SENATE BILL NO. 286

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE SENATE

January 26, 1981

February 6, 1981

Pebruary 9, 1981

Pebruary 10, 1981

February 11, 1981

Pebruary 12, 1981

Introduced and referred to Committee on Judiciary.

Committee recommend bill do pass as amended. Report adopted.

Bill printed and placed on members' desks.

Second reading, do pass as amended.

Correctly engrossed.

Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

Pebruary 13, 1981

March 25, 1981

March 28, 1981

March 30, 1981

March 31, 1981

Introduced and referred to Committee on Judiciary.

Committee recommend bill be concurred in as amended. Report adopted.

Second reading, concurred in.

On motion rules suspended and bill allowed to be transmitted on the 71st legislative day. Motion adopted.

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		Pree 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 Con- ference Committee report adopted
				Third reading, new Free Con- ference Committee report adopted Ayes, 47; Noes, 0. Transmitted to House.
			IN TH	E HOUSE
April	23,	1981		New Free Conference Committee report adopted.

IN THE SENATE

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April 23, 1981

Returned from House. Sent to enrolling.

Reported correctly enrolled.

LC 0546/01

INTRODUCED BY Un Voltation 1 2 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS 3 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM: REDEFINING 6 7 THE PROGRAM AS THE SUPERVISED RELEASED PROGRAM: RESTRICTING TIME QUALIFICATION FOR PRISONER ELIGIBILITY: з THE 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 ADMISSION INTO THE PROGRAM: TRANSFERRING SUPERVISION OF THE 12 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; AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401, 16 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 46-23-421, AND 46-23-423 THROUGH 46-23-425, MCA." 20

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

and complication of efforts;

1

2 WHEREAS, the Legislature supports the basic intent of З 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 B be administered in a more efficient and meaningful manner. 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 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_3/113] 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 23 (5)(4) "Prisoner" means a person sentenced by a state 24 district court to a term of confinement in the state prison. 25 (5) "State prison" means the Montana state prison INTRODUCED BILL

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1	at Deer Lodge and <u>or</u> any adult correctional facility under
2	the-direction-of designated by the department.
3	(7)<u>(6)</u> #Supervising-~agency# <u>"Sponsor</u># 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	<u>supervised release</u> program. <u>The term_does_not_include_an</u>
9	employeractinginthatcapacityandcreating_an
10	employer/employee_relationship_between_the_prisoner_and
11	itself.
12	(7) "Supervising gent" 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 <u>supervised</u> release program and make rules in
18	accordance with Title 2, chapter 4 <u>[the_Montana</u>
19	Administrative_Procedure_Act), to implement and control the
20	same. Rules shall include guidelines for:
21	(1) prisoner eligibility;
22	(2) participating <u>prisoner participation</u> in an a
23	recognized educational, treatment, or training programbut
24	Dot.a.work_program;
25	(3) approval of supervising-agencyt-and the sponsor:

1	(4) review of determinations-in-furioughapplications
2	<u>a board decision to deny an applicant admittance into the</u>
3	programi
4	<u>(5) supervision of the prisoner by or under the</u>
5	<u>direction of a supervising agent while be is in the program:</u>
6	<pre>[6]conducting_revocation_hearings;</pre>
7	(7) establishment of a program by the prisoner; and
8	<pre>181_any_other_provisions_necessary_to_implement_[this</pre>
9	act]e"
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-thestate-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	<u>release</u> program if he-has-served-at-least-one-half-of- the
16	time-required-to-beconsideredforparoleandqualifies
17	underthe-rules-established-by-the-department <u>not_more_than</u>
18	15 wonths remain before he is elicible for parcle.
19	(2) Prisoners serving sentences with the restriction
20	imposedunder46-18-202(2)arenoteligiblefor
21	participation_in_the_programs
22	(3) In order to be accepted into the program. an
23	applicantmust_qualifyunder_tbe_rules_established_by_tbe
24	department."
25	Section 4. Section 46-23-412, MCA, is amended to read:

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1	"46-23-412。 Board"s action on application。 [1]-Atthe
2	meeting-of-the-board-following-the-signing-of-any-prisoner*s
3	applicationythe Ing board shall approve or deny the
4	application of each prisoner after careful study of the
5	prisoner's furtough <u>release</u> plans, criminal history, and all
5	other pertinent case material. The-following-rules-shall-be
1	observed-when-the-board-meets-to-consider-an-application+
8	ta)Eoch-applicant-may-call-two-witnesses-from-outside
y	or-inside-the-institution-to-testify-es-totheapplicant*s
10	generalattitudey-participation-in-self-help-ectivitiesy-or
11	his-character-or-job-references.
12	tb }An-applicant-may-remain-prese nt-duringtheboard
13	proceedingson-his-applications-howevery-the-board-may-meet
14	inexecutivesessionwithouttheapplicantforfinal
15	decision-on-the-application.
16	te}-Each-applicant-shall-be-viewed-singly-and-shall-be
17	recognized-as-an-individualy
18	{d}Eachapplicantshallbeallowed-to-discuss-any
19	specific-problem-areas-with-any-member-of-the-baard+
20	te)The-board-shall-cause-the-applicant-to-be-notified
21	of-its-decision-immediately-and-shall-provide-theapplicant
22	withawritten-decisiony-including-c-thorough-statement-of
23	the-reasonsforthedecisionywithin2daysfollowing
24	adjournmente
25	{2}Finalcuthorityinallmatterspertaini ngto

