

HOUSE BILL NO. 141

INTRODUCED BY K. PETERSON

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MAKEUP, OPERATION, AND PROCEDURES OF THE BOARD OF PARDONS AND PAROLE; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-210, 46-23-215, 46-23-218, 46-23-301, 46-23-302, 46-23-306, 46-23-307, AND 46-23-1025, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 2-15-2302, MCA, is amended to read:

"2-15-2302. Board of pardons and parole -- composition -- allocation -- quasi-judicial. (1) There is a board of pardons and parole.

(2) The board consists of ~~three~~ seven members and ~~four auxiliary members~~, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. One member must be an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board. Members of the board, ~~including the auxiliary members~~, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

~~(3) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.~~

(3) The governor shall attempt to establish geographic balance among board members.

(4) Board members and ~~auxiliary members~~ shall serve staggered 4-year terms. The governor shall appoint ~~one member and two auxiliary~~ three members in January of the first year of the governor's term, ~~one member and one auxiliary member~~ two members in January of the second year of the governor's term, and ~~one member and one auxiliary member~~ two members in January of the third year of the governor's term. The

1 provisions of 2-15-124(2) do not apply to the board.

2 (5) The terms of board members ~~and auxiliary members~~ run with the position, and if a vacancy occurs,
3 the governor shall appoint a person to fill the unexpired portion of the term.

4 (6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.
5 However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

6 (7) The board, ~~including the auxiliary members~~, is designated as a quasi-judicial board for purposes of
7 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms
8 of board members must be staggered as provided in subsection (4).

9 ~~——(8) The provisions of 2-15-124(2) do not apply to the board.~~

10 (8) A favorable vote of at least a majority of the seven members of the board is required to implement
11 any policy, procedure, or administrative rule. A favorable vote of at least a majority of the members of a hearing
12 panel, as defined in 46-23-103, is required to make decisions regarding parole and executive clemency, and the
13 provisions of 2-15-124(8) do not apply."

14

15 **Section 2.** Section 46-23-103, MCA, is amended to read:

16 **"46-23-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
17 apply:

18 (1) "Board" means the board of pardons and parole provided for in 2-15-2302.

19 (2) "Department" means the department of corrections provided for in 2-15-2301.

20 (3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of
21 the constitution of Montana.

22 (4) "Hearing panel" means a panel made up of ~~at least two~~ or three board members appointed ~~by the~~
23 ~~board~~ to conduct parole hearings, revocation hearings, rescission hearings, and administrative parole reviews
24 and to make final decisions and recommendations in matters of executive clemency.

25 (5) "Parole" means the release to the community of a prisoner by the decision of a hearing panel prior
26 to the expiration of the prisoner's term, subject to conditions imposed by the hearing panel and subject to
27 supervision of the department.

28 (6) "Victim" means a victim as defined in 46-18-243."
29

30 **Section 3.** Section 46-23-104, MCA, is amended to read:

1 **"46-23-104. Board of pardons and parole.** (1) The board of pardons and parole is responsible for
2 executive clemency and parole as provided in this chapter.

3 (2) The board shall meet monthly at a place determined by the board and at other times and places that
4 the board considers necessary.

5 (3) The principal office of the board is in Deer Lodge.

6 (4) The presiding officer of the board or a designee in consultation with the members shall appoint
7 hearing panels and their presiding officers to conduct ~~parole~~ hearings and to issue a final ~~decision~~ decisions
8 concerning parole and executive clemency and shall request out-of-state releasing authorities to conduct hearings
9 pursuant to Article IV(6) of the Western Interstate Corrections Compact. If the two board members of the hearing
10 panel are unable to reach a unanimous decision, the presiding officer of the board shall convene a panel of three
11 board members as soon as is practicable to rehear the case. The presiding officer of the board or a designee
12 shall attempt to make hearing panel appointments in a manner that ensures equitable distribution of workload
13 among board members. If a hearing panel consisting of two members is unable to reach a unanimous decision,
14 the presiding officer of the board shall appoint a third member to consider all pertinent information and render a
15 final decision. The hearing panels have the full authority and power of the board to order the denial, grant, or
16 revocation of parole and to make final decisions and recommendations in matters of executive clemency."

