

PAROLE AND EXECUTIVE CLEMENCY

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The links below open to the introduced bill. The other information is available by selecting the Additional Bill Links hyperlink at the top of the bill and then the link “Status of this Bill.”

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: Montana law defines “parole” as “the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.” The Board of Pardons and Parole is a five-member, fulltime board that reviews eligible offenders and grants or denies parole. The board also assigns conditions of parole, which the offender must abide by while on parole. In addition, the board makes recommendations about executive clemency to the governor, who then chooses to grant or deny clemency.

The statutes governing parole, executive clemency, and the board are generally contained in [Title 46, section 23, MCA](#). Board members are appointed by the governor and subject to confirmation by the Senate. They serve 6-year staggered terms.

Montana law requires that a prisoner serving a time sentence must serve at least 1/4 of the person's full term before becoming eligible for parole; a prisoner serving a life sentence must serve 30 years before becoming parole eligible. The Board may *not* grant nonmedical parole to a person who:

- is sentenced to death;
- is sentenced to the Department of Corrections and was placed by the Department in a state prison temporarily for assessment or sanction;
- is sentenced by a judge to a term in state prison of more than 1 year and the judge restricts the person's right to parole as part of the sentence; or
- is sentenced to life without parole pursuant to section 46-18-219, MCA, which provides sentencing requirements for offenders who have previously been convicted of certain felony offenses.

Legislative Services Division Materials:

[Study Resources Page](#) and [Meeting Materials](#) for the 2015-2016 Commission on Sentencing
[Summary of Criminal Justice System Changes from 2017 Legislature](#) (Board changes on page 10)
[Study Resources Page](#) for the 2013-2014 Senate Joint Resolution No. 3 study of the Board of Pardons and Parole

Other Materials:

[Board of Pardons and Parole website](#)
[Presentation slides](#) on parole for the 2015-2016 Commission on Sentencing – Council of State Governments Justice Center
[2017 Executive Clemency Report](#) – Office of the Governor

Introduced Legislation

2017

[Senate Bill No. 64](#) -- Chapter Number Assigned -- AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF PARDONS AND PAROLE; REVISING THE BOARD'S SIZE AND STRUCTURE; PROVIDING THAT THE BOARD IS A FULL-TIME BOARD; REVISING THE QUALIFICATIONS AND COMPENSATION OF BOARD MEMBERS; PROHIBITING A BOARD DESIGNEE FROM PERFORMING CERTAIN ACTS; REVISING THE LENGTH OF TIME THE BOARD MAY ORDER A PRISONER TO SERVE BEFORE ANOTHER HEARING OR REVIEW AFTER A PAROLE DENIAL; REVISING WHEN THE BOARD MAY ASSIGN CONDITIONS OF PAROLE; REVISING THE BOARD'S RULEMAKING AUTHORITY; REQUIRING THE DEPARTMENT OF CORRECTIONS AND THE BOARD TO COLLECT AND REPORT CERTAIN DATA; REVISING SUPERVISION AND REVOCATION PROCEDURES; REQUIRING THE BOARD TO REVIEW CERTAIN ADMINISTRATIVE RULES AND REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE; AMENDING SECTIONS 46-23-103, 46-23-104, 46-23-110, 46-23-201, 46-23-202, 46-23-208, 46-23-215, 46-23-218, 46-23-1001, 46-23-1003, 46-23-1021, 46-23-1023, 46-23-1024, AND 46-23-1025, MCA; REPEALING SECTION 2-15-2302, MCA; PROVIDING A TRANSITION SCHEDULE; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

[Senate Bill No. 230](#) -- (S) Died in Process -- AN ACT REVISING LAWS RELATED TO COMMITMENTS TO THE DEPARTMENT OF CORRECTIONS; REVISING THE JURISDICTION OF THE BOARD OF PARDONS AND PAROLE OVER OFFENDERS WHO ARE SENTENCED TO COMMITMENT TO THE DEPARTMENT AND CONFINED IN A STATE PRISON; EXTENDING THE DEPARTMENT'S RULEMAKING AUTHORITY; AMENDING SECTIONS 46-23-201 AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

2015

[House Bill No. 19](#) -- Chapter Number Assigned -- AN ACT CLARIFYING THE AUTHORITY OF THE GOVERNOR TO CHANGE THE PRESIDING OFFICER OF THE BOARD OF PARDONS AND PAROLE; AND AMENDING SECTION 2-15-2302, MCA.

[House Bill No. 28](#) -- Chapter Number Assigned -- AN ACT REQUIRING THE BOARD OF PARDONS AND PAROLE TO VIDEO-RECORD AND AUDIO-RECORD MEETINGS OF THE BOARD AND ALL HEARINGS HELD TO CONSIDER PAROLE, RESCISSION, REVOCATION, OR CLEMENCY DECISIONS; REQUIRING THE

PAROLE AND EXECUTIVE CLEMENCY

BOARD TO MAKE THE RECORDINGS PUBLICLY AVAILABLE; AMENDING SECTION 46-23-110, MCA; AND PROVIDING A TERMINATION DATE.

[House Bill No. 43](#) -- Chapter Number Assigned -- AN ACT PROVIDING THAT THE GOVERNOR HAS THE FINAL AUTHORITY WITH RESPECT TO CLEMENCY AND MAY DETERMINE WHETHER A CLEMENCY HEARING TAKES PLACE AND WHETHER CLEMENCY IS GRANTED IF THE BOARD OF PARDONS AND PAROLE DENIES AN APPLICANT A HEARING OR DENIES CLEMENCY; PROHIBITING CLEMENCY RECOMMENDATIONS AND DECISIONS IF THE APPLICANT IS RELATED OR CONNECTED TO THE GOVERNOR OR WORKS OR HAS WORKED IN THE OFFICE OF THE GOVERNOR SINCE THE GOVERNOR TOOK OFFICE; AMENDING SECTIONS 46-23-103, 46-23-104, 46-23-301, 46-23-302, AND 46-23-307, MCA; AND PROVIDING AN APPLICABILITY DATE.

[House Bill No. 128](#) -- Chapter Number Assigned -- AN ACT REQUIRING THE BOARD OF PARDONS AND PAROLE TO COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING THAT THE BOARD OF PARDONS AND PAROLE IS EXEMPT FROM THE CONTESTED CASE AND JUDICIAL REVIEW OF CONTESTED CASES PORTIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 2-4-102, MCA.

[House Bill No. 135](#) -- Chapter Number Assigned -- 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.

2013

[House Bill No. 137](#) -- Chapter Number Assigned -- AN ACT CLARIFYING APPLICATION OF PAROLE ELIGIBILITY RESTRICTIONS; AMENDING SECTION 46-18-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[Senate Joint Resolution No. 3](#) -- (S) Filed with Secretary of State -- A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE OPERATIONS OF THE MONTANA BOARD OF PARDONS AND PAROLE.

2011

[House Bill No. 141](#) -- Chapter Number Assigned -- AN ACT GENERALLY REVISING THE MAKEUP, OPERATION, AND PROCEDURES OF THE BOARD OF PARDONS AND PAROLE; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-210, 46-23-215, 46-23-218, 46-23-301, 46-23-302, 46-23-306, 46-23-307, AND 46-23-1025, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

[Senate Bill No. 368](#) -- (S) Died in Standing Committee -- A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AMOUNT OF TIME A PRISONER MUST SERVE BEFORE BEING ELIGIBLE FOR PAROLE; AND AMENDING SECTION 46-23-201, MCA.

2009

None