

1 HOUSE BILL NO. 43

2 INTRODUCED BY M. MACDONALD

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE GOVERNOR HAS THE FINAL AUTHORITY
6 WITH RESPECT TO CLEMENCY AND MAY DETERMINE WHETHER A CLEMENCY HEARING TAKES PLACE
7 AND WHETHER CLEMENCY IS GRANTED IF THE BOARD OF PARDONS AND PAROLE DENIES AN
8 APPLICANT A HEARING OR DENIES CLEMENCY; AMENDING SECTIONS 46-23-103, 46-23-104, 46-23-301,
9 46-23-302, AND 46-23-307, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

12

13 **Section 1.** Section 46-23-103, MCA, is amended to read:

14 **"46-23-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
15 apply:

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

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

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

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

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

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

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28 **Section 2.** Section 46-23-104, MCA, is amended to read:

29 **"46-23-104. Board of pardons and parole.** (1) The board of pardons and parole is responsible for
30 executive clemency and parole as provided in this chapter.

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

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

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

14 **Section 3.** Section 46-23-301, MCA, is amended to read:

15 **"46-23-301. Cases of executive clemency -- application for clemency -- definitions.** (1) (a)
16 "Clemency" means kindness, mercy, or leniency that may be exercised by the governor toward a convicted
17 person. The governor may grant clemency in the form of:

18 (i) the remission of fines or forfeitures;

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

20 (iii) respite; or

21 (iv) pardon.

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

24 (2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an
25 application for clemency, except that an application may not be filed with respect to a sentence of death while
26 an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through
27 46-18-310. The board shall consider cases of executive clemency only upon application. All applications for
28 executive clemency must be made to the board. An application for executive clemency in capital cases may be
29 filed with the board no later than 10 days after the district court sets a date of execution. Applications may be filed
30 only by the person convicted of the crime, by the person's attorney acting on the person's behalf and with the

1 person's consent, or by a court-appointed next friend, guardian, or conservator acting on the person's behalf.

2 (3) (a) After a hearing panel has considered an application for executive clemency and has by majority
3 vote favored a hearing, the hearing panel shall cause an investigation to be made of and base any
4 recommendation it makes on:

5 ~~(a)~~(i) all the circumstances surrounding the crime for which the applicant was convicted;

6 ~~(b)~~(ii) the applicant's criminal record; and

7 ~~(c)~~(iii) the individual circumstances relating to social conditions of the applicant prior to commission of
8 the crime, at the time the offense was committed, and at the time of the application for clemency.

9 (b) If the hearing panel does not favor a hearing by majority vote, the hearing panel shall transmit the
10 application to the governor. The governor shall review the application and determine whether a hearing is
11 appropriate. If the governor determines that a hearing is appropriate, the governor shall transmit the application
12 back to the hearing panel. The hearing panel shall cause an investigation to be made of and base any
13 recommendation it makes on the factors set forth in subsection (3)(a).

14 ~~(3)(4)~~ A hearing panel may recommend that clemency be granted or denied. ~~In noncapital cases, if the~~
15 ~~hearing panel recommends that clemency be denied, the application may not be forwarded to the governor and~~
16 ~~the governor may not take action on the case. In capital cases, the~~ The hearing panel shall transmit the
17 application and either a recommendation that clemency be granted or a recommendation that clemency be
18 denied to the governor. The governor is not bound by any recommendation of the hearing panel, but the governor
19 shall review the record of the hearing and the hearing panel's recommendation before granting or denying
20 clemency. The governor has the final authority to grant or deny clemency ~~in those cases forwarded to the~~
21 ~~governor~~. An appeal may not be taken from the governor's decision to grant or deny clemency."
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23 **Section 4.** Section 46-23-302, MCA, is amended to read:

24 **"46-23-302. Order for hearing on application for executive clemency.** After a hearing panel has
25 considered an application for executive clemency and has by majority vote favored a hearing or the governor has
26 determined that a hearing is appropriate, if the hearing panel shall pass an order in substance as follows:

27 "Whereas, the Board of Pardons and Parole has officially received an application for executive clemency
28 concerning, a convict confined in the state prison (or concerning, who has been found guilty of an offense
29 committed against the laws of the state), who was convicted of the crime of.... committed at, in the county of
30, State of Montana, on the day of, 20...., and sentenced for a term of years.