17

18 **Section 4.** Section 46-23-109, MCA, is amended to read:

19 **"46-23-109. Parole hearings and administrative reviews -- telephone -- videoconference.** The board
20 ~~and the board's hearing panel panels~~ may hold any ~~parole~~ hearing via interactive videoconference, and may hold
21 an administrative review via telephone conference, and, at the applicant's request, may hold a clemency hearing
22 via telephone conference."

23

24 **Section 5.** Section 46-23-201, MCA, is amended to read:

25 **"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking.** (1) Subject to the restrictions
26 contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any
27 person who is confined in a state prison or the state hospital, ~~or~~ any person who is sentenced to the state prison
28 and confined in a prerelease center, or any person who has been sentenced to prison as an adult pursuant to
29 41-5-206 and is confined in a youth correctional facility when in its opinion there is reasonable probability that the
30 prisoner can be released without detriment to the prisoner or to the community.

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

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

6 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served
7 30 years.

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

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

14

15 **Section 6.** Section 46-23-202, MCA, is amended to read:

16 **"46-23-202. Initial parole hearing -- conduct of hearing.** Within the 2 months prior to a prisoner's
17 official parole eligibility date or as soon after that date as possible, the department shall make the prisoner
18 available for a hearing before a hearing panel. The hearing panel shall consider all available and pertinent
19 information regarding the prisoner, including:

20 (1) the circumstances of the offense;

21 (2) the prisoner's previous social history and criminal record;

22 (3) the prisoner's conduct, employment, and attitude in prison;

23 (4) the reports of any physical, psychological, and mental ~~examinations~~ evaluations that have been
24 made; and

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

30

1 **Section 7.** Section 46-23-210, MCA, is amended to read:

2 **"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order any
3 person confined in a state prison or adult community corrections facility or any person sentenced to a state prison
4 and confined in a prerelease center who:

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

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

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

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

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

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

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

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

23 (c) a prognosis addressing the likelihood of the person's recovery from the medical condition or diagnosis
24 and the extent of any potential recovery. The prognosis may include whether the person has a medical condition
25 causing the likelihood of death within 6 months.

26 (4) The application must be reviewed and accepted by the department before the board may consider
27 granting a medical parole.

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

1 (6) The ~~board~~ hearing panel shall require as a condition of medical parole that the person agree to
2 placement in an environment approved by the department during the parole period, including but not limited to
3 a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other
4 appropriate community corrections facility or program, or to a family home. The ~~board~~ hearing panel may require
5 as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense.
6 Reports of each examination and diagnosis must be submitted to the board and department by the examining
7 physician. If either the board or department determines that the person's medical condition has improved to the
8 extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the person,
9 victim, or community, ~~the board~~ a hearing panel may revoke the parole and return the person to the custody of
10 the department.

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

12 (8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to
13 medical parole.

14 (9) Before July 1 of each even-numbered year, the board and the department shall report to the children,
15 families, health, and human services interim committee and the law and justice interim committee regarding the
16 outcome related to any person released on medical parole since the last report, including health care costs and
17 payments related to the care of the person released on medical parole."
18

19 **Section 8.** Section 46-23-215, MCA, is amended to read:

20 **"46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of the
21 department but is subject to the orders of the board.

22 (2) When a hearing panel issues an order for parole, the order must recite the conditions of parole. If
23 restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition
24 to pay restitution to the victim. The prisoner may not be paroled until the prisoner provides a biological sample
25 for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the
26 prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense
27 as defined in 46-23-502. An order for parole or any parole agreement signed by a prisoner may contain a clause
28 waiving extradition.

