

## **SJ 3: Study the Board of Pardons and Parole**

### *Background Paper: Board Parole Philosophy*

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for the Law and Justice Interim Committee  
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#### Purpose

Senate Joint Resolution No. 3 (SJ 3) requests that the Law and Justice Interim Committee (LJIC) study "the parole philosophy of the Board [of Pardons and Parole]". During its September 2013 meeting, the LJIC will hear from current and past Board members about their philosophies toward parole and the work of the Board. The LJIC also continues to receive written testimony from the public that includes statements about or related to the Board's parole philosophy; this testimony is in your packet.

The purpose of this paper is to provide the LJIC members with the text of various written statements that appear in the Montana Constitution, statutes, or rules, or in Board publications that relate to the Board's parole philosophy.

#### Background

Among other definitions, the Merriam-Webster Dictionary provides these relevant definitions of "philosophy":

- a theory underlying or regarding a sphere of activity or thought; and
- the most basic beliefs, concepts, and attitudes of an individual or group.<sup>1</sup>

The various written statements compiled in this paper will assist LJIC members and the public in determining the Board's parole philosophy. Some statements come from statutes and administrative rules and compel certain actions from Board members, while others are included in the Board's publications. For example, section 46-23-201(5), MCA, provides this statement about parole, which must guide the Board's decisions: "A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen." Another example is an administrative rule adopted by the Board that sets out criteria the Board uses in making decisions to grant nonmedical parole (The text of ARM 20.25.505 is included on page 10 of this paper.) The Board's mission and vision statement also contain information pertaining to the parole philosophy. Those statements are included on page 2 of this report.

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<sup>1</sup>"Philosophy;" Merriam-Webster.com; available from <http://www.merriam-webster.com/dictionary/philosophy>; last accessed August 20, 2013.

## Written Statements Related to Board Philosophy

(Underlining added to original text)

### *Board of Pardons and Parole Biennial Report 2013*

**MISSION STATEMENT:** The Board of Pardons and Parole, as an essential part of the criminal justice process, serves all Montana Citizens by administering a parole system that is balanced with public safety, offender accountability and rehabilitation, as well as, protecting the interests of victims and communities, with the goal of successfully reintegrating merited offenders back into society through a reentry process. All employees and members of the Board of Pardons and Parole are committed to securing the effective application of and improvements to the clemency and release system, as well as the laws upon which they are based. The parole process is carried out in an effective, fair, safe, and efficient fashion. [page iv of the biennial report]

**VISION STATEMENT:** The Montana Board of Pardons and Parole envisions a parole and pardon system that promotes fair and consistent decisions based on public safety, victim concerns, successful inmate re-entry and sensible use of state resources. [page iv of the biennial report]

### **PARAMOUNT OBJECTIVES OF THE BOARD**

1. The primary objective of the Board is to carefully review each eligible prisoner after serving  $\frac{1}{4}$  of their term, unless otherwise mandated by the sentencing court. Parole may be granted when, in the Board's opinion, there is a reasonable probability that the prisoner can be released without detriment to the inmate or community.
  2. To make every feasible effort to bring about the rehabilitation of those inmates incarcerated or released.
  3. To allow, when requested, a victim to present a statement concerning the effects of the crime on the victim or family including, but not limited to, their opinion on release of an offender.
  4. To return promptly to custody offenders who are unable or unwilling to adjust to parole supervision and violate conditions of their release.
  5. To protect society by not releasing inmates shown to be a menace to society, except a possible release of an inmate who would soon be discharged without supervision at the end of an inmate's sentence and it is thought better to return the inmate to society under strict supervision.
  6. To recommend pardons and/or commutation of sentences to the governor for those individuals considered appropriate for this extraordinary privilege.
  7. To approve grants of conditional discharges from supervision and set conditions of such.
- [page 3 of the biennial report]

### *Montana Constitution*

**Article VI, Section 12. Pardons.** The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

*Montana Statutes*

**46-18-101. Correctional and sentencing policy.** (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.

(2) The correctional and sentencing policy of the state of Montana is to:

(a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;

(b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense; and

(d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles.

