

HOUSE BILL NO. 211
INTRODUCED BY NEWMAN
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO ELIGIBILITY OF PRISONERS FOR PARDON AND PAROLE AND RELATING TO THE BOARD OF PARDONS AND PAROLE; ADDING TWO AUXILIARY BOARD MEMBERS; ~~REQUIRING THAT AT LEAST ONE MEMBER OF THE BOARD BE SUPPORTED AT THE TIME OF APPLICATION BY AT LEAST TWO OF THE EIGHT TRIBAL GOVERNMENTS IN MONTANA;~~ AUTHORIZING MULTIPLE BOARDS TO BE IMPANELED TO CONDUCT HEARINGS AROUND THE STATE AND TO MAKE PAROLE DECISIONS; ~~AUTHORIZING TELEPHONE CONFERENCE HEARINGS;~~ AUTHORIZING THE BOARD TO ISSUE UP TO TWO 10-DAY FURLOUGHS; CLARIFYING FROM WHICH CORRECTIONAL FACILITIES AND PROGRAMS THE BOARD CAN GRANT PAROLE; REVISING THE CONDUCT OF HEARINGS; REQUIRING AN INTERIM REPORT ON DISPOSITION OF NATIVE AMERICAN PAROLE APPLICATIONS; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-215, 46-23-216, 46-23-218, 46-23-1025, AND 46-24-212, MCA; REPEALING SECTION 46-23-107, MCA; AND PROVIDING EFFECTIVE DATES."

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 members and ~~two~~ four auxiliary members, ~~at least one each~~ of whom must have ~~particular~~ knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. ~~IN ORDER TO COMPLY WITH THE INTENT OF 2-15-108, AT LEAST ONE MEMBER OF THE BOARD MUST BE SUPPORTED AT THE TIME OF THE MEMBER'S APPLICATION BY LETTERS OF RECOMMENDATION FROM AT LEAST TWO OF THE EIGHT TRIBAL GOVERNMENTS IN MONTANA.~~ 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.

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

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

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

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

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

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 2-15-2302.

(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) "Initial appearance" means the prisoner's first appearance before the board during the prisoner's current term of incarceration.~~

(4) "Hearing panel" means a panel made up of at least two board members appointed by the board to conduct parole hearings.

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

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

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

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

(2) The board shall meet monthly at a place determined by the board; and at other times and places that the board considers necessary, ~~at the state prison.~~

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

~~(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:~~

~~—— (a) parole eligibility;~~

~~—— (b) plans for release on parole; or~~

~~—— (c) revocation hearings.~~

~~—— (5) If the offense was committed prior to March 20, 1989, the board may not designate one of its staff members or any other adult correctional releasing authority to preside over an initial appearance or hearing under 46-23-202, and the initial appearance and hearing must be before at least one member of the board.~~

(4) The board shall appoint hearing panels to conduct parole hearings and to issue a final decision concerning parole. If the two board members of the hearing panel are unable to reach a unanimous decision, the presiding officer of the board shall convene a panel of three board members as soon as is practicable to rehear the case. The hearing panels have the full authority and power of the board to order the denial, grant, or revocation of parole."

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

"46-23-109. Parole and revocation hearings and administrative reviews AND ADMINISTRATIVE REVIEWS -- telephone -- videoconference. The board and the board's hearing panel may, ~~in its discretion,~~ hold any parole hearing ~~or revocation hearing~~ via interactive videoconference ~~and may hold an administrative review via~~ or AND MAY HOLD AN ADMINISTRATIVE REVIEW VIA telephone conference."

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

"46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through ~~(4)~~ (5), the board may release on nonmedical parole by appropriate order any person who is confined in a state prison, ~~except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) or 46-18-219,~~ or the state hospital or any person who is sentenced to the state prison and confined in a prerelease center when in its opinion there is reasonable probability that the prisoner

can be released without detriment to the prisoner or to the community.

(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 paroled.

~~(2)~~(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.

~~(3)~~(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

~~(4)~~(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."

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

"46-23-202. ~~Investigation of prisoner by board or board's designee~~ Initial parole hearing -- conduct of hearing. ~~(4)~~ Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the ~~prisoner~~ department shall make ~~an initial appearance before the board or the board's designee as provided for in 46-23-104(4), except that if the offense was committed prior to March 20, 1989, the initial appearance must be before at least one member of the board. The board~~ the prisoner available for a hearing before a hearing panel. The hearing panel shall consider all available and pertinent information regarding the prisoner, including:

~~(a)~~(1) the circumstances of the offense;

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

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

~~(d)~~(4) the reports of any physical and mental examinations that have been made; and

(5) written or oral statements from any interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A VICTIM'S STATEMENT MAY ALSO INCLUDE BUT IS NOT LIMITED TO THE CIRCUMSTANCES SURROUNDING THE CRIME, THE MANNER IN WHICH THE CRIME WAS COMMITTED, AND THE VICTIM'S OPINION AS TO WHETHER THE PRISONER SHOULD BE PAROLED. THE VICTIM'S STATEMENT MAY BE KEPT CONFIDENTIAL.

