

SENATE BILL NO. 286

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE SENATE

January 26, 1981	Introduced and referred to Committee on Judiciary.
February 6, 1981	Committee recommend bill do pass as amended. Report adopted.
February 9, 1981	Bill printed and placed on members' desks.
February 10, 1981	Second reading, do pass as amended.
February 11, 1981	Correctly engrossed.
February 12, 1981	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

February 13, 1981	Introduced and referred to Committee on Judiciary.
March 25, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on the 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in as amended. Ayes, 92; Noes, 5.

IN THE SENATE

April 1, 1981 Returned from House with amendments.

April 4, 1981 On motion, consideration be passed for the day.

April 10, 1981 Second reading, amendments not concurred in

April 11, 1981 On motion Conference Committee requested and appointed.

April 15, 1981 Conference Committee dissolved.
On motion Free Conference Committee requested and appointed.

April 21, 1981 Free Conference Committee dissolved.
On motion, New Free Conference Committee requested and appointed.

April 22, 1981 New Free Conference Committee reported.

April 23, 1981 Second reading, new Free Conference Committee report adopted.
Third reading, new Free Conference Committee report adopted. Ayes, 47; Noes, 0. Transmitted to House.

IN THE HOUSE

April 23, 1981 New Free Conference Committee report adopted.

IN THE SENATE

April 23, 1981 Returned from House. Sent to enrolling.
Reported correctly enrolled.

1 *Amended* BILL NO. *286*
 2 INTRODUCED BY *Van Valkenburg*
 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; REDEFINING
 7 THE PROGRAM AS THE SUPERVISED RELEASED PROGRAM; RESTRICTING
 8 THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY;
 9 TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM
 10 FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE
 11 PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR
 12 ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE
 13 PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER;
 14 STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING
 15 WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED;
 16 AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401,
 17 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-422, AND
 18 46-23-426, MCA; AND REPEALING SECTIONS 46-23-402 THROUGH
 19 46-23-404, 46-23-406 THROUGH 46-23-410, 46-23-413 THROUGH
 20 46-23-421, AND 46-23-423 THROUGH 46-23-425, MCA."

21
 22 WHEREAS, a prisoner furlough program currently exists
 23 under sections 46-23-401 through 46-23-426, MCA;

24 WHEREAS, the Legislature realizes that the above-named
 25 statutes are no longer workable and cause conflicts of laws

1 and complication of efforts;
 2 WHEREAS, the Legislature supports the basic intent of
 3 the prisoner furlough program, hereafter referred to as the
 4 supervised release program, to provide education, training,
 5 and betterment of selected prisoners and to increase such
 6 prisoners' responsibility to society; and
 7 WHEREAS, the Legislature believes that the program can
 8 be administered in a more efficient and meaningful manner.

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

14 (1) "Applicant" means any prisoner who has signed is
 15 eligible under [section 3(1)] and who signs an application
 16 to participate in the prisoner-furlough supervised release
 17 program.

18 (2) "Board" means the board of pardons provided for in
 19 2-15-2302.

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

22 ~~(4) "Jail" means any county jail or tribal jail.~~

23 ~~(5)~~(4) "Prisoner" means a person sentenced by a state
 24 district court to a term of confinement in the state prison.

25 ~~(6)~~(5) "State prison" means the Montana state prison

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1 at Deer Lodge and or any adult correctional facility under
2 the direction of designated by the department.

3 ~~(7)(6)~~ "Supervising--agency" "Sponsor" means any
4 federal, state, county, local, or private agency, Indian
5 tribe and reservation, or any person, group, association, or
6 organization approved by the department to undertake the
7 supervision of prisoners participating in the furlough
8 supervised release program. The term does not include an
9 employer acting in that capacity and creating an
10 employer/employee relationship between the prisoner and
11 itself.

12 (7) "Supervising agent" means a probation and parole
13 officer of the department."

14 Section 2. Section 46-23-405, MCA, is amended to read:
15 "46-23-405. Establishing program -- rules. The
16 department is authorized and directed to establish a
17 furlough supervised release program and make rules in
18 accordance with Title 2, chapter 4 (the Montana
19 Administrative Procedure Act), to implement and control the
20 same. Rules shall include guidelines for:

- 21 (1) prisoner eligibility;
- 22 (2) participating prisoner participation in an a
23 recognized educational, treatment, or training program, but
24 not a work program;
- 25 (3) approval of supervising-agency and the sponsori

1 (4) review of determinations-in-furlough--application;
2 a board decision to deny an applicant admittance into the
3 program;

4 (5) supervision of the prisoner by or under the
5 direction of a supervising agent while he is in the program;

6 (6) conducting revocation hearings;

7 (7) establishment of a program by the prisoner; and

8 (8) any other provisions necessary to implement (this
9 act)."

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

11 "46-23-411. Application to participate -- eligibility,

12 (1) Any prisoner confined-in--the--state--prison, except a
13 prisoner serving a sentence imposed under 46-18-202(2), may
14 make application to participate in the furlough supervised
15 release program if he has served at least one-half of the
16 time required to be considered for parole and qualifies
17 under the rules established by the department not more than
18 15 months remain before he is eligible for parole.

19 (2) Prisoners serving sentences with the restriction
20 imposed under 46-18-202(2) are not eligible for
21 participation in the program.

22 (3) In order to be accepted into the program, an
23 applicant must qualify under the rules established by the
24 department."

25 Section 4. Section 46-23-412, MCA, is amended to read:

1 "46-23-412. Board's action on application. ~~{i} At the~~
 2 ~~meeting of the board following the signing of any prisoner's~~
 3 ~~application, the~~ The board shall approve or deny the
 4 application of each prisoner after careful study of the
 5 prisoner's furlough ~~release~~ plans, criminal history, and all
 6 other pertinent case material. ~~The following rules shall be~~
 7 ~~observed when the board meets to consider an application:~~

8 ~~{a) Each applicant may call two witnesses from outside~~
 9 ~~or inside the institution to testify as to the applicant's~~
 10 ~~general attitude, participation in self-help activities, or~~
 11 ~~his character or job references.~~

12 ~~{b) An applicant may remain present during the board~~
 13 ~~proceedings on his application; however, the board may meet~~
 14 ~~in executive session without the applicant for final~~
 15 ~~decision on the application.~~

16 ~~{c) Each applicant shall be viewed singly and shall be~~
 17 ~~recognized as an individual.~~

18 ~~{d) Each applicant shall be allowed to discuss any~~
 19 ~~specific problem areas with any member of the board.~~

20 ~~{e) The board shall cause the applicant to be notified~~
 21 ~~of its decision immediately and shall provide the applicant~~
 22 ~~with a written decision including a thorough statement of~~
 23 ~~the reasons for the decision within 2 days following~~
 24 ~~adjournment.~~

25 ~~{2) Final authority in all matters pertaining to~~

1 ~~prisoner furloughs is in the department. The board shall~~
 2 ~~grant the applicant a hearing consistent with the procedural~~
 3 ~~rules adopted by it for parole hearings pursuant to~~
 4 ~~46-23-218.~~"

5 Section 5. Section 46-23-422, MCA, is amended to read:

6 "46-23-422. Violation of furlough agreement supervised
 7 release program by prisoner == revocation. (1) If any
 8 prisoner released from actual prison confinement under the
 9 furlough program fails to comply with the rules of the
 10 furlough agreement, he shall be called by the department or
 11 by the supervising agency to appear before the department or
 12 supervising agency. If a prisoner in a supervised release
 13 program violates a condition established for the program,
 14 the department may issue a warrant for his arrest.

