

Montana Criminal Justice System EAQs #1

Prepared for the Commission on Sentencing
By Rachel Weiss, Research Analyst
December 2015

Background

This EAQ document differs from the traditional “frequently asked questions” (FAQ) documents in that the questions addressed are not always frequently asked, but rather that they are *comparatively* “easily answered” questions about Montana’s criminal justice system. The questions in this edition were generated at the November 17-18, 2015, meeting of the Commission on Sentencing.

Questions and Answers

Parole

What are the eligibility criteria for parole and medical parole?

The eligibility criteria for parole and for medical parole are located in statute. The term used in statute for regular parole is “nonmedical parole”.

46-23-201. Prisoners eligible for nonmedical parole -- rulemaking. (1)

Subject to the restrictions contained in subsections (2) through (4) and the parole criteria in 46-23-208, 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) 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.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec.

60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(1), (2); amd. Secs. 1, 2, Ch. 235, L. 1983; amd. Sec. 1, Ch. 451, L. 1985; amd. Sec. 2, Ch. 188, L. 1989; amd. Sec. 2, Ch. 248, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 315, L. 1991; amd. Sec. 3, Ch. 519, L. 1991; amd. Sec. 68, Ch. 10, L. 1993; amd. Sec. 4, Ch. 372, L. 1995; amd. Sec. 17, Ch. 482, L. 1995; amd. Sec. 227, Ch. 546, L. 1995; amd. Sec. 9, Ch. 189, L. 1997; amd. Sec. 7, Ch. 491, L. 1999; amd. Sec. 5, Ch. 559, L. 2003; amd. Sec. 5, Ch. 102, L. 2011; amd. Sec. 1, Ch. 176, L. 2011; amd. Sec. 5, Ch. 209, L. 2013; amd. Sec. 2, Ch. 198, L. 2015. [Underlining added to original text]

Section 46-23-201(2) lists who is not eligible for nonmedical parole and includes two references to other statutes. In addition to a person sentenced to death and a person sentenced to the Department of Corrections and placed in prison for assessment or sanction, the Board of Pardons and Parole (board) may not parole a person whose right to parole was restricted by the sentencing judge pursuant to 46-18-202(2), or a person sentenced to life without parole pursuant to 46-18-219, MCA, which provides sentencing requirements for offenders who have previously been convicted of certain felony offenses.

The criteria for medical parole eligibility are included in 46-23-210. Since 2010, three offenders have been paroled using the medical parole statutes. In that same time span, 22 others were paroled for medical issues under the regular parole process.

46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order any person confined in a state prison or adult community corrections facility or any person sentenced to a state prison and confined in a prerelease center who:

(a) is not under sentence of death or sentence of life imprisonment without possibility of release;

(b) is unlikely to pose a detriment to the person, victim, or community; and

(c) (i) has a medical condition requiring extensive medical attention; or

(ii) has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.

(2) A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. If the court does not respond within 30 days to a written request from the department, the person is considered to be approved by the court for medical parole. The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).

(3) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:

- (a) a description of the medical attention required to treat the person's medical condition;
 - (b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and
 - (c) a prognosis addressing the likelihood of the person's recovery from the medical condition or diagnosis and the extent of any potential recovery. The prognosis may include whether the person has a medical condition causing the likelihood of death within 6 months.
- (4) The application must be reviewed and accepted by the department before the board may consider granting a medical parole.
- (5) Upon receiving the application from the department, a hearing panel shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.
- (6) The hearing panel shall require as a condition of medical parole that the person agree to placement in an environment approved by the department during the parole period, including but not limited to a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program, or to a family home. The hearing panel may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person'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 person's medical condition has improved to the extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the person, victim, or community, a hearing panel may revoke the parole and return the person to the custody of the department.
- (7) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.
- (8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.

History: En. Sec. 1, Ch. 248, L. 1991; amd. Sec. 1, Ch. 381, L. 1993; amd. Sec. 23, Ch. 125, L. 1995; amd. Sec. 3, Ch. 420, L. 1997; amd. Sec. 1, Ch. 250, L. 2007; amd. Sec. 7, Ch. 102, L. 2011; amd. Sec. 1, Ch. 43, L. 2013.

The parole criteria for nonmedical parole are listed in 46-23-208, which is a new section of law created by the 2015 Legislature in House Bill No. 135. The criteria in HB 135 were based on criteria that existed in the board's administrative rules. The board is currently revising administrative rules to comply with changes made in HB 135 and several other parole-related bills.

46-23-208. Nonmedical parole criteria -- information board may consider.

- (1) The board may release an eligible prisoner on nonmedical parole only when:
- (a) there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community;
 - (b) release is in the best interests of society;

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

(d) the prisoner does not require:

(i) continued correctional treatment; or

(ii) other programs available in a correctional facility that will substantially enhance the prisoner's capability to lead a law-abiding life if released, including mental health therapy or vocational training.

(2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.

(3) 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 (3)(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.

(4) In making its determination regarding nonmedical parole release, a hearing panel shall consider all available and pertinent information regarding the prisoner, including the following factors:

(a) the circumstances of the offense;

(b) the prisoner's social history and prior criminal record, including the nature and circumstances of the offense, date of offense, and frequency of previous offenses;

(c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the prisoner has taken advantage of opportunities for treatment and whether the prisoner is clear of major disciplinary violations prior to the hearing;

(d) the reports of any physical, psychological, and mental evaluations that have been made;

(e) the prisoner's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the prisoner will conform the prisoner's behavior to the requirements of law;

(f) the adequacy of the prisoner's release plan;

(g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;

(h) the prisoner's education and training;

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

(j) the prisoner's employment history and occupational skills and the stability of the prisoner's past employment;

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

- (l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;
 - (m) the prisoner's mental and physical makeup;
 - (n) the prisoner's attitude toward law and authority;
 - (o) the prisoner's behavior and attitude during any previous experience of supervision and the recency of the supervision;
 - (p) 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 offender should be paroled.
 - (q) whether parole at this time would diminish the seriousness of the offense; and
 - (r) any and all other factors that the hearing panel determines to be relevant.
- (5) A victim's statement may be kept confidential.
History: En. Sec. 1, Ch. 198, L. 2015.