~~(2) Before a prisoner may be paroled, the board or its designee shall:~~

~~—— (a) conduct a hearing and interview the prisoner, except that if the offense was committed prior to March~~

~~20, 1989, the hearing must be before at least one member of the board. At the time of the hearing, the board or its designee must receive relevant statements from interested persons and any person may be represented by counsel. The board has the power to regulate procedures at all hearings:~~

~~—— (b) permit a victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement may be kept confidential. The board shall consider the victim's statement, along with the information provided under subsection (1), in determining whether to grant parole."~~

Section 7. Section 46-23-215, MCA, is amended to read:

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

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

(3) Whenever a hearing panel grants a parole to a prisoner ~~in a state prison has been approved for parole~~ on the condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the ~~department~~ hearing panel may grant the prisoner a furlough, not to exceed ~~40 days~~ two 10-day periods, for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the department and is subject to all other conditions recited by the ~~board~~ hearing panel."

Section 8. Section 46-23-216, MCA, is amended to read:

"46-23-216. Duration of parole. (1) A prisoner on parole is considered released on parole until the expiration of the maximum term or terms for which the prisoner was sentenced.

(2) The period served on parole ~~or conditional release~~ must be considered service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner

who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole ~~or conditional release~~ has performed the obligations of the release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner."

Section 9. 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, ~~video~~ videoconference and telephone conference hearings, TELEPHONE CONFERENCE ADMINISTRATIVE REVIEWS, progress reviews, ~~the conduct of revocation proceedings~~, clemency proceedings, ~~and the conditions to be imposed upon parolees, the training of board members and auxiliary 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."

Section 10. Section 46-23-1025, MCA, is amended to read:

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

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

(3) If the prisoner has violated a condition of release requiring the payment of restitution, the board shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an opportunity to be heard. If the ~~board hearing panel~~ board hearing panel finds that ~~due to~~ because of circumstances beyond the prisoner's control; the prisoner is unable to make the required restitution payments, the ~~board hearing panel~~ board hearing panel may not revoke the prisoner's parole for failure to pay restitution. The ~~board hearing panel~~ board hearing panel may modify the time or method of making

restitution and may extend the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the prisoner.

(4) ~~If it appears the hearing panel determines~~ that the prisoner has violated the provisions of release, the ~~board~~ hearing panel shall determine whether the time from the issuing of the warrant to the date of the prisoner's ~~arrest~~ return to the custody of Montana law enforcement, the department, or the department's agent or any part of ~~it~~ the time will be counted as time served under the sentence."

Section 11. Section 46-24-212, MCA, is amended to read:

"46-24-212. Information concerning confinement. Upon request of a victim of a felony offense, the department of corrections or the board of pardons and parole, as applicable, shall:

(1) promptly inform the victim of the following information concerning a prisoner committing the offense:

- (a) the custody level;
- (b) the projected discharge or parole eligibility date;
- (c) the actual date of the prisoner's discharge from confinement or parole, if reasonably ascertainable;
- (d) the time and place of a parole hearing concerning the prisoner and of the victim's right to submit a statement to the board of pardons and parole or the hearing panel conducting a parole hearing under 46-23-202;

and

- (e) the community in which the prisoner will reside after parole;

(2) provide reasonable advance notice to the victim before release of the defendant on furlough or to a work-release program, halfway house, or other community-based program or correctional facility; and

(3) promptly inform the victim of the occurrence of any of the following events concerning the prisoner:

- (a) an escape from a correctional or mental health facility or community program;
- (b) a recapture;
- (c) a decision of the board of pardons and parole;
- (d) a decision of the governor to commute the sentence or to grant executive clemency;
- (e) a release from confinement and any conditions attached to the release; and
- (f) the prisoner's death."

NEW SECTION. **Section 12. Repealer.** Section 46-23-107, MCA, is repealed.

NEW SECTION. **Section 13. Saving clause.** [This act] does not affect rights and duties that matured,

penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 15. Transition.** The governor shall appoint the two auxiliary members, whose positions are created by [this act], on or before July 1, 2003. One new auxiliary member must be appointed to a term ending in January 2005, and one new auxiliary member must be appointed to a term ending in January 2006.

NEW SECTION. SECTION 16. INTERIM REPORT. DURING THE BIENNIUM BEGINNING JULY 1, 2003, THE BOARD OF PARDONS AND PAROLE SHALL REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE OF THE LEGISLATURE ON THE DISPOSITION OF PAROLE APPLICATIONS MADE BY NATIVE AMERICANS, INCLUDING THE REASONS FOR APPROVAL OR DENIAL OF PAROLE, DURING THE PERIOD OF JANUARY 1, 1999, THROUGH MARCH 31, 2004. THE REPORT MUST BE MADE BEFORE JULY 1, 2004, AND MUST BE INCLUDED IN THE BOARD'S BIENNIAL REPORT.

NEW SECTION. **Section 17. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2003.

(2) [Section 15 and this section] are effective on passage and approval.

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