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1	prisoner-furloughs-is-in-thedeportmentv <u>The_board_shall</u>
2	<u>grant_the_applicant_a_bearing_consistent_with_the_procedural</u>
3	rulesadoptedbyitforparolehearingspursuantto
4	<u>46-23-218a</u> "
5	Section 5. Section 46-23-422, MCA, is amended to read:
6	"46+23-422. Viclation of furlough-agreement supervised
7	<u>release program</u> by prisoner <u> revocatio</u> n• (1) Ifany
8	prisonerreleasedfrom-actual-prison-confinement-under-the
9	furlough -program-fails-tocomplywiththerulesofthe
10	furloughsgreementy-he-shall-be-called-by-the-department-or
11	by-the-supervising-agency-to-appear-before-the-department-or
12	<pre>supervising-agency= If_a_prisoner_in_a_supervised_release</pre>
13	program_violates_a_condition_established_for_the_program.
14	the <u>separtment may issue a warrant for bis arrest</u> .
15	{2} If-a-conference -is-not-sufficient-toresolvethe
16	situationandiftheprisonercontinuesinhis
17	noncompliancey-the <u>The</u> prisoner shall be granted a hearing
18	ontheviolation within a reasonable time on or near the
19	site of the alleged violation to determine whether a
20	violation of the furloughagreement <u>supervised</u>_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 onfurlough shall have all
25	opportunities provided under 46-23-1024 and 46-23-1025

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pertaining to on-site hearings for parole revocation. If reasonable--grounds--ere--established--for--violation-of-the furlough-agreementy-the-furlough-shall-be-concelled-end--the prisoner--shall-be-returned-to-the-prison* If probable cause is established that a violation of the supervised release has_occurreds_the_prisoner_shall_be_returned_to_the_state prisone

(3) At-the-next-meeting-of-the-board-of-perdons--ofter 8 9 the-return-of-the-prisoner-to-the-prisony-the-prisoner-sholt 10 be--granted--a-due-process-hearing-in-order--to-determine-if the--prisoner--has--in--fact--violated--the--terms--of---the 11 12 prisoner-s--furlough--releases--If-it-is-determined-that-the prisoner-has-in-fact-violated-the-terms--of--the--prisoner*s 13 14 furloughy--the-prisoner-shell-remain-at-the-prison- Kithin_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 <u>(41</u> If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole supervising agent and a new furlough-arrangement supervised release program shall be worked out."

Section 6. Section 46-23-426. MCA, is amended to read:
 #46-23-426. Escape. For-the-purpase-of-this-purty-the
 provisions-relating-to-escape-in-45-7-306-shall-apply-unless
 aggravating-circumstances-reguire-a-more-severe--penalty. A

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."

Section 7. Section 45-7-306. MCA. is amended to read: 6 7 "45-7-306. Escape. (1) "Official detention" means 8 imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person 9 charged with an offense, detention by a peace officer 10 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 include supervision of probation or parole, constraint 16 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:

(a) imprisoned in the state prison for a term not to
exceed 20 years if he escapes from a state prison, county
jail, or city jail<u>s or supervised release program</u> by the use
or threat of force, physical violence, weapon, or simulated
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."

Section 8. Section 45-9-101. MCA, is amended to read: "45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous 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.

(3) A person convicted of criminal sale of a dangerous 4 drug included in Schedule I or Schedule II pursuant to 5 50-32-222 ٥r 50-32-224. except marijuana ٥r 6 tetrahydrocannabinols, who has a prior conviction for 7 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 than life, except as provided in 46-18-222. Upon a third or 10 subsequent conviction for criminal sale of such a drug, he 11 shall be imprisoned in the state prison for a term of not 12 13 less than 10 years or more than life, except as provided in 14 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence 15 16 shall include the restriction that the defendant be 17 ineligible for parole and participation in the prisoner furlough supervised release program while serving his term. 18 19 (4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3)20 shall be imprisoned in the state prison for a term of not 21 22 less than 1 year or more than life.

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

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1 Section 9. Section 46-18-202, MCA, is amended to read: #46-18-202. Additional restrictions on sentence. (1) 2 The district court may also impose any of the following 3 restrictions or conditions on the sentence provided for in 4 46-18-201 which it considers necessary to obtain the 5 6 objectives of rehabilitation and the protection of society: 7 (a) prohibition of the defendant's holding public office; 8

9 (b) prohibition of his owning or carrying a dangerous10 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 imprisonment in the state prison for a term exceeding 1 16 17 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the 18 prisoner--furlough supervised release program while serving 19 20 his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court 21 finds that the restriction is necessary for the protection 22 23 of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the 24 Z5 reasons for the restriction.

(3) The judge in a justice's, city, or municipal court
 does not have the authority to restrict an individual's
 rights as enumerated in subsections (1) and (2)=*
 Section 10. Section 46-18-401, MCA, is amended to
 read:

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

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

· · · ·

(4) Separate sentences for two or more offenses shall
 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 imprisoned in the state prison or while he was released on 5 parole or under the prisoner-furlowch supervised_release 6 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."

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

 20
 Section 12. Repealer.
 Sections
 45-23-402
 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-

47th Legislature

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Approved by Committee on Judiciary

