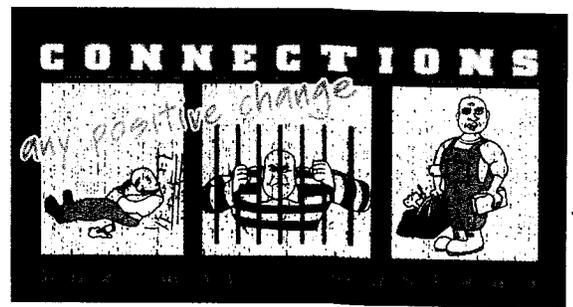


Connections
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June 27, 2014

To: Law and Justice Committee members

Connections is a non-profit organization based in Bozeman and in existence since 1998. Within our organization we have a program called the Montana Criminal Justice Reform Network that advocates for prisoners and their families. We currently have 4500 members of whom 1274 are prisoners currently doing time in one of the five facilities in MT. On behalf of the MCJRN and our constituents we would like to submit our comments and changes to the SJ 3 draft bill. (LCJ95-99) We support the committee's work on these bills so far and have highlighted some changes we would like to see. We have also included our comments as to why we recommend these changes.

It is our belief that it takes far too long for a prisoner to leave prison after he has been granted a parole. Before they even get to that point they have to go through several screening committees and if one committee denies them they have to start over which can take up to a year and a half.

We have shown through over 300 survey's we conducted in 2013 that parole school is a joke and not helpful in its current state. It is unlawful for the Board to add conditions and groups onto a prisoner's time, overriding what the sentencing judge has already ordered. The testimonies on these surveys will show how unfair the system can be to prisoners that have done all they can to better themselves and move forward. Most have maintain clear conduct completed all programs required by the judge and more but yet they are consistently denied parole even though they are well passed their parole eligibility date. They are given the same denial year after year, nature and severity of offense and past criminal history. These are both things they can never change no matter what they do.

There are many problems within the current system but we are encouraged by your effort to change what you can so that MT has a more efficient running system. Thank you for your time and consideration of our submissions and for allowing us to represent our constituents.

Casey Rudd
Founder Director

COMMENT:

RE:NEW SECTION LC1j95-Nonmedical Parole Criteria

In changing the discretionary word "may" to the mandatory word "shall" in subsection (1) will rightfully restrict the boards obvious uncontrolled and arbitrary discretion while at the same time giving proper guidance with respect to paroling inmates who have achieved meeting the required criteria for parole.

Adding in the words continuing rehabilitation of the offender in subsections (1)(b), and deleting the word society, rightfully emphasizes the importance of an inmates continuing rehabilitation under the explicit mandatory language of Montana's Constitution. Art.II, Sec. 28. Montana is one of 5 states that have a rehabilitation clause in their state constitutions.

The exclusion of the word "society" does not exclude society's interest in justice in the context of this section. Allowing continuing rehabilitation of parole eligible inmates is in the furtherance of society's overall interest.

Adding in the words court ordered and/or court recommended in subsection (1)(d) properly delegates authority to the ~~judicial branch~~ ^{department}. The courts explicit conditions at sentencing should be given great weight. The current and past practices of the board diminish the judiciary's role.

The entire deletion of subsection (2) and (3)b) should be considered as this section deals specifically with "criteria and information" the board may consider. Placing this language in a subsection regarding the powers of the department would keep it in it's proper context.

Subsection (4)(a) should include the words "Evidence of the offender's post-sentence" to emphasize the importance of considering what a prisoner has done since he was sentenced to prison rather than focusing on boiler plate factors that will never change, such as, the circumstances surrounding the crime and revisiting the nature and severity of the offense. The current practice of the board gives little emphasis to an inmates post-sentence achievements but rather focuses on bad behavior. Most inmate parole files leave out records of inmates good institutional reports such as work evaluations and group certificates. Therefore it is believed that adding this language will better guide the department and boards discretion in proper consideration of a prisoner's post-sentence efforts of rehabilitation.

