

HOUSE BILL NO. 429

INTRODUCED BY Z. BROWN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE CRIMINAL
5 SENTENCING OF YOUTH OFFENDERS; REVISING SENTENCING LAWS TO INCLUDE A RESTRICTION ON
6 A SENTENCE OF LIFE WITHOUT POSSIBILITY OF RELEASE FOR YOUTH OFFENDERS; ESTABLISHING
7 MITIGATING FACTORS A COURT MUST CONSIDER WHEN IMPOSING A SENTENCE ON A YOUTH
8 OFFENDER; ESTABLISHING PAROLE CRITERIA THE BOARD OF PARDONS AND PAROLE MUST
9 CONSIDER FOR A YOUTH OFFENDER; ALLOWING A SENTENCE REVIEW HEARING FOR CERTAIN
10 CRIMINALLY CONVICTED YOUTH; ESTABLISHING THAT A YOUTH OFFENDER IS ELIGIBLE FOR PAROLE
11 CONSIDERATION AFTER SERVING A MAXIMUM OF 15 YEARS OF THE SENTENCE; LIMITING THE
12 AMOUNT OF TIME A YOUTH OFFENDER MAY BE ORDERED TO SERVE BEFORE BEING GRANTED A
13 SUBSEQUENT PAROLE HEARING OR REVIEW; REVISING THE RULEMAKING AUTHORITY OF THE BOARD
14 OF PARDONS AND PAROLE; AMENDING SECTIONS 41-5-2503, 41-5-2510, 46-18-202, 46-18-219, 46-18-223,
15 46-23-201, 46-23-202, 46-23-208, AND 46-23-218, MCA; AND PROVIDING AN APPLICABILITY DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 **NEW SECTION. Section 1. Restriction on sentence of youth offender to life imprisonment without**
20 **possibility of release -- mitigating circumstances.** (1) A court may not sentence an offender to a life sentence
21 without the possibility of release if the offender was less than 18 years of age at the time of the commission of
22 the offense or offenses for which the offender is to be sentenced.

23 (2) In addition to other factors required by law to be considered prior to the imposition of a sentence,
24 when determining the appropriate sentence to be imposed for an offender who was less than 18 years of age at
25 the time of the commission of the offense for which the offender is to be sentenced, the court shall consider the
26 following mitigating circumstances:

- 27 (a) the offender's:
28 (i) age at the time of the offense;
29 (ii) impetuosity;
30 (iii) family and community environment;

- 1 (iv) ability to appreciate the risks and consequences of the offender's conduct;
2 (v) intellectual capacity;
3 (vi) ability to participate meaningfully in the offender's defense;
4 (vii) capacity for rehabilitation;
5 (viii) school records and special education evaluations;
6 (ix) trauma history;
7 (x) faith and community involvement; and
8 (xi) involvement in the child welfare system;
9 (b) the outcomes of a comprehensive mental health evaluation conducted by a mental health professional
10 licensed in Montana to treat adolescents;
11 (c) peer or familial pressure;
12 (d) whether and to what extent an adult was involved in the offense; and
13 (e) any other mitigating factor or circumstances.
14 (3) Subsection (2)(b) may not be construed to require a comprehensive mental health evaluation be
15 conducted.
16

17 **NEW SECTION. Section 2. Parole factors for youth offenders.** (1) When making a determination
18 regarding nonmedical parole release for a prisoner who was less than 18 years of age at the time of the
19 commission of the offense or offenses for which the prisoner was sentenced and in addition to the criteria in
20 46-23-208 and the parole guidelines established pursuant to 46-23-218(3), the hearing panel shall give great
21 weight to the following mitigating factors:

- 22 (a) the diminished culpability of youth as compared to that of adults;
23 (b) the hallmark features of youth;
24 (c) a review of the prisoner's educational and court documents;
25 (d) age and immaturity of the prisoner at the time of the offense;
26 (e) whether and to what extent an adult was involved in the offense;
27 (f) home and community environment at the time of the offense, including any history of abuse, trauma,
28 and involvement in the child welfare system;
29 (g) any subsequent growth and increased maturity of the prisoner during incarceration;
30 (h) the offender's participation in available rehabilitative and educational programs while in prison or use

1 of self-study for self-improvement; and

2 (i) any other mitigating factors or circumstances the hearing panel considers relevant.