1	SENATE BILL NO. 286	L	and complication of efforts;
2	INTRODUCED BY VAN VALKENBERG	2	WHEREAS, the Legislature supports the basic intent of
3	BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS	3	the prisoner furlough program, hereafter referred to as the
4		4	supervised release program, to provide education, training,
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	5	and betterment of selected prisoners and to increase such
6	LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; REDEFINING	6	prisoners' responsibility to society; and
7	THE PROGRAM AS THE SUPERVISED RECEASED RELEASE PROGRAM;	7	WHEREAS, the Legislature believes that the program can
8	RESTRICTING THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY;	8	be administered in a more efficient and meaningful manner.
9	TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM	9	
10	FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE	10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR	11	Section 1. Section 46-23-401, MCA, is amended to read:
12	ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE	12	*46-23-401. Definitions. Unless the context requires
13	PRISONER FROM THE SPONSOR TO 4 PROBATION AND PAROLE OFFICER;	13	otherwise, in this part the following definitions apply:
14	STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING	14	(1) "Applicant" means any prisoner who hest-signed is
15	WHETHER A VIGLATION OF A PROGRAM CONDITION HAS DECURRED;	15	eligible_under_Esection=:3f111 46-23-411 and who signs an
16	AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-1d-401,	16	application to participate in the prisonerfurlough
17	45-2 3-401, 46-23-405, 46-23-411, 46-23-412, 46-23-4 22, AND	17	supervised_release program.
18	46-23-426, MCA; AND REPEALING SECTIONS 46-23-402 THROUGH	18	(2) "Board" means the board of pardons provided for in
19	46-23-404, 46-23-406 THROUGH 46-23-410, 46-23-413 THROUGH	19	2-15-2302.
20	46-23-421, AND 46-23-423 THROUGH 46-23-425, MCA."	20	(3) "Department" means the department of institutions
21		21	provided for in 2-15-2301.
22	WHEREAS, a prisoner furlough program currently exists	22	f4)*Jail*-meons-any-county-jail-or-tribal-jail*
23	under sections 46-23-401 through 46-23-426, MCA;	23	(5)(4) "Prisoner" means a person sentenced by a state
24	WHEREAS, the Legislature realizes that the above-named	24	district court to a term of confinement in the state prison.
25	statutes are no longer workable and cause conflicts of laws	25	(6)<u>(5)</u> "State prison" means the Montana state prison

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SECOND READING

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1 at Deer Lodge and or any adult correctional facility under 2 the-direction-of designated by the department. 3 f7+(6) "Supervising---agency" "Sponsor" means any federal. state. county. local. or private agency. Indian 4 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 department is authorized and directed to establish a 16 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 <u>PROGRAM_OR_A recognized</u> educational, treatment, or training 24 program<u>y-but-mot-a-work-program</u>;

25 (3) approval of supervising-agency; and the spansor;

1 (4) review of determinotions-in-furlough-applications Z 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; б (6) conducting revocation hearings; 7 (7) establishment of a program by the prisoner; and 8 [8] any other provisions necessary to implement fthis 9 oct- 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-hos-served-at-least--one-half--of--the 16 time--required--to--be--considered--for-parate-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:

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1	"46-23-412. Board's action on application. {1}-At-the
2	meeting-of-the-board-fallowing-the-signing-of-any-prisoner*s
3	applicationthe <u>The</u> board shall approve or deny the
4	application of each prisoner after careful study of the
5	prisoner's fu rlough release plans, criminal history, and all
6	other pertinent case material. The-fallowing-rules-shallbe
7	observed-when-the-boord-meets-to-consider-an-application+
8	tajEoch-applicant-may-call-two-witnesses-from-outside
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13	proceedings-on-his-application;-howevery-the-board-maymeet
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15	decision-on-the-application*
16	{c}tach-applicant-shall-be-viewed-singly-and-shall-be
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21	ofits-decision-immediately-and-shall-provide-the-applicant
22	with-a-written-decisiony-including-a-thoroughstatementof
23	thereasonsforthedecisionywithin2days-following
24	adjournment*
25	{2}finalauthorityinall matterspertainingto

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ı	prisonerfurloughsisinthe-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	<u>46-23-213.</u> "
5	Section 5. Section 46-23-422, MCA, is amended to read:
6	"46-23-422. Violation of furlough-agreement supervised
7	<u>release_program</u> by prisoner <u> revocation</u> . (1) If-any
8	prisoner-released-from-actual-prison-confinementunder-the
9	furloughprogramfailstocomplywiththe-rules-of-the
10	furlough-agreementy-he-shall-be-called-by-the-departmentor
11	by-the-supervising-agency-to-appear-befare-the-department-or
12	supervisingagency= <u>If a prisoner in a supervised release</u>
13	program violates a condition established for the program,
14	the department may issue a warrant for his arrest.
15	(2) Ifaconference-is-not-sufficient-to-resolve-the
16	situationandiftheprisonercontinuesinhis
17	noncompliancevthe 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 furloughagreement supervised release
21	<u>conditions</u> 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 boardofpardons
24	department. The prisoner onfurlough 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--agreementy-the-furlough-shall-be-concelled-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-ofter 9 the-return-of-the-prisoner-to-the-prisony-the-prisoner-shall 10 be-granted-s-due-process-hearing-in-order--to--determine--if the---prisoner--hos--in--fact--violated--the--terms--of--the 11 12 prisoner-s-furtough-release-If-it-is--determined--that--the 13 prisoner--has--in--fact-violated-the-terms-of-the-prisoner-s 14 furloughy-the-prisoner-shall-remain-at-the-prisony 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 <u>supervising</u> agent and a new furlough-arrangement 21 <u>supervised release program</u> shall be worked out."

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

person convicted of escape from a supervised release program is punishable as provided in 45-7-306. A person convicted of such an escape and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 45-18-401." Section 7. Section 45-7-306, MCA, is amended to read:

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

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

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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<u>or supervised release program</u>;

(ii) escapes from another official detention by the use
 or threat of force, physical violence, weapon, or simulated
 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. barters, 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.

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

(3) A person convicted of criminal sale of a dangerous 4 5 grug included in Schedule I or Schedule II pursuant to 50-32-224. marijuana 50-32-222 05 except OF 6 tetrahydrocannabinols, who has a prior conviction for 7 8 criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 5 years or more 9 than life, except as provided in 46-18-222. Upon a third or 10 subsequent conviction for criminal sale of such a drug, he 11 shall be imprisoned in the state prison for a term of not 12 less than 10 years or more than life, except as provided in 13 46-18-222. Whenever a conviction under this subsection is 14 for criminal sale of such a drug to a minor+ the sentence 15 16 shall include the restriction that the defendant be ineligible for parole and participation in the prisoner 17 furtough supervised release program while serving his term. 18 19 (4) A person convicted of criminal sale of dangerous 20 drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not 21 22 less than I year or more than life.

