

## 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."

10

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.

27

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~~ FINAL decisions concerning  
6 parole and RECOMMENDATIONS CONCERNING executive clemency and shall request out-of-state releasing  
7 authorities to conduct hearings pursuant to Article IV(6) of the Western Interstate Corrections Compact. The  
8 presiding officer of the board or a designee shall attempt to make hearing panel appointments in a manner that  
9 ensures equitable distribution of workload among board members. If a hearing panel consisting of two members  
10 is unable to reach a unanimous decision, the presiding officer of the board shall appoint a third member to  
11 consider all pertinent information and render a ~~final~~ FINAL decision CONCERNING PAROLE OR A RECOMMENDATION  
12 CONCERNING EXECUTIVE CLEMENCY. The hearing panels have the full authority and power of the board to order the  
13 denial, grant, or revocation of parole and to make ~~final decisions and~~ recommendations in matters of executive  
14 clemency."  
15

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

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

20 (i) the remission of fines or forfeitures;

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

22 (iii) respite; or

23 (iv) pardon.

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

26 (2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an  
27 application for clemency, except that an application may not be filed with respect to a sentence of death while  
28 an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through  
29 46-18-310. The board shall consider cases of executive clemency only upon application. All applications for  
30 executive clemency must be made to the board. An application for executive clemency in capital cases may be

1 filed with the board no later than 10 days after the district court sets a date of execution. Applications may be filed  
 2 only by the person convicted of the crime, by the person's attorney acting on the person's behalf and with the  
 3 person's consent, or by a court-appointed next friend, guardian, or conservator acting on the person's behalf.

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

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

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

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

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

16 ~~(3)(4)~~ A hearing panel may recommend that clemency be granted or denied. ~~In noncapital cases, if the~~  
 17 ~~hearing panel recommends that clemency be denied, the application may not be forwarded to the governor and~~  
 18 ~~the governor may not take action on the case. In capital cases, the~~ The hearing panel shall transmit the  
 19 application and either a recommendation that clemency be granted or a recommendation that clemency be  
 20 denied to the governor. The governor is not bound by any recommendation of the hearing panel, but the governor  
 21 shall review the record of the hearing and the hearing panel's recommendation before granting or denying  
 22 clemency. The governor has the final authority to grant or deny clemency ~~in those cases forwarded to the~~  
 23 ~~governor~~. An appeal may not be taken from the governor's decision to grant or deny clemency."  
 24

25 **Section 4.** Section 46-23-302, MCA, is amended to read:

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

29 "Whereas, the Board of Pardons and Parole has officially received an application for executive clemency  
 30 concerning ....., a convict confined in the state prison (or concerning ....., who has been found guilty of an offense

1 committed against the laws of the state), who was convicted of the crime of.... committed at ....., in the county of  
2 ....., State of Montana, on the .... day of ....., 20..., and sentenced for a term of .... years.

3 Therefore, it is ordered that ....., the .... day of ....., 20..., is set for the consideration of the executive  
4 clemency matter and all persons having an interest in the matter who desire to be heard either for or against the  
5 granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture  
6 are notified to be present at .... o'clock of that day, at .....

7 Further, it is ordered that a copy of this order be printed and published in the.... (here insert name of some  
8 newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper  
9 printed and published at ....., in the county of ....., once each week for 2 weeks beginning ....., 20..., and ending ....."

10

11 **Section 5.** Section 46-23-307, MCA, is amended to read:

12 **"46-23-307. Decision RECOMMENDATION of board.** Within 30 days after the hearing of ~~any capital a~~ case  
13 ~~or in noncapital cases where the decision is made to recommend clemency be granted,~~ the hearing panel ~~must~~  
14 shall make a ~~decision~~ RECOMMENDATION in writing; and ~~if such decision be made to recommend executive~~  
15 ~~clemency, the~~ a copy of the ~~decision~~ RECOMMENDATION together with all papers used in each case ~~shall~~ must be  
16 immediately transmitted to the governor."

17

18 NEW SECTION. Section 6. Applicability. [This act] applies to applications filed on or after [the effective  
19 date of this act].

20

- END -