3 (2) A prisoner who was less than 18 years of age at the time of the commission of the offense or offenses
4 for which the prisoner was sentenced may have an attorney present to represent the prisoner's interests at a
5 parole hearing.

6 (3) If the hearing panel denies parole, it shall state the reasons for denial in writing and address the
7 panel's consideration of the factors in subsection (1).

8

9 **Section 3.** Section 41-5-2503, MCA, is amended to read:

10 **"41-5-2503. Disposition of criminally convicted youth.** (1) The district court, in sentencing a youth
11 adjudicated in district court pursuant to 41-5-206, shall:

12 (a) consider the mitigating factors in [section 1(2)];

13 ~~(a)(b) except as provided in [section 1(1)].~~ impose any sentence allowed by the statute that established
14 the penalty for the offense of which the youth is convicted as if the youth were an adult and any conditions or
15 restrictions allowed by statute;

16 ~~(b)(c)~~ retain jurisdiction over the case until the criminally convicted youth reaches the age of 21; and

17 ~~(e)(d)~~ order the department to submit a status report to the court, county attorney, defense attorney, and
18 juvenile probation officer every 6 months until the youth attains the age of 21. The report must include a
19 recommendation from the department regarding the disposition of the criminally convicted youth.

20 (2) The district court shall review the criminally convicted youth's sentence pursuant to 41-5-2510 before
21 the youth reaches the age of 21 if a hearing has not been requested under 41-5-2510."

22

23 **Section 4.** Section 41-5-2510, MCA, is amended to read:

24 **"41-5-2510. Sentence review hearing.** (1) When a youth has been convicted as an adult pursuant to
25 the provisions of 41-5-206, ~~except for offenses punishable by death or life imprisonment or when a sentence of~~
26 ~~100 years could be imposed,~~ the county attorney, defense attorney, or youth may, at any time before the youth
27 reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall
28 notify the court of the youth's impending birthday no later than 90 days before the youth's 21st birthday.

29 (2) After reviewing the status report and upon motion for a hearing, the court shall determine whether
30 to hold a criminally convicted youth sentence review hearing. When determining whether to hold a review hearing,

1 the court shall consider the mitigating factors in [section 1(2)].

2 (3) If the court, in its discretion, determines that a sentence review hearing is warranted or is required
3 under 41-5-2503, the hearing must be held within 90 days after the filing of the request or determination. The
4 sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

5 ~~(3)~~(4) The sentencing court shall review the department's records, formal youth court records, victim
6 statements, and any other pertinent information.

7 ~~(4)~~(5) The sentencing court; shall determine whether the criminally convicted youth has been
8 substantially rehabilitated based upon a preponderance of the evidence after considering the following:

9 (a) criminal, social, psychological, and any other records of the youth;

10 (b) any evidence presented at the hearing; ~~and~~

11 (c) any statements by the victim, ~~and by the parent or parents or guardian of the youth,~~ and any other
12 advocates for the youth; and

13 ~~(d) the mitigating factors in [section 1(2)] shall determine whether the criminally convicted youth has been~~
14 ~~substantially rehabilitated based upon a preponderance of the evidence.~~

15 ~~(5)~~(6) In the event that the sentencing court determines that the youth has been substantially
16 rehabilitated, the court shall determine whether to:

17 (a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions
18 pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless otherwise
19 specified;

20 (b) impose all or part of the remaining sentence and make any additional recommendations to the
21 department regarding the placement and treatment of the criminally convicted youth; or

22 (c) impose a combination of options allowed under subsections ~~(5)(a)~~ (6)(a) and ~~(5)(b)~~ (6)(b), not to
23 exceed the total sentence remaining.

24 ~~(6)~~(7) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant
25 to 46-18-203."