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

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1 Section 9. Section 46-19-202. MCA. is amended to read: "46-18-202. Additional restrictions on sentence. (1) 2 The district court may also impose any of the following 3 restrictions or conditions on the sentence provided for in 4 46-18-201 which it considers necessary to obtain the 5 objectives of rehabilitation and the protection of society: 6 7 (a) prohibition of the defendant's holding public office; 8

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 objectives of rehabilitation and the protection of society. 14 (2) Whenever the district court imposes a sentence of 15 imprisonment in the state prison for a term exceeding 1 16 17 year, the court may also impose the restriction that the 18 defendant be incligible for parole and participation in the prisoner-furlough supervised release program while serving 19 his term. If such a restriction is to be imposed, the court 20 shall state the reasons for it in writing. If the court 21 finds that the restriction is necessary for the protection 22 of society, it shall impose the restriction as part of the 23 sentence and the judgment shall contain a statement of the 24 25 reasons for the restriction.

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

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ŧ (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 prisoner is sentenced for an offense committed while he was 4 5 imprisoned in the state prison or while he was released on parole or under the prisoner--furlough supervised release 6 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 <u>46-23-415</u>, 46-23-421, and 46-23-423 through 46-23-425, MCA,
23 are repealed.

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1	SENATE BILL NO. 286	1	and complication of effo
2	INTRODUCED BY VAN VALKENBERG	. 2	WHEREAS, the Legi
3	BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS	3	the prisoner furlough pr
4		4	supervised release prog
5	A BILL FOR AN ACT ENTITLED: MAN ACT TO GENERALLY REVISE THE	5	and betterment of select
6	LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; REDEFINING	6	prisoners' responsibilit
7	THE PROGRAM AS THE SUPERVISED RELEASED RELEASE PROGRAM;	7	WHEREAS, the Legis
8	RESTRICTING THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY;	8	be administered in a mor
9	TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM	9	
LO	FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE	10	BE IT ENACTED BY THE LEG
11	PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR	11	Section 1. Section
12	ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE	12	"46-23-401. Defini
13	PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER;	13	otherwise, in this part
14	STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING	14	<pre>(1) "Applicant" me</pre>
15	WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED;	15	<u>eligible under Esectie</u>
16	AMENDING SECTIONS 45-7-306, 45+9-101, 46-18-202, 46-18-401,	16	application to partici
17	46-23-401+ 46-23-405+ 46-23-411+ 46-23-412+ 46-23-427+ AND	17	<u>supervised_release</u> _progr
18	46-23-426. MCA; AND REPEALING SECTIONS 46-23-402 THROUGH	18	(2) "Board" means
19	46-2 3-404, 46-23-406 THROUGH-+46+23-410, 46-23-413 THROUGH	19	2-15-2302.
20	<u>46-23-415,</u> 46-23-421, AND 46-23-423 THROUGH 46-23-425, MCA."	20	(3) "Department"
21		21	provided for in 2-15-230
22	WHEREAS, a prisoner furlough program currently exists	22	(4)≞Jaił#-means-a
23	under sections 46-23-401 through 46-23-426, MCA;	23	(5)<u>(4)</u> "Prisoner"
24	WHEREAS+ the Legislature realizes that the above-named	24	district court to a term
25	statutes are no longer workable and cause conflicts of laws	25	(6)<u>(5)</u> "State pri

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gislature supports the basic intent of program, hereafter referred to as the ogram, to provide education, training, ted prisoners and to increase such ty to society; and slature believes that the program can ore efficient and meaningful manner. EGISLATURE OF THE STATE OF MONTANA: on 46-23-401, MCA, is amended to read: nitions. Unless the context requires t the following definitions apply: means any prisoner who has--signed is ton--3ft+] 46-23-411 and who signs an gram. is the board of pardons provided for in means the department of institutions

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-any-county-jail-or-tribal-jail+

" means a person sentenced by a state erm of confinement in the state prison. rison" means the Montana state prison

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1	at Deer Lodge and <u>or</u> any adult correctional facility under
2	the-direction-of designated by the department.
3	(7)[6] "Supervisingagency" <u>"Sponsor"</u> 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	<u>supervised_release</u> _program. <u>The-term-does-not-include-an</u>
9	employeractinginthatcapacityandcreatingan
10	employer/employee==relationship==between==the==prisoner==ond
11	itselfy
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	f urlough <u>supervised</u> release program and make rules in
18	accordance with Title 2, chapter 4 <u>(the Montana</u>
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 <u>a</u> <u>WORK</u>
23	PROGRAM OR A recognized educational, treatment, or training
24	program <u>z-but-not-a-work-program</u> ;
25	(3) approval of supervising-sgencyt-and the sponsor;

1	(4) review of determinations-in-furlough-application *
2	<u>a board decision to deny an applicant admittance into the</u>
3	<u>Program;</u>
4	(5) <u>supervision of the prisoner by or under the</u>
5	<u>direction of a supervising agent while he is in the program:</u>
6	<pre>(6) conducting revocation hearings;</pre>
7	[7] establishment of a program by the prisoner; and
8	(8) any other provisions necessary to implement Ethis
9	ecti PARI."
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 3
13	prisoner serving a sentence imposed under 46-18-202(2), may
14	make application to participate in the furlough <u>supervised</u>
15	<u>release</u> program if he-has-served-at-leastone-halfofthe
16	timerequiredtobeconsideredfor-parole-and-qualifies
17	under-the-rules-established-by-the-department <u>not more than</u>
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 gualify under the rules established by the
24	department."
25	Section 4. Section 46-23-412, MCA, is amended to read:

