

HOUSE BILL NO. 83

INTRODUCED BY C. HINER

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO MEDICAL PAROLE OF PRISON INMATES; PROVIDING THAT THE BOARD OF PARDONS AND PAROLE SHALL HOLD A HEARING ON APPLICATIONS FOR MEDICAL PAROLE; REVISING PROCEDURES AND STANDARDS FOR APPLICATION FOR AND ELIGIBILITY FOR MEDICAL PAROLE; AMENDING SECTION 46-23-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 46-23-210, MCA, is amended to read:

**"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order a any person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

—— (a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome;

—— (b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and confined in a state prison 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. THE PROVISIONS OF THIS SUBSECTION DO NOT APPLY TO A PERSON WHO IS INELIGIBLE FOR MEDICAL PAROLE UNDER SUBSECTION (1)(A).

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

8           (a) a description of the medical attention required to treat the person's medical condition;

9           (b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and

10           (c) a prognosis addressing the likelihood of the person's recovery from the ~~physical condition, disease,~~  
 11 ~~or syndrome~~ medical condition or diagnosis and the extent of any potential recovery. The prognosis may include  
 12 whether the person has a medical condition causing the likelihood of death within 6 months.

13           ~~(2)(4)~~ The diagnosis application must be reviewed and accepted by the department before the board  
 14 may consider granting a medical parole. ~~The board may not grant a medical parole unless the incapacitating~~  
 15 ~~physical condition, disease, or syndrome renders the person highly unlikely to present a clear and present danger~~  
 16 ~~to public safety.~~

17           (5) Upon receiving the application from the department, the board shall hold a hearing. Any interested  
 18 person or the interested person's representative may submit written or oral statements, including written or oral  
 19 statements from a victim. A victim's statement may be kept confidential.

20           ~~(3)(6)~~ The board shall require as a condition of medical parole that the person agree to placement in an  
 21 environment ~~chosen~~ approved by the department during the parole period, including but not limited to a hospital,  
 22 nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate  
 23 community corrections facility or program, or to a family home. The board may require as a condition of parole  
 24 that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each  
 25 examination and diagnosis must be submitted to the board and department by the examining physician. If either  
 26 the board or department determines that the person's ~~physical capacity~~ medical condition has improved to the  
 27 extent that the person ~~no longer requires extensive medical attention or~~ is likely to pose a ~~possible~~ detriment to  
 28 ~~society~~ the person, victim, or community, the board may revoke the parole and return the person to the custody  
 29 of the department.

30           ~~(4) Medical parole may be requested by the board, the department, an incarcerated person, or an~~

1 incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator  
2 of the correctional institution in which the person is incarcerated.

3 ~~(5)(7)~~ A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

4 ~~(6)~~ Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to  
5 nonmedical parole.

6 ~~(8)~~ SECTIONS 46-23-203, 46-23-205 THROUGH 46-23-207, AND 46-23-215 THROUGH 46-23-218 APPLY TO  
7 NONMEDICAL MEDICAL PAROLE.

8 (9) BEFORE JULY 1 OF EACH EVEN-NUMBERED YEAR, THE BOARD SHALL REPORT TO THE CHILDREN, FAMILIES,  
9 HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE AND THE LAW AND JUSTICE INTERIM COMMITTEE REGARDING THE  
10 OUTCOME RELATED TO ANY PERSON RELEASED ON MEDICAL PAROLE SINCE THE LAST REPORT, INCLUDING HEALTH CARE  
11 COSTS AND PAYMENTS RELATED TO THE CARE OF THE PERSON RELEASED ON MEDICAL PAROLE."

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13 NEW SECTION. Section 2. Effective date. [This act] is effective July 1, 2007.

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15 NEW SECTION. Section 3. Applicability. [This act] applies to applications for medical parole received  
16 on or after [the effective date of this act].

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