

SENATE BILL NO. 277
INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MANDATORY PAROLE OF CERTAIN NONVIOLENT, EXTREMELY LOW-RISK SEXUAL OFFENDERS UPON SPECIFIED CONDITIONS; AMENDING SECTIONS 46-18-202 AND 46-23-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- (a) prohibition of the offender's holding public office;
- (b) prohibition of the offender's owning or carrying a dangerous weapon;
- (c) restrictions on the offender's freedom of association;
- (d) restrictions on the offender's freedom of movement;
- (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;
- (f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program unless sooner paroled pursuant to [section 2]."

NEW SECTION. Section 2. Mandatory parole for certain low-risk sexual offenders. (1) The board shall, under the following conditions, grant nonmedical parole by an appropriate order, whether or not the offender has completed a minimum time sentence, to an offender if the offender:

(a) was sentenced for a sexual offense, as defined in 46-23-502, in which the victim was at least 15 years of age and consented to the act but, because of the victim's age, that consent could not be lawfully recognized;

(b) was sentenced and is serving time for an offense that did not involve use of a deadly weapon or bodily injury;

(c) has been designated a level 1 sexual offender pursuant to 46-23-509;

(d) has no prior juvenile or adult felony convictions;

(e) (i) has completed the educational phase of the prison's sexual offender program at a state prison if the offender was required to complete only the educational phase at a state prison; or

(ii) can complete the educational phase of the prison's sexual offender program while paroled if the offender was required to complete only the educational phase of the program;

(f) has not had a disciplinary infraction at a state prison for 6 months; and

(g) has secured employment and has a place to live, or realistic prospects of both.

(2) An offender granted parole pursuant to this section is subject to all conditions of parole, whether imposed by law or by the board pursuant to law, except as provided in this section.

(3) This section does not affect the granting of parole pursuant to 46-23-201 or 46-23-210.

Section 3. 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 (5), the board may release on nonmedical parole by appropriate order any person who is confined in a state prison 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.

(3) A prisoner serving a time sentence may not, except as provided in [section 2], 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 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."

NEW SECTION. **Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [section 2].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to an individual sentenced to a Montana state prison before [the effective date of this act].

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