15 (2) If a conference is not sufficient to resolve the
 16 situation and if the prisoner continues in his
 17 noncompliance, the ~~the~~ prisoner shall be granted a hearing
 18 on the violation within a reasonable time on or near the
 19 site of the alleged violation to determine whether a
 20 violation of the furlough agreement supervised release
 21 conditions exists. The prisoner may be represented by
 22 counsel at the hearing at his own expense. The hearing shall
 23 be conducted by a hearing officer of the board of pardons
 24 department. The prisoner on furlough shall have all
 25 opportunities provided under 46-23-1024 and 46-23-1025

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1 pertaining to on-site hearings for parole revocation. If
 2 ~~reasonable grounds are established for violation of the~~
 3 ~~furlough agreements the furlough shall be cancelled and the~~
 4 ~~prisoner shall be returned to the prison. If probable cause~~
 5 is established that a violation of the supervised release
 6 has occurred, the prisoner shall be returned to the state
 7 prison.

8 (3) ~~At the next meeting of the board of pardons after~~
 9 ~~the return of the prisoner to the prison, the prisoner shall~~
 10 ~~be granted a due process hearing in order to determine if~~
 11 ~~the prisoner has in fact violated the terms of the~~
 12 ~~prisoner's furlough release. If it is determined that the~~
 13 ~~prisoner has in fact violated the terms of the prisoner's~~
 14 ~~furlough, the prisoner shall remain at the prison. Within a~~
 15 reasonable time after the prisoner's return to the state
 16 prison, the board shall conduct a revocation proceeding in
 17 accordance with rules established under 46-23-405.

18 (4) If the terms of the prisoner's release have not
 19 been violated, the prisoner's case shall be assigned to a
 20 parole supervising agent and a new furlough arrangement
 21 supervised release program shall be worked out."

22 Section 6. Section 46-23-426, MCA, is amended to read:

23 "46-23-426. Escape. ~~For the purpose of this part, the~~
 24 ~~provisions relating to escape in 45-7-306 shall apply unless~~
 25 ~~aggravating circumstances require a more severe penalty. A~~

1 person convicted of escape from a supervised release program
 2 is punishable as provided in 45-7-306. A person convicted of
 3 such an escape and sentenced therefor shall serve such
 4 sentence consecutively with the remainder of the original
 5 sentence as provided in 46-18-401."

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

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

20 (2) A person subject to official detention commits the
 21 offense of escape if he knowingly or purposely removes
 22 himself from official detention or fails to return to
 23 official detention following temporary leave granted for a
 24 specific purpose or limited time.

25 (3) A person convicted of the offense of escape shall

1 be:

2 (a) imprisoned in the state prison for a term not to
3 exceed 20 years if he escapes from a state prison, county
4 jail, or city jail, or supervised release program by the use
5 or threat of force, physical violence, weapon, or simulated
6 weapon;

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

9 (i) escapes from a state prison, county jail, or city
10 jail, or supervised release program;

11 (ii) escapes from another official detention by the use
12 or threat of force, physical violence, weapon, or simulated
13 weapon; or

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

18 Section 8. Section 45-9-101, MCA, is amended to read:

19 "45-9-101. Criminal sale of dangerous drugs. (1) A
20 person commits the offense of criminal sale of dangerous
21 drugs if he sells, barter, exchanges, gives away, or offers
22 to sell, barter, exchange, or give away or manufactures,
23 prepares, cultivates, compounds, or processes any dangerous
24 drug, as defined in 50-32-101.

25 (2) A person convicted of criminal sale of an opiate,

1 as defined in 50-32-101(18), shall be imprisoned in the
2 state prison for a term of not less than 2 years or more
3 than life, except as provided in 46-18-222.

4 (3) A person convicted of criminal sale of a dangerous
5 drug included in Schedule I or Schedule II pursuant to
6 50-32-222 or 50-32-224, except marijuana or
7 tetrahydrocannabinols, who has a prior conviction for
8 criminal sale of such a drug shall be imprisoned in the
9 state prison for a term of not less than 5 years or more
10 than life, except as provided in 46-18-222. Upon a third or
11 subsequent conviction for criminal sale of such a drug, he
12 shall be imprisoned in the state prison for a term of not
13 less than 10 years or more than life, except as provided in
14 46-18-222. Whenever a conviction under this subsection is
15 for criminal sale of such a drug to a minor, the sentence
16 shall include the restriction that the defendant be
17 ineligible for parole and participation in the prisoner
18 fortough supervised release program while serving his term.

19 (4) A person convicted of criminal sale of dangerous
20 drugs not otherwise provided for in subsection (2) or (3)
21 shall be imprisoned in the state prison for a term of not
22 less than 1 year or more than life.

23 (5) Practitioners and agents under their supervision
24 acting in the course of a professional practice, as defined
25 by 50-32-101, are exempt from this section."

1 Section 9. Section 46-18-202, MCA, is amended to read:
 2 "46-18-202. Additional restrictions on sentence. (1)
 3 The district court may also impose any of the following
 4 restrictions or conditions on the sentence provided for in
 5 46-18-201 which it considers necessary to obtain the
 6 objectives of rehabilitation and the protection of society:
 7 (a) prohibition of the defendant's holding public
 8 office;
 9 (b) prohibition of his owning or carrying a dangerous
 10 weapon;
 11 (c) restrictions on his freedom of association;
 12 (d) restrictions on his freedom of movement;
 13 (e) any other limitation reasonably related to the
 14 objectives of rehabilitation and the protection of society.
 15 (2) Whenever the district court imposes a sentence of
 16 imprisonment in the state prison for a term exceeding 1
 17 year, the court may also impose the restriction that the
 18 defendant be ineligible for parole and participation in the
 19 prisoner--furlough ~~supervised release~~ program while serving
 20 his term. If such a restriction is to be imposed, the court
 21 shall state the reasons for it in writing. If the court
 22 finds that the restriction is necessary for the protection
 23 of society, it shall impose the restriction as part of the
 24 sentence and the judgment shall contain a statement of the
 25 reasons for the restriction.

1 (3) The judge in a justice's, city, or municipal court
 2 does not have the authority to restrict an individual's
 3 rights as enumerated in subsections (1) and (2)."
 4 Section 10. Section 46-18-401, MCA, is amended to
 5 read:
 6 "46-18-401. Merger of sentences. (1) Unless the judge
 7 otherwise orders:
 8 (a) whenever a person serving a term of commitment
 9 imposed by a court in this state is committed for another
 10 offense, the shorter term or shorter remaining term shall be
 11 merged in the other term except as provided in subsection
 12 (5); and
 13 (b) whenever a person under suspended sentence or on
 14 probation for an offense committed in this state is
 15 sentenced for another offense, the period still to be served
 16 on suspended sentence or probation shall be merged in any
 17 new sentence of commitment or probation.
 18 (2) The court merging the sentences shall immediately
 19 furnish each of the other courts and penal institutions in
 20 which the defendant is confined under sentence with
 21 authenticated copies of its sentence, which must cite the
 22 sentences being merged.
 23 (3) If an unexpired sentence is merged pursuant to
 24 subsection (1), the court which imposed such sentence shall
 25 modify it in accordance with the effect of the merger.

1 (4) Separate sentences for two or more offenses shall
2 run concurrently unless the court otherwise orders.

3 (5) Except as provided in this subsection, whenever a
4 prisoner is sentenced for an offense committed while he was
5 imprisoned in the state prison or while he was released on
6 parole or under the prisoner-furlough ~~supervised release~~
7 program, the new sentence runs consecutively with the
8 remainder of the original sentence. The prisoner starts
9 serving the new sentence when the original sentence has
10 expired or when he is released on parole under chapter 23,
11 part 2, of this title in regard to the original sentence,
12 whichever is sooner. In the latter case, the sentences run
13 concurrently from the time of his release on parole."

14 Section 11. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

20 Section 12. Repealer. Sections 46-23-402 through
21 46-23-404, 46-23-406 through 46-23-410, 46-23-413 through
22 46-23-421, and 46-23-423 through 46-23-425, MCA, are
23 repealed.

-End-

Approved by Committee on Judiciary

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 2 INTRODUCED BY VAN VALKENBERG
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
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23 under sections 46-23-401 through 46-23-426, MCA;

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 13 program, or any lawful detention for the purpose of the
 14 protection of the welfare of the person detained or for the
 15 protection of society. "Official detention" does not
 16 include supervision of probation or parole, constraint
 17 incidental to release on bail, or an unlawful arrest unless
 18 the person arrested employed physical force, a threat of
 19 physical force, or a weapon to escape.