The addition of the words "and whether the offender has since completed and subsequent treatment." in subsection (4)(h) is believed to be important so that, although an offender may have engaged in misconduct in prison, his/her subsequent efforts to change behavior and follow the departments recommendations should be of significant relevance.

The department and boards current practice often ignores this critically important event in an inmates progression toward rehabilitation. Current practice also shows that tax-paid-for programming, that an inmate is required to complete, is of little value. The board often brushes it aside and tells the inmate to keep up the good work year after year.

The inclusion of the words "unrelated to any legally exercised political, civil and/or religious activities;" in subsection (4)(k) should be considered to minimize discrimination against inmates exercising such rights while in prison. The department and board's current practices often result in a nonrecommendation for parole simply because of being active in his or her government. In many instances, an inmate is experiences retaliation by unit managers and counselors because his "attitude" is construed as being bad because of such activities.

The inclusion of the words "that were or could have been considered during oral pronouncement of sentence," in subsection (4)(o), are important regarding separation of powers. The boards current practice allows information that is used to deny an offenders grant of parole which often diminishes a sentencing courts explicit and/or implicit sentence of leniency. The judiciary is well aware and often expects that if an inmate follows the courts orders and recommendations, and has clear conduct, that he or she will be paroled at the earliest possible parole date in accord with the sentence handed down. The board encourages re-hashing factors weighed and considered by the court at sentencing years ago. Factors that an inmate can never change should never be used by the board to increase the explicit and/or implicit sentence of the court.

By deleting the words "diminish the seriousness of the offense." in subsection (4)(p), would eliminate the most oft boiler plate reason for denying an otherwise parole eligible offender his parole. The seriousness of the offense is considered at the time of sentencing. Allowing the board to use this factor to deny parole diminishes and if not usurps the sentence of the court. The seriousness of the offense is addressed also by sentencing statutes in effect of the time of the crime. Considering this factor in denying parole therefore also usurps the power of the legislative branch.

The inclusion of the words "denial of parole would diminish the leniency of the sentence of the court;" should be likewise considered important to properly guide the department and boards authority.

The inclusion of the words "regarding matters of personal privacy." comports with Montana's Open Meeting Law statutes and constitutional text that restricts only matters of privacy from public view.

COMMENT: LCLj95-46-23-201, Prisoners eligible for nonmedical parole -- rulemaking.

The inclusion of the words "for no more than 90 days" in subsection (2) should be added to ensure parolible inmates are not unnecessarily delayed a parole while held on a sanction or held in a sanction center.

Deletion of "6 years" and the inclusion of "1 year" in subsection (5) properly considers an inmates continuing ability to exhibit his eligibility for parole without delay.

The additional language in subsections (5)(a)(b) and (c) should be added to prevent the current practice of the board not allowing a flopped inmate an earlier appearance, despite the adoption of an administrative rule required by statute.

LC1j95

NEW SECTION. Section 1. Nonmedical Parole Criteria --information the board may consider. (1) The Board ~~may~~ shall release an eligible offender on nonmedical parole only when, in its opinion, the following criteria has been met:

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

(b) release is in the best interest of the ~~society~~ continuing rehabilitation of the offender;

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

(d) the offender does not require continued court ordered and/or court recommended correctional treatment or mental health therapy, vocational, or other programs available in a correctional facility that will substantially enhance the offender's capability to lead a law abiding life if released;

(e) When the offender is unable to complete the programs described in subsection

(d) due to the unavailability or delayed placement by the department, in which case the offender's access to community equivalent programs should be considered;

~~(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 a hearing panel shall consider all available and pertinent information regarding the prisoner, including the following factors:

(a) ~~The offender's~~ Evidence of the offender's post-sentence maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the offender will conform the offender's behavior to the requirements of the law;

- (b) the adequacy of the offenders 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 or abusive use of chemicals and whether the offender has since completed any subsequent treatment;
- (i) the offender's mental and physical makeup;
- (j) the offender's prior criminal record, including the nature and circumstances of the offense, date of the offense, and frequency of previous offenses;
- (k) The offender's attitude towards law and authority unrelated to any legally excercised political, civil and/or religious activities;

l
(l) the offender's conduct, employment, ~~and attitude~~ 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 180 days prior to the hearing. When considering any bad institutional conduct, the offender's subsequent successful completion of positive programming and good conduct should be weighed;

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

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

(o) written oral statements that were or could not have been considered by the court during oral pronouncement of sentence, from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from the victim regarding the effects of the crime on the victim, ~~A Victims 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.

