

SENATE BILL NO. 230

INTRODUCED BY M. MACDONALD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO COMMITMENTS TO THE
5 DEPARTMENT OF CORRECTIONS; REVISING THE JURISDICTION OF THE BOARD OF PARDONS AND
6 PAROLE OVER OFFENDERS WHO ARE SENTENCED TO COMMITMENT TO THE DEPARTMENT AND
7 CONFINED IN A STATE PRISON; EXTENDING THE DEPARTMENT'S RULEMAKING AUTHORITY;
8 AMENDING SECTIONS 46-23-201 AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
9 AND A RETROACTIVE APPLICABILITY DATE."
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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13 **Section 1.** Section 46-23-201, MCA, is amended to read:

14 **"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking.** (1) Subject to the restrictions
15 contained in subsections (2) through (4) and the parole criteria in 46-23-208, the board may release on
16 nonmedical parole by appropriate order any person who is:

17 (a) ~~confined in~~ sentenced to a state prison as defined in 53-30-101;

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

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

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

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

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

28 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served
29 30 years.

30 (5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing

1 panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a
2 prisoner may request an earlier hearing or review."

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4 **Section 2.** Section 53-1-203, MCA, is amended to read:

5 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

6 (a) subject to subsection (6), adopt rules necessary:

7 (i) to carry out the purposes of 41-5-125;

8 (ii) for the siting, establishment, and expansion of prerelease centers;

9 (iii) for the expansion of treatment facilities or programs previously established by contract through a
10 competitive procurement process;

11 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; ~~and~~

12 (v) for the admission, custody, transfer, and release of persons in department programs except as
13 otherwise provided by law; and

14 (vi) for the release of persons committed to the department who have been placed by the department in
15 a state prison;

16 (b) subject to the functions of the department of administration, lease or purchase lands for use by
17 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
18 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
19 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
20 persons confined in correctional facilities;

21 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
22 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
23 maintain:

24 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
25 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
26 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
27 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
28 centers must be operated in coordination with other department correctional programs. This subsection does not
29 affect the department's authority to operate and maintain prerelease centers.

30 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as

1 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
2 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
3 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

4 (d) use the staff and services of other state agencies and units of the Montana university system, within
5 their respective statutory functions, to carry out its functions under this title;

6 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
7 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
8 in correctional facilities or programs;

9 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
10 education of felony offenders;

11 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
12 in 41-5-103;

13 (h) collect and disseminate information relating to youth who are committed to the department for
14 placement in a state youth correctional facility;

15 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
16 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

17 (j) provide funding for youth who are committed to the department for placement in a state youth
18 correctional facility;

19 (k) administer youth correctional facilities;

20 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

21 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

22 (i) provide for delinquent youth committed to the department; and

23 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
24 administered by the department.

25 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
26 and maintain a residential sexual offender treatment program. If the department intends to contract for that
27 purpose, the department shall adopt rules for the establishment and maintenance of that program.

28 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
29 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
30 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a

1 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
2 committee. The legislative audit division shall review the contract and make recommendations or comments to
3 the legislative audit committee. The committee may make recommendations or comments to the department. The
4 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
5 prior to entering into the contract.

6 (4) The department of corrections may enter into contracts with nonprofit corporations or associations
7 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
8 juvenile parole supervision.

9 (5) The department may contract with Montana corporations to operate a day reporting program as an
10 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
11 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
12 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
13 with any conditions of probation, such as drug testing.

14 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
15 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
16 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
17 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
18 at any location without community support. The prerelease siting, establishment, and expansion must be subject
19 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
20 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
21 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

22 (7) The department has jurisdiction over offenders committed to the custody of the department as
23 provided in 46-18-201(3)(a)(iv)(A), including an offender placed by the department in a state prison."

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25 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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27 **NEW SECTION. Section 4. Retroactive applicability.** (1) [This act] applies retroactively, within the
28 meaning of 1-2-109, to prisoners who are currently serving a sentence of commitment to the department of
29 corrections and who are in a state prison on or after [the effective date of this act].

30 (2) A prisoner currently serving a sentence of commitment to the department of corrections and who is

1 in a state prison on or after [the effective date of this act] remains entitled to:

2 (a) the prisoner's initial parole hearing if the prisoner remains confined in a state prison when the prisoner
3 is first eligible for a parole hearing; and

4 (b) any subsequent hearing or administrative review that was granted to the prisoner prior to [the
5 effective date of this act] if the prisoner remains confined in a state prison on the hearing or review date.

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