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L	M45-23-412. Soard's action on application. {} + + + + + + + + + + + + + + + + + +
. 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 fu rlough 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	tajEach-applicant-may-call-two-witnesses-from-outside
9	orinsidethe-institution-to-testify-as-to-the-applicant*s
10	general-attitudeparticipation-in-self-help-activitiesor
11	h is-choracter-or-job-references.
12	<pre>(b)Anapplicantmay-remain-present-during-the-board</pre>
13	proceedings-on-his-application;-howevery-the-board-maymeet
14	inexecutivesessionwithouttheapplicantforfinal
15	decision-on-the-application.
16	<pre>fc}Each-applicant-shall-be-viewed-singly-and-shall-be</pre>
17	recognized-as-an-individualy
18	{d}Each-applicant-shall-beallowedtodiscussany
19	specific-problem-areas-with-any-member-of-the-board-
20	(e}The-board-shall-cause-the-applicant-ta-be-notified
21	ofits-decision-immediately-and-shall-provide-the-applicant
22	with-o-written-decisiony-including-o-thoroughstatementof
23	thereasonsforthedecisionwithin2days-following
24	adjournmente
25	t2tFinatauthorityinallmatterspertainingto

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l	prisonerfurloughsisinthe-department* <u>The board shall</u>
2	grant the applicant a hearing consistent with the procedural
3	rules adopted by it for parole hearings pursuant to
4	<u>46-23-218.</u> *
5	Section 5. Section 46-23-422, MCA, is amended to read:
6	"46-23-422. Violation of furlough-agreement supervised
7	<u>release program</u> by prisoner <u> revocation</u> . (1) If-any
8	prisoner-released-from-actual-prison-confinementunderthe
9	furtoughprogramfaitstocomplywiththe-rules-of-the
10	furtough-agreementy-he-shall-be-called-by-the-departmentor
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) Ifaconference-is-not-sufficient-to-resolve-the
16	situationandiftheprisonercontinuesinhis
17	noncompliancethe 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 boardofpardons
24	<u>department</u> . The prisoner on-furlough shall have all
25	opportunities provided under 46-23-1024 and 46-23-1025

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

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person convicted of escape from a supervised release program
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(3) A person convicted of the offense of escape shall

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as defined in 50-32-101(18), shall be imprisoned in the
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4 (3) A person convicted of criminal sale of a dangerous 5 drug included in Schedule I or Schedule II pursuant to 50-32-222 50-32-224. 6 or except marijuana or 7 tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the R 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 shall include the restriction that the defendant be 16 17 ineligible for parole and participation in the prisoner forlough supervised release program while serving his term. 18 19 (4) A person convicted of criminal sale of dangerous

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9 (b) prohibition of his owning or carrying a dangerous
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11 (c) restrictions on his freedom of association;

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6 "46-18-401" Merger of sentences" (1) Unless the judge
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24 subsection (1). the court which imposed such sentence shall
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(4) Separate sentences for two or more offenses shall
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3 (5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was 4 5 imprisoned in the state prison or while he was released on parole or under the prisoner--furlough supervised release 6 7 program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts 8 9 serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23. 10 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."

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 20
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 Sections
 46-23-402
 through

 21
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 through--46-23-410.
 46-23-413
 through

 22
 <u>46-23-415.</u>
 46-23-421.
 and 46-23-423
 through 46-23-425.
 MCA.

 23
 are repealed.
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-End-

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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 THE DEPARTMENT TO THE PRISONER: RESTRICTING THE 10 FROM PRISONER'S RIGHTS UNDER THE HEARING PROCEDURES USED FOR 11 ADMISSION INTO THE PROGRAM: TRANSFERRING SUPERVISION OF THE 12 13 PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER: STREAMLINING THE HEARING PROCEDURES USED FOR DETERMINING 14 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, 46-23-422, AND 46-23-426, MCA; AND REPEALING SECTIONS 16 19 46-23-402 THRDUGH 46-23-404, 46-23-406 THRDUGH-46-23-410, 20 46-23-413 THROUGH 46-23-415, 46-23-421, AND 46-23-423 21 THRDUGH 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

statutes are no longer workable and cause conflicts of laws
 and complication of efforts;
 WHEREAS, the Legislature supports the basic intent of
 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:

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

15 (1) "Applicant" means any prisoner who has-signed is eligible under taction-aftith 46-23-411 and who signs an in application to participate in the prisoner--furlough 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 t4)--#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.

-2- SB 286 REFERENCE BILL (6)(5) "State prison" means the Montana state prison
 at Deer Lodge and or any adult correctional facility under
 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 furlough 9 supervised_release program. The term-does--not--include--an 10 employer---acting---in---that---copacity---and--creating--on 11 Employer/employeer-relationship-between-the-prisoner--and 12 itselfa

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

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 supervised release program and make rules in accordance with Title 2. chapter 4 (the Montana Administrative Procedure Act), to implement and control the same. Rules shall include guidelines for:

22 (1) prisoner eligibility;

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(2) participating prisoner participation in an a WORK
 <u>PROGRAM-OR-A</u> recognized educational+ treatment, or training
 program<u>r--but--not--a-work-program</u> <u>OR WORK PROGRAM_IN</u>

1	CONJUNCTION WITH ANY OF THE ABOVE PROGRAMS;
2	(3) approval of supervising-agency;-and the iponsor;
3	(4) review of determinations-in-furlough-application w
4	a board decision to deny an applicant admittance into the
5	program;
6	(5) supervision of the prisoner by or under the
7	<u>direction of a supervising agent while he is in the program;</u>
8	<pre>(6) conducting revocation hearings;</pre>
9	[7] establishment of a program by the prisoner; and
10	(8) any other provisions necessary to implement fthis
11	acti PARI."
12	Section 3. Section 46-23-411, MCA, is amended to read:
13	"46-23-411. Application to participate eligibility.
14	(1) Any prisoner confinedinthe-state-prison, except a
15	prisoner serving a sentence imposed under 46-18-202(2), may
16	make application to participate in the furlough supervised
17	<u>release</u> program if he-has-served-at-leastone-halfofthe
18	timerequiredtobeconsideredfor-parole-and-qualifies
19	under-the-rules-established-by-the-department <u>HE_HAS_SERVED</u>
20	AT LEAST ONE-HALF OF THE TIME REQUIRED TO BE CONSIDERED FOR
21	PAROLE AND not more than 15 18 15 months remain before he is
22	eligible for parole.
23	(2) Prisoners serving sentences with the restriction
24	imposed under 46-18-202(2) are not eligible for
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25 participation in the program.

