

SENATE BILL NO. 289

INTRODUCED BY VAN VALKENBURG, GOULD

IN THE SENATE

FEBRUARY 5, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 17, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1987 PRINTING REPORT.

FEBRUARY 19, 1987 SECOND READING, DO PASS.

FEBRUARY 20, 1987 ENGROSSING REPORT.

FEBRUARY 21, 1987 THIRD READING, PASSED.
AYES, 49; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 23, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 98; NOES, 0.

RETURNED TO SENATE.

IN THE SENATE

MARCH 31, 1987 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

1 *Sen. Steve* BILL NO. *289*
 2 INTRODUCED BY *Jan Volkening*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE
 5 EXTRADITION WITHOUT A HEARING OF A PERSON ARRESTED IN THIS
 6 STATE FOR VIOLATION OF A PROBATION OR PAROLE AGREEMENT
 7 SIGNED IN ANOTHER STATE IF THE AGREEMENT CONTAINS A WAIVER
 8 OF EXTRADITION CLAUSE; TO AUTHORIZE THE USE OF WAIVER OF
 9 EXTRADITION CLAUSES IN PROBATION AND PAROLE AGREEMENTS; AND
 10 AMENDING SECTIONS 46-18-202 AND 46-23-215, MCA."

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

13 NEW SECTION. Section 1. Prior waiver of extradition.
 14 A law enforcement agency in this state holding a person who
 15 is alleged to have broken the terms of his bail, probation,
 16 parole, or any other conditional release in the demanding
 17 state shall immediately deliver the person to the duly
 18 authorized agent of the demanding state without the
 19 requirement of a warrant provided for in 46-30-213, if all
 20 the following apply:

- 21 (1) the person has signed a prior waiver of
- 22 extradition as a term of his current bail, probation,
- 23 parole, or other conditional release in the demanding state;
- 24 and
- 25 (2) the law enforcement agency holding the person has

1 received an authenticated copy of the prior waiver of
 2 extradition signed by the person and photographs,
 3 fingerprints, or other evidence properly identifying the
 4 person as the person who signed the waiver.

5 Section 2. Section 46-18-202, MCA, is amended to read:

6 "46-18-202. Additional restrictions on sentence. (1)
 7 The district court may also impose any of the following
 8 restrictions or conditions on the sentence provided for in
 9 46-18-201 which it considers necessary to obtain the
 10 objectives of rehabilitation and the protection of society:

- 11 (a) prohibition of the defendant's holding public
- 12 office;
- 13 (b) prohibition of his owning or carrying a dangerous
- 14 weapon;
- 15 (c) restrictions on his freedom of association;
- 16 (d) restrictions on his freedom of movement;
- 17 (e) any other limitation reasonably related to the
- 18 objectives of rehabilitation and the protection of society.

19 (2) Whenever the district court imposes a sentence of
 20 imprisonment in the state prison for a term exceeding 1
 21 year, the court may also impose the restriction that the
 22 defendant be ineligible for parole and participation in the
 23 supervised release program while serving his term. If such
 24 a restriction is to be imposed, the court shall state the
 25 reasons for it in writing. If the court finds that the



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1 restriction is necessary for the protection of society, it
 2 shall impose the restriction as part of the sentence and the
 3 judgment shall contain a statement of the reasons for the
 4 restriction.

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

8 (4) When the district court imposes a sentence of
 9 probation as defined in 46-23-1001, any probation agreement
 10 signed by the defendant may contain a clause waiving
 11 extradition."

12 Section 3. Section 46-23-215, MCA, is amended to read:

13 "46-23-215. Conditions of parole. (1) Every prisoner
 14 while on parole shall remain in the legal custody of the
 15 institution from which he was released but shall be subject
 16 to the orders of the board.

17 (2) When an order for parole is issued, it shall
 18 recite the conditions thereof. An order for parole or any
 19 parole agreement signed by a prisoner may contain a clause
 20 waiving extradition.

21 (3) Whenever a prisoner in the Montana state prison
 22 has been approved for parole on condition that he obtain
 23 employment or secure suitable living arrangements or on any
 24 other condition that is difficult to fulfill while
 25 incarcerated, the warden may grant him a furlough, not to

1 exceed 10 days, for purposes of fulfilling the condition.
 2 While on such furlough, the prisoner remains in the legal
 3 custody of the prison and is subject to all other conditions
 4 recited by the board."

5 NEW SECTION. Section 4. Codification instruction.
 6 Section 1 is intended to be codified as an integral part of
 7 Title 46, chapter 30, and the provisions of Title 46,
 8 chapter 30, apply to section 1.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 289

INTRODUCED BY VAN VALKENBURG, GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE EXTRADITION WITHOUT A HEARING THE RETURN TO ANOTHER STATE OF A PERSON ARRESTED IN THIS STATE FOR VIOLATION OF A BAIL, PROBATION, OR PAROLE AGREEMENT SIGNED IN ANOTHER, ORDER, OR OTHER CONDITIONAL RELEASE FROM THAT OTHER STATE IF THE AGREEMENT, ORDER, OR OTHER CONDITIONAL RELEASE CONTAINS A WAIVER OF EXTRADITION CLAUSE; TO AUTHORIZE THE USE OF WAIVER OF EXTRADITION CLAUSES IN PROBATION AND PAROLE AGREEMENTS; AND AMENDING SECTIONS 46-18-202 AND 46-23-215, MCA."

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

~~NEW SECTION: Section 1. Prior waiver of extradition. A law enforcement agency in this state holding a person who is alleged to have broken the terms of his bail, probation, parole, or any other conditional release in the demanding state shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a warrant provided for in 46-30-213, if all the following apply:~~

~~(1) the person has signed a prior waiver of extradition as a term of his current bail, probation, parole, or other conditional release in the demanding state;~~

and

~~(2) the law enforcement agency holding the person has received an authenticated copy of the prior waiver of extradition signed by the person and photographs, fingerprints, or other evidence properly identifying the person as the person who signed the waiver;~~

NEW SECTION. SECTION 1. PRIOR WAIVER OF EXTRADITION.

(1) A PERSON WHO IS ALLEGED TO HAVE VIOLATED THE TERMS OF HIS BAIL, PROBATION, PAROLE, OR ANY OTHER CONDITIONAL RELEASE FROM ANOTHER STATE AND WHO IS HELD IN THIS STATE MAY BE RELEASED TO THE DULY AUTHORIZED AGENT OF THAT OTHER STATE WITHOUT THE WARRANT PROVIDED FOR IN 46-30-213 IF THE FOLLOWING HAS OCCURRED:

(A) A DISTRICT COURT IN THIS STATE HAS HELD A HEARING AT WHICH THE STATE HAS PRESENTED:

(I) A CERTIFIED COPY OF AN AGREEMENT TO WAIVE EXTRADITION, SIGNED BY THE PERSON, OR AN ORDER FROM THE OTHER STATE RELEASING THE PERSON ON THE CONDITION THAT HE WAIVE EXTRADITION;

(II) A CERTIFIED COPY OF THE WARRANT OR ORDER FROM THE OTHER STATE DIRECTING THE RETURN OF THE PERSON FOR VIOLATING THE TERMS OF HIS RELEASE; AND

(III) EVIDENCE THAT THE PERSON IS THE SAME PERSON NAMED IN THE WARRANT OR ORDER; AND

(B) THE DISTRICT COURT HAS FOUND THAT THERE IS



1 PROBABLE CAUSE TO BELIEVE THAT THE PERSON IS THE SAME PERSON
 2 CHARGED IN THE WARRANT OR ORDER. WHENEVER A DISTRICT COURT
 3 MAKES THIS FINDING, IT SHALL, EXCEPT AS PROVIDED IN
 4 SUBSECTION (2), ORDER THAT THE PERSON BE REMANDED TO CUSTODY
 5 AND DELIVERED TO AGENTS OF THE OTHER STATE. THE COURT SHALL
 6 ALSO ADVISE THE PERSON OF HIS RIGHT TO CONTEST THE ORDER BY
 7 FILING A WRIT OF HABEAS CORPUS.

8 (2) IF THE PERSON WISHES TO TEST THE VALIDITY OF THE
 9 ORDER ISSUED PURSUANT TO SUBSECTION (1)(B), THE COURT SHALL
 10 FIX A REASONABLE TIME FOR HIM TO APPLY FOR A WRIT OF HABEAS
 11 CORPUS BEFORE HE MAY BE RELEASED TO AGENTS FROM THE OTHER
 12 STATE.

13 Section 2. Section 46-18-202, MCA, is amended to read:

14 "46-18-202. Additional restrictions on sentence. (1)
 15 The district court may also impose any of the following
 16 restrictions or conditions on the sentence provided for in
 17 46-18-201 which it considers necessary to obtain the
 18 objectives of rehabilitation and the protection of society:

19 (a) prohibition of the defendant's holding public
 20 office;

21 (b) prohibition of his owning or carrying a dangerous
 22 weapon;

23 (c) restrictions on his freedom of association;

24 (d) restrictions on his freedom of movement;

25 (e) any other limitation reasonably related to the

1 objectives of rehabilitation and the protection of society.

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

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

16 (4) When the district court imposes a sentence of
 17 probation as defined in 46-23-1001, any probation agreement
 18 signed by the defendant may contain a clause waiving
 19 extradition."

20 Section 3. Section 46-23-215, MCA, is amended to read:

21 "46-23-215. Conditions of parole. (1) Every prisoner
 22 while on parole shall remain in the legal custody of the
 23 institution from which he was released but shall be subject
 24 to the orders of the board.

25 (2) When an order for parole is issued, it shall

1 recite the conditions thereof. An order for parole or any
2 parole agreement signed by a prisoner may contain a clause
3 waiving extradition.

4 (3) Whenever a prisoner in the Montana state prison
5 has been approved for parole on condition that he obtain
6 employment or secure suitable living arrangements or on any
7 other condition that is difficult to fulfill while
8 incarcerated, the warden may grant him a furlough, not to
9 exceed 10 days, for purposes of fulfilling the condition.
10 While on such furlough, the prisoner remains in the legal
11 custody of the prison and is subject to all other conditions
12 recited by the board."

13 NEW SECTION. Section 4. Codification instruction.
14 Section 1 is intended to be codified as an integral part of
15 Title 46, chapter 30, and the provisions of Title 46,
16 chapter 30, apply to section 1.

-End-

SENATE BILL NO. 289

INTRODUCED BY VAN VALKENBURG, GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE EXTRADITION-WITHOUT-A-HEARING THE RETURN TO ANOTHER STATE OF A PERSON ARRESTED IN THIS STATE FOR VIOLATION OF A BAIL, PROBATION, OR PAROLE AGREEMENT SIGNED IN ANOTHER, ORDER, OR OTHER CONDITIONAL RELEASE FROM THAT OTHER STATE IF THE AGREEMENT, ORDER, OR OTHER CONDITIONAL RELEASE CONTAINS A WAIVER OF EXTRADITION CLAUSE; TO AUTHORIZE THE USE OF WAIVER OF EXTRADITION CLAUSES IN PROBATION AND PAROLE AGREEMENTS; AND AMENDING SECTIONS 46-18-202 AND 46-23-215, MCA."

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

NEW SECTION: Section 1. Prior waiver of extradition. A law enforcement agency in this state holding a person who is alleged to have broken the terms of his bail, probation, parole, or any other conditional release in the demanding state shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a warrant provided for in 46-30-213, if all the following apply:

(1) the person has signed a prior waiver of extradition as a term of his current bail, probation, parole, or other conditional release in the demanding state;

and

(2) the law enforcement agency holding the person has received an authenticated copy of the prior waiver of extradition signed by the person and photographs, fingerprints, or other evidence properly identifying the person as the person who signed the waiver;

NEW SECTION. SECTION 1. PRIOR WAIVER OF EXTRADITION.

(1) A PERSON WHO IS ALLEGED TO HAVE VIOLATED THE TERMS OF HIS BAIL, PROBATION, PAROLE, OR ANY OTHER CONDITIONAL RELEASE FROM ANOTHER STATE AND WHO IS HELD IN THIS STATE MAY BE RELEASED TO THE DULY AUTHORIZED AGENT OF THAT OTHER STATE WITHOUT THE WARRANT PROVIDED FOR IN 46-30-213 IF THE FOLLOWING HAS OCCURRED:

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 5 AND DELIVERED TO AGENTS OF THE OTHER STATE. THE COURT SHALL
 6 ALSO ADVISE THE PERSON OF HIS RIGHT TO CONTEST THE ORDER BY
 7 FILING A WRIT OF HABEAS CORPUS.

8 (2) IF THE PERSON WISHES TO TEST THE VALIDITY OF THE
 9 ORDER ISSUED PURSUANT TO SUBSECTION (1)(B), THE COURT SHALL
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1 objectives of rehabilitation and the protection of society.

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