20 (2) A person subject to official detention commits the
 21 offense of escape if he knowingly or purposely removes
 22 himself from official detention or fails to return to
 23 official detention following temporary leave granted for a
 24 specific purpose or limited time.

25 (3) A person convicted of the offense of escape shall

1 be:

2 (a) imprisoned in the state prison for a term not to
3 exceed 20 years if he escapes from a state prison, county
4 jail, or city jail, or supervised release program by the use
5 or threat of force, physical violence, weapon, or simulated
6 weapon;

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

9 (i) escapes from a state prison, county jail, or city
10 jail, or supervised release program;

11 (ii) escapes from another official detention by the use
12 or threat of force, physical violence, weapon, or simulated
13 weapon; or

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

18 Section 8. Section 45-9-101, MCA, is amended to read:

19 "45-9-101. Criminal sale of dangerous drugs. (1) A
20 person commits the offense of criminal sale of dangerous
21 drugs if he sells, barter, exchanges, gives away, or offers
22 to sell, barter, exchange, or give away or manufactures,
23 prepares, cultivates, compounds, or processes any dangerous
24 drug, as defined in 50-32-101.

25 (2) A person convicted of criminal sale of an opiate,

1 as defined in 50-32-101(18), shall be imprisoned in the
2 state prison for a term of not less than 2 years or more
3 than life, except as provided in 46-18-222.

4 (3) A person convicted of criminal sale of a dangerous
5 drug included in Schedule I or Schedule II pursuant to
6 50-32-222 or 50-32-224, except marijuana or
7 tetrahydrocannabinols, who has a prior conviction for
8 criminal sale of such a drug shall be imprisoned in the
9 state prison for a term of not less than 5 years or more
10 than life, except as provided in 46-18-222. Upon a third or
11 subsequent conviction for criminal sale of such a drug, he
12 shall be imprisoned in the state prison for a term of not
13 less than 10 years or more than life, except as provided in
14 46-18-222. Whenever a conviction under this subsection is
15 for criminal sale of such a drug to a minor, the sentence
16 shall include the restriction that the defendant be
17 ineligible for parole and participation in the prisoner
18 furlough supervised release program while serving his term.

19 (4) A person convicted of criminal sale of dangerous
20 drugs not otherwise provided for in subsection (2) or (3)
21 shall be imprisoned in the state prison for a term of not
22 less than 1 year or more than life.

23 (5) Practitioners and agents under their supervision
24 acting in the course of a professional practice, as defined
25 by 50-32-101, are exempt from this section."

1 Section 9. Section 46-19-202, MCA, is amended to read:
 2 "46-18-202. Additional restrictions on sentence. (1)
 3 The district court may also impose any of the following
 4 restrictions or conditions on the sentence provided for in
 5 46-18-201 which it considers necessary to obtain the
 6 objectives of rehabilitation and the protection of society:
 7 (a) prohibition of the defendant's holding public
 8 office;
 9 (b) prohibition of his owning or carrying a dangerous
 10 weapon;
 11 (c) restrictions on his freedom of association;
 12 (d) restrictions on his freedom of movement;
 13 (e) any other limitation reasonably related to the
 14 objectives of rehabilitation and the protection of society.
 15 (2) Whenever the district court imposes a sentence of
 16 imprisonment in the state prison for a term exceeding 1
 17 year, the court may also impose the restriction that the
 18 defendant be ineligible for parole and participation in the
 19 prisoner-furlough supervised release program while serving
 20 his term. If such a restriction is to be imposed, the court
 21 shall state the reasons for it in writing. If the court
 22 finds that the restriction is necessary for the protection
 23 of society, it shall impose the restriction as part of the
 24 sentence and the judgment shall contain a statement of the
 25 reasons for the restriction.

1 (3) The judge in a justice's, city, or municipal court
 2 does not have the authority to restrict an individual's
 3 rights as enumerated in subsections (1) and (2)."
 4 Section 10. Section 46-18-401, MCA, is amended to
 5 read:
 6 "46-18-401. Merger of sentences. (1) Unless the judge
 7 otherwise orders:
 8 (a) whenever a person serving a term of commitment
 9 imposed by a court in this state is committed for another
 10 offense, the shorter term or shorter remaining term shall be
 11 merged in the other term except as provided in subsection
 12 (5); and
 13 (b) whenever a person under suspended sentence or on
 14 probation for an offense committed in this state is
 15 sentenced for another offense, the period still to be served
 16 on suspended sentence or probation shall be merged in any
 17 new sentence of commitment or probation.
 18 (2) The court merging the sentences shall immediately
 19 furnish each of the other courts and penal institutions in
 20 which the defendant is confined under sentence with
 21 authenticated copies of its sentence, which must cite the
 22 sentences being merged.
 23 (3) If an unexpired sentence is merged pursuant to
 24 subsection (1), the court which imposed such sentence shall
 25 modify it in accordance with the effect of the merger.

1 (4) Separate sentences for two or more offenses shall
2 run concurrently unless the court otherwise orders.

3 (5) Except as provided in this subsection, whenever a
4 prisoner is sentenced for an offense committed while he was
5 imprisoned in the state prison or while he was released on
6 parole or under the ~~prisoner--furlough~~ supervised release
7 program, the new sentence runs consecutively with the
8 remainder of the original sentence. The prisoner starts
9 serving the new sentence when the original sentence has
10 expired or when he is released on parole under chapter 23,
11 part 2, of this title in regard to the original sentence,
12 whichever is sooner. In the latter case, the sentences run
13 concurrently from the time of his release on parole."

14 Section 11. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

20 Section 12. Repealer. Sections 46-23-402 through
21 46-23-404, 46-23-406 through ~~46-23-410~~, 46-23-413 through
22 ~~46-23-415~~, 46-23-421, and 46-23-423 through 46-23-425, MCA,
23 are repealed.

-end-

1 SENATE BILL NO. 286

2 INTRODUCED BY VAN VALKENBERG

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; REDEFINING
7 THE PROGRAM AS THE SUPERVISED ~~RELEASED~~ RELEASE PROGRAM;
8 RESTRICTING THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY;
9 TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM
10 FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE
11 PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR
12 ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE
13 PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER;
14 STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING
15 WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED;
16 AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401,
17 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-422, AND
18 46-23-426, MCA; AND REPEALING SECTIONS 46-23-402 THROUGH
19 46-23-404, 46-23-406 ~~THROUGH--46-23-410~~, 46-23-413 THROUGH
20 ~~46-23-415~~, 46-23-421, AND 46-23-423 THROUGH 46-23-425, "MCA."

21
22 WHEREAS, a prisoner furlough program currently exists
23 under sections 46-23-401 through 46-23-426, MCA;

24 WHEREAS, the Legislature realizes that the above-named
25 statutes are no longer workable and cause conflicts of laws

1 and complication of efforts;

2 WHEREAS, the Legislature supports the basic intent of
3 the prisoner furlough program, hereafter referred to as the
4 supervised release program, to provide education, training,
5 and betterment of selected prisoners and to increase such
6 prisoners' responsibility to society; and

7 WHEREAS, the Legislature believes that the program can
8 be administered in a more efficient and meaningful manner.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

12 "46-23-401. Definitions. Unless the context requires
13 otherwise, in this part the following definitions apply:

14 (1) "Applicant" means any prisoner who ~~has--signed~~ is
15 eligible under [section--3(1)] 46-23-411 and who signs an
16 application to participate in the prisoner--furlough
17 supervised release program.

18 (2) "Board" means the board of pardons provided for in
19 2-15-2302.

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

22 ~~{4}--"Jail"--means-any-county-jail-or-tribal-jail--~~

23 ~~{5}{4}~~ "Prisoner" means a person sentenced by a state
24 district court to a term of confinement in the state prison.