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1	(3) In order to be accepted into the program, an	L	withowritten-decisiony-including-o-therough-statement-of
2	applicant must qualify under the rules established by the	2	the-reasonsforthedecision,within2daysfollowing
3	department."	3	adjournment
4	Section 4. Section 46-23-412, MCA, is amended to read:	4	(2)Finalauthorityinallmatterspertainingto
5	"46-23-412. Board's action on application. {}	5	prisoner-furloughs-is-in-thedepartments <u>The board shall</u>
6	meeting-of-the-board-fo lloxing-the -signing-of-any-prisoner*s	6	grant the applicant a hearing consistent with the procedural
7	opplicationthe <u>The</u> board shall approve or deny the	7	rules adopted by it for parole hearings pursuant to
8	application of each prisoner after careful study of the	8	<u>46-23-218</u> **
9	prisoner's furlough <u>release</u> plans, criminal history, and all	9	SECTION 5. SECTION 46-23-421, MCA. IS AMENDED TO READ:
10	other pertinent case material. The following-rules-shallbe	10	<pre>"46-23-421. Responsibility of department and</pre>
11	observed-when-the-board-meets-to-consider-an-application+	11	supervising agency <u>agent</u> . The department shall be
12	tajEach-applicant-may-call-two-witnesses-from-outside	12	responsible for the activities of a prisoner participating
13	orinsidethe-institution-to-testify-as-to-the-applicant*s	13	in a furlough <u>supervised release</u> program under this part.
14	general-attitude=-porticipation-in-self-help-activities=-or	14	The department may delegate jurisdictional supervision of
15	h i s-character-or-job-references.	15	work-furlough-participants to the-adult-parole-and-probation
16	{b}Anapp}icantmay-remain-present-during-the-board	15	fieldserviceThesupervising-agency <u>a supervising agent</u>
17	proceedings-on-his-application:-howeverthe-board-maymeet	17	<u>who</u> shall be responsible for those <u>the</u> activities of a
18	inexecutivesessionwithouttheapplicantforfinal	18	furloughed <u>the</u> prisoner for-which-it-is-responsible-in-the
19	decision-on-the-application=	19	written-furlough-agreement <u>during his supervised release</u> ."
20	{c}Each-applicant-shall-be-viewed-singly-and-shall-be	20	Section 6. Section 46-23-422, MCA, is amended to read:
21	recognized-as-an-individual.	21	"45-23-422. Violation of furlough-agreement supervised
22	{d}Each-applicant-shall-beallowedtodiscussany	22	<u>release_program</u> by prisoner <u> revocation</u> . (1) IF-any
23	<pre>specific-problem-oreas-with-any-member-af-the-boardw</pre>	23	prisoner-reteased-from-actual-prison-confinementunderthe
24	te}The-board-shall-cause-the-applicant-to-be-notified	24	furloughprogramfailstocomplywiththe-rules-of-the
25	ofits-decision-immediately-and-shall-provide-the-applicant	25	furlough-agreementy-he-shall-be-called-by-the-departmentor
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by-the-supervising-agency-to-appear-before-the-department-or
 supervising-agency+ If a prisoner in a supervised release
 program_violates_a_condition_established for the program;
 the department may issue a warrant for his_arrest, UPON_A
 SECOND_OR_SUBSEQUENT_VIOLATION_THE_DEPARTMENT_SHALL_ISSUE_A
 WARRANT_FOR_THE_PRISONER'S_ARREST.

7 (2) If-a-conference-is-not-sufficient-to--resolve--the 8 situation---and---if---the---prisoner---continues---in---his 9 noncompliances-the The prisoner shall be granted a hearing on--the--violation within a reasonable time on or near the 10 11 site of the alleged violation to determine whether a 12 violation of the furlough--agreement supervised release 13 conditions exists OCCURRED. The prisoner may be represented by counse) at the hearing at his own expense. The hearing 14 15 shall be conducted by a hearing officer of the board--of pordons department. The prisoner on-furlough shall have all 16 17 opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If 18 19 reasonable--grounds--are--established--for--violation-of-the furlough-agreement. the furlough-shall-be-cancelled-and-the 20 21 prisoner--shall-be-returned-to-the-prisons If probable cause **Z**2 is established that a violation of the supervised release 23 has occurred, the prisoner shall be returned to the state Z4 prison.

the-return-of-the-prisoner-to-the-prisony-the-prisoner-shall 1 2 be--granted--a-due-process-hearing-in-order--to-determine-if the--prisoner--has--in--fact--wighted--the--terms--of---the 3 prisoner=s--furlough--releases--if-it-is-determined-that-the 4 5 prisoner-hos-in-fact-violated-the-terms--of--the--prisoner*s furloughy--the-prisoner-shall-remain-at-the-prisony within a A. 7 reasonable time after the prisoner's return to the state 8 prison, the board shall conduct a revocation proceeding in 9 accordance with rules established under 46-23-405. (4) If the terms of the prisoner's release have not 10 11 been violated, the prisoner's case shall be assigned to a 12 parate supervising agent and a new furtough--arrangement 13 supervised_release_program_shall be worked out." 14 Section 7. Section 46-23-426, NCA, is amended to read: 15 "46-23-426. Escape. For-the-purpose-of-this-party-the 16 provisions-relating-to-escape-in-45-7-306-shall-apply-unless 17 aggravating-circumstances-reguire-a-more-severe--penaityv 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

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(3) At-the-next-meeting-of-the-board-of-pardons--after

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weapon: or

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 protection of the welfare of the person detained or for the 6 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.