26

27 **Section 5.** Section 46-18-202, MCA, is amended to read:

28 **"46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of
29 the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers
30 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- 1 (a) prohibition of the offender's holding public office;
- 2 (b) prohibition of the offender's owning or carrying a dangerous weapon;
- 3 (c) restrictions on the offender's freedom of association;
- 4 (d) restrictions on the offender's freedom of movement;
- 5 (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title
- 6 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;
- 7 (f) a requirement that the offender surrender any registry identification card or license issued under
- 8 50-46-303;
- 9 (g) any other limitation reasonably related to the objectives of rehabilitation and the protection of the
- 10 victim and society.

11 (2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term

12 exceeding 1 year and the offender was 18 years of age or older at the time of the commission of the offense, the

13 sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the

14 supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall

15 state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection

16 of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a

17 statement of the reasons for the restriction.

18 (3) If a sentencing judge requires an offender to surrender a registry identification card or license issued

19 under 50-46-303, the court shall return the card or license to the department of public health and human services

20 and provide the department with information on the offender's sentence. The department shall revoke the card

21 for the duration of the sentence and shall return the card if the offender successfully completes the terms of the

22 sentence before the expiration date listed on the card."

23

24 **Section 6.** Section 46-18-219, MCA, is amended to read:

25 **"46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in [section 1] or

26 subsection (3) of this section, if an offender convicted of one of the following offenses was previously convicted

27 of one of the following offenses or of an offense under the laws of another state or of the United States that, if

28 committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison,

29 unless the death penalty is applicable and imposed:

30 (i) 45-5-102, deliberate homicide;

- 1 (ii) 45-5-303, aggravated kidnapping;
- 2 (iii) 45-5-625, sexual abuse of children;
- 3 (iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or
- 4 (v) 45-5-508, aggravated sexual intercourse without consent.
- 5 (b) Except as provided in [section 1] or subsection (3) of this section, if an offender convicted of one of
- 6 the following offenses was previously convicted of two of the following offenses, two of any combination of the
- 7 offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another
- 8 state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a)
- 9 or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and
- 10 imposed:
- 11 (i) 45-5-103, mitigated deliberate homicide;
- 12 (ii) 45-5-202, aggravated assault;
- 13 (iii) 45-5-215, strangulation of a partner or family member;
- 14 (iv) 45-5-302, kidnapping;
- 15 (v) 45-5-401, robbery; or
- 16 (vi) 45-5-603, aggravated promotion of prostitution.
- 17 (2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under
- 18 subsection (1):
- 19 (a) shall serve the entire sentence;
- 20 (b) shall serve the sentence in prison;
- 21 (c) may not for any reason, except a medical reason, be transferred for any length of time to another type
- 22 of institution, facility, or program;
- 23 (d) may not be paroled; and
- 24 (e) may not be given time off for good behavior or otherwise be given an early release for any reason.
- 25 (3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1),
- 26 pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section
- 27 do not apply to the offender's present sentence.
- 28 (4) The imposition or execution of the sentences prescribed by this section may not be deferred or
- 29 suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this
- 30 section prevails.

1 (5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are
 2 locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private
 3 contractor.

4 (b) Prison does not include a work release center, prerelease center, boot camp, or any other type of
 5 facility that does not provide secure detention."
 6

7 **Section 7.** Section 46-18-223, MCA, is amended to read:

8 **"46-18-223. Hearing to determine application of exceptions.** (1) When the application of an exception
 9 provided for in 46-18-222 is an issue, the court shall grant the defendant a hearing prior to the imposition of
 10 sentence to determine the applicability of the exception.

11 (2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution
 12 are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at
 13 the hearing.

14 (3) If the court is asked to determine the applicability of the exception in 46-18-222(1), the court must give
 15 great weight to the mitigating circumstances listed in [section 1(2)].

16 ~~(3)~~(4) If it appears by a preponderance of the information, including information submitted during the trial,
 17 during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the
 18 exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the
 19 reasons for its decision in writing and shall include an identification of the facts relied upon in making its
 20 determination. The statement shall be included in the judgment."
 21

22 **Section 8.** Section 46-23-201, MCA, is amended to read:

23 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in
 24 subsections (2) through (4), ~~and the parole criteria in 46-23-208, and the provisions of [section 2],~~ the board may
 25 release on nonmedical parole by appropriate order any person who is:

- 26 (a) confined in a state prison;
 27 (b) sentenced to the state prison and confined in a prerelease center;
 28 (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;
 29 (d) sentenced to be committed to the custody of the director of the department of public health and
 30 human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental

1 center, or the Montana mental health nursing care center.

