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SENATE BILL NO. 6

INTRODUCED BY J. GROSS

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CONDITIONAL RELEASE OF A PERSON CRIMINALLY COMMITTED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 45-7-306 AND SECTION SECTIONS 45-7-306 AND 46-14-304, MCA."

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

**Section 1.** Section 45-7-306, MCA, is amended to read:

~~"45-7-306. Escape. (1) (a) "Official detention" means placement of a person in the legal custody of a municipality, a county, or the state as a result of:~~

- ~~(i) a conviction for an offense or of having been charged with an offense;~~
- ~~(ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest, transport, or court order;~~
- ~~(iii) detention for extradition or deportation;~~
- ~~(iv) placement in a community corrections facility or program;~~
- ~~(v) supervision while under a supervised release program;~~
- ~~(vi) participation in a county jail work program under 7-32-2225 through 7-32-2227; or~~
- ~~(vii) any lawful detention for the purpose of the protection of the welfare of the person detained or~~

~~for the protection of society; or~~

~~(viii) a condition of release pursuant to 46-14-304.~~

~~(b) Official detention does not include supervision of a person on 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 the person knowingly or~~

1 purposely eludes official detention or fails to return to official detention following temporary leave granted for a  
2 specific purpose or limited time. A person also commits the offense of escape if the person is participating in a  
3 county jail work program under 7-32-2225 through 7-32-2227 and knowingly or purposely fails to appear for  
4 work at a time and place scheduled for participation in the program.

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

6 (a) — imprisoned in the state prison for a term not to exceed 20 years if the person escapes by the  
7 use or threat of force, physical violence, a weapon, or a simulated weapon;

8 (b) — imprisoned in the state prison for a term not to exceed 10 years if the person escapes after  
9 having been charged with or convicted of a felony; or

10 (c) — fined an amount not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6  
11 months, or both, if the person escapes under circumstances other than those described in subsections (3)(a)  
12 and (3)(b)."

14 **Section 1.** Section 45-7-306, MCA, is amended to read:

15 **"45-7-306. Escape.** (1) (a) "Official detention" means placement of a person in the legal custody of a  
16 municipality, a county, or the state as a result of:

17 (i) a conviction for an offense or of having been charged with an offense;

18 (ii) the actual or constructive restraint or custody of a person by a peace officer pursuant to arrest,  
19 transport, or court order;

20 (iii) detention for extradition or deportation;

21 (iv) placement in a community corrections facility or program;

22 (v) supervision while under a supervised release program;

23 (vi) participation in a county jail work program under 7-32-2225 through 7-32-2227; ~~or~~

24 (vii) any lawful detention for the purpose of the protection of the welfare of the person detained or  
25 for the protection of society; or

26 (viii) a condition of release pursuant to 46-14-304.

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28 incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat

1 of physical force, or a weapon to escape.

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6 work at a time and place scheduled for participation in the program.

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

8 (a) imprisoned in the state prison for a term not to exceed 20 years if the person escapes by the  
9 use or threat of force, physical violence, a weapon, or a simulated weapon;

10 (b) imprisoned in the state prison for a term not to exceed 10 years if the person escapes after  
11 having been charged with or convicted of a felony; or

12 (c) fined an amount not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6  
13 months, or both, if the person escapes conditional release as established in 46-14-304 or under circumstances  
14 other than those described in subsections (3)(a) and (3)(b)."

15  
16 **Section 2.** Section 46-14-304, MCA, is amended to read:

17 **"46-14-304. ~~Revocation of conditional release~~Conditional release -- revocation.** (1) ~~The~~A person  
18 who has been conditionally released remains under the supervision of the department of public health and  
19 human services until the committing court discharges the person.

20 (2) (a) When the person is conditionally released, the director of the department of public health  
21 and human services shall provide written notice of the conditions of the person's release to any community  
22 facility or program that is treating the person, the county attorney of the county in which the person was  
23 committed, and the county attorney of the county in which the person is required to receive treatment.

24 (b) ~~The community facility or program shall report in writing every 3 months regarding the~~  
25 treatment and status of the person to the director of the department of public health and human services, the  
26 county attorney of the county in which the person was committed, and the county attorney of the county in  
27 which the person is required to receive treatment. The report must include all known violations of the terms and  
28 conditions of a person's release and any changes in the person's mental status that would indicate the person's

1 ~~conditional release should be revoked.~~

2 (3) ~~On motion of the department of public health and human services or~~ the department of public  
3 health and human services or a county attorney, the court may order revocation of a person's conditional  
4 release if the court determines after hearing evidence that:

5 (a) the conditions of release have not been fulfilled; and

6 (b) based on the violations of the conditions and the person's past mental health history, there is a  
7 substantial likelihood that the person continues to suffer from a mental disease or disorder that causes the  
8 person to present a substantial risk of:

9 (i) serious bodily injury or death to the person or others;

10 (ii) ~~an imminent~~ threat of physical injury to the person or others; or

11 (iii) substantial property damage.

12 ~~(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.~~

13 ~~(3)~~(4) If the court finds that the conditional release should be revoked, the court shall immediately  
14 order the person to be recommitted to the custody of the director of the department of public health and human  
15 services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-  
16 14-303.

17 (5) When a person fails to comply with the conditions of the person's release that require the  
18 person to establish, maintain, and reside in a specific community and the person's whereabouts have become  
19 unknown to the department of public health and human services or when the person leaves the state without  
20 the consent of the court that granted the conditional release, the person's absence from supervision constitutes  
21 a violation of 45-7-306. The offense is considered to have occurred in the county in which the person is  
22 authorized to reside.

23 ~~(5) When a person fails to comply with conditions of the person's release that require the person to~~  
24 ~~establish, maintain, and reside at a specific residence and the person's whereabouts have become unknown to~~  
25 ~~the supervising authorities or when the person leaves the state without the consent of the committing court, the~~  
26 ~~person's absence from supervision constitutes a violation of 45-7-306. The offense is considered to have~~  
27 ~~occurred in the county in which the person is authorized to reside."~~

28 - END -