Files:

- House Bill No. 135 (2015): <http://leg.mt.gov/bills/2015/billhtml/HB0135.htm>
- Background Paper: Board Structure, Duties, and Operations, prepared for the Commission on Sentencing:
<http://leg.mt.gov/content/Committees/Interim/2015-2016/Sentencing/Meetings/Nov-2015/Exhibits/parole-board-background-cos-nov-2015.pdf>

Can you provide statistics on parole decisions and caseloads?

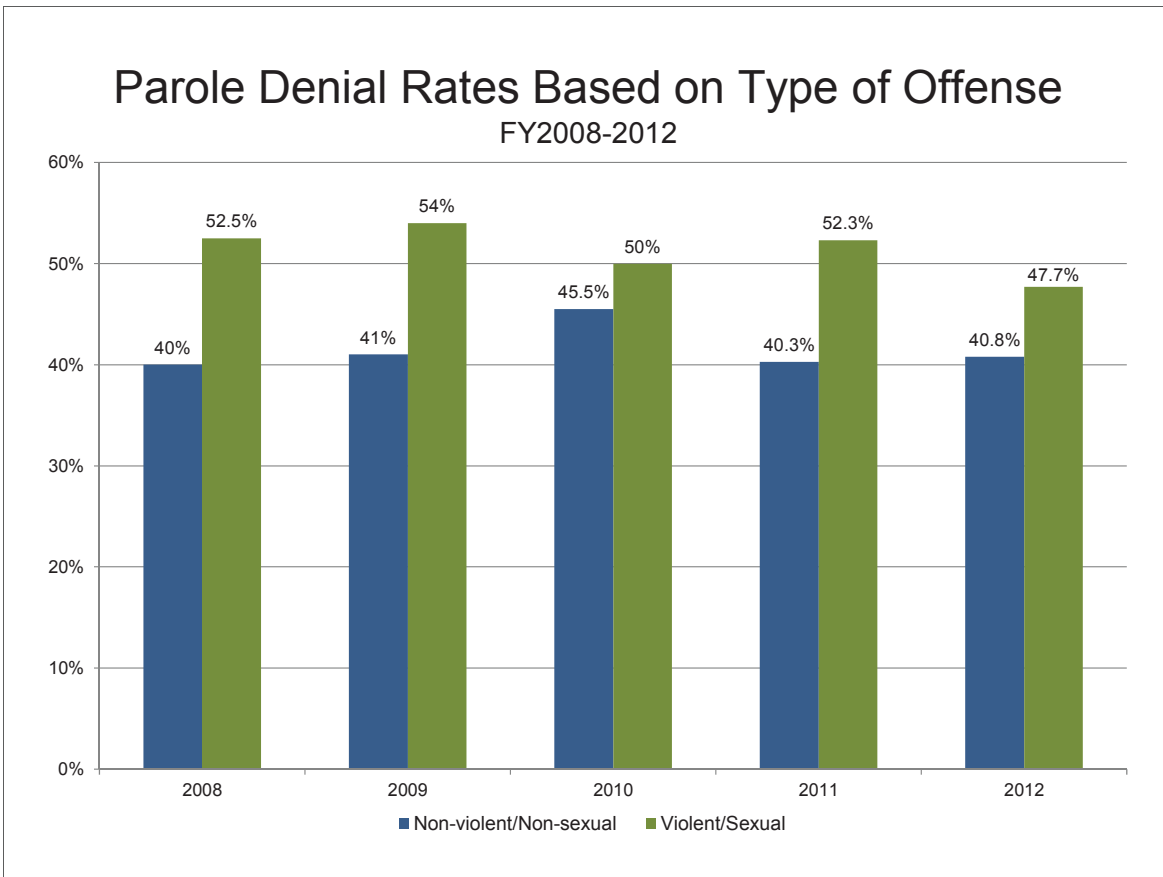
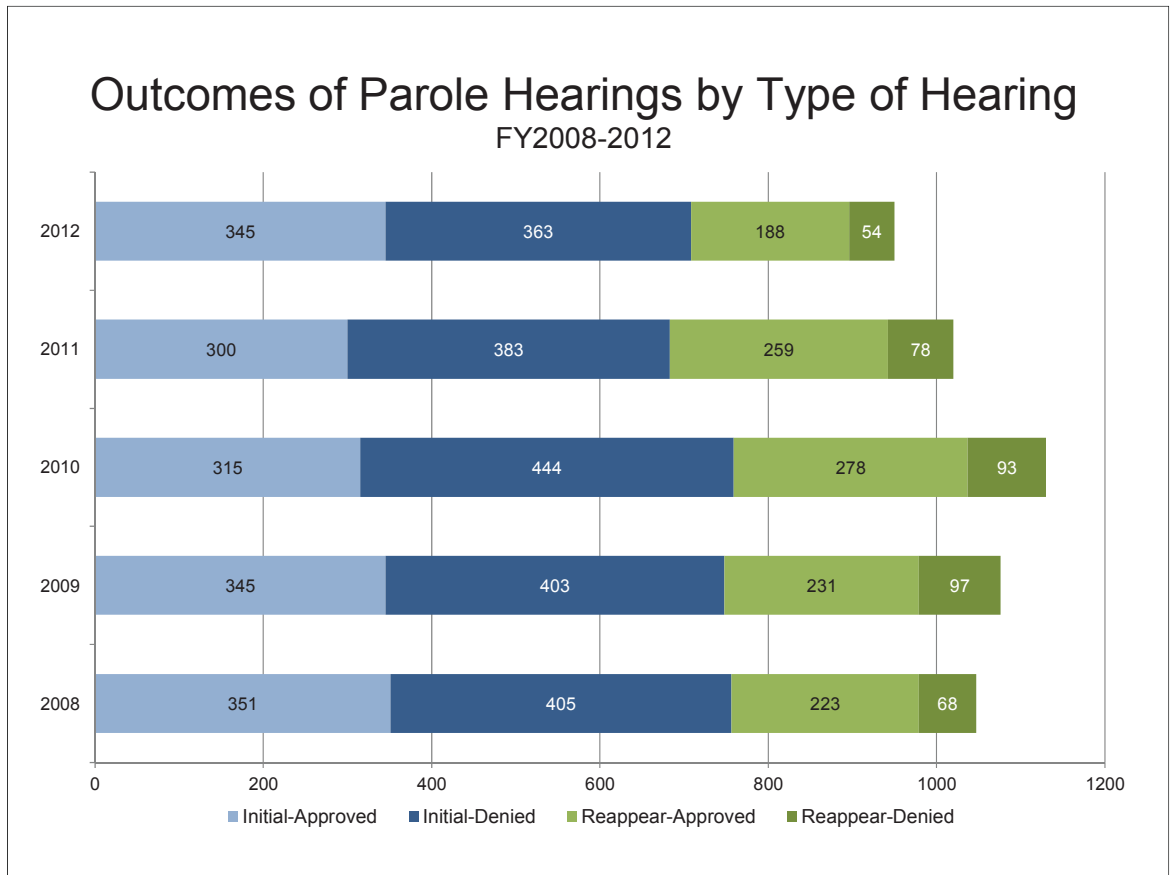
Statistics on parole release decisions can be found on the board's website and in previous reports from the Department of Corrections (DOC) and the board. Several tables of relevant statistics are included on the following pages. Pages A27-29 are from the DOC 2013 Biennial Report; pages 4, 8, 9, and 16 are from the board's 2015 Biennial Report. Links to the full reports are listed below.