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12 (2) A person subject to official detention commits the 13 offense of escape if he knowingly or purposely removes himself from official detention or fails to return to 14 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 jail, or city jail, or supervised release program by the use 21 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 jail, or supervised release program; 3 (ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated

(c) fined not to exceed \$500 or imprisoned in the 6 7 county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) 8 of this subsection." 0

Section 9. Section 45-9-101, MCA, is amended to read: 10 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, barters, 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 mari juana or tetrahydrocannabinols, who has a prior conviction for 24 25 criminal sale of such a drug shall be imprisoned in the

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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 druge he shall be imprisoned in the state prison for a term of not 4 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

L	offic	e;

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

4 (c) restrictions on his freedom of association;

(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 q imprisonment in the state prison for a term exceeding 1 10 year + the court may also impose the restriction that the defendant be ineligible for parole and participation in the 11 12 prisoner-furlough supervised_release program while serving his term. If such a restriction is to be imposed, the court 13 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 reasons for the restriction. 18

(3) The judge in a justice's, city, or municipal court
does not have the authority to restrict an individual's
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:

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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

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remainder of the original sentence. The prisoner starts
 serving the new sentence when the original sentence has
 expired or when he is released on parole under chapter 23,
 part 2, of this title in regard to the original sentence,
 whichever is sooner. In the latter case, the sentences run
 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.

Section 13. Repealer. Sections 46-23-402 through
 46-23-404, 46-23-406 through--46-23-410, 46-23-413 through
 46-23-405, 46-23-421, and 46-23-423 through 46-23-425, MCA,
 are repealed.

-End-

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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

FOR THE HOUSE:

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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:

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 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.

SENATE:

FOR THE HOUSE:

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1	SENATE BILL NO. 286	1	statutes are no longer workable and cause conflicts of laws
2	INTRODUCED BY VAN VALKENBERG	2	and complication of efforts;
3	BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS	3	WHEREAS, the Legislature supports the basic intent of
4		4	the prisoner furlough program, hereafter referred to as the
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	5	supervised release program, to provide education, training,
6	LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM; REDEFINING	6	and betterment of selected prisoners and to increase such
7	THE PROGRAM AS THE SUPERVISED RELEASED RELEASE PROGRAM;	1	prisomers' responsibility to society; and
8	RESTRICTING THE TIME QUALIFICATION FOR PRISONER ELIGIBILITY;	8	WHEREAS, the Legislature believes that the program can
9	TRANSFERRING THE RESPONSIBILITY OF ESTABLISHING A PROGRAM	9	be administered in a more efficient and meaningful manner.
10	FROM THE DEPARTMENT TO THE PRISONER; RESTRICTING THE	10	
11	PRISONER®S RIGHTS UNDER THE HEARING PROCEDURES USED FOR	11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12	ADMISSION INTO THE PROGRAM; TRANSFERRING SUPERVISION OF THE	12	Section 1. Section 46-23-401, MCA, is amended to read:
13	PRISONER FROM THE SPONSOR TO A PROBATION AND PAROLE OFFICER;	13	*45-23-401. Definitions. Unless the context requires
14	STREAMLINING THE MEARING PROCEDURES USED FOR DETERMINING	14	otherwise, in this part the following definitions apply:
15	WHETHER A VIOLATION OF A PROGRAM CONDITION HAS OCCURRED;	15	(1) "Applicant" means any prisoner who has-signed is
16	AMENDING SECTIONS 45-7-306, 45-9-101, 46-18-202, 46-18-401,	16	eligible under faction-atta 46-23-411 and who signs an
17	46-23-401, 46-23-405, 46-23-411, 46-23-412, <u>46-23-421,</u>	17	application to participate in the prisonerfurlough
18	46-23-422, AND 46-23-426, MCA; AND REPEALING SECTIONS	18	supervised release program.
19	46-23-402 THROUGH 46-23-404, 46-23-406 THRBUGH-46-23-410,	19	(2) "Soard" means the board of pardons provided for in
20	46-23-413 THROUGH <u>46-23-415, 46-23-42t+</u> AND 46-23-423	20	2~15-2302•
21	THROUGH 46-23-425+ HCA."	21	(3) "Department" means the department of institutions
22		22	provided for in 2-15-2301.
23	WHEREAS, a prisoner furlough program currently exists	23	{4} ^u dai ^{,w_} means-any-county-joit-or-tribat-jait+
24	under sections 46-23-401 through 46-23-426, MCA;	24	<pre>(5)[4] "Prisoner" means a person sentenced by a state</pre>
25	WHEREAS, the Legislature realizes that the above-named	25	district court to a term of confinement in the state prison.