**46-23-201, MCA. Prisoners eligible for nonmedical parole -- rulemaking.** (1) Subject to the restrictions contained in subsections (2) through (5) and when in the board's opinion there is reasonable probability that a prisoner can be released without detriment to the prisoner or to the community, the board may release on nonmedical parole by appropriate order any person who is:

(a) confined in a state prison;

(b) sentenced to the state prison and confined in a prerelease center;

(c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;

(d) sentenced to be committed to the custody of the director of the department of public

health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

(6) For a prisoner sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312:

(a) the board may require as a condition of parole participation in a supervised mental health treatment program to ensure that the prisoner continues to treat the prisoner's mental disorder; and

(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (6)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.

(7) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request an earlier hearing or review.

**46-23-202. Initial parole hearing -- conduct of hearing.** Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the department shall make the prisoner available for a hearing before a hearing panel. The hearing panel shall consider all available and pertinent information regarding the prisoner, including:

(1) the circumstances of the offense;  
(2) the prisoner's previous social history and criminal record;  
(3) the prisoner's conduct, employment, and attitude in prison;  
(4) the reports of any physical, psychological, and mental evaluations that have been made; and

(5) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the prisoner should be paroled. The victim's statement may be kept confidential.

**46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the board.

(2) The department shall assign personnel to assist a person who is eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist the parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful completion of the sentence.

(5) The probation and parole officer shall keep records as the board or department may require. All records must be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of the parolee's sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Any of the achievements listed in 46-23-1027(2) must be considered a significant achievement by the board in deciding whether to grant a conditional discharge from supervision to a parolee. [see next page for the list of achievements from 46-23-1027(2)]

(c) If the board discharges a parolee from supervision, the department is relieved of the obligation of supervising the parolee.

(d) For good cause, the board may return a parolee who was conditionally discharged to the status of a regular parolee.

(e) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

(f) If the department certifies to the board that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office.

[Achievements contained in 46-23-1027(2) and referred to in 46-23-1021(6): "(2) The department shall acknowledge achievements, such as:

- (a) obtaining a high school diploma or general equivalency diploma;
- (b) obtaining a degree from an accredited postsecondary educational institution;
- (c) completion of an approved apprenticeship program;
- (d) completion of an accredited vocational certification program;
- (e) employment of at least 20 scheduled hours a week, for 6 or more months;

- (f) attendance at a faith-based, social service, or rehabilitation activity for 6 or more months; or
- (g) any other achievement designated by a department rule."]

*Administrative Rules*

20.25.201. OBJECTIVES

(1) The principal objective of the board is to affect the release from confinement of appropriate eligible offenders before the completion of the full term of commitment while still fully protecting society. A hearing panel may only grant a release when, in the panel's opinion, there is a reasonable probability it can release the offender without detriment to the offender or the community. When a hearing panel grants a release the offender is subject to the conditions imposed by the panel and the supervision authorized by governing statutes, rules, and policies of the department. The board will conduct business fairly and consistently and the board's hearing panels will base decisions on public safety concerns, successful offender reentry, and sensible use of state resources.

(2) An offender must serve the statutorily or court-imposed amount of time before the board may consider the offender for release. Release before the offender serves the entire sentence is a privilege, not a right. A hearing panel may only grant a release for the best interest of society and when the panel believes the offender is able and willing to fulfill the obligations of a law-abiding citizen and not as an award of clemency or a reduction of sentence or pardon.

(3) If the department, after it utilizes its screening process, transfers an offender from prison to prerelease or a community-based treatment program before the offender is eligible for parole, when the offender becomes eligible for parole, a hearing panel, after review of the entire offender file or summary, will conduct an impartial hearing.

(4) Board members and designated staff will participate in federal, state, and regional criminal justice planning efforts and meet periodically with relevant criminal justice personnel.