25 ~~{6}{5}~~ "State prison" means the Montana state prison

1 at Deer Lodge and or any adult correctional facility under
2 ~~the direction of~~ designated by the department.

3 ~~(7)(6)~~ "Supervising---agency" "Sponsor" means any
4 federal, state, county, local, or private agency, Indian
5 tribe and reservation, or any person, group, association, or
6 organization approved by the department to undertake the
7 supervision of prisoners participating in the furlough
8 supervised release program. ~~the term does not include an~~
9 ~~employer acting in that capacity and creating an~~
10 ~~employer/employee relationship between the prisoner and~~
11 ~~itself.~~

12 (7) "Supervising agent" means a probation and parole
13 officer of the department."

14 Section 2. Section 46-23-405, MCA, is amended to read:
15 "46-23-405. Establishing program -- rules. The
16 department is authorized and directed to establish a
17 furlough supervised release program and make rules in
18 accordance with Title 2, chapter 4 (the Montana
19 Administrative Procedure Act), to implement and control the
20 same. Rules shall include guidelines for:

- 21 (1) prisoner eligibility;
22 (2) participating prisoner participation in an a WORK
23 PROGRAM OR A recognized educational, treatment, or training
24 programy-but-not-a-work-program;
25 (3) approval of supervising-agency; and the sponsor;

1 (4) review of determinations-in-furlough-applications
2 a board decision to deny an applicant admittance into the
3 program;

4 (5) supervision of the prisoner by or under the
5 direction of a supervising agent while he is in the program;

6 (6) conducting revocation hearings;

7 (7) establishment of a program by the prisoner; and

8 (8) any other provisions necessary to implement [this
9 act] PART."

10 Section 3. Section 46-23-411, MCA, is amended to read:
11 "46-23-411. Application to participate -- eligibility.

12 (1) Any prisoner confined--in--the-state-prison, except a
13 prisoner serving a sentence imposed under 46-18-202(2), may
14 make application to participate in the furlough supervised
15 release program if ~~he has served at least one-half of the~~
16 ~~time required to be considered for parole and qualifies~~
17 ~~under the rules established by the department not more than~~
18 15 18 months remain before he is eligible for parole.

19 (2) Prisoners serving sentences with the restriction
20 imposed under 46-18-202(2) are not eligible for
21 participation in the program.

22 (3) In order to be accepted into the program, an
23 applicant must qualify under the rules established by the
24 department."

25 Section 4. Section 46-23-412, MCA, is amended to read:

1 "46-23-412. Board's action on application. ~~{1} At the~~
 2 ~~meeting of the board following the signing of any prisoner's~~
 3 ~~application; the~~ The board shall approve or deny the
 4 application of each prisoner after careful study of the
 5 prisoner's furlough release plans, criminal history, and all
 6 other pertinent case material. ~~The following rules shall be~~
 7 ~~observed when the board meets to consider an application:~~

8 ~~(a) Each applicant may call two witnesses from outside~~
 9 ~~or inside the institution to testify as to the applicant's~~
 10 ~~general attitude, participation in self-help activities, or~~
 11 ~~his character or job references.~~

12 ~~(b) An applicant may remain present during the board~~
 13 ~~proceedings on his application; however, the board may meet~~
 14 ~~in executive session without the applicant for final~~
 15 ~~decision on the application.~~

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

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

20 ~~(e) The board shall cause the applicant to be notified~~
 21 ~~of its decision immediately and shall provide the applicant~~
 22 ~~with a written decision, including a thorough statement of~~
 23 ~~the reasons for the decision, within 2 days following~~
 24 ~~adjournment.~~

25 ~~{2} Final authority in all matters pertaining to~~

1 ~~prisoner furloughs is in the department. The board shall~~
 2 ~~grant the applicant a hearing consistent with the procedural~~
 3 ~~rules adopted by it for parole hearings pursuant to~~
 4 ~~46-23-218."~~

5 Section 5. Section 46-23-422, MCA, is amended to read:

6 "46-23-422. Violation of furlough agreement supervised
 7 release program by prisoner -- revocation. (1) If any
 8 prisoner released from actual prison confinement under the
 9 furlough program fails to comply with the rules of the
 10 furlough agreement, he shall be called by the department or
 11 by the supervising agency to appear before the department or
 12 supervising agency. If a prisoner in a supervised release
 13 program violates a condition established for the program,
 14 the department may issue a warrant for his arrest.

15 (2) If a conference is not sufficient to resolve the
 16 situation and if the prisoner continues in his
 17 noncompliance, the The prisoner shall be granted a hearing
 18 on the violation within a reasonable time on or near the
 19 site of the alleged violation to determine whether a
 20 violation of the furlough agreement supervised release
 21 conditions exists. The prisoner may be represented by
 22 counsel at the hearing at his own expense. The hearing shall
 23 be conducted by a hearing officer of the board of pardons
 24 department. The prisoner on furlough shall have all
 25 opportunities provided under 46-23-1024 and 46-23-1025

1 pertaining to on-site hearings for parole revocation. If
 2 ~~reasonable grounds are established for violation of the~~
 3 ~~furlough agreement, the furlough shall be cancelled and the~~
 4 ~~prisoner shall be returned to the prison. If probable cause~~
 5 is established that a violation of the supervised release
 6 has occurred, the prisoner shall be returned to the state
 7 prison.

8 (3) ~~At the next meeting of the board of pardons after~~
 9 ~~the return of the prisoner to the prison, the prisoner shall~~
 10 ~~be granted a due process hearing in order to determine if~~
 11 ~~the prisoner has in fact violated the terms of the~~
 12 ~~prisoner's furlough release. If it is determined that the~~
 13 ~~prisoner has in fact violated the terms of the prisoner's~~
 14 ~~furlough, the prisoner shall remain at the prison. Within a~~
 15 reasonable time after the prisoner's return to the state
 16 prison, the board shall conduct a revocation proceeding in
 17 accordance with rules established under 46-23-405.

18 (4) If the terms of the prisoner's release have not
 19 been violated, the prisoner's case shall be assigned to a
 20 parole supervising agent and a new furlough arrangement
 21 supervised release program shall be worked out."

22 Section 6. Section 46-23-426, MCA, is amended to read:
 23 "46-23-426. Escape. ~~For the purpose of this part, the~~
 24 ~~provisions relating to escape in 45-7-306 shall apply unless~~
 25 ~~aggravating circumstances require a more severe penalty. A~~

1 person convicted of escape from a supervised release program
 2 is punishable as provided in 45-7-306. A person convicted of
 3 such an escape and sentenced therefor shall serve such
 4 sentence consecutively with the remainder of the original
 5 sentence as provided in 46-18-401."

6 Section 7. Section 45-7-306, MCA, is amended to read:
 7 "45-7-306. Escape. (1) "Official detention" means
 8 imprisonment which resulted from a conviction for an
 9 offense, confinement for an offense, confinement of a person
 10 charged with an offense, detention by a peace officer
 11 pursuant to arrest, detention for extradition or
 12 deportation, supervision while under a supervised release
 13 program, or any lawful detention for the purpose of the
 14 protection of the welfare of the person detained or for the
 15 protection of society. "Official detention" does not
 16 include supervision of probation or parole, constraint
 17 incidental to release on bail, or an unlawful arrest unless
 18 the person arrested employed physical force, a threat of
 19 physical force, or a weapon to escape.

20 (2) A person subject to official detention commits the
 21 offense of escape if he knowingly or purposely removes
 22 himself from official detention or fails to return to
 23 official detention following temporary leave granted for a
 24 specific purpose or limited time.