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

5 (3) ~~A~~ Except as provided in subsection (5), a prisoner serving a time sentence may not be paroled under
6 this section until the prisoner has served at least one-fourth of the prisoner's full term.

7 (4) ~~A~~ Except as provided in subsection (5), a prisoner serving a life sentence may not be paroled under
8 this section until the prisoner has served 30 years.

9 (5) A prisoner who was less than 18 years of age at the time of the commission of the offense or offenses
10 for which the prisoner was sentenced is eligible for parole after the prisoner has served no more than 15 years
11 unless the prisoner is eligible for an earlier parole consideration. The provisions of this subsection apply
12 regardless of any mandatory minimums, sentencing enhancements, or multiple sentences ordered to be served
13 consecutively provided that the minimums, enhancements, or multiple sentences are for crimes committed by
14 the prisoner before the prisoner reached 18 years of age.

15 ~~(5)(6)~~ (a) If a hearing panel denies parole, it may order that the prisoner serve:

16 (i) except as provided in subsection (6)(b), up to 6 years if the prisoner is confined for a sexual or violent
17 offense, as defined in 46-23-502; before a hearing panel conducts another hearing or review; or

18 (ii) up to 1 year if the prisoner is confined for any other offense before a hearing panel conducts another
19 hearing or review.

20 (b) If a hearing panel denies parole to an offender who was less than 18 years of age at the time of the
21 commission of the sexual or violent offense or offenses, the hearing panel may not order that the prisoner serve
22 more than 3 years before a hearing panel conducts another hearing or review."

23

24 **Section 9.** Section 46-23-202, MCA, is amended to read:

25 **"46-23-202. Initial parole hearing.** Within the 2 months prior to a prisoner's official parole eligibility date
26 or as soon after that date as possible, the department shall make the prisoner available for a hearing before a
27 hearing panel. The hearing panel shall consider the prisoner's score under the parole guidelines and other
28 case-specific and pertinent information regarding the prisoner, including the criteria in 46-23-208 and the
29 mitigating factors in [section 2] if applicable."

30

1 **Section 10.** Section 46-23-208, MCA, is amended to read:

2 **"46-23-208. Nonmedical parole criteria -- information board may consider.** (1) The board may
3 release an eligible prisoner on nonmedical parole only when:

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

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

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

8 (d) the prisoner does not require:

9 (i) continued correctional treatment that cannot be found in the community; or

10 (ii) other programs available only in a correctional facility that will substantially enhance the prisoner's
11 capability to lead a law-abiding life if released, including mental health therapy or vocational training.

12 (2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.

13 (3) For a prisoner sentenced to be committed to the custody of the director of the department of public
14 health and human services as provided in 46-14-312:

15 (a) the board may require as a condition of parole participation in a supervised mental health treatment
16 program, if consistent with mental health services recommendations provided by a mental health professional,
17 as that term is defined in 53-21-102, to ensure that the prisoner continues to treat the prisoner's mental disorder;
18 and

19 (b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health
20 treatment program described in subsection (3)(a), in which case the prisoner must be recommitted to the custody
21 of the director of the department of public health and human services pursuant to 46-14-312.

22 (4) In making its determination regarding nonmedical parole release, a hearing panel shall consider all
23 available and pertinent information regarding the prisoner, including the following factors:

24 (a) the circumstances of the offense;

25 (b) the prisoner's social history and prior criminal record, including the nature and circumstances of the
26 offense, date of offense, and frequency of previous offenses;

27 (c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the prisoner
28 has taken advantage of opportunities for treatment and whether the prisoner is clear of major disciplinary
29 violations prior to the hearing;

30 (d) the reports of any physical, psychological, and mental evaluations that have been made;