20.25.307. MEDICAL PAROLE

(1) Except for an offender under sentence of death or of life imprisonment without the possibility of parole, a hearing panel may release on medical parole:

- (a) a Montana offender confined in a prison or the state hospital;
- (b) a Montana offender confined in prerelease or other community corrections program;

or

(c) an offender for whom the court has restricted parole for a number of years under 46-18-202(2), MCA, but who has obtained the approval of the sentencing court. If the sentencing court does not respond within 30 days to a written request for medical parole consideration from the department, the offender is considered to be approved by the court for medical parole.

(2) The board, the department, the offender, or the offender's spouse, parent, child, grandparent, or sibling may submit an application for medical parole. The application must contain the following:

- (a) details of the offender's proposed living arrangement on medical parole;
- (b) details of how the offender will acquire and pay for medical care while the offender is on medical parole;

- (c) a report of an examination and written diagnosis by a licensed physician that includes:
- (i) a detailed description of the offender's medical condition and the medical attention required to treat that condition;
  - (ii) an assessment of the offender's likelihood of recovery;
  - (iii) a description of the offender's most recent past medical condition and treatment; and
  - (iv) an assessment of whether, to a reasonable degree of medical certainty, there is a high probability the offender's medical condition will cause death within six months or less.
- (3) The diagnosis must be reviewed and accepted by the department's medical director or designee before a hearing panel may hear the case for medical parole.
- (4) In order to grant a medical parole a hearing panel must find:
- (a) release of the offender is unlikely to pose a detriment to the offender, victim, or community; and
  - (b) the offender has a medical condition that requires extensive medical attention or the offender suffers from a medical condition that will likely cause his/her death within six months or less.
- (5) In considering whether an offender is likely to pose a detriment to the victim or community, a hearing panel may consider:
- (a) whether the offender's medical condition renders him/her unable to engage in criminal activity;
  - (b) any statement submitted by the victim of the offense for which the offender is currently incarcerated;
  - (c) the progression of the offender's medical condition, as documented by a licensed physician;
  - (d) the offender's conduct, employment, and attitude in prison;
  - (e) reports of any physical and mental examinations that have been made;
  - (f) the offender's previous social and criminal record; and
  - (g) the circumstances of the offense for which the offender is incarcerated.
- (6) In determining whether to grant or deny an application for medical parole, a hearing panel may consider whether:
- (a) there is support or opposition from the community including the victim or victim's family, the court, or law enforcement;
  - (b) the offender suffered from the medical condition at the time the offender committed the offense or was sentenced for the offense for which the offender is presently incarcerated and if so, whether the medical condition has progressed to such a degree that it is unlikely that the offender is able to engage in criminal activity;
  - (c) the care and supervision that the offender requires can be provided in a more medically appropriate or cost-effective manner than by the department;
  - (d) the offender is incapacitated to an extent that incarceration does not impose significant additional restrictions on the offender;
  - (e) the offender is likely to continue to suffer from the medical condition throughout the entire period of parole or to die while the offender is on medical parole and there is no reasonable expectation that the offender's medical condition will improve noticeably; and

(f) an appropriate discharge plan has been formulated that addresses basic life domains of the offender, including care coordination, housing, eligibility for public benefits and health care including necessary medication.

(7) The hearing panel shall require as a condition of medical parole that the offender agree to placement in a setting chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The hearing panel may require as a condition of parole that the offender agree to periodic examinations and diagnosis at the offender's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the offender's physical capacity has improved to the extent that the offender is likely to pose a possible detriment to society, a hearing panel may revoke the medical parole and return the offender to the custody of the department.

(8) Prior to the medical parole hearing, the board, through its staff, shall gather for a hearing panel's deliberations, all pertinent information on the offender, including but not limited to the nature of the offense, social history, criminal history, institutional performance, and any medical and mental examinations which may have been made while in custody.

(9) Upon receiving notification from the department that a medical parolee is eligible for nonmedical parole, a hearing panel may consider the offender for nonmedical parole according to the rules established for nonmedical parole consideration.