25 (3) A person convicted of the offense of escape shall

1 be:

2 (a) imprisoned in the state prison for a term not to
3 exceed 20 years if he escapes from a state prison, county
4 jail, or city jail, or supervised release program by the use
5 or threat of force, physical violence, weapon, or simulated
6 weapon;

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

9 (i) escapes from a state prison, county jail, or city
10 jail, or supervised release program;

11 (ii) escapes from another official detention by the use
12 or threat of force, physical violence, weapon, or simulated
13 weapon; or

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

18 Section 8. Section 45-9-101, MCA, is amended to read:

19 "45-9-101. Criminal sale of dangerous drugs. (1) A
20 person commits the offense of criminal sale of dangerous
21 drugs if he sells, barter, exchanges, gives away, or offers
22 to sell, barter, exchange, or give away or manufactures,
23 prepares, cultivates, compounds, or processes any dangerous
24 drug, as defined in 50-32-101.

25 (2) A person convicted of criminal sale of an opiate,

1 as defined in 50-32-101(18), shall be imprisoned in the
2 state prison for a term of not less than 2 years or more
3 than life, except as provided in 46-18-222.

4 (3) A person convicted of criminal sale of a dangerous
5 drug included in Schedule I or Schedule II pursuant to
6 50-32-222 or 50-32-224, except marijuana or
7 tetrahydrocannabinols, who has a prior conviction for
8 criminal sale of such a drug shall be imprisoned in the
9 state prison for a term of not less than 5 years or more
10 than life, except as provided in 46-18-222. Upon a third or
11 subsequent conviction for criminal sale of such a drug, he
12 shall be imprisoned in the state prison for a term of not
13 less than 10 years or more than life, except as provided in
14 46-18-222. Whenever a conviction under this subsection is
15 for criminal sale of such a drug to a minor, the sentence
16 shall include the restriction that the defendant be
17 ineligible for parole and participation in the prisoner
18 ~~fortough~~ supervised release program while serving his term.

19 (4) A person convicted of criminal sale of dangerous
20 drugs not otherwise provided for in subsection (2) or (3)
21 shall be imprisoned in the state prison for a term of not
22 less than 1 year or more than life.

23 (5) Practitioners and agents under their supervision
24 acting in the course of a professional practice, as defined
25 by 50-32-101, are exempt from this section."

1 Section 9. Section 46-18-202, MCA, is amended to read:

2 "46-18-202. Additional restrictions on sentence. (1)

3 The district court may also impose any of the following
4 restrictions or conditions on the sentence provided for in
5 46-18-201 which it considers necessary to obtain the
6 objectives of rehabilitation and the protection of society:

7 (a) prohibition of the defendant's holding public
8 office;

9 (b) prohibition of his owning or carrying a dangerous
10 weapon;

11 (c) restrictions on his freedom of association;

12 (d) restrictions on his freedom of movement;

13 (e) any other limitation reasonably related to the
14 objectives of rehabilitation and the protection of society.

15 (2) Whenever the district court imposes a sentence of
16 imprisonment in the state prison for a term exceeding 1
17 year, the court may also impose the restriction that the
18 defendant be ineligible for parole and participation in the
19 ~~prisoner-furlough~~ supervised release program while serving
20 his term. If such a restriction is to be imposed, the court
21 shall state the reasons for it in writing. If the court
22 finds that the restriction is necessary for the protection
23 of society, it shall impose the restriction as part of the
24 sentence and the judgment shall contain a statement of the
25 reasons for the restriction.

1 (3) The judge in a justice's, city, or municipal court
2 does not have the authority to restrict an individual's
3 rights as enumerated in subsections (1) and (2)."

4 Section 10. Section 46-18-401, MCA, is amended to
5 read:

6 "46-18-401. Merger of sentences. (1) Unless the judge
7 otherwise orders:

8 (a) whenever a person serving a term of commitment
9 imposed by a court in this state is committed for another
10 offense, the shorter term or shorter remaining term shall be
11 merged in the other term except as provided in subsection
12 (5); and

13 (b) whenever a person under suspended sentence or on
14 probation for an offense committed in this state is
15 sentenced for another offense, the period still to be served
16 on suspended sentence or probation shall be merged in any
17 new sentence of commitment or probation.

18 (2) The court merging the sentences shall immediately
19 furnish each of the other courts and penal institutions in
20 which the defendant is confined under sentence with
21 authenticated copies of its sentence, which must cite the
22 sentences being merged.

23 (3) If an unexpired sentence is merged pursuant to
24 subsection (1), the court which imposed such sentence shall
25 modify it in accordance with the effect of the merger.

1 (4) Separate sentences for two or more offenses shall
2 run concurrently unless the court otherwise orders.

3 (5) Except as provided in this subsection, whenever a
4 prisoner is sentenced for an offense committed while he was
5 imprisoned in the state prison or while he was released on
6 parole or under the ~~prisoner--furlough~~ supervised release
7 program, the new sentence runs consecutively with the
8 remainder of the original sentence. The prisoner starts
9 serving the new sentence when the original sentence has
10 expired or when he is released on parole under chapter 23,
11 part 2, of this title in regard to the original sentence,
12 whichever is sooner. In the latter case, the sentences run
13 concurrently from the time of his release on parole."

14 Section 11. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

20 Section 12. Repealer. Sections 46-23-402 through
21 46-23-404, 46-23-406 through--46-23-410, 46-23-413 through
22 46-23-415, 46-23-421, and 46-23-423 through 46-23-425, MCA,
23 are repealed.

-End-

1 SENATE BILL NO. 286

2 INTRODUCED BY VAN VALKENBERG

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; REDEFINING
7 THE PROGRAM AS THE SUPERVISED RELEASED RELEASE PROGRAM;
8 RESTRICTING THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY;
9 TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM
10 FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE
11 PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR
12 ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE
13 PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER;
14 STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING
15 WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED;
16 AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401,
17 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-421,
18 46-23-422, AND 46-23-426, MCA; AND REPEALING SECTIONS
19 46-23-402 THROUGH 46-23-404, 46-23-406 ~~THROUGH 46-23-410,~~
20 46-23-413 THROUGH 46-23-415, ~~46-23-421,~~ AND 46-23-423
21 THROUGH 46-23-425, MCA."

22
23 WHEREAS, a prisoner furlough program currently exists
24 under sections 46-23-401 through 46-23-426, MCA;

25 WHEREAS, the Legislature realizes that the above-named

1 statutes are no longer workable and cause conflicts of laws
2 and complication of efforts;

3 WHEREAS, the Legislature supports the basic intent of
4 the prisoner furlough program, hereafter referred to as the
5 supervised release program, to provide education, training,
6 and betterment of selected prisoners and to increase such
7 prisoners' responsibility to society; and

8 WHEREAS, the Legislature believes that the program can
9 be administered in a more efficient and meaningful manner.

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, in this part the following definitions apply:

15 (1) "Applicant" means any prisoner who ~~has signed~~ is
16 eligible under ~~section 3111~~ 46-23-411 and who signs an
17 application to participate in the ~~prisoner--furlough~~
18 supervised release program.

19 (2) "Board" means the board of pardons provided for in
20 2-15-2302.

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

23 ~~{4}--"Jail"--means-any-county-jail-or-tribal-jail--~~

24 ~~{5}{4}~~ "Prisoner" means a person sentenced by a state
25 district court to a term of confinement in the state prison.

1 ~~(6)~~(5) "State prison" means the Montana state prison
2 at Deer Lodge ~~and or~~ any adult correctional facility under
3 ~~the-direction-of~~ designated by the department.

4 ~~(7)~~(6) "~~Supervising--agency~~" "Sponsor" means any
5 federal, state, county, local, or private agency, Indian
6 tribe and reservation, or any person, group, association, or
7 organization approved by the department to undertake the
8 supervision of prisoners participating in the ~~fur-tough~~
9 supervised release program. ~~The term--does--not--include--an~~
10 ~~employer---acting---in---that---capacity---and---creating---an~~
11 ~~employer/employee--relationship--between--the--prisoner--and~~
12 ~~itself.~~

13 (7) "Supervising agent" means a probation and parole
14 officer of the department."