The board also provides detailed release information on its website, and a link to the site is provided below.

Files:

- Board of Pardons and Parole monthly, fiscal year, and calendar year Statistics: <http://bopp.mt.gov/Statistics>
- Department of Corrections 2013 Biennial Report: <http://cor.mt.gov/Portals/104/Resources/Reports/2013BiennialReport.pdf> (large file)
- Board of Pardons and Parole 2015 Biennial Report: <http://bopp.mt.gov/Portals/42/about/Legislative%20Report%202015.pdf>

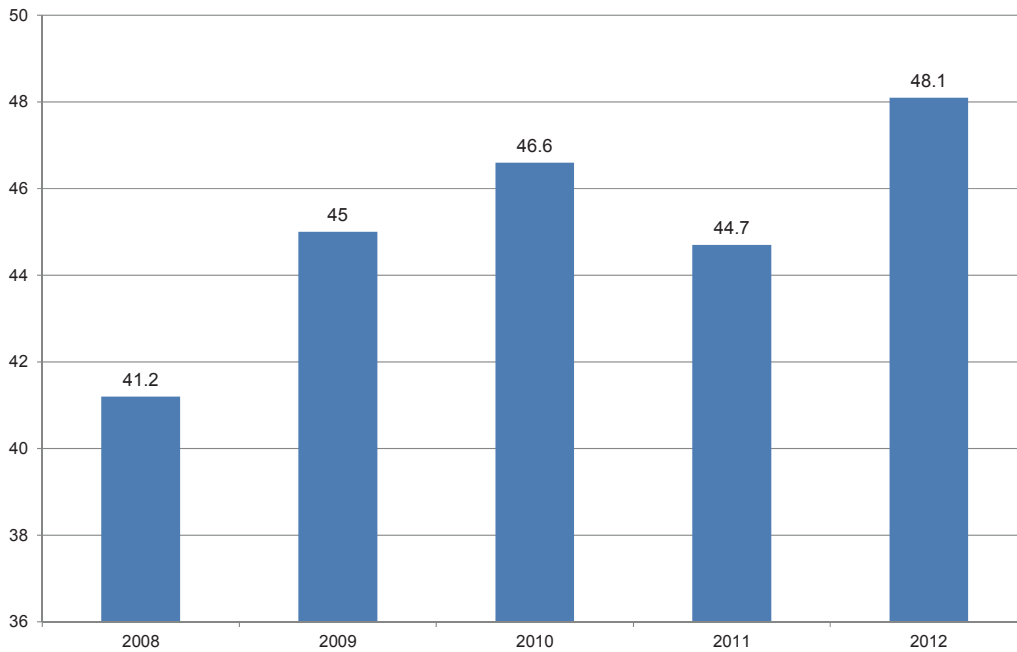
During the past five fiscal years, the Board of Pardons and Parole has granted parole in 54 percent of the cases coming before it. On average, 45 percent of those making an initial appearance before the board have their parole approved. Offenders are more successful when reappearing before the board, when the approval rate is 75.3 percent. The lower rate on initial appearances reflects the fact that many of those offenders have not yet completed required programming or treatment.



Sexual and violent offenders are more likely to have paroles denied than are offenders in prison for non-violent and non-sexual crimes. In the past five fiscal years, 51.3 percent of violent and sexual offenders appearing before the Board of Pardons and Parole were denied parole. The denial rate for other offenders during that time was 41.5 percent.

