

HOUSE BILL NO. 135

INTRODUCED BY J. ECK

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PAROLE CRITERIA; EXPANDING EXISTING RULEMAKING AUTHORITY OF THE BOARD OF PARDONS AND PAROLE; AND AMENDING SECTIONS 46-23-201 AND 46-23-202, MCA."

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

NEW SECTION. **Section 1. Nonmedical parole criteria -- information board may consider.** (1) The board may release an eligible prisoner on nonmedical parole only when, in its opinion:

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

(b) release is in the best interests of society;

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

(d) the prisoner does not require:

(i) continued correctional treatment; OR

(ii) ~~mental health therapy, or vocational or other programs available in a correctional facility that will substantially enhance the prisoner's capability to lead a law-abiding life if released,~~ INCLUDING MENTAL HEALTH THERAPY OR VOCATIONAL TRAINING.

(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 release, a hearing panel shall consider all

- 1 available and pertinent information regarding the prisoner, including the following factors:
- 2 (a) the circumstances of the offense;
- 3 (b) the prisoner's social history and prior criminal record, including the nature and circumstances of the
4 offense, date of offense, and frequency of previous offenses;
- 5 (c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the prisoner
6 has taken advantage of opportunities for treatment and whether the prisoner is clear of major disciplinary
7 violations prior to the hearing;
- 8 (d) the reports of any physical, psychological, and mental evaluations that have been made;
- 9 (e) the prisoner's maturity, stability, sense of responsibility, and development of traits and behaviors that
10 increase the likelihood the prisoner will conform the prisoner's behavior to the requirements of law;
- 11 (f) the adequacy of the prisoner's release plan;
- 12 (g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;
- 13 (h) the prisoner's education and training;
- 14 (i) the prisoner's family status and whether the prisoner has relatives who display an interest or whether
15 the prisoner has other close and constructive associations in the community;
- 16 (j) the prisoner's employment history and occupational skills and the stability of the prisoner's past
17 employment;
- 18 (k) the type of residence, neighborhood, or community in which the prisoner plans to live;
- 19 (l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;
- 20 (m) the prisoner's mental and physical makeup;
- 21 (n) the prisoner's attitude toward law and authority;
- 22 (o) the prisoner's behavior and attitude during any previous experience of supervision and the recency
23 of the supervision;
- 24 (p) written or oral statements from criminal justice authorities or any other interested person or the
25 interested person's legal representative, including written or oral statements from a victim regarding the effects
26 of the crime on the victim. A victim's statement may also include but is not limited to the circumstances
27 surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the
28 offender should be paroled.
- 29 (q) whether parole at this time would diminish the seriousness of the offense; and
- 30 (r) any and all other factors that the hearing panel determines to be relevant.

1 (5) A victim's statement may be kept confidential.

2

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

4 **"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking.** (1) Subject to the restrictions
5 contained in subsections (2) through ~~(5)~~ (4) and when in the board's opinion there is reasonable probability that
6 a prisoner can be released without detriment to the prisoner or to the community the parole criteria in [section
7 1], the board may release on nonmedical parole by appropriate order any person who is:

8 (a) confined in a state prison;

9 (b) sentenced to the state prison and confined in a prerelease center;

10 (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;

11 (d) sentenced to be committed to the custody of the director of the department of public health and
12 human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental
13 center, or the Montana mental health nursing care center.

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

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

19 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served
20 30 years.

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

24 ~~————(6) For a prisoner sentenced to be committed to the custody of the director of the department of public~~
25 ~~health and human services as provided in 46-14-312:~~

26 ~~————(a) the board may require as a condition of parole participation in a supervised mental health treatment~~
27 ~~program to ensure that the prisoner continues to treat the prisoner's mental disorder; and~~

28 ~~————(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health~~
29 ~~treatment program described in subsection (6)(a), in which case the prisoner must be recommitted to the custody~~
30 ~~of the director of the department of public health and human services pursuant to 46-14-312.~~

1 ~~(7)~~(5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing
2 panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a
3 prisoner may request an earlier hearing or review."
4

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

6 "**46-23-202. Initial parole hearing** ~~—conduct of hearing~~. Within the 2 months prior to a prisoner's
7 official parole eligibility date or as soon after that date as possible, the department shall make the prisoner
8 available for a hearing before a hearing panel. The hearing panel shall consider all available and pertinent
9 information regarding the prisoner, including:
10 ~~—— (1) the circumstances of the offense;~~
11 ~~—— (2) the prisoner's previous social history and criminal record;~~
12 ~~—— (3) the prisoner's conduct, employment, and attitude in prison;~~
13 ~~—— (4) the reports of any physical, psychological, and mental evaluations that have been made; and~~
14 ~~—— (5) written or oral statements from criminal justice authorities or any other interested person or the~~
15 ~~interested person's legal representative, including written or oral statements from a victim regarding the effects~~
16 ~~of the crime on the victim. A victim's statement may also include but is not limited to the circumstances~~
17 ~~surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the~~
18 ~~prisoner should be paroled. The victim's statement may be kept confidential the criteria in [section 1]."~~
19

20 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
21 integral part of Title 46, chapter 23, part 2, and the provisions of Title 46, chapter 23, part 2, apply to [section 1].
22

- END -