29 (3) Whenever a hearing panel grants a parole to a prisoner on the condition that the prisoner obtain
30 employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while

1 incarcerated, the hearing panel or the presiding officer of the board or a designee may grant the prisoner a
 2 furlough, not to exceed two consecutive 10-day periods, for purposes of fulfilling the condition. While on furlough,
 3 the prisoner is not on parole and is subject to official detention as defined in 45-7-306. The prisoner remains in
 4 the legal custody of the department and is subject to all other conditions ~~recited~~ ordered by the hearing panel or
 5 the presiding officer of the board or a designee."

6

7 **Section 9.** Section 46-23-218, MCA, is amended to read:

8 **"46-23-218. Authority of board to adopt rules -- purpose for training.** (1) The board may adopt any
 9 rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of
 10 parole and parole revocation hearings, videoconference hearings, telephone conference administrative reviews,
 11 progress reviews, clemency proceedings, the conditions to be imposed upon parolees, the training of board
 12 members ~~and auxiliary members~~ regarding American Indian culture and problems, and other matters pertinent
 13 to service on the board.

14 (2) The legislature finds that American Indians incarcerated in state prisons constitute a disproportionate
 15 percentage of the total inmate population when compared to the American Indian population percentage of the
 16 total state population. The training of board members regarding American Indian culture and problems is
 17 necessary in order for the board to deal appropriately with American Indian inmates appearing before the board."

18

19 **Section 10.** Section 46-23-301, MCA, is amended to read:

20 **"46-23-301. Cases of executive clemency -- application for clemency -- definitions.** (1) (a)
 21 "Clemency" means kindness, mercy, or leniency that may be exercised by the governor toward a convicted
 22 person. The governor may grant clemency in the form of:

23 (i) the remission of fines or forfeitures;

24 (ii) the commutation of a sentence to one that is less severe;

25 (iii) respite; or

26 (iv) pardon.

27 (b) "Pardon" means a declaration of record that an individual is to be relieved of all legal consequences
 28 of a prior conviction.

29 (2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an
 30 application for clemency, except that an application may not be filed with respect to a sentence of death while

1 an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through
 2 46-18-310. The board shall consider cases of executive clemency only upon application. All applications for
 3 executive clemency must be made to the board. An application for executive clemency in capital cases may be
 4 filed with the board no later than 10 days after the district court sets a date of execution. Applications may be filed
 5 only by the person convicted of the crime, by the person's attorney acting on the person's behalf and with the
 6 person's consent, or by a court-appointed next friend, guardian, or conservator acting on the person's behalf. ~~The~~
 7 ~~board~~ After a hearing panel has considered an application for executive clemency and has by majority vote
 8 avored a hearing, the hearing panel shall cause an investigation to be made of and base any recommendation
 9 it makes on:

- 10 (a) all the circumstances surrounding the crime for which the applicant was convicted; ~~and~~
 11 (b) the applicant's criminal record; and
 12 ~~(b)(c)~~ (c) the individual circumstances relating to social conditions of the applicant prior to commission of
 13 the crime, at the time the offense was committed, and at the time of the application for clemency.
 14 (3) ~~The board shall advise the governor and recommend action to be taken. The board~~ A hearing panel
 15 may recommend that clemency be granted or denied. In noncapital cases, if the ~~board~~ hearing panel
 16 recommends that clemency be denied, the application may not be forwarded to the governor and the governor
 17 may not take action on the case. In capital cases, the ~~board~~ hearing panel shall transmit the application and either
 18 a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The
 19 governor is not bound by any recommendation of the ~~board~~ hearing panel, but the governor shall review the
 20 record of the hearing and the ~~board's~~ hearing panel's recommendation before granting or denying clemency. The
 21 governor has the final authority to grant or deny clemency in those cases forwarded to the governor. An appeal
 22 may not be taken from the governor's decision to grant or deny clemency."
 23

24 **Section 11.** Section 46-23-302, MCA, is amended to read:

25 **"46-23-302. Order for hearing on application for executive clemency.** ~~After the board~~ After a hearing panel
 26 has considered an application for executive clemency and has by majority vote favored a hearing, it shall pass
 27 an order in substance as follows:

28 "Whereas, the Board of Pardons and Parole has officially received an application for executive clemency
 29 concerning, a convict confined in the state prison (or concerning, who has been found guilty of an offense
 30 committed against the laws of the state), who was convicted of the crime of.... committed at, in the county of

1 ..., State of Montana, on the day of, 20..., and sentenced for a term of years.