15 Section 2. Section 46-23-405, MCA, is amended to read:
16 "46-23-405. Establishing program -- rules. The
17 department is authorized and directed to establish a
18 fur-tough supervised release program and make rules in
19 accordance with Title 2, chapter 4 (the Montana
20 Administrative Procedure Act), to implement and control the
21 same. Rules shall include guidelines for:

22 (1) prisoner eligibility;

23 (2) participating prisoner participation in an a WORK
24 PROGRAM-OR-A recognized educational, treatment, or training
25 programy---but--not--a--work--program OR WORK PROGRAM IN

1 CONJUNCTION WITH ANY OF THE ABOVE PROGRAMS;

2 (3) approval of ~~supervising-agency~~ and the sponsor;

3 (4) review of ~~determinations-in-furlough-applications~~
4 a board decision to deny an applicant admittance into the
5 program;

6 (5) supervision of the prisoner by or under the
7 direction of a supervising agent while he is in the program;

8 (6) conducting revocation hearings;

9 (7) establishment of a program by the prisoner; and

10 (8) any other provisions necessary to implement ~~this~~
11 act. PART."

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

13 "46-23-411. Application to participate -- eligibility.

14 (1) Any prisoner confined--in--the--state--prison, except a
15 prisoner serving a sentence imposed under 46-18-202(2), may
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10 "46-23-421. Responsibility of department and
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 14 The department may delegate jurisdictional supervision of
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 16 field service. ~~The supervising agency a~~ supervising agent
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 18 furloughed the prisoner for which it is responsible in the
 19 written furlough agreement during his supervised release."

20 Section 6. Section 46-23-422, MCA, is amended to read:

21 "46-23-422. Violation of furlough agreement supervised
 22 release program by prisoner revocation. (1) ~~if any~~
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 9 ~~noncompliance, the~~ The prisoner shall be granted a hearing
 10 ~~on the violation~~ within a reasonable time on or near the
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 14 ~~by counsel at the hearing at his own expense. The hearing~~
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 11 ~~been violated, the prisoner's case shall be assigned to a~~
 12 ~~parole supervising agent and a new furlough arrangement~~
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14 Section 7. Section 46-23-426, MCA, is amended to read:
 15 "46-23-426. Escape. ~~For the purpose of this part, the~~
 16 ~~provisions relating to escape in 45-7-306 shall apply unless~~
 17 ~~aggravating circumstances require a more severe penalty. A~~
 18 ~~person convicted of escape from a supervised release program~~
 19 ~~is punishable as provided in 45-7-306. A person convicted of~~
 20 ~~such an escape and sentenced therefor shall serve such~~
 21 ~~sentence consecutively with the remainder of the original~~
 22 ~~sentence as provided in 46-18-401."~~

23 Section 8. 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 while under a supervised release
 5 program, or any lawful detention for the purpose of the
 6 protection of the welfare of the person detained or for the
 7 protection of society. "Official detention" does not
 8 include supervision of probation or parole, constraint
 9 incidental to release on bail, or an unlawful arrest unless
 10 the person arrested employed physical force, a threat of
 11 physical force, or a 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, or supervised release program by the use
 22 or threat of force, physical violence, weapon, or simulated
 23 weapon;

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

1 (i) escapes from a state prison, county jail, or city
 2 jail, or supervised release program;

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

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

10 Section 9. Section 45-9-101, MCA, is amended to read:

11 "45-9-101. Criminal sale of dangerous drugs. (1) A
 12 person commits the offense of criminal sale of dangerous
 13 drugs if he sells, barter, exchanges, gives away, or offers
 14 to sell, barter, exchange, or give away or manufactures,
 15 prepares, cultivates, compounds, or processes any dangerous
 16 drug, as defined in 50-32-101.

17 (2) A person convicted of criminal sale of an opiate,
 18 as defined in 50-32-101(18), shall be imprisoned in the
 19 state prison for a term of not less than 2 years or more
 20 than life, except as provided in 46-18-222.

21 (3) A person convicted of criminal sale of a dangerous
 22 drug included in Schedule I or Schedule II pursuant to
 23 50-32-222 or 50-32-224, except marijuana or
 24 tetrahydrocannabinols, who has a prior conviction for
 25 criminal sale of such a drug shall be imprisoned in the

1 state prison for a term of not less than 5 years or more
 2 than life, except as provided in 46-18-222. Upon a third or
 3 subsequent conviction for criminal sale of such a drug, he
 4 shall be imprisoned in the state prison for a term of not
 5 less than 10 years or more than life, except as provided in
 6 46-18-222. Whenever a conviction under this subsection is
 7 for criminal sale of such a drug to a minor, the sentence
 8 shall include the restriction that the defendant be
 9 ineligible for parole and participation in the prisoner
 10 furlough supervised release program while serving his term.

11 (4) A person convicted of criminal sale of dangerous
 12 drugs not otherwise provided for in subsection (2) or (3)
 13 shall be imprisoned in the state prison for a term of not
 14 less than 1 year or more than life.

15 (5) Practitioners and agents under their supervision
 16 acting in the course of a professional practice, as defined
 17 by 50-32-101, are exempt from this section."

18 Section 10. Section 46-18-202, MCA, is amended to
 19 read:

20 "46-18-202. Additional restrictions on sentence. (1)
 21 The district court may also impose any of the following
 22 restrictions or conditions on the sentence provided for in
 23 46-18-201 which it considers necessary to obtain the
 24 objectives of rehabilitation and the protection of society:

25 (a) prohibition of the defendant's holding public

1 office;

2 (b) prohibition of his owning or carrying a dangerous
 3 weapon;

4 (c) restrictions on his freedom of association;

5 (d) restrictions on his freedom of movement;

6 (e) any other limitation reasonably related to the
 7 objectives of rehabilitation and the protection of society.

8 (2) Whenever the district court imposes a sentence of
 9 imprisonment in the state prison for a term exceeding 1
 10 year, the court may also impose the restriction that the
 11 defendant be ineligible for parole and participation in the
 12 prisoner-furlough supervised release program while serving
 13 his term. If such a restriction is to be imposed, the court
 14 shall state the reasons for it in writing. If the court
 15 finds that the restriction is necessary for the protection
 16 of society, it shall impose the restriction as part of the
 17 sentence and the judgment shall contain a statement of the
 18 reasons for the restriction.

19 (3) The judge in a justice's, city, or municipal court
 20 does not have the authority to restrict an individual's
 21 rights as enumerated in subsections (1) and (2)."

22 Section 11. Section 46-18-401, MCA, is amended to
 23 read:

24 "46-18-401. Merger of sentences. (1) Unless the judge
 25 otherwise orders:

1 (a) whenever a person serving a term of commitment
2 imposed by a court in this state is committed for another
3 offense, the shorter term or shorter remaining term shall be
4 merged in the other term except as provided in subsection
5 (5); and

6 (b) whenever a person under suspended sentence or on
7 probation for an offense committed in this state is
8 sentenced for another offense, the period still to be served
9 on suspended sentence or probation shall be merged in any
10 new sentence of commitment or probation.

11 (2) The court merging the sentences shall immediately
12 furnish each of the other courts and penal institutions in
13 which the defendant is confined under sentence with
14 authenticated copies of its sentence, which must cite the
15 sentences being merged.

16 (3) If an unexpired sentence is merged pursuant to
17 subsection (1), the court which imposed such sentence shall
18 modify it in accordance with the effect of the merger.

19 (4) Separate sentences for two or more offenses shall
20 run concurrently unless the court otherwise orders.

21 (5) Except as provided in this subsection, whenever a
22 prisoner is sentenced for an offense committed while he was
23 imprisoned in the state prison or while he was released on
24 parole or under the ~~prisoner--furlough~~ supervised release
25 program, the new sentence runs consecutively with the

1 remainder of the original sentence. The prisoner starts
2 serving the new sentence when the original sentence has
3 expired or when he is released on parole under chapter 23,
4 part 2, of this title in regard to the original sentence,
5 whichever is sooner. In the latter case, the sentences run
6 concurrently from the time of his release on parole."

