

SJR 3: Study the Board of Pardons and Parole

Draft Study Plan

Prepared for the Law & Justice Interim Committee
by Rachel Weiss, Research Analyst
for discussion on July 10, 2013

INTRODUCTION AND STUDY TASKS

The 2013 Legislature recommended an interim study of the operations of the Board of Pardons and Parole (Board) when it enacted Senate Joint Resolution 3 (SJR 3). Legislators ranked the study tenth out of 17 study resolutions in the postsession poll of interim studies. The Legislative Council met in May 2013 and assigned the study to the Law & Justice Interim Committee (LJIC).

The 2010-2011 Law & Justice Interim Committee requested SJR 3, and Senator Terry Murphy carried the resolution. It requests that an interim committee study the operations of the Board, including:

- the parole philosophy of the Board;
- the statutes and rules administered by the Board;
- the degree to which the Board has prevented or contributed to the need for additional prison beds;
- the effect of the possible elimination of the Board; and
- other aspects of the Board's administration, as appropriate.

BACKGROUND ON THE BOARD

The Board is created by statute (2-15-2302, MCA) and consists of seven members who are appointed by the Governor to serve staggered 4-year terms. The Board is responsible for executive clemency and parole as provided by law in Title 46, chapter 23. Statute requires that each member have knowledge of American Indian culture and problems and knowledge of serious mental illness and recovery. The Board is required to adopt rules to ensure that members acquire training to meet these requirements. Board members must also possess academic training that qualifies them for professional practice in a related field. In addition to these training requirements, one member of the board must be an enrolled member of a state-recognized or federally recognized Indian tribe in Montana and one member must be a mental health professional.

The Board is supported by ten staff, including seven that have more than 10 years of experience with the Board. The Board is accredited by the American Correctional Association.

Section 46-23-201, MCA, provides that the Board may release a prisoner on nonmedical parole if, in the Board's opinion, "there is a reasonable probability that [the] prisoner can be released without detriment to the prisoner or to the community". The law further restricts the Board to

placing a prisoner on parole "only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen". Prisoners must serve 25% of their sentence before being eligible for parole.

Board members or staff have appeared before the LJIC throughout the years, but the Board has not been the subject of a legislative interim study for many years. The Legislative Audit Division completed a performance audit of the Board in November 2000.

The Board is administratively attached to the Department of Corrections but is an independent, quasi-judicial board. The Department does not have control over policies set by the Board or oversight of its decisions.

STUDY RESOURCES

There are several resources can draw on during the course of the SJR 3 study. First, LJIC will work with Board members and staff to gain an understanding of current Board operations and philosophies. The LJIC can also seek assistance from the Department of Corrections to better understand the interplay between Board activities related to parole and Department activities related to supervising those offenders who are granted parole. It is likely the LJIC will also want to gather public comment from Montanans to hear concerns with current Board operations and actions or with possible changes to the system. The LJIC heard public comment about these topics during the previous interim, which helped generate the study request.

The study resolution also instructs that the committee should solicit the views of the law enforcement community, the Judicial Branch, providers of community services, and other stakeholders.

To research how eliminating the Board might affect the parole and probation process in Montana, the LJIC will need to identify other states that have taken this step in the past or that have never had a Board or similar authority involved in the parole process. The National Conference of State Legislatures monitors corrections policies in the states and will serve as a resource for state-to-state comparisons.

Staff will also seek out expertise of individuals involved in corrections policy in this state and others to assist the LJIC as it enters and continues the study. Staff will prepare briefing papers for the committee as necessary and requested and will also arrange presentations on the study topics.

The Board routinely holds parole hearings. The hearings take place not only in Deer Lodge but also in locations around the state. It is possible that the LJIC members will want to attend one of the hearings in their area to add to their knowledge of Board operations and procedures. If so, the LJIC and staff must coordinate any plans with the Board and will also need to monitor the committee's budget carefully to ensure the committee has adequate funds to complete its other interim work.

OUTLINE OF STUDY ACTIVITY

The study will include the following basic activities during the time periods noted:

1. Compile background information: June 2013 - January 2014. This stage includes several steps designed to provide LJIC members with information about the Board, its operations and philosophy, laws and rules governing the parole process, and Montana corrections policy and costs. This stage should set the foundation for the rest of the LJIC's work in this policy area.

Activities or work products could include:

- a. staff briefing papers summarizing the Board's operations and existing policies, the laws governing the Board and the parole process, and budget information related to the Board and the Department of Corrections;
- b. presentations from stakeholders (including Board members and staff, Department of Corrections staff, representatives from the Judicial Branch, law enforcement agencies, and others) on the existing processes;
- c. testimony from members of the public to gather additional input on areas of the Board's operations or parole process that might warrant LJIC attention;
- d. information on other states' laws related to parole. This step might include presentations, panel discussions, briefing papers, or a combinations of those options.