S3 286 REFERENCE BILL: INCLUDES JOINT CONFERENCE COMMITTEE REPORT. DATED 4- 2-2-21

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1	<pre>f6f(5) "State prison" means the Montana state prison</pre>
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3	the-direction-of designated by the department.
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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	<u>supervised release</u> program. The term does not include an
10	<u>employeractingtnthatcopacityandcreatingan</u>
11	<u>employer/employeerelationship_betweentheprisoner_and</u>
12	<u>itself</u>
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16	♥46-23-405。 Establishing program rules. The
17	department is authorized and directed to establish a
18	furlough <u>supervised release</u> program and make rules in
19	accordance with Title 2, chapter 4 <u>{the Montana</u>
20	Administrative Procedure Act); to implement and control the
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7	direction of a supervising agent while he is in the program;
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21	PAROLE AND not more than 15 10 15 months remain before he 15
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8	application of each prisoner after careful study of the	8	<u>46-23-218-</u> "
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15	hts-character-or-job-references+	15	work-furlough-participants to the-adult-parole-and-probation
15	totwn-appticant-may-remain-present-duringtheboard	16	freidserviceFhesupervising-ogency <u>a supervising agent</u>
1.*	proceedingson-his-application:-howevery-the-board-way-meet	17	who shall be responsible for those the activities of a
13	<pre>tm-secdetve-sessionwithouttheapplicants-forfinal</pre>	18	furloughed the prisoner for-which-it-is-responsible-in-the
14	decraion-on-the-apolication=	Ŧa	written-furlough-agreement <u>during his supervised release</u> ."
20	tettach-applicant-shall-be-viewed-singly-and-shall-be	20	Section 6. Section 46-23-422, MCA, is amended to read:
21	recognized-og-an-individuatu	21	#46-23-422+ Violation of furloogh-agreement supervised
22	(atEachapplicantshallbeallowed-co-discust-any	22	<u>release program</u> by prisoner <u> revocation</u> . (1) if-any
23	-pectfic-problem-areas-with-any-member-of-the-boord-	23	prtsoner-released-from-actual-prison-confinementunderthe
24	tetFne-poord-shail-cause-the-appircant-co-be-nocrfred	24	furloughprogramfailstocomplywiththe-rules-of-the
25	of-rts-decision-immediately-and-ahalt-provide-the apolicant	25	f ur lough-agreementv-he-shall-be-call ed-by-the-departm entor
	6		_
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1	by-the-supervising-agency-to-appear-before-the-department-or
2	supervising-agencyv If a prisoner in a supervised release
3	program violates a condition_established_for_the_program,
4	the <u>department</u> may issue a warrant for his arrest. UPON A
5	SECOND OR SUBSEQUENT VIOLATION THE DEPARIMENT SHALL ISSUE A
6	WARRANT_FOR_THE_PRISONER'S_ARREST.
7	(2) Ifaconference-is-not-sufficient-to-resolve-the
8	situationandiftheprisonercontinuesinhis
9	noncompliance, the <u>The</u> prisoner shall be granted a hearing
10	on-the-violation within a reasonable time on or near the
11	site of the alleged violation to determine whether a
12	violation of the furlough-agreement <u>supervised_release</u>
13	conditions exists OCCURRED. The prisoner may be represented
14	by counsel at the hearing at his own expense. The hearing
15	shall be conducted by a hearing officer of the board-of
16	pardons <u>department</u> . The prisoner on-furlough shall have all
17	opportunities provided under 46-23-1024 and 46-23-1025
18	pertaining to on-site hearings for parole revocation. If
19	reasonable-grounds-areestablishedforviolationofthe
20	furloughagreementy-the-furlough-shall-be-concelled-and-the
21	p <u>risone lf probable cause</u>
2,2	is established that a violation of the supervised release
23	has occurred, the prisoner shall be returned to the state
24	prișon.
25	(3) Atthe-next-meeting-of-the-board-of-pardons-after

ι	the-return-of-the-prisoner-to-the-prisony-the-prisoner-shall
2	be-granted-a-due-process-hearing-in-ordertodetermineif
3	theprisonerhasinfactviolatedthetermsofthe
4	prisoner#s-furlough-release*-If-it-isdeterminedthatthe
5	prisonerhasinfact-violated-the-terms-of-the-prisoner*s
6	furloughy-the-prisoner-shall-remain-at-the-prisons <u>Within a</u>
7	reasonable_time_after_the_prisoner's return to the state
8	prison, the board shall conduct a revocation proceeding in
9	accordance with rules_established_under_46-23-405.
10	. (4) If the terms of the prisoner's release have not
11	been violated, the prisoner's case shall be assigned to a
12	parole supervising agent and a new furlough-arrangement
13	supervised release program shall be worked out."
14	Section 7. Section 46-23-426, MCA, is amended to read:
15	M46-23-426. Escape. For-the-purpose-of-this-partythe
16	provisions-relating-to-escape-in-45+7-366-shall-apply-anless
17	aggravatingcircumstancesrequire-a-more-severe-penaltyr A
18	<u>person convicted of escape from a supervised_release_program</u>
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

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offense, confinement for an offense, confinement of a person 1 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 protection of the welfare of the person detained or for the 6 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:

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

(b) imprisoned in the state prison for a term not toexceed 10 years if he:

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

Section 9. Section 45-9-101, MCA, is amended to read: "45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

17 (2) A person convicted of criminal sale of an opiatev
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

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1 state prison for a term of not less than 5 years or more than life, except as provided in 46-18-222. Upon a third or Z 3 subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not 4 5 less than 10 years or more than life, except as provided in 46-18-222. Whenever a conviction under this subsection is 6 7 for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be 8 ineligible for parole and participation in the prisoner 9 10 furlough supervised release program while serving his term. 11 (4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) 12 13 shall be imprisoned in the state prison for a term of not less than I year or more than life. 14

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."

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

"46-18-202. Additional restrictions on sentence. (1) 20 The district coust may also impose any of the following 21 restrictions or conditions on the sentence provided for in -a. 222 23 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society: 24 25 (a) prohibition of the defendant's holding public

L	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 l
10	year, the court may also impose the restriction that the
11	defendant be ineligible for parole and participation in the
12	prisonerfurlough 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

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21

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read:

otherwise orders:

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rights as enumerated in subsections (1) and (2)."

Section 11. Section 46-18-401, MCA, is amended to

"46-18-401. Merger of sentences. (1) Unless the judge

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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.

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

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

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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.

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

-End-

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HOUSE JUDICIARY 3/25/81 SENATE 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" يبيد يهددها بحب المصادية 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: "<u>+5</u>" 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,"