(10) A grant or denial of medical parole does not affect an offender's eligibility for nonmedical parole. The board will first consider an offender for nonmedical parole if the offender has reached parole eligibility.

(11) If a hearing panel denies the application, the department may not accept another application regarding the same offender, unless the offender's medical condition has deteriorated to such a degree that the factors previously considered by the hearing panel are affected.

(12) Revocation procedures for medical parole are the same as those for nonmedical parole and statutory provisions for nonmedical parole apply to medical parole.

(13) By submitting an application for medical parole, the offender waives any right to privacy in his/her medical information.

#### 20.25.401 HEARING PROCEDURE

(1) An eligible offender may apply and come before a hearing panel or an out-of-state releasing authority for nonmedical parole consideration within two months of time fixed by law as calculated by the prison records department. During the parole hearing the hearing panel will consider all pertinent information regarding each eligible offender including:

(a) the circumstances of the offender's current offense and any other offenses the offender has committed;

(b) the offender's social history and criminal record;

(c) the offender's prison record including disciplinary conduct, work history, treatment programs, classification and placement, and adjustment to prison; and

(d) reports of any physical, psychological, and mental health evaluations done on the offender.



(2) The presiding hearing panel member shall conduct hearings informally and shall have discretion to allow or not allow any proposed testimony. Board staff shall make a record of all hearings.

(3) Interested persons who wish to appear before the hearing panel must:

(a) notify the board staff not less than ten working days prior to the regularly scheduled hearing; and

(b) inform the board staff of the reason they wish to appear before the hearing panel and the relationship of the person to the offender at whose hearing the person intends to appear.

(4) Interested persons may submit written comments about an offender's possible parole to board staff at any time before the hearing. The hearing panel will give interested persons' comments due consideration at the offender's hearing.

(5) A victim may present a statement concerning:

(a) the effects of the crime on the victim;

(b) the circumstances surrounding the crime; and

(c) the victim's opinion regarding whether the hearing panel should grant the offender parole.

(6) At the presiding hearing panel member's discretion, the victim's statement and testimony will be kept confidential if the presiding member finds the victim's privacy interest outweighs the public's right to know.

(7) The hearing panel shall consider the victim's statement along with the other information presented in determining whether to grant parole.

(8) The presiding hearing panel member may close a hearing to hear or consider confidential information.

(a) Information is confidential when the presiding member finds a person's privacy interest outweighs the public's right to know.

(b) When the hearing panel has finished hearing or discussing the confidential information, it shall reopen the meeting and complete the hearing in public.

(9) When the hearing panel denies an offender parole, it must give the offender written notification of the decision and include reason(s) for the decision and when the offender may reapply for parole consideration.

(10) A hearing panel will consider an eligible offender for parole release even if the offender does not submit an application for parole. A hearing panel will render a decision based on the written record and on the fact the offender did not apply for parole.

(11) A hearing panel may conduct hearings via two-way interactive video teleconferencing and may conduct administrative reviews by means of telephone conference.

(12) Board hearings are open to the public; however, all persons attending hearings that take place in a secure facility must gain approval to enter the facility from the facility's chief of security or designee as required by the facility's policy. While at the facility, persons must comply with the facility's policies including applicable security policies. The facility may exclude or escort from the facility any person who fails to gain approval to enter the facility or fails to comply with the facility's policies. At the discretion of the hearing panel additional witnesses may be heard outside of the secure facility.

(13) Offenders who appear for parole hearings may have a representative, including an attorney, present with them.

(14) At the conclusion of the hearing, the hearing panel will either notify the offender of the panel's decision and the reasons for the decision or the hearing panel may take the decision under advisement.

#### 20.25.505. CRITERIA FOR RELEASE GRANT DECISIONS ON NONMEDICAL PAROLE

(1) A hearing panel may release an eligible offender on nonmedical parole only when, in its opinion:

(a) there is reasonable probability that the offender can be released without detriment to himself/herself or to the community;

(b) release is in the best interests of society;

(c) the offender is able and willing to fulfill the obligations of a law-abiding citizen; and

(d) the offender does not require continued correctional treatment, or mental health therapy, vocational or other programs available in the correctional facility that will substantially enhance the offender's capacity to lead a law-abiding life if released.