(p) whether denial of parole would ~~diminish the seriousness of the offense;~~
contradict the oral pronouncement or diminish the leniency of the sentence of the
court; and

~~(q) any and all other factors that the hearing panel determines to be relevant.~~

(5) A victim's statement may be kept confidential regarding matters of personal
privacy.

Section 2. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking. (1) Subject to the restrictions contained in subsections (2) through ~~(5)~~(4) 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 criteria in [section 1], the board ~~may~~ shall 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 the state 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 sanction, for no more than 90 days and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

(3) A person 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 interest 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)(5)~~ If a hearing panel denies parole, it may order that the prisoner serve up to ~~6 years~~ 1 year 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 if any of the following criteria is established:

(a) the boards denial of parole was based upon inaccurate or misleading information;

(b) the offender has since completed any department or board order treatment or programming relevant to the boards decision to deny parole;

(c) the reasons the board used to deny parole no longer exist.

Section 3. Section 46-23-202, MCA, is amended to read:

"46-23-202. Initial Parole Hearing -- conduct of hearing.

Within the 2 month prior to a prisoner's official parole eligibility date or as soon after 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 victims statement may be kept confidential the criteria in (section 1)."

(1) Within 45 days prior to a prisoner's first or subsequent parole hearing or review, the department shall gather all pertinent information necessary for releasing a paroled prisoner within 5 working days of the the hearing or review.

COMMENT:LC1j95

RE:Amended Section 46-23-202:

The reason for adding in the additional subsection is explained as follows:

Montana, unlike many other states, does not release offenders in a timely manner following the granting of parole. The past and current practice allows DOC/MSP administrative staff to drag their feet in releasing paroled inmates from the institutions. It is not uncommon for a paroled inmate to remain in prison for 2 or more months costing taxpayers millions of dollars due to inefficient use of existing resources.

Current Pre-Parole Procedures:

By way of policy, the department currently gathers all necessary information for a parolee to be released. The problem stems from: 1) the department's own inability to predict an inmate's chances of parole; and 2) the timing of and utilization of department resources in effecting timely release.

The department employs personal to conduct a "pre-parole school". This consists of the parole eligible inmate meeting for a couple hours in a classroom at which time the inmate provides pertinent information to include job prospects, treatment, family support, and living arrangements. This takes place about 30 days prior to the hearing.

Without delegating authority through clear and concise statutes to direct department discretion, paroled inmates will continue to be filling prison beds unnecessarily.

Many inmates lose housing and employment opportunities due to such delays. This needs to be fixed through clear and concise statutory language.

Recommended Common Sense Solution.

Utilize the current pre-parole school procedures 60-90 days prior to a parole decision. An inmate should wait no more than 5 days for his release. Language should be written to ensure the department timely releases parolees accordingly.

COMMENT:LC1j96

RE:Amended Section 46-23-103:

The striking of the words or the department in subsection (5) will ensure that the finality of a prisoner's oral pronouncement of sentence remains. To allow the department to add or change conditions without the court pronouncing sentence offends the separation of powers doctrine and Montana's constitutional restrictions.

The additional language set forth in subsection (7)(a) should be seriously considered. Especially if this committee is looking at adopting a parole system that is based upon risk factors, like South Dakota.

When South Dakota administered a risk assessment factor, the prison administration manipulated an inmates parole eligibility by enforcing a no tolerance disciplinary policy. Inmates were given rule infractions that prevented parole for behavior such as leaving a coffee cup out. Montana's correctional system is likewise capable of re-writing policies and rules that would elevate minor rule infractions to major rule infractions, netting the same result. Without legislative oversight, the boards discretion could be exercised by department staff who oversee and prepare information regarding parole eligibility factors.