2 Therefore, it is ordered that, the day of, 20..., is set for the consideration of the executive
3 clemency matter and all persons having an interest in the matter who desire to be heard either for or against the
4 granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture
5 are notified to be present at o'clock of that day, at

6 Further, it is ordered that a copy of this order be printed and published in the.... (here insert name of some
7 newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper
8 printed and published at, in the county of, once each week for 2 weeks beginning, 20..., and ending"

9

10 **Section 12.** Section 46-23-306, MCA, is amended to read:

11 **"46-23-306. Record of hearing.** At the hearing, the ~~board~~ hearing panel must cause to be kept a record
12 showing:

13 (1) the names of all persons appearing before the ~~board~~ hearing panel on behalf of the person seeking
14 clemency from the governor;

15 (2) the names of all persons appearing before the ~~board~~ hearing panel in opposition to the granting of
16 the same;

17 (3) the testimony of all persons giving evidence before the ~~board~~ hearing panel;

18 (4) that the affidavit and return from the printer of the publication of the notice and order of hearing was
19 on file prior to the hearing."

20

21 **Section 13.** Section 46-23-307, MCA, is amended to read:

22 **"46-23-307. Decision of board.** Within 30 days after the hearing of any capital case or in noncapital
23 cases where the decision is made to recommend clemency be granted, the ~~board~~ hearing panel must make a
24 decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision
25 together with all papers used in each case shall be immediately transmitted to the governor."

26

27 **Section 14.** Section 46-23-1025, MCA, is amended to read:

28 **"46-23-1025. Report to and action by board.** (1) If the hearings officer determines that there is
29 probable cause to believe that the prisoner has violated a condition of parole, the probation and parole officer
30 shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has

1 violated the conditions of release. This report must be accompanied by the findings of the hearings officer.

2 (2) Upon receipt of a report, the board shall cause the prisoner to be promptly brought before a hearing
3 panel for a hearing on the violation charged under rules that the board may adopt. If the violation is established,
4 the hearing panel may continue or revoke the parole or may enter an order as it sees fit.

5 (3) If the prisoner has violated a condition of release requiring the payment of restitution, the ~~board~~
6 supervising parole officer shall notify the victim of the offense prior to the hearing required by ~~subsection (2)~~
7 46-23-1024 and give the victim an opportunity to ~~be heard~~ provide written or oral comment.

8 (4) If the hearing panel finds that because of circumstances beyond the prisoner's control the prisoner
9 is unable to make the required restitution payments, the hearing panel may not revoke the prisoner's parole for
10 failure to pay restitution. The hearing panel may modify the time or method of making restitution and may extend
11 the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the
12 prisoner.

13 ~~(4)(5)~~ If the hearing panel determines that the prisoner has violated the provisions of release, the hearing
14 panel shall determine ~~whether the time from the issuing of the warrant to the date of the prisoner's return to the~~
15 ~~custody of Montana law enforcement, the department, or the department's agent or any part of the time will be~~
16 ~~counted as time served under the sentence~~ the amount of time, if any, that will be counted as time served while
17 the prisoner was in violation of the provisions of release."

18

19 NEW SECTION. Section 15. Effective date. [This act] is effective July 1, 2011.

20

21 NEW SECTION. Section 16. Implementation -- staggered terms. A person serving on the board of
22 pardons and parole as an auxiliary member on [the effective date of this act] becomes a regular board member
23 on [the effective date of this act] and shall serve as a regular board member for the unexpired portion of the term
24 to which the person was initially appointed as an auxiliary member.

25

26 NEW SECTION. Section 17. Retroactive applicability. [This act] applies retroactively, within the
27 meaning of 1-2-109, to applications made to the board on or before [the effective date of this act] and that are
28 pending decision on [the effective date of this act].

29

- END -