

3. Title, line 7.

Following: "SECTIONS"

Strike: "45-7-306, 46-23-401 THROUGH"

Insert: "46-23-402,"

4. Title, line 8.

Following: line 7

Strike: "THROUGH 46-23-413"

Insert: "46-23-422"

Following: "AND"

Strike: "46-23-415 THROUGH 46-23-426"

Insert: "46-23-425"

5. Title, lines 8 and 9.

Following: "MCA" on line 8

Strike: remainder of line 8 through "MCA" on line 9

6. Pages 1 through 15.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 46-23-402, MCA, is amended to read:

"46-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part is to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase their responsibility to society;

~~(c) provide for the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer to be paid for said convicts while so employed;~~

~~(d)~~ (c) make it possible that they may work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

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- (1) working-at-paid-employment-for-a-rate-of-pay-not-less-than-the minimum-hourly-wage-as-required-by-law-or-the-prevailing-rate-of-pay-for-persons-employed-in-similar-occupations-by-the-same-employer prisoner eligibility;
- (2) participating in an educational, treatment, or training program;
- (3) approval of supervising agency; and
- (4) review of determinations in furlough application."

Section 3. Section 46-23-411, MCA, is amended to read:

"46-23-411. Application to participate -- eligibility. Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough program at-least-by-the-time-the-inmate if he has served at least one-half of the time required to be considered for parole and qualifies under the rules established by the department."

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(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner is-entitled to-have may be represented by counsel appointed-to-represent-him at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.

(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

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(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs;

(b) has become so disabled as to be unemployable; or

(c) is on an educational furlough and has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.

(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference.

(3) If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to determine an alternate proposal. In this hearing the prisoner ~~is entitled to have~~ may be represented by counsel appointed to represent him at his own expense. Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison."