

HOUSE BILL NO. 264
INTRODUCED BY HANNAH, BENGTON

IN THE HOUSE

JANUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 18, 1989	FIRST READING.
FEBRUARY 6, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 7, 1989	PRINTING REPORT.
FEBRUARY 8, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 9, 1989	ENGROSSING REPORT.
FEBRUARY 10, 1989	THIRD READING, PASSED. AYES, 58; NOES, 37.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
MARCH 11, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 13, 1989	SECOND READING, CONCURRED IN.
MARCH 15, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 16, 1989	RECEIVED FROM SENATE.
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MARCH 18, 1989

SECOND READING, AMENDMENTS
CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 264
2 INTRODUCED BY Hand Bengton
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COUNTY JAIL
5 WORK PROGRAMS; PROVIDING THAT A PERSON CONVICTED OF A
6 NONVIOLENT OFFENSE MAY VOLUNTEER TO DO DESIGNATED WORK FOR
7 THE COUNTY IN LIEU OF INCARCERATION IN THE COUNTY JAIL;
8 PROVIDING THAT A COUNTY JAIL WORK PROGRAM IS TO BE
9 SUPERVISED BY THE COUNTY SHERIFF; PROVIDING THAT THE CRIME
10 OF ESCAPE IS APPLICABLE TO A PERSON PARTICIPATING IN A
11 COUNTY JAIL WORK PROGRAM; AND AMENDING SECTION 7-32-2208,
12 MCA."
13

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

15 **Section 1. County jail work program.** (1) A county may
16 operate a county jail work program. The program may be
17 established to allow jail inmates convicted of nonviolent
18 offenses to serve a sentence of imprisonment in the county
19 jail by performing county work without actual physical
20 confinement in the county jail.

21 (2) A participant in a county jail work program is
22 considered to be in confinement for the purposes of laws
23 relating to confinement in jail, sentencing, and length of
24 imprisonment.

25 (3) A county jail work program may be established in

1 addition to any county jail labor, rehabilitation, or other
2 program, including the authority of the board of county
3 commissioners to require persons confined to the county jail
4 to perform labor pursuant to 7-32-2223.

5 **Section 2. Operation of county jail work program.** (1)
6 If a county establishes a county jail work program, it must
7 be authorized by the board of county commissioners and
8 supervised by the county sheriff. The sheriff may permit
9 persons eligible under the provisions of [section 3] to work
10 on county projects or for county departments as designated
11 by the board of county commissioners.

12 (2) A person participating in a county work program
13 may not be physically confined in the county jail during the
14 course of his participation. The person may not be required
15 to perform county work in excess of 8 hours each calendar
16 day. Each calendar day in which a person has participated in
17 a county jail work program is 1 day of incarceration for the
18 purposes of serving a sentence of imprisonment.

19 (3) In order to ensure public safety, the sheriff may
20 in his discretion deny a person permission to participate in
21 the program and may revoke a person's permission to
22 participate at any time.

23 (4) A person participating in a program is under
24 official detention as that term is used in defining the
25 crime of escape in 45-7-306. Failure to appear for work at

1 a time and place scheduled for participation in a program
2 constitutes the offense of escape.

3 **Section 3. Inmate eligibility for participation.** A
4 person may be permitted to participate in a county jail work
5 program if he:

6 (1) has been sentenced to the county jail for an
7 offense and is not confined in the county jail upon process
8 in a civil action or prior to examination or trial;

9 (2) is not serving a sentence for homicide, robbery,
10 sexual intercourse without consent, arson, burglary,
11 kidnapping, escape, assault, or any other offense in which
12 violence is an element of the crime or for an offense which
13 during the course of which bodily injury occurred;

14 (3) was not prohibited from participating in the
15 county work program by the sentencing judge, magistrate, or
16 justice of the peace, or his successor; and

17 (4) has applied to participate to the county sheriff,
18 and the sheriff has approved the participation.

19 **Section 4.** Section 7-32-2208, MCA, is amended to read:

20 "7-32-2208. Actual confinement of prisoners required.
21 A prisoner committed to the county jail for trial, ~~for or~~
22 ~~examination, or, upon conviction for~~ except as provided in
23 [sections 1 through 3], a prisoner convicted of a public
24 offense must be actually confined in the jail until he is
25 legally discharged. If he is permitted to go at large out of

1 the jail, except by virtue of a legal order or process or
2 pursuant to a program established by law, it is an escape."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB264, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The Legislation authorizes county jail work programs, provides that a person convicted of a nonviolent offense may volunteer to do designated work for the county in lieu of incarceration in the county jail; provides that the program is to be supervised by the county sheriff; and provides that the crime of escape is applicable to a person participating in the program.

ASSUMPTIONS:

1. No impact on state level revenue or expenditures.
2. No data is available to project county impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

In counties where the program is not authorized by the county Commissioners, there will be no impact. The impact in other counties is unknown.

Ray Shackleford 1/25/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Tom Hannah 1/27/89
TOM HANNAH, PRIMARY SPONSOR DATE

Fiscal Note for HB264, as introduced

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 264

INTRODUCED BY HANNAH, BENGTSON

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COUNTY JAIL WORK PROGRAMS; PROVIDING THAT A PERSON CONVICTED OF A NONVIOLENT OFFENSE MAY VOLUNTEER TO DO DESIGNATED WORK FOR THE COUNTY IN LIEU OF INCARCERATION IN THE COUNTY JAIL; PROVIDING THAT A COUNTY JAIL WORK PROGRAM IS TO BE SUPERVISED BY THE COUNTY SHERIFF; PROVIDING THAT THE CRIME OF ESCAPE IS APPLICABLE TO A PERSON PARTICIPATING IN A COUNTY JAIL WORK PROGRAM; AND AMENDING SECTION SECTIONS 7-32-2208 AND 45-7-306, MCA."

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

NEW SECTION. Section 1. County jail work program. (1)

A county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail.

(2) A participant in a county jail work program is considered to be in confinement for the purposes of laws relating to confinement in jail, sentencing, and length of imprisonment.

(3) A county jail work program may be established in

addition to any county jail labor, rehabilitation, or other program, including the authority of the board of county commissioners to require persons confined to the county jail to perform labor pursuant to 7-32-2223.

NEW SECTION. Section 2. Operation of county jail work program. (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of [section 3] to work on county projects or for county departments as designated by the board of county commissioners. A PERSON PARTICIPATING IN A COUNTY JAIL WORK PROGRAM MAY NOT HAVE HIS LABOR OR OTHER WORK CONTRACTED OUT TO A PRIVATE PARTY OR BE REQUIRED TO DO LABOR OR OTHER WORK THAT FURTHERS THE PRIVATE INTERESTS OF A GOVERNMENT EMPLOYEE OR OFFICIAL. HE MAY ONLY BE PERMITTED OR REQUIRED TO DO LABOR OR OTHER WORK THAT RELATES TO PUBLIC PROJECTS, PUBLIC SERVICES, OR OTHER PUBLIC MATTERS.

(2) A person participating in a county work program may not be physically confined in the county jail during the course of his participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is 1 day of incarceration for the purposes of serving a sentence of imprisonment.

(3) In order to ensure public safety, the sheriff may in his discretion deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(4) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. Failure to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

NEW SECTION. Section 3. Inmate eligibility for participation. A person may be permitted to participate in a county jail work program if he:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, DOMESTIC ABUSE, INCEST, or any other offense in which violence is an element of the crime or for an offense which during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace, or his successor; and

(4) has applied to participate to the county sheriff,

and the sheriff has approved the participation.

Section 4. Section 7-32-2208, MCA, is amended to read:

"7-32-2208. Actual confinement of prisoners required.

A prisoner committed to the county jail for trial, ~~for or~~ examination, ~~or, upon conviction for~~ except as provided in [sections 1 through 3], a prisoner convicted of a public offense must be actually confined in the jail until he is legally discharged. If he is permitted to go at large out of the jail, except by virtue of a legal order or process or pursuant to a program established by law, it is an escape."

SECTION 5. SECTION 45-7-306, MCA, IS AMENDED TO READ:

"45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, supervision while under a supervised release program, participation in a county jail work program under [sections 1 through 3], or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is participating in a county jail work program under [sections 1 through 3] and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

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

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, 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 to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, halfway house, life skills center, or supervised release program; or

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

(c) fined not to exceed \$500 or imprisoned in the

county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection."

-End-

HOUSE BILL NO. 264

INTRODUCED BY HANNAH, BENGTSON

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COUNTY JAIL WORK PROGRAMS; PROVIDING THAT A PERSON CONVICTED OF A NONVIOLENT OFFENSE MAY VOLUNTEER TO DO DESIGNATED WORK FOR THE COUNTY IN LIEU OF INCARCERATION IN THE COUNTY JAIL; PROVIDING THAT A COUNTY JAIL WORK PROGRAM IS TO BE SUPERVISED BY THE COUNTY SHERIFF; PROVIDING THAT THE CRIME OF ESCAPE IS APPLICABLE TO A PERSON PARTICIPATING IN A COUNTY JAIL WORK PROGRAM; AND AMENDING ~~SECTION~~ SECTIONS 7-32-2208 AND 45-7-306, MCA."

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

NEW SECTION. Section 1. County jail work program. (1)

A county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail.

(2) A participant in a county jail work program is considered to be in confinement for the purposes of laws relating to confinement in jail, sentencing, and length of imprisonment.

(3) A county jail work program may be established in

addition to any county jail labor, rehabilitation, or other program, including the authority of the board of county commissioners to require persons confined to the county jail to perform labor pursuant to 7-32-2223.

NEW SECTION. Section 2. Operation of county jail work program. (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of [section 3] to work on county projects or for county departments as designated by the board of county commissioners. A PERSON PARTICIPATING IN A COUNTY JAIL WORK PROGRAM MAY NOT HAVE HIS LABOR OR OTHER WORK CONTRACTED OUT TO A PRIVATE PARTY OR BE REQUIRED TO DO LABOR OR OTHER WORK THAT FURTHERS THE PRIVATE INTERESTS OF A GOVERNMENT EMPLOYEE OR OFFICIAL. HE MAY ONLY BE PERMITTED OR REQUIRED TO DO LABOR OR OTHER WORK THAT RELATES TO PUBLIC PROJECTS, PUBLIC SERVICES, OR OTHER PUBLIC MATTERS.:

(A) HAVE HIS LABOR OR OTHER WORK CONTRACTED OUT TO A PRIVATE PARTY;

(B) BE REQUIRED TO DO LABOR OR OTHER WORK THAT FURTHERS THE PRIVATE INTERESTS OF A GOVERNMENT EMPLOYEE OR OFFICIAL;

(C) BE PERMITTED OR REQUIRED TO DO LABOR OR OTHER WORK THAT RELATES TO ANYTHING OTHER THAN PUBLIC PROJECTS, PUBLIC

SERVICES, OR OTHER PUBLIC MATTERS;(D) BE USED TO DISPLACE ANY REGULAR COUNTY EMPLOYEE;(E) PERFORM THE DUTIES OF ANY VACANT COUNTY POSITION;

OR

(F) WORK ON ANY CONSTRUCTION OR RECONSTRUCTION PROJECT.(2) NO COUNTY MAY REDUCE ITS CURRENT WORKFORCE IN ORDER TO TRANSFER THE DUTIES OF SUCH A REDUCTION TO PERSONS PARTICIPATING IN A COUNTY JAIL WORK PROGRAM.

~~(2)~~(3) A person participating in a county work program may not be physically confined in the county jail during the course of his participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is 1 day of incarceration for the purposes of serving a sentence of imprisonment.

~~(3)~~(4) In order to ensure public safety, the sheriff may in his discretion deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

~~(4)~~(5) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. Failure to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

NEW SECTION. Section 3. Inmate eligibility for

participation. A person may be permitted to participate in a county jail work program if he:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, DOMESTIC ABUSE, INCEST, or any other offense in which violence is an element of the crime or for an offense which during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace, or his successor; and

(4) has applied to participate to the county sheriff, and the sheriff has approved the participation.

Section 4. Section 7-32-2208, MCA, is amended to read:

"7-32-2208. Actual confinement of prisoners required.

A prisoner committed to the county jail for trial, ~~for or~~ examination, or, ~~upon conviction for~~ except as provided in [sections 1 through 3], a prisoner convicted of a public offense must be actually confined in the jail until he is legally discharged. If he is permitted to go at large out of the jail, except by virtue of a legal order or process or

1 pursuant to a program established by law, it is an escape."

2 **SECTION 5. SECTION 45-7-306, MCA, IS AMENDED TO READ:**

3 "45-7-306. Escape. (1) "Official detention" means
4 imprisonment which resulted from a conviction for an
5 offense, confinement for an offense, confinement of a person
6 charged with an offense, detention by a peace officer
7 pursuant to arrest, detention for extradition or
8 deportation, supervision while under a supervised release
9 program, participation in a county jail work program under
10 [sections 1 through 3], or any lawful detention for the
11 purpose of the protection of the welfare of the person
12 detained or for the protection of society. "Official
13 detention" does not include supervision of probation or
14 parole, constraint incidental to release on bail, or an
15 unlawful arrest unless the person arrested employed physical
16 force, a threat of physical force, or a weapon to escape.

17 (2) A person subject to official detention commits the
18 offense of escape if he knowingly or purposely removes
19 himself from official detention or fails to return to
20 official detention following temporary leave granted for a
21 specific purpose or limited time. A person also commits the
22 offense of escape if he is participating in a county jail
23 work program under [sections 1 through 3] and he knowingly
24 or purposely fails to appear for work at a time and place
25 scheduled for participation in the program.

1 (3) A person convicted of the offense of escape shall
2 be:

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

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

10 (i) escapes from a state prison, county jail, city
11 jail, halfway house, life skills center, or supervised
12 release program; or

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

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

-End-

SENATE STANDING COMMITTEE REPORT

March 10, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 264 (third reading copy -- blue), respectfully report that HB 264 be amended and as so amended be concurred in:

Sponsor: Hannah (Bengtson)

1. Page 3.

Following: line 16

Insert: "(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program."

Renumber: subsequent subsections

2. Page 4, line 17.

Following: "sheriff"

Insert: ", pursuant to written policy,"

AND AS AMENDED BE CONCURRED IN

Signed: Farrell

William E. Farrell, Chairman

SENATE

HB 264

scrhb264.310

HOUSE BILL NO. 264

INTRODUCED BY HANNAH, BENGTSON

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COUNTY JAIL WORK PROGRAMS; PROVIDING THAT A PERSON CONVICTED OF A NONVIOLENT OFFENSE MAY VOLUNTEER TO DO DESIGNATED WORK FOR THE COUNTY IN LIEU OF INCARCERATION IN THE COUNTY JAIL; PROVIDING THAT A COUNTY JAIL WORK PROGRAM IS TO BE SUPERVISED BY THE COUNTY SHERIFF; PROVIDING THAT THE CRIME OF ESCAPE IS APPLICABLE TO A PERSON PARTICIPATING IN A COUNTY JAIL WORK PROGRAM; AND AMENDING SECTION SECTIONS 7-32-2208 AND 45-7-306, MCA."

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(3) A county jail work program may be established in

addition to any county jail labor, rehabilitation, or other program, including the authority of the board of county commissioners to require persons confined to the county jail to perform labor pursuant to 7-32-2223.

NEW SECTION. Section 2. Operation of county jail work program. (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of [section 3] to work on county projects or for county departments as designated by the board of county commissioners. A PERSON PARTICIPATING IN A COUNTY JAIL WORK PROGRAM MAY NOT HAVE HIS LABOR OR OTHER WORK CONTRACTED OUT TO A PRIVATE PARTY OR BE REQUIRED TO DO LABOR OR OTHER WORK THAT FURTHERS THE PRIVATE INTERESTS OF A GOVERNMENT EMPLOYEE OR OFFICIAL. HE MAY ONLY BE PERMITTED OR REQUIRED TO DO LABOR OR OTHER WORK THAT RELATES TO PUBLIC PROJECTS, PUBLIC SERVICES, OR OTHER PUBLIC MATTERS:

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(C) BE PERMITTED OR REQUIRED TO DO LABOR OR OTHER WORK THAT RELATES TO ANYTHING OTHER THAN PUBLIC PROJECTS, PUBLIC

1 SERVICES, OR OTHER PUBLIC MATTERS;

2 (D) BE USED TO DISPLACE ANY REGULAR COUNTY EMPLOYEE;

3 (E) PERFORM THE DUTIES OF ANY VACANT COUNTY POSITION;

4 OR

5 (F) WORK ON ANY CONSTRUCTION OR RECONSTRUCTION
6 PROJECT.

7 (2) NO COUNTY MAY REDUCE ITS CURRENT WORKFORCE IN
8 ORDER TO TRANSFER THE DUTIES OF SUCH A REDUCTION TO PERSONS
9 PARTICIPATING IN A COUNTY JAIL WORK PROGRAM.

10 {2}{3} A person participating in a county work program
11 may not be physically confined in the county jail during the
12 course of his participation. The person may not be required
13 to perform county work in excess of 8 hours each calendar
14 day. Each calendar day in which a person has participated in
15 a county jail work program is 1 day of incarceration for the
16 purposes of serving a sentence of imprisonment.

17 (4) THE SHERIFF, IN CONJUNCTION WITH THE BOARD OF
18 COUNTY COMMISSIONERS, SHALL ESTABLISH A WRITTEN POLICY ON
19 HOW JAIL INMATES MAY VOLUNTEER FOR PARTICIPATION IN THE
20 COUNTY WORK PROGRAM AND WHAT CRITERIA THE SHERIFF SHALL USE
21 TO CHOOSE VOLUNTEERS IF THERE ARE MORE ELIGIBLE PERSONS
22 VOLUNTEERING THAN ARE NEEDED IN THE PROGRAM.

23 {3}{4}{5} In order to ensure public safety, the
24 sheriff may in his discretion deny a person permission to
25 participate in the program and may revoke a person's

1 permission to participate at any time.

2 {4}{5}(6) A person participating in a program is under
3 official detention as that term is used in defining the
4 crime of escape in 45-7-306. Failure to appear for work at
5 a time and place scheduled for participation in a program
6 constitutes the offense of escape.

7 NEW SECTION. Section 3. Inmate eligibility for
8 participation. A person may be permitted to participate in a
9 county jail work program if he:

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14 sexual intercourse without consent, arson, burglary,
15 kidnapping, escape, assault, DOMESTIC ABUSE, INCEST, or any
16 other offense in which violence is an element of the crime
17 or for an offense which during the course of which bodily
18 injury occurred;

19 (3) was not prohibited from participating in the
20 county work program by the sentencing judge, magistrate, or
21 justice of the peace, or his successor; and

22 (4) has applied to participate to the county sheriff,
23 and the sheriff, PURSUANT TO WRITTEN POLICY, has approved
24 the participation.

25 **Section 4.** Section 7-32-2208, MCA, is amended to read:

1 "7-32-2208. Actual confinement of prisoners required.
 2 A prisoner committed to the county jail for trial, ~~for or~~
 3 ~~examination, or, upon conviction for~~ except as provided in
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 5 offense must be actually confined in the jail until he is
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 7 the jail, except by virtue of a legal order or process ~~or~~
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9 **SECTION 5. SECTION 45-7-306, MCA, IS AMENDED TO READ:**

10 "45-7-306. Escape. (1) "Official detention" means
 11 imprisonment which resulted from a conviction for an
 12 offense, confinement for an offense, confinement of a person
 13 charged with an offense, detention by a peace officer
 14 pursuant to arrest, detention for extradition or
 15 deportation, supervision while under a supervised release
 16 program, participation in a county jail work program under
 17 [sections 1 through 3], or any lawful detention for the
 18 purpose of the protection of the welfare of the person
 19 detained or for the protection of society. "Official
 20 detention" does not include supervision of probation or
 21 parole, constraint incidental to release on bail, or an
 22 unlawful arrest unless the person arrested employed physical
 23 force, a threat of physical force, or a weapon to escape.

24 (2) A person subject to official detention commits the
 25 offense of escape if he knowingly or purposely removes

1 himself from official detention or fails to return to
 2 official detention following temporary leave granted for a
 3 specific purpose or limited time. A person also commits the
 4 offense of escape if he is participating in a county jail
 5 work program under [sections 1 through 3] and he knowingly
 6 or purposely fails to appear for work at a time and place
 7 scheduled for participation in the program.

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

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

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

17 (i) escapes from a state prison, county jail, city
 18 jail, halfway house, life skills center, or supervised
 19 release program; or

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

23 (c) fined not to exceed \$500 or imprisoned in the
 24 county jail for a term not to exceed 6 months, or both, if
 25 he commits escape under circumstances other than (a) and (b)

HB 0264/04

1 of this subsection."

-End-