2. Identify issues: January 2014 - April 2014. Study activities during this period will likely include a review of the information presented previously and papers or presentations on issues selected by the LJIC for more in-depth analysis. The focus of the activities during this period will be identification by the LJIC of issues it would like to address through further analysis and possibly legislation.

3. Review and decide on legislative options: April 2014 - August 2014. After compiling background information, identifying issues, and researching options, the LJIC will discuss and act on issues it wants to address through the legislative process or other methods.

The table on the following page provides a listing of possible or anticipated study activities and study resources, as well as tentative dates for the activities. It also includes an estimate of the amount of LJIC meeting time each activity might entail. The time estimates in the table are based on the assumption that the LJIC will adopt the proposal in the Draft Work Plan to devote approximately 30% of its meeting time (or 21.5 hours) to the SJR 3 study. If the LJIC chooses a different allocation of time or a different level of involvement in the study, the activities would be revised accordingly by the presiding officer and staff.

Action Item: Review, discuss, and revise/adopt the proposed study activities and allocation of committee time.

Study Process	Source	Actions	Meeting Date	Committee Time
(1) Compile existing information on Board, its operations, philosophy, and budget	Staff research, Board, LFD data	Staff research materials; panel presentation(s); public comment	September 2013	2 hours
(2) Identify existing laws/rules governing the Board and the parole process	Staff research, Board, LFD data	Staff research materials; presentation(s); public comment	September 2013	1 hour
(3) Develop an understanding of current correctional process in Montana, focusing on parole; Examine parole methods in other states	Board, DOC, staff research, stakeholder input	Panel presentations; staff materials; public comment	September 2013/December 2013	3 hours
(4) Identify possible gaps in existing processes or, if necessary, policy changes or alternatives to existing parole process	Stakeholder input, Board, DOC	Panel presentations; public comment; discussion during meetings	ongoing but especially December 2013/February 2014	4.5 hours
(5) Examine implications of possible policy changes or alternatives	Board, DOC, staff research, stakeholders	Presentations; public comments; staff materials; discussion during meetings	April/June 2014	3 hours
(6) Develop recommendations and, if requested, bill drafts for the 2015 Legislature	Committee members, staff	Committee work sessions; public comment	April through August 2014	8 hours
			Total	21.5 hours

TEXT OF SENATE JOINT RESOLUTION 3

SENATE JOINT RESOLUTION NO. 3

INTRODUCED BY T. MURPHY

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF
THE STATE OF MONTANA REQUESTING A STUDY OF THE OPERATIONS OF THE
MONTANA BOARD OF PARDONS AND PAROLE.

WHEREAS, the increase in the prison population in Montana prisons is well known and documented and has recently led the Montana Legislature to appropriate millions of dollars for increased capacity at Montana prisons for medium security inmates; and

WHEREAS, it costs over \$90 per day to incarcerate an offender but only \$5 per day to supervise an offender on parole, and according to the 2011 biennial report of the Board of Pardons and Parole, 72% of the correctional population is eligible for parole but 60% of those eligible for parole are denied parole on their initial appearance before the Board; and

WHEREAS, the Legislature has the responsibility to ensure that the statutes and policies administered by the Board do not contribute to prison overcrowding and unnecessary additional expense of housing prison inmates who may be safely paroled; and

WHEREAS, the Law and Justice Interim Committee heard testimony during the 2011-2012 interim from persons with loved ones appearing before the Board; and

WHEREAS, the testimony those persons gave to the Committee indicated strong dissatisfaction with the operation of the Board for many reasons, including inmate access to the inmates' own parole files and discrepancies between prison files and Board files; and

WHEREAS, the Board has more discretion than do most other agencies of state government in making administrative decisions and decisions regarding whether to release inmates on parole; and

WHEREAS, it has recently been determined that the Board is exempt from any of the standards contained in section 2-4-305, MCA, governing administrative rules of state agencies, including the prohibition contained in that section that rules may not contravene statutes; and

WHEREAS, as many as 15 states have eliminated their parole boards for various reasons, including monetary savings, but no such proposal has been recently considered by the Montana Legislature; and

WHEREAS, the operation of the Board has not been the subject of a study by an interim study committee of the Montana Legislature for many years; and

WHEREAS, it is appropriate for an interim committee of the Legislature to review the operation and rules of and the statutes governing the Montana Board of Pardons and Parole.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study the operation of the Montana Board of Pardons and Parole, including the parole philosophy of the Board, the statutes and rules administered by the Board, the degree to which the Board has prevented or contributed to the need for additional prison beds, the effect of the possible elimination of the Board, and other aspects of the Board's administration as appropriate.

BE IT FURTHER RESOLVED, that the study solicit the views of the law enforcement community, the Judicial Branch of state government, providers of community services, the Department of Corrections, and other appropriate stakeholders.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.