Average Months in Correctional Facility Before Parole

FY2008-2012

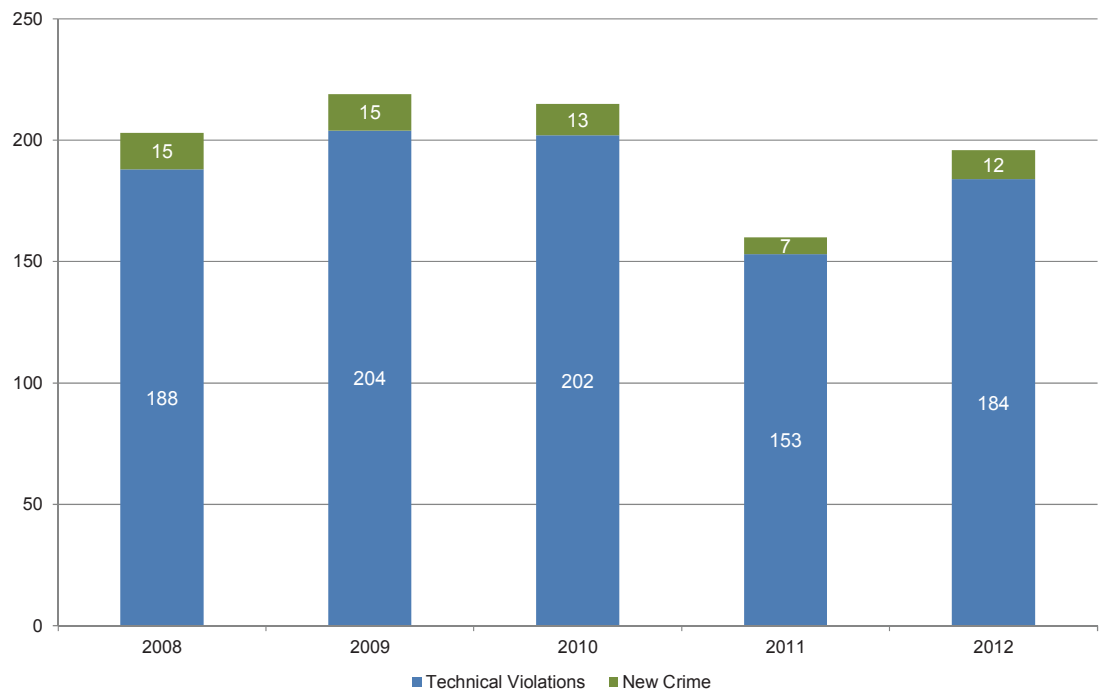


The typical offender spent three years and nine months in a correctional facility before being paroled during the past five fiscal years. The average time in a facility — prison, treatment or sanction program, or prerelease center — before parole increased by about seven months since 2008, although the prison stay dropped by nearly two months in 2011. Offenders must complete a fourth of their prison sentence before being eligible for parole.

Paroles are revoked when offenders commit a new crime or repeatedly violate conditions of their community supervision. On average, new offenses account for only 6.1 percent of revocations. In the past five years, the board has revoked 993 parolees, an average of about 199 annually.

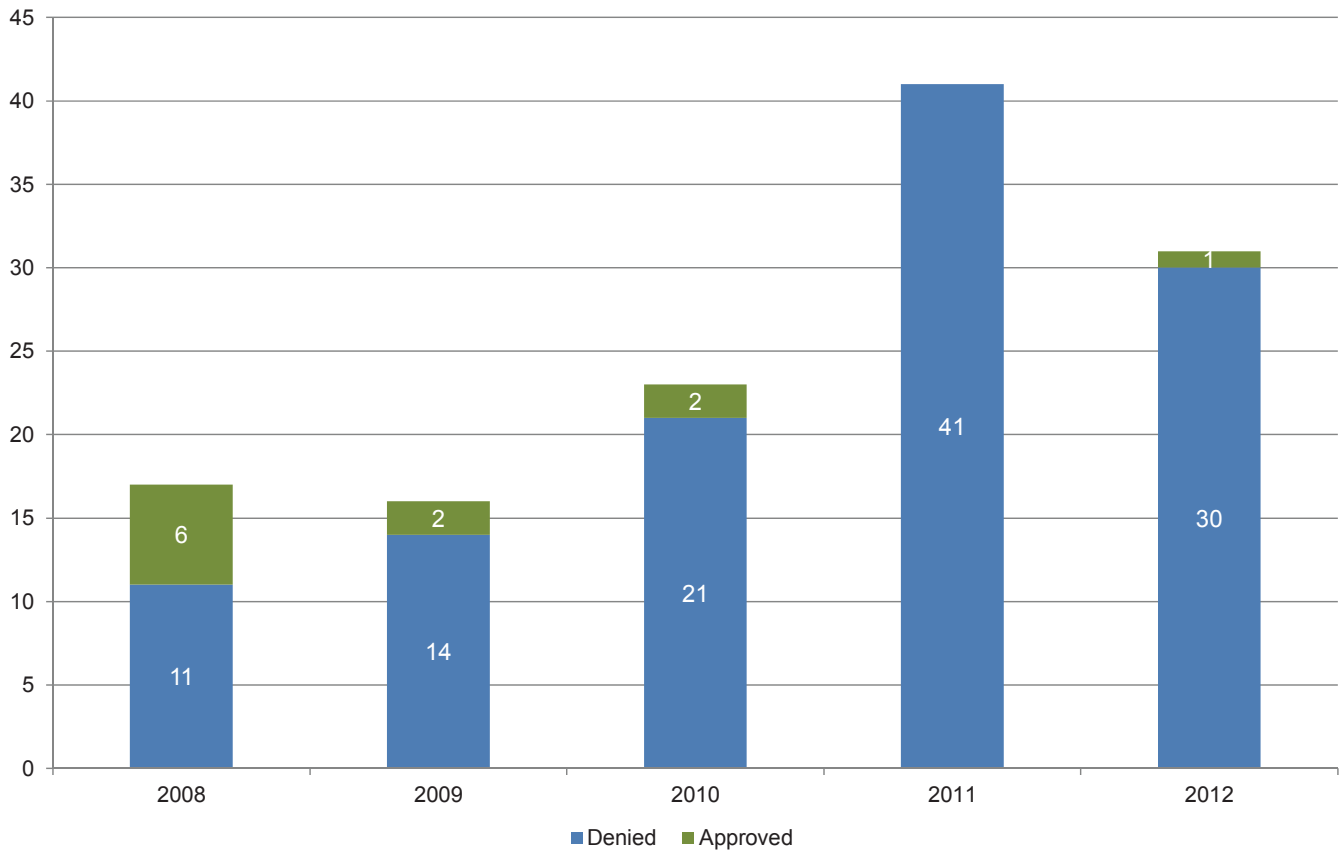
Parole Revocations by Type

FY2008-2012



Disposition of Pardon Requests

FY2008-2012

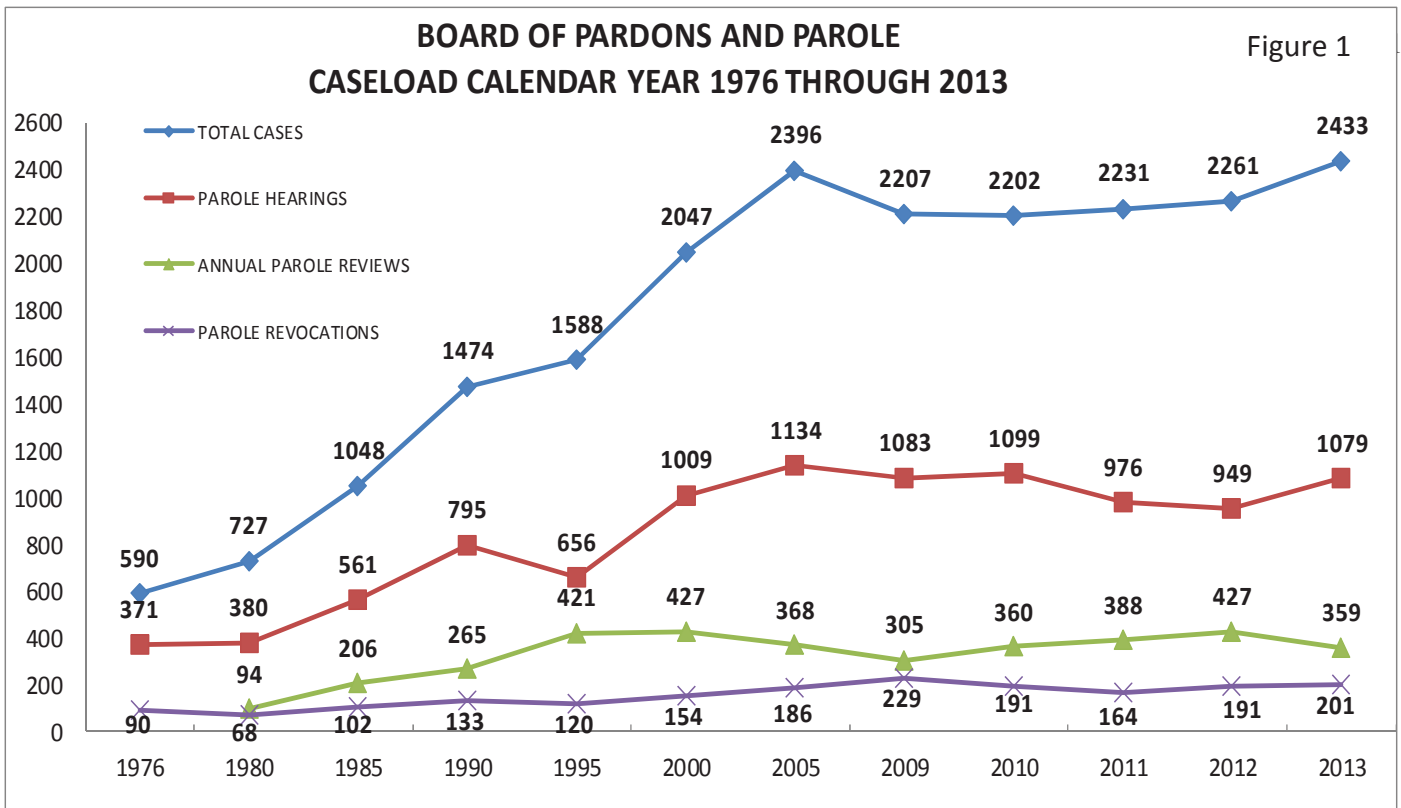


The Board of Pardons and Parole received 128 requests for pardons in the past five fiscal years, an average of 25 per year. On average, the board approved about 12 percent of the requests, or two per year. The number of pardon requests increased significantly in 2011 and 2012, perhaps prompted by similar trends in other states and a growing desire of offenders to have their gun rights restored under federal law.

Once an offender becomes parole eligible, the remaining time on the prison term can be served either in custody or in the community, depending upon the severity of the crime and risk/needs presented by the offender. By denying parole, the Board can keep dangerous offenders who remain a risk to public safety in custody. The Board has the benefit of reviewing all circumstances surrounding the crime(s), studying the offenders' behavior in prison, examining treatment/education/life skills recommendations as assessed by treatment professionals and other corrections staff, and considering all testimony and correspondence from victims, criminal justice authorities, and offenders' support networks as they review each case.

If the Board determines parole is appropriate, an offender can serve a portion of the term in the community under supervision and the requirements set by the Board. If an offender violates the conditions, the Board can quickly return the offender to custody to protect society and require them to serve the remainder of the term in prison.

Courts have consistently ruled that parole in Montana is a **privilege and not a right** and the Board has been afforded broad discretion in making decisions. The Board of Pardons and Parole is required to give offenders meaningful access to the members and, when parole is denied, the Board must issue a written decision informing the offender in what respects he or she falls short of qualifying for parole.



****Although the total number of cases has increased drastically over the past two decades, the number of parole revocations has remained relatively low, as evident in the chart above****

“Total Cases” – The number of total decisions made by the Board.

“Parole Hearings” – The personal appearance of an inmate before the Board for release consideration. This includes initial appearances and reappearances. The Board frequently uses video conference to conduct these hearings.

“Administrative Parole Reviews” – The informal administrative process conducted by a hearing panel via teleconference that entails a paper review to consider the progress and conduct of an inmate and to determine if further consideration is warranted.

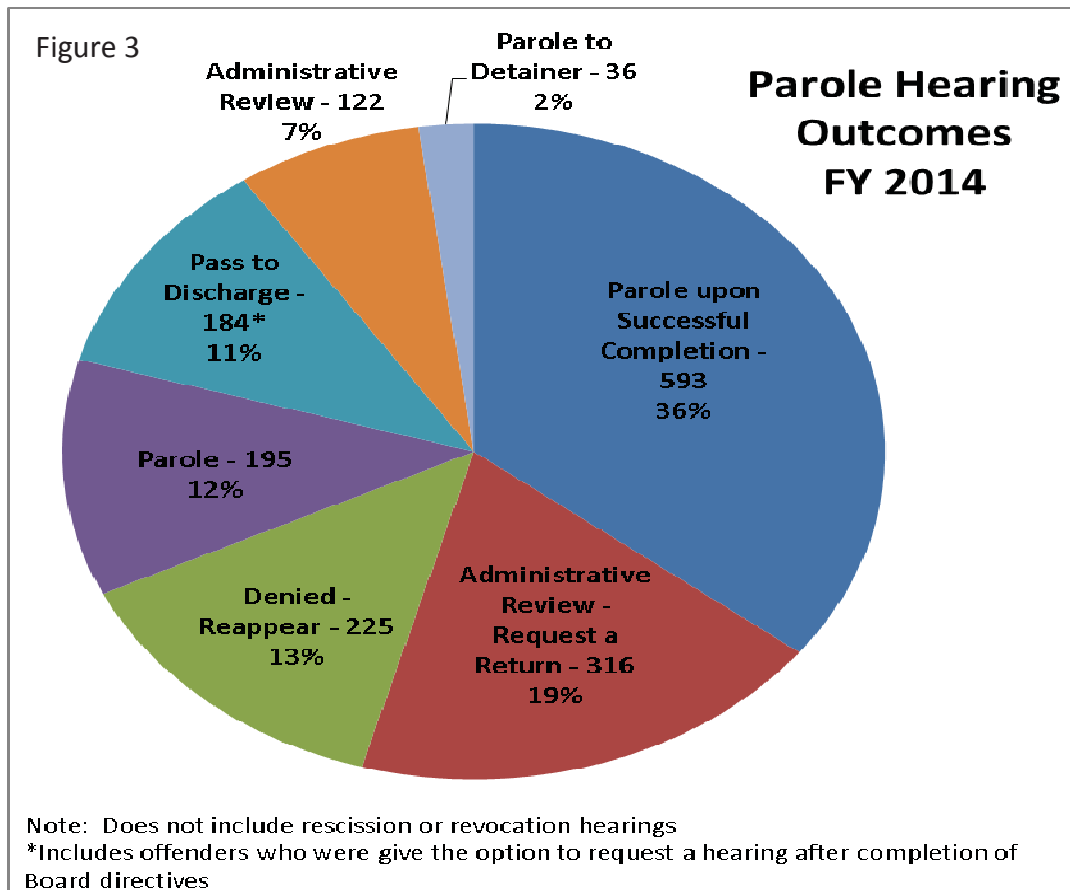
“Parole Revocation” - An action by the Board to consider taking away a previously granted parole after probable cause has been determined that a parolee had violated the rule(s) of parole.

ADMINISTRATIVE ATTACHMENT:

The Montana Legislature allocated the Board of Pardons and Parole to the Department of Corrections for administrative purposes only following the 1971 Executive Reorganization Act. However, the Board is autonomous, hires its own personnel, and sets its own policy independent of the Department of Corrections and without approval or control of the Department of Corrections. The Parole Board is not responsible for the care and custody of inmates nor is it in charge of supervising parole and probation officers.

A separate and independent paroling authority is a significant factor for the following reasons: (1) The distribution of power within a correctional system must be distributed in a manner that will reduce the potential for misuse of power, a flexible system of punishment and checks and balances. (2) A citizen Board with members who have no vested interests in prison overcrowding can review offenders based on community safety and are not unduly influenced by the pressures of system management. (3) Corrections personnel due to the nature of their job could have the propensity to become overly involved in the lives of the offenders under their jurisdiction. Dealing with individuals on a daily basis, results in, the tendency to be influenced, either positively or negatively, by factors the individuals present, such as behavior and current progress. Board members focus on many areas in addition to adjustment, especially those with predictive significance such as criminal history, nature and severity of the offense, prior community adjustment, and victim or community input. (4) When the question of whether a parolee's behavior has deteriorated to the point where revocation is necessary, this decision must be subject to review by a body not involved in day-to-day supervision and system management.

Consequently, the separate and distinct roles of the corrections personnel and the parole board could conceivably result in periodic tension between the two agencies. However, this is one of the results of the checks and balance system; the ultimate purpose of which is public safety, victim concerns, successful inmate re-entry, and sensible use of state resources.

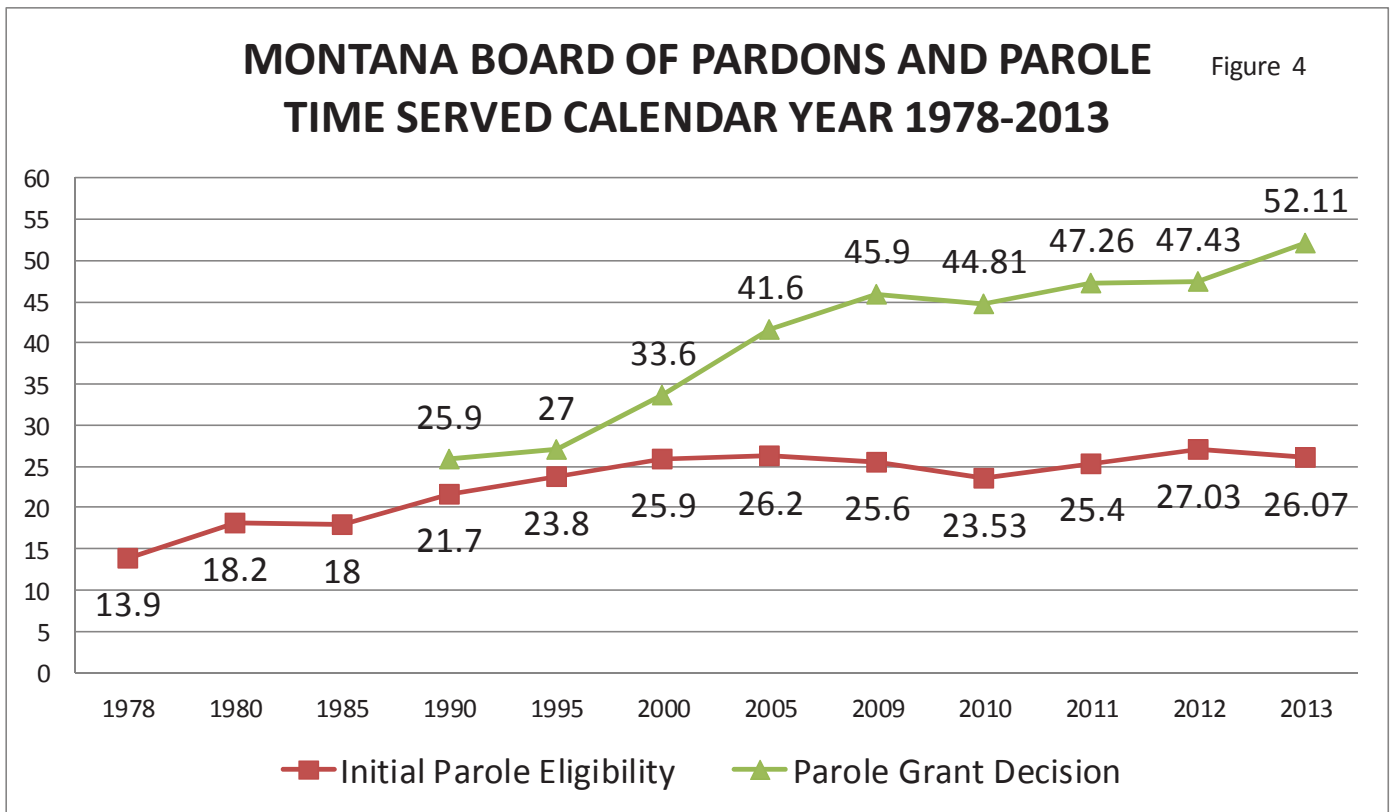


PAROLE PROCESS

PAROLE ELIGIBILITY:

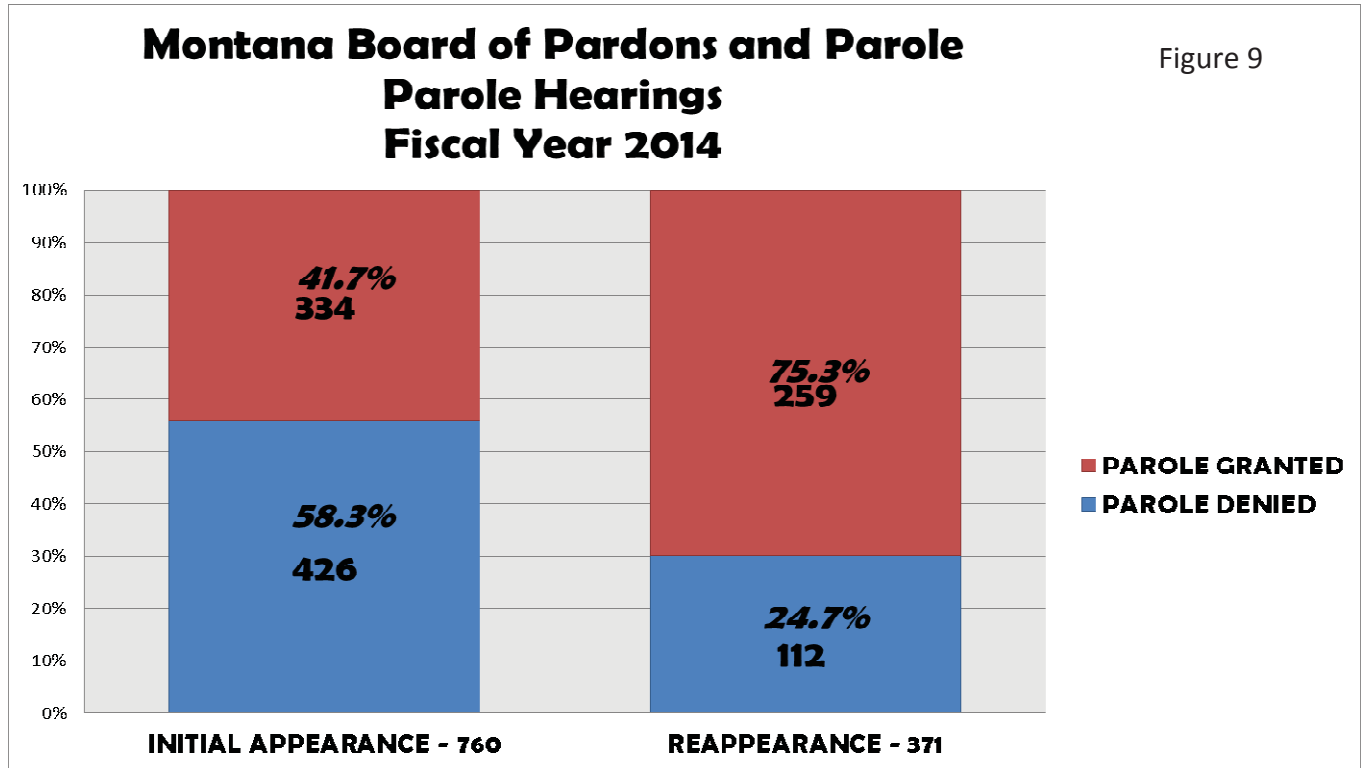
The minimum (initial parole eligibility) and maximum (sentence expiration) sentence lengths are set by the legislature and the district court. **The Board cannot and does not change the minimum and maximum sentence lengths.** An offender sentenced to prison as an adult pursuant to MCA 41-5-206 and confined in a youth correctional facility, or an offender committed to the director of the Department of Public Health and Human Services pursuant to MCA 46-14-312, is only eligible for parole when the offender is placed at the Montana State Hospital, the Montana Developmental Center, the Montana Mental Health Nursing Care Center, or in a prison. Offenders who were ordered ineligible by the sentencing court and offenders who are required by the court to complete certain requirements prior to being eligible for parole are not eligible for a parole hearing until the requirements have been met. An inmate **sentenced to Montana State Prison or classified and housed in a state prison** meeting all the qualifications must be considered for parole. Parole is an earned privilege and may be granted only in the best interest of society and when the Board feels the offender is willing and capable of being a law-abiding citizen. Parole is not a reduction of a sentence or an award of clemency.

The Board staff administers a pre-parole program and participates in the initial classification of inmates. The Board staff personally advises the new inmates of the types of prison programs, treatment accomplishments, and behavior or conduct expected which may enhance the offender's possibility of a parole.



NOTIFICATION OF DECISION:

All decisions issued from the Board are in writing and must be signed by at least two Board members. When an inmate has been denied parole, written notification will include the date of any future Board consideration. The disposition will include any special conditions or terms to be required by those granted parole. (See Appendix for example of dispositions).



RESCISSION AND RELEASE DELAY:

Parole may be taken away after a hearing prior to release as a result of improper conduct, new evidence and/or information that was not available for the hearing, or a significant change in parole plan. The Board may delay parole release as a result of improper conduct if rescission is not in order.

PAROLE SUPERVISION:

An inmate's parole is subject to all rules and conditions set by the Board and violations thereof subject the parolee to possible revocation and return to custody to serve the remainder of the sentence. Rules and conditions are stated in writing and are part of an agreement signed by the parolee. A parolee shall pay a supervisory fee for each month under supervision. A Board hearing panel may reduce or waive the fee or suspend the monthly payment if payment would cause the parolee significant financial hardship. A Board hearing panel may order additional special conditions. Additionally, a hearing panel shall consider Department of Corrections' requests for special conditions. Any special condition requested by the department must be approved by a Board hearing panel. Special conditions must not be unrealistic or vague and must be reasonably related to the offender's crime, public safety, or the circumstances and rehabilitation of the offender. (See Appendix for an example of parole conditions).

What do parole board members receive in a parole packet?

The board responded to this question during the 2013-2014 Law and Justice Interim Committee's interim study of the board. That answer and the source file are provided below.

"Parole packets is the information sent to the Parole Board members approximately one week in advance of the hearings. This information will include the facility prepared parole report, a Board staff report, and psych or sex offender reports, risk assessment, a list of placement where the offender has been at, prior board dispositions, any letter of support or opposition that were received, and any other information the offender has chosen to send to the Board for consideration. Once the parole board hearing has been completed, this packet information is placed in the BOPP section of the field file."

File: <http://leg.mt.gov/content/Committees/Interim/2013-2014/Law-and-Justice/Meetings/September-2013/Exhibits/bopp-doc-offenders-files-packet.pdf>

What is the average percentage of a sentence served before an offender is actually released on parole?

The Montana Department of Corrections responded to this question during the 2013-2014 Law and Justice Interim Committee's interim study of the board. That answer and the source file are provided below.

"It is not possible to calculate a meaningful average percentage of sentences offenders serve before they are granted parole. Some of the factors that affect the length of time before an inmate is granted parole are listed below. These complicating factors make producing a meaningful average impossible.

- Severity of crime – The type of offense committed can dramatically affect the length of sentence served. For example, the length of time served by violent sex offenders is typically much longer than the time served for property crime.
- Multiple sentences – Offenders are often convicted of multiple crimes and are therefore serving multiple sentences of varying lengths. For example, a single offender could be convicted of assault, kidnapping and tampering with a witness, and be serving three sentences ranging from 5 to 50 years.
- Concurrent or consecutive sentences – Inmates may be serving multiple sentences that run either concurrently or consecutively. The overall sentence length could be unequally split among two or more offenses.
- Court-ordered restrictions on parole eligibility – Some sentences specify that offenders are not parole eligible or severely restrict parole so the offenders must serve more than the normal portion.
- Inmate conduct – How inmates conduct themselves while in prison affects their parole eligibility. An inmate who assaults other inmates or refuses to

follow prison rules is not going to have the clear conduct required to be granted parole.

- Participation in treatment – Inmates who refuse to participate in or complete the treatment required by the sentencing court do not qualify for parole.
- Criminal history – Some inmates who have been in prison only once may be paroled more quickly than an offender who committed the same crime but has been in prison multiple times.”

File: <http://leg.mt.gov/content/Committees/Interim/2013-2014/Law-and-Justice/Meetings/December-2013/Exhibits/doc-response-ljic-september-requests.pdf>

South Dakota Justice Reinvestment

Please provide a copy of the 2015 South Dakota Public Safety Improvement Act annual report.

A link to the 2015 South Dakota PSIA annual report and its appendices can be found using the link below. If you would prefer a hard copy of the report, please e-mail or call me.

Link: <http://psia.sd.gov/annualreport.aspx>

What are the initial results of a pilot project related to parole supervision on American Indian reservations in South Dakota? How are the changes being implemented and what are the initial results?

The South Dakota Public Safety Improvement Act (SB 70 in 2013) allowed the South Dakota Department of Corrections (SD DOC) to work with the South Dakota Department of Tribal Relations to develop tribal parole pilot programs to supervise parolees on tribal lands.

In 2014, the SD DOC signed a Memorandum of Agreement with the Sisseton-Wahpeton Oyate Tribal Council (SWO) to create a pilot project between the two entities. The SWO supervises enrolled tribal members using the same supervision system used by parole agents in other areas of the state. The state provides office supplies and a state vehicle. It also reimburses the SWO for the tribal agent's salary, benefits, and expenses. The agent has access to the same management system as state agents, and the agent's weapon and safety equipment meet the SD DOC's specifications. The tribe's police department provides office space for the agent and a 24/7 program for the pilot project.

The SWO also establishes a tribal wellness team, which determines the offenders who can participate in the pilot program. The wellness team provides case management for the enrolled parolees and includes people with expertise in

behavioral health, tribal law enforcement, housing, and veterans' affairs. It reviews cases when a parolee violates parole and determines the sanction for the violation. If jail time is used as a sanction, the SD DOC pays for the expense.

The 2015 South Dakota Public Safety Improvement Act annual report found that “[as] of June 30, 2015, 97 percent of offenders in the pilot program did not abscond or have a parole violation report submitted while under case supervision and wellness team oversight.” The pilot program had 61 offenders on the caseload during the 2015 fiscal year.

Files:

- South Dakota SB 70 (2013): <http://psia.sd.gov/SB70.aspx>
- Update on the Tribal Pilot Parole Program, South Dakota Governor Dennis Daugaard, June 2015: <http://news.sd.gov/newsitem.aspx?id=17851>
- South Dakota Department of Tribal Relations Newsletter, May 2015: <http://www.sdtribalrelations.com/Documents/May2015.pdf>
- 2015 South Dakota Public Safety Improvement Act annual report: <http://psia.sd.gov/annualreport.aspx>

Ongoing Questions

Answers to these questions posed at the Nov. 17-18, 2015, meeting are not included in this EAQ document, but they remain on the list of questions to be answered either in future editions or at future meetings.

- Expungement data for treatment court completions
- Copy of the Conference of State Court Administrators' policy paper on problem-solving courts when it is finalized.
- Summary of Langford v. Racicot (U.S. District Court for the District of Montana) – now Langford v. Bullock
- Summary of what was being measured in cited cost-benefit analyses of treatment courts

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