7 Section 12. Severability. If a part of this act is
8 invalid, all valid parts that are severable from the invalid
9 part remain in effect. If a part of this act is invalid in
10 one or more of its applications, the part remains in effect
11 in all valid applications that are severable from the
12 invalid applications.

13 Section 13. Repealer. Sections 46-23-402 through
14 46-23-404, 46-23-406 through--46-23-410, 46-23-413 through
15 46-23-415, 46-23-421, and 46-23-423 through 46-23-425, MCA,
16 are repealed.

-End-

April 14, 1981¹⁹

JOINT CONFERENCE COMMITTEE
ON HOUSE AMENDMENTS TO SENATE BILL NO. 286

(Report No. 1, April 14, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on Senate Bill No. 286, met April 14, 1981, and considered:

House Judiciary Committee Amendments to the third reading copy, dated March 25, 1981, and recommend as follows:

That the Senate accede to Committee amendment nos. 1 through 4 and 6 through 10.

That the House recede from Committee amendment no. 5;

That the reference copy of Senate Bill No. 286 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Conference Committee Report to Senate Bill No. 286 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 4, lines 19 through 21.

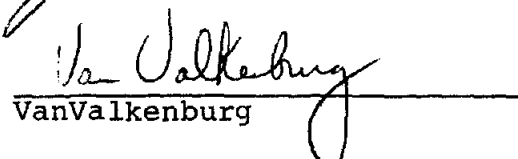
Following: "department"

Strike: "HE HAS SERVED AT LEAST ONE-HALF OF THE TIME
REQUIRED TO BE CONSIDERED FOR PAROLE AND"

FOR THE SENATE:

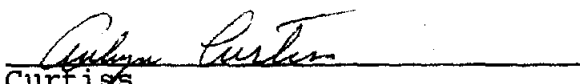

Anderson, Chairman

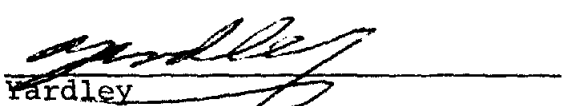

O'Hara


VanValkenburg

FOR THE HOUSE:


Seifert, Chairman


Curtiss


Yardley

April 22

1981

JOINT CONFERENCE COMMITTEE
ON HOUSE AMENDMENTS TO SENATE BILL NO. 286

(Report No. 2, April 22, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on Senate Bill No. 286,
met April 22, 1981, and considered:

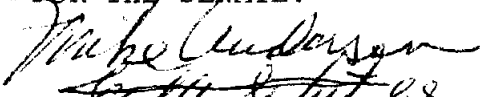
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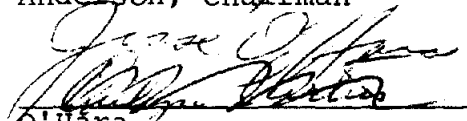
That the Senate accede to Committee amendment nos. 1 through 10;

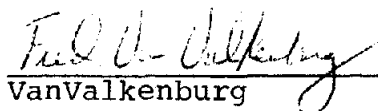
That the reference copy of Senate Bill No. 286 remain unchanged;

And, that the Conference Committee Report to Senate Bill
No. 286 be adopted.

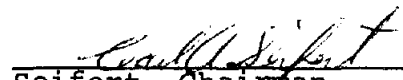
FOR THE SENATE:


Anderson, Chairman

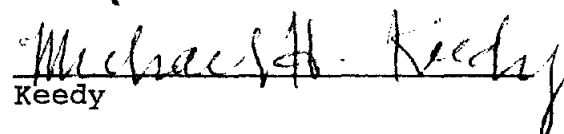

O'Hara


VanValkenburg

FOR THE HOUSE:


Seifert, Chairman


Curtiss


Keedy

1 SENATE BILL NO. 286

2 INTRODUCED BY VAN VALKENBERG

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; REDEFINING
7 THE PROGRAM AS THE SUPERVISED ~~RELEASED~~ RELEASE PROGRAM;
8 RESTRICTING THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY;
9 TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM
10 FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE
11 PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR
12 ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE
13 PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER;
14 STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING
15 WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED;
16 AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401,
17 46-23-401, 46-23-405, 46-23-411, 46-23-412, ~~46-23-421,~~
18 46-23-422, AND 46-23-426, MCA; AND REPEALING SECTIONS
19 46-23-402 THROUGH 46-23-404, 46-23-406 ~~THROUGH 46-23-410,~~
20 46-23-413 THROUGH ~~46-23-415,~~ 46-23-421, AND 46-23-423
21 THROUGH 46-23-425, MCA."

22
23 WHEREAS, a prisoner furlough program currently exists
24 under sections 46-23-401 through 46-23-426, MCA;

25 WHEREAS, the Legislature realizes that the above-named

1 statutes are no longer workable and cause conflicts of laws
2 and complication of efforts;

3 WHEREAS, the Legislature supports the basic intent of
4 the prisoner furlough program, hereafter referred to as the
5 supervised release program, to provide education, training,
6 and betterment of selected prisoners and to increase such
7 prisoners' responsibility to society; and

8 WHEREAS, the Legislature believes that the program can
9 be administered in a more efficient and meaningful manner.

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, in this part the following definitions apply:

15 (1) "Applicant" means any prisoner who has signed is
16 eligible under ~~section 3111~~ 46-23-411 and who signs an
17 application to participate in the prisoner--~~furlough~~
18 supervised release program.

19 (2) "Board" means the board of pardons provided for in
20 2-15-2302.

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

23 ~~{4}--"Jail"--means-any-county-jail-or-tribal-jail~~

24 ~~{5}{4}~~ "Prisoner" means a person sentenced by a state
25 district court to a term of confinement in the state prison.

1 ~~f6)~~(5) "State prison" means the Montana state prison
2 at Deer Lodge and or any adult correctional facility under
3 the direction of designated by the department.

4 ~~f7)~~(6) "~~Supervising--agency~~" "~~Sponsor~~" means any
5 federal, state, county, local, or private agency, Indian
6 tribe and reservation, or any person, group, association, or
7 organization approved by the department to undertake the
8 supervision of prisoners participating in the furlough
9 supervised release program. ~~the term does not include an~~
10 ~~employer acting in that capacity and creating an~~
11 ~~employer/employee relationship between the prisoner and~~
12 ~~itself.~~

13 (7) "Supervising agent" means a probation and parole
14 officer of the department."

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

16 "46-23-405. Establishing program -- rules. The
17 department is authorized and directed to establish a
18 furlough supervised release program and make rules in
19 accordance with Title 2, chapter 4 (the Montana
20 Administrative Procedure Act), to implement and control the
21 same. Rules shall include guidelines for:

- 22 (1) prisoner eligibility;
- 23 (2) participating prisoner participation in an a WORK
24 PROGRAM--OR--A recognized educational, treatment, or training
25 programy---but--not--a--work--program OR WORK PROGRAM IN

1 CONJUNCTION WITH ANY OF THE ABOVE PROGRAMS;

- 2 (3) approval of ~~supervising-agency~~ and the sponsor;
- 3 (4) review of ~~determinations-in-furlough-applications~~
4 a board decision to deny an applicant admittance into the
5 program;

6 (5) supervision of the prisoner by or under the
7 direction of a supervising agent while he is in the program;

8 (6) conducting revocation hearings;

9 (7) establishment of a program by the prisoner; and

10 (8) any other provisions necessary to implement [this
11 act] PART."