- 1 (e) the prisoner's maturity, stability, sense of responsibility, and development of traits and behaviors that
2 increase the likelihood the prisoner will conform the prisoner's behavior to the requirements of law;
- 3 (f) the adequacy of the prisoner's release plan;
- 4 (g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;
- 5 (h) the prisoner's education and training;
- 6 (i) the prisoner's family status and whether the prisoner has relatives who display an interest or whether
7 the prisoner has other close and constructive associations in the community;
- 8 (j) the prisoner's employment history and occupational skills and the stability of the prisoner's past
9 employment;
- 10 (k) the type of residence, neighborhood, or community in which the prisoner plans to live;
- 11 (l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;
- 12 (m) the prisoner's mental health needs;
- 13 (n) the prisoner's attitude toward law and authority;
- 14 (o) the prisoner's behavior and attitude during any previous experience of supervision and the recency
15 of the supervision;
- 16 (p) written or oral statements from criminal justice authorities or any other interested person or the
17 interested person's legal representative, including written or oral statements from a victim regarding the effects
18 of the crime on the victim. A victim's statement may also include but is not limited to the circumstances
19 surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the
20 offender should be paroled.
- 21 (q) whether parole at this time would diminish the seriousness of the offense; and
- 22 (r) any and all other factors that the hearing panel determines to be relevant.

23 (5) In addition to the factors listed in subsection (4), if the prisoner is currently seeking parole for an
24 offense committed when the offender was less than 18 years of age, the hearing panel shall consider the factors
25 in [section 2].

26 ~~(5)~~(6) A victim's statement may be kept confidential."
27

28 **Section 11.** Section 46-23-218, MCA, is amended to read:

29 **"46-23-218. Authority of board to adopt rules -- purpose for training -- data collection.** (1) The
30 board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for

1 parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference
2 administrative reviews, progress reviews, clemency proceedings, the conditions to be imposed upon parolees,
3 the training of board members regarding American Indian culture and problems, and other matters pertinent to
4 service on the board.

5 (2) The legislature finds that American Indians incarcerated in state prisons constitute a disproportionate
6 percentage of the total inmate population when compared to the American Indian population percentage of the
7 total state population. The training of board members regarding American Indian culture and problems is
8 necessary in order for the board to deal appropriately with American Indian inmates appearing before the board.

9 (3) In consultation with the department, the board shall adopt rules to establish:

10 (a) parole guidelines to structure and guide parole release decisions and the imposition of release
11 conditions. The guidelines must include, in decreasing order of importance, the prisoner's:

12 (i) risk and needs levels, as determined by a validated risk and needs assessment;

13 (ii) participation in risk-reducing programs and treatment;

14 (iii) institutional behavior as reflected by disciplinary records; and

15 (iv) offense severity.

16 (b) a process by which a prisoner who has been denied parole and has more than 1 year before a
17 scheduled hearing or review may request an earlier hearing or review; ~~and~~

18 (c) criteria for consideration of conditional discharges, which must include supervision compliance,
19 residential stability, employment stability, engagement in treatment, and other factors indicative of adequate
20 reentry stability; and

21 (d) hearing and administrative review procedures that ensure a hearing panel considers the mitigating
22 factors established in [section 2] for a prisoner who was less than 18 years of age at the time of the commission
23 of the offense for which the prisoner is serving time and to give the prisoner a meaningful opportunity to obtain
24 parole.

25 (4) The board and the department shall compile data to validate the parole guidelines after gathering
26 recidivism results for the last 3 years and every 5 years thereafter. The board may adopt rules to govern the
27 transition to use of parole guidelines. The data collection must start by April 2018.

28 (5) The board shall annually assess and prioritize inservice training needs and arrange for training to
29 strengthen knowledge and skills needed for case assessment, interviewing, and parole decisionmaking. Board
30 members, parole analysts, and the hearings officers shall attend the training, as well as other board and

1 department staff as needed."

2

3 NEW SECTION. **Section 12. Codification instruction.** (1) [Section 1] is intended to be codified as
4 an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section
5 1].

6 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 2, and the
7 provisions of Title 46, chapter 23, part 2, apply to [section 2].

8

9 NEW SECTION. **Section 13. Applicability.** [This act] applies to offenses committed on or after [the
10 effective date of this act].

11

- END -