One could easily assume, and the record might very well reflect that 90% of all parole eligible inmates have had a major rule infraction in the last 5 years. Under the current rough draft proposed bill language, most of the 72% parole eligible inmates could be still denied parole on that basis. Defining clear conduct when it is a factor, is critical.

The addition of subsection (8)(a)(b)(c) is likewise important to ensure the department, when assessing factors, cannot self-define them arbitrarily.

For example, under the current language, an inmate could be denied parole for no being able to complete his groups to no fault of his own.

NOTE: The prison administration or penal institute in Montana are not subject to adhering to Montana's Open Meeting and Participation Laws with respect to institutional functions etc. This includes closed meeting discussions regarding how and when policies and rules are written and enforced. MAPA procedures do not apply as institutions were exempted by the legislature in 1971, before Montana's 1972 Constitution was ratified.(see compilers comments 2-4-102)

COMMENT: LC1j96-New Section

RE:New Section 1. Conditions of Parole

The addition of the words "or if the department asserts additional conditions to the original sentence are warranted," are important to ensure it remains the sentencing court who imposes all restrictions and conditions of a prison sentence. Without such mandatory language, the department could place any condition it wanted on a supervised inmates sentence. Not even a court is clothed with such authority.

The addition of the sentence in subsection (2) further clarifies this intent of this restrictive language.

COMMENT: LC1j96-Section 5, 46-23-218:

The striking of the words "The board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, and the conditions to be imposed upon parolees," should be seriously considered. It is this grant of authority that has led to the current scrutiny of the boards practices and procedures. The current language needs stricken to ensure the board is not granted unbridled discretion. Additional language should be considered by this committee to ensure the authority is properly delegated.

It has long been recognized under Montana law that authority delegated to a board that does not set criteria and standards is improper. The Montana Supreme Court has recognized that it is not what has been done under such a circumstances but what could be done. (Baucus v. Lake County)

NOTE: Striking the words: the department in all remaining subsections should be considered. (See above comments)

LC1j96

New Section. Section 1. Conditions of Parole. (1) After the board grants a parole to a prisoner, the department shall supervise the parolee during the parole period in accord with the conditions set by the department or the sentencing judge. If the sentencing judge did not set the conditions of parole at the time of sentencing, or if the department asserts additional conditions to the original sentence is warranted, the court shall, at the request of the department, hold a hearing and set conditions of parole. The parolee must be present at the hearing. The parolee has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of parole must be signed by the parolee. The department may require a parolee to waive extradition for the parolee's return to Montana. Nothing in this section should be construed to allow the department to set any additional conditions to a prisoner's original sentence before the district court.

LC1j96

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

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

(1) "Board" means the board of pardons and parole provided for in 2-5-2302.

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

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

(4) "hearing panel" means a panel made up composed of two or three board members appointed to conduct parole hearings, revocation hearings, rescissions hearings, and administrative parole reviews and to making ~~final decisions~~ and recommendations in matters of executive clemency.

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

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

(7) "Clear conduct" means the prisoner appearing before the board:

(a) has not been convicted of a major category institutional rule infraction for at least 120 days;

(8) "parole eligible" means a prisoner sentenced to a state prison who meets the following criteria:

(a) has served the minimum amount of time on his/or her sentence as required by statute

(b) has completed programming and/or treatment ordered or recommended in advance of a parole hearing by the sentencing court, or;

(c) has not yet completed programming and/or treatment ordered or recommended in advance of a parole hearing by the sentencing court if, through no fault of the prisoner, the programming or treatment has not been available to the prisoner. In such cases, the prisoner's parole plan may include verified enrollment, admission or acceptance into an educational or treatment program in the community comparable to programming or treatment normally available in secure custody.

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As of: April 16, 2014 (9:50am)

LC1j96

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

{ Internal References to 46-23-215:
46-23-210 * }

Section 5. Section 46-23-218, MCA, is amended to read:

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

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

before the board."

{Internal References to 46-23-218:
46-23-210 }

Section 6. Section 46-23-1001, MCA, is amended to read:

"46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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

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

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of the prisoner's term, subject to conditions imposed by the board the sentencing judge or the department and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court."