(2) In making its determination regarding release, the hearing panel may consider each of the following factors:

(a) the offender's maturity, stability, sense of responsibility and development of traits and behaviors which increase the likelihood the offender will conform his/her behaviors to the requirements of law;

(b) the adequacy of the offender's release plan;

(c) the offender's ability and readiness to assume obligations and undertake responsibilities;

(d) the offender's education and training;

(e) the offender's family status and whether the offender has relatives who display an interest or whether the offender has other close and constructive associations in the community;

(f) the offender's employment history, occupational skills, and the stability of the offender's past employment;

(g) the type of residence, neighborhood or community in which the offender plans to live;

(h) the offender's past use of chemicals (including alcohol), and past habitual and/or abusive use of such chemicals;

(i) the offender's mental and/or physical makeup;

(j) the offender's prior criminal record, including the nature and circumstances of the offense, date of offense and frequency of previous offenses;

(k) the offender's attitude toward law and authority;

(l) the offender's conduct in the institution, including particularly whether the offender has taken advantage of opportunities for treatment, and whether the offender is clear of major disciplinary violations prior to the hearing;

(m) the offender's behavior and attitude during any previous experience of supervision and the recency of such experience;

(n) any statement of the victim or victims of the offense;

(o) whether parole at this time would diminish the seriousness of the offense; and

(p) any and all other factors which the hearing panel determines to be relevant.

#### 20.25.704. CONDITIONAL DISCHARGE FROM SUPERVISION

(1) Upon recommendation of the supervising parole officer, a hearing panel may conditionally discharge a parolee from parole supervision before the expiration of the sentence, if the panel determines that such conditional discharge is in the best interests of the parolee and society, and will not present an unreasonable risk of danger to society or the victim of the offense.

(2) During a conditional discharge the following apply:

(a) the parolee is not supervised by the department;

(b) the parolee will not pay supervision fees; and

(c) if the parolee becomes a resident of another state, the parolee's sentence is discharged, but the parolee can be revoked as in (7).

(3) After the parolee has served one year of active supervision, the parole officer will review the parolee's file and may recommend a parolee for conditional discharge.

(4) When a hearing panel considers granting a conditional discharge from supervision, it will consider the achievement credits the parolee has accrued pursuant to 46-23-1027, MCA. [A list of what achievements accrue credits are printed on page 4 of this document.]

(5) If a hearing panel grants a conditional discharge from supervision it may order the parolee to submit written reports to the board once a year, reporting the parolee's address, and any contacts the parolee has had with law enforcement.

(6) A hearing panel may return a parolee to active supervision or amend the conditions of the conditional discharge if, in the opinion of a hearing panel, this action is in the best interest of society and the parolee has committed any of the violations listed in (7).

(7) The board may revoke a parole, even when the parolee is conditionally discharged from supervision, if the parolee:

(a) is charged with a felony offense;

(b) is charged with a misdemeanor offense for which the parolee could be sentenced to incarceration for a period of more than six months; or

(c) the parolee fails to report his/her address and law enforcement contacts.

#### 20.25.801. ON-SITE HEARING AND REVOCATION OF PAROLE

(1) If an officer of the department has reason to believe a parolee has violated any of the conditions of the parolee's release, the department must conduct an on-site hearing unless the parolee waives the right to an on-site hearing or pursuant to (3), no on-site hearing is necessary.

(2) In order to waive the right to an on-site hearing the parolee must sign a waiver that clearly specifies the rights the parolee is relinquishing and admit to at least one of the violations as outlined in the report of violation.

(3) No on-site hearing is necessary if the parolee is convicted of a felony offense during the period of supervision, or if the parolee is arrested in a state in which the parolee had no permission to travel or reside. If no on-site hearing is necessary the hearing panel may utilize the court judgment and conviction or out-of-state arrest documents in lieu of the on-site hearing summary.