12 Section 3. Section 46-23-411, MCA, is amended to read:
13 "46-23-411. Application to participate -- eligibility.

14 (1) Any prisoner confined--in--the--state--prison, except a
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16 make application to participate in the furlough supervised
17 release program if he has served at least one-half of the
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19 under the rules established by the department HE HAS SERVED
20 AT LEAST ONE-HALF OF THE TIME REQUIRED TO BE CONSIDERED FOR
21 PAROLE AND not more than 15 1# 15 months remain before he is
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 17 opportunities provided under 46-23-1024 and 46-23-1025
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 15 "46-23-426. Escape. ~~For the purpose of this part, the~~
 16 ~~provisions relating to escape in 45-7-386 shall apply unless~~
 17 ~~aggravating circumstances require a more severe penalty. A~~
 18 ~~person convicted of escape from a supervised release program~~
 19 ~~is punishable as provided in 45-7-306. A person convicted of~~
 20 ~~such an escape and sentenced therefor shall serve such~~
 21 ~~sentence consecutively with the remainder of the original~~
 22 ~~sentence as provided in 46-18-401."~~

23 Section 8. 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 while under a supervised release
 5 program, or any lawful detention for the purpose of the
 6 protection of the welfare of the person detained or for the
 7 protection of society. "Official detention" does not
 8 include supervision of probation or parole, constraint
 9 incidental to release on bail, or an unlawful arrest unless
 10 the person arrested employed physical force, a threat of
 11 physical force, or a 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, or supervised release program by the use
 22 or threat of force, physical violence, weapon, or simulated
 23 weapon;

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

1 (i) escapes from a state prison, county jail, or city
 2 jail, or supervised release program;

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

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

10 Section 9. Section 45-9-101, MCA, is amended to read:

11 "45-9-101. Criminal sale of dangerous drugs. (1) A
 12 person commits the offense of criminal sale of dangerous
 13 drugs if he sells, barter, exchanges, gives away, or offers
 14 to sell, barter, exchange, or give away or manufactures,
 15 prepares, cultivates, compounds, or processes any dangerous
 16 drug, as defined in 50-32-101.

17 (2) A person convicted of criminal sale of an opiate,
 18 as defined in 50-32-101(18), shall be imprisoned in the
 19 state prison for a term of not less than 2 years or more
 20 than life, except as provided in 46-18-222.

21 (3) A person convicted of criminal sale of a dangerous
 22 drug included in Schedule I or Schedule II pursuant to
 23 50-32-222 or 50-32-224, except marijuana or
 24 tetrahydrocannabinols, who has a prior conviction for
 25 criminal sale of such a drug shall be imprisoned in the

1 state prison for a term of not less than 5 years or more
 2 than life, except as provided in 46-18-222. Upon a third or
 3 subsequent conviction for criminal sale of such a drug, he
 4 shall be imprisoned in the state prison for a term of not
 5 less than 10 years or more than life, except as provided in
 6 46-18-222. Whenever a conviction under this subsection is
 7 for criminal sale of such a drug to a minor, the sentence
 8 shall include the restriction that the defendant be
 9 ineligible for parole and participation in the prisoner
 10 ~~fortough~~ supervised release program while serving his term.

11 (4) A person convicted of criminal sale of dangerous
 12 drugs not otherwise provided for in subsection (2) or (3)
 13 shall be imprisoned in the state prison for a term of not
 14 less than 1 year or more than life.

15 (5) Practitioners and agents under their supervision
 16 acting in the course of a professional practice, as defined
 17 by 50-32-101, are exempt from this section."

18 Section 10. Section 46-18-202, MCA, is amended to
 19 read:

20 "46-18-202. Additional restrictions on sentence. (1)
 21 The district court may also impose any of the following
 22 restrictions or conditions on the sentence provided for in
 23 46-18-201 which it considers necessary to obtain the
 24 objectives of rehabilitation and the protection of society:

25 (a) prohibition of the defendant's holding public

1 office;

2 (b) prohibition of his owning or carrying a dangerous
 3 weapon;

4 (c) restrictions on his freedom of association;

5 (d) restrictions on his freedom of movement;

6 (e) any other limitation reasonably related to the
 7 objectives of rehabilitation and the protection of society.

8 (2) Whenever the district court imposes a sentence of
 9 imprisonment in the state prison for a term exceeding 1
 10 year, the court may also impose the restriction that the
 11 defendant be ineligible for parole and participation in the
 12 ~~prisoner--fortough~~ supervised release program while serving
 13 his term. If such a restriction is to be imposed, the court
 14 shall state the reasons for it in writing. If the court
 15 finds that the restriction is necessary for the protection
 16 of society, it shall impose the restriction as part of the
 17 sentence and the judgment shall contain a statement of the
 18 reasons for the restriction.

19 (3) The judge in a justice's, city, or municipal court
 20 does not have the authority to restrict an individual's
 21 rights as enumerated in subsections (1) and (2)."

22 Section 11. Section 46-18-401, MCA, is amended to
 23 read:

24 "46-18-401. Merger of sentences. (1) Unless the judge
 25 otherwise orders:

1 (a) whenever a person serving a term of commitment
2 imposed by a court in this state is committed for another
3 offense, the shorter term or shorter remaining term shall be
4 merged in the other term except as provided in subsection
5 (5); and

6 (b) whenever a person under suspended sentence or on
7 probation for an offense committed in this state is
8 sentenced for another offense, the period still to be served
9 on suspended sentence or probation shall be merged in any
10 new sentence of commitment or probation.

11 (2) The court merging the sentences shall immediately
12 furnish each of the other courts and penal institutions in
13 which the defendant is confined under sentence with
14 authenticated copies of its sentence, which must cite the
15 sentences being merged.

16 (3) If an unexpired sentence is merged pursuant to
17 subsection (1), the court which imposed such sentence shall
18 modify it in accordance with the effect of the merger.

19 (4) Separate sentences for two or more offenses shall
20 run concurrently unless the court otherwise orders.

21 (5) Except as provided in this subsection, whenever a
22 prisoner is sentenced for an offense committed while he was
23 imprisoned in the state prison or while he was released on
24 parole or under the ~~prisoner-furlough~~ supervised release
25 program, the new sentence runs consecutively with the

1 remainder of the original sentence. The prisoner starts
2 serving the new sentence when the original sentence has
3 expired or when he is released on parole under chapter 23,
4 part 2, of this title in regard to the original sentence,
5 whichever is sooner. In the latter case, the sentences run
6 concurrently from the time of his release on parole."

7 Section 12. Severability. If a part of this act is
8 invalid, all valid parts that are severable from the invalid
9 part remain in effect. If a part of this act is invalid in
10 one or more of its applications, the part remains in effect
11 in all valid applications that are severable from the
12 invalid applications.

13 Section 13. Repealer. Sections 46-23-402 through
14 46-23-404, 46-23-406 through ~~46-23-410~~, 46-23-413 through
15 ~~46-23-415~~, 46-23-421, and 46-23-423 through 46-23-425, MCA,
16 are repealed.

-End-

Respectfully report as follows: That.....

BE AMENDED AS FOLLOWS:

1. Title, line 17.
Following: "46-23-412,"
Insert: "46-23-421,"
2. Title, line 20.
Following: "46-23-415,"
Strike: "46-23-421,"
3. Page 3, lines 22 and 23.
Following: "a" on line 22
Strike: remainder of line 22 through "A" on line 23
4. Page 3, line 24.
Following: "program"
Insert: "or work program in conjunction with any of the above programs"
5. Page 4, line 17.
Following: "department"
Insert: "if he has served at least one-half of the time required to be considered for parole and"
6. Page 4, line 18.
Following: "15"
Strike: "18"
Insert: "15"
7. Page 6.
Following: line 4
Insert: "Section 5. Section 46-23-421, MCA, is amended to read:
"46-23-421. Responsibility of department and supervising agency agent. The department shall be responsible for the activities of a prisoner participating in a furlough supervised release program under this part. The department may delegate jurisdictional supervision of ~~work-furlough-participants~~ to the ~~adult-parole-and-probation-field-service~~---~~The-supervising-agency~~ a supervising agent who shall be responsible for those the activities of a-furloughed the prisoner during his supervised release for which it is responsible in the written furlough agreement."
Renumber: subsequent sections
8. Page 6, line 14.
Following: "."
Insert: "Upon a second or subsequent violation the department shall issue a warrant for the prisoner's arrest."
9. Page 6, line 21.
Following: "conditions"
Strike: "exists"
Insert: "occurred"
10. Page 13, line 22.
Following: "46-23-415,"
Strike: "46-23-421,"