{Internal References to 46-23-1001:
61-8-731 * }

Section 7. Section 46-23-1002, MCA, is amended to read:

"46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, including conditions of parole, except that the department may not make any rule conflicting with conditions of parole ~~imposed by the board~~ or conditions of probation imposed by a court."

{ Internal References to 46-23-1002:

44-4-401 45-8-317 61-8-731 * }

Section 8. Section 46-23-1021, MCA, is amended to read:

"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 sentencing judge ~~or the department 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.

(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

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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."

{ Internal References to 46-23-1021:
46-18-1003 46-23-1020 46-23-1020 }

- END -

{ Name : Julianne Burkhardt
Title : Legislative Attorney
Agency : Legislative Services
Phone : 4025
E-Mail : jburkhardt@mt.gov }

COMMENT: LC1j98-99

RE: Amended Section 1., 2-4-102, Definitions:

We fully support the committees proposed amendment in subsection (2)(i) because it would now require the board to substantially comply with Montana's explicit constitutional protections regarding public participation and right to know found in Art. II Sec. 8-9. Government is always held more accountable when it is open and responsive to the public's right to know and participate.

The current exemption resulted in such broad discretion that the board rules were written and adopted in disregard for adequate public participation in 2010.

Our proposed additional amendment that further strikes subsection (2)(ii) "the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;" is absolutely necessary to ensure the department cannot circumvent the proposed amendments of LC1j95-96.

RELEVANT HISTORY: The current exemption can be traced to the 1961 Model State Administrative Procedure Act offered by the National Conference of Commissioners (see MCA Ann. 2-4-102, Compilers Comments). Also see the 1971 MAPA procedures. The intent of the exemption was "because to a large degree...matters of supervision and administration are regulated by statute and directly involve basic constitutional rights...better handled by courts than by administrative bodies.

The Montana 1972 Constitution ratified by the vote of the people of Montana, explicitly mandates agency meetings to be open and to allow public participation as may be provided by law (2-3-101 esq.)

The exemption of 2-4-102 in no way exempts the prison administration from the mandates of the Montana Constitution and the protections of Title 2, Chapter Three.

The definition of agency in Title 2, Chapters 3, conflict with the definition of agency found in Title 2, Chapter 4, which is where the exemption is defined.

CURRENT PROBLEMS: The only MDOC prison meeting that is open to the public is the Prison Issues Board which came after scrutiny of a suit that was filed by a prisoner and his wife in 2009. However, the other boards and sub-committee meetings held at the prison and other places remain outside public view and participation. Many of the decisions made at such meetings deal with the finalization of written policies and procedures that effect the constitutional rights of inmates and their families.

For example: all prison policies, rules, and procedures are subject to change without public notice. The prison administration asserts safety and security to keep them closed. (Only one exception is found in Montana's Constitution-Individual privacy). Procedures that effect the way in which the prison administration determines how and when inmates are screened for DOC programs, to include board and court ordered treatment are discussed and approved with complete disregard for the public's right to know and participate. This practice continues to be asserted as permissible as a direct result

of the exemption of 2-4-102.

With this practice still at play, the department can and will manipulate policy's and procedures that will unnecessarily retard the intended effect of this committees amended changes to the above parole board statutes. This would include the manner in which any risk assessment tool may be applied in considering parole eligibility.

Common Sense Solution: The department will operate more effective and efficient with this exemption being lifted. This would allow the public to weigh in on important decisions through openness and accountability. This will also minimize the growing complaints this committee is starting to hear every year by giving the public provision to participate in agency decisions as is required by Montana's Constitution.

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As of: April 15, 2014 (10:00am)

LC1j98

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. (Temporary) Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole is exempt from the contested case and the judicial review of contested cases contained in this chapter, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

~~(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;~~

(iii) the board of regents and the Montana university system;

Unofficial Draft Copy

As of: April 15, 2014 (10:00am)

LC1j99

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. **(Temporary) Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

~~(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;~~

~~(ii)(i) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;~~

~~(iii)(ii) the board of regents and the Montana university system;~~

~~(iv)(iii) the financing, construction, and maintenance of~~