(4) For an on-site hearing the parole officer shall serve the parolee with a report of violation and notice of on-site hearing.

(5) The on-site hearing must be held at or reasonably near the site of the alleged violation within a reasonable time after the service of the report of violation to the parolee. If the parolee is arrested out-of-state, the hearing will be conducted by the state tasked with supervision of the parolee or upon return to Montana custody.

(6) The parolee may have witnesses attend the on-site hearing, but only if the witnesses have relevant testimony to present concerning whether the parolee did or did not violate the conditions of release on parole, and only if the witnesses can qualify to enter the correctional facility if the hearing is held in a secure facility.

(7) A hearing officer of the department will preside over the on-site hearing. If the hearing officer finds there is probable cause to hold the parolee for the final decision of the board, the parole officer will notify the board and submit a summary of the hearing to the board.

(8) The parolee may be held in a state prison pending an on-site hearing or after a hearing officer has determined there is probable cause to hold the parolee for a final decision of the board.

(9) The board staff will deliver a copy of the board's written decision to the offender within 21 days of the decision. The written decision will include reasons for the decision and disposition, and a summary of the evidence upon which the board relied.

(10) If a hearing panel determines that the offender has violated the provisions of release, the hearing panel, at its sole discretion, will determine the amount of time, if any, that will be counted as time served while the parolee was in violation of the provisions of release.

(11) A parole violation warrant will remain active until the parolee is in Montana custody and may not be quashed without the approval of a board hearing panel. If the parolee's sentence expiration date is reached, a hearing panel will review the case to determine if keeping the warrant active is in the interests of justice. If the panel decides to keep the warrant active after the parole discharge date, not including dead time, a panel will review the parolee's status annually.

(12) Unless the parolee waives the revocation hearing, the board will schedule a revocation hearing within 90 days of receipt of the on-site hearing summary or of receipt of notice of conviction or return to Montana custody. If the parolee waives the revocation hearing the parolee must sign a waiver that clearly specifies the rights the parolee is relinquishing. Once the hearing is scheduled, the parolee may request a continuance and board staff may grant the continuance if the parolee can show good and substantial cause for the continuance.

(13) At the revocation hearing the parolee may be represented by counsel at the parolee's expense, and may present witness testimony if the testimony relates to the violations. An indigent parolee may request appointed counsel if difficult or complex issues are present and if the parolee is unable to articulate the issues. A decision on the request for appointed counsel will be rendered by a board hearing panel after due consideration of the request.

(14) A parolee who contests parole revocation or the parolee's counsel shall, at least 20 days before the revocation hearing, present to the board staff:

(a) any requests for information from the parolee's file that the parolee needs for the hearing;

(b) a list of witnesses and exhibits the parolee intends to present at the revocation hearing;

(c) a list of information the parolee will present at the hearing; and

(d) any requests for subpoenas the parolee wants the board to issue. The board will only issue subpoenas for extraordinary reasons and in cases where the board considers a person's testimony is crucial to a determination of the issue of revocation.

(15) The presiding hearing panel member will conduct the revocation hearing and will record the hearing. The decision of the board in a revocation hearing is by a preponderance of the evidence. The board may consider:

(a) reports of the supervising officer;

(b) the report of the on-site hearing, if one was conducted; and

(c) the information and evidence presented at the hearing.

(16) If the board decides the parolee has violated parole, the hearing panel may, considering the nature of the violations and the criteria for release grant decision, take any of the following actions:

(a) continue the parolee on parole with release to the community;

(b) continue the parolee on parole, but authorize the parolee's detention in custody until the parolee satisfies conditions imposed by the board;

(c) revoke the parole and set no re-parole date;

(d) revoke the parole, but order the offender's re-parole on a date certain;

(e) revoke the parole and set a date within one year when a board hearing panel will conduct an administrative review of the offender's case; or

(f) make any other appropriate order.