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As of: April 16, 2014 (9:50am)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ; amending sections 46-23-103, 46-23-201, 46-23-215, 46-23-218, 46-23-1001, 46-23-1002, and 46-23-1021, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Conditions of Parole.** (1) After the board grants a parole to a prisoner, the department shall supervise the parolee during the parole period in accord with the conditions set by the department or the sentencing judge. If the sentencing judge did not set conditions of parole at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of parole. The parolee must be present at the hearing. The parolee has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of parole must be signed by the parolee. The department may require a parolee to waive extradition for the parolee's return to Montana.

Section 2. Section 46-23-103, MCA, is amended to read:

"46-23-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Hearing panel" means a panel made up of two or three board members appointed to conduct parole hearings, revocation hearings, rescission hearings, and administrative parole reviews and to make final decisions and recommendations in matters of executive clemency.

(5) "Parole" means the release to the community of a prisoner by the decision of a hearing panel prior to the expiration of the prisoner's term, subject to conditions imposed by the ~~hearing panel~~ sentencing judge or the department and subject to supervision of the department.

(6) "Victim" means a victim as defined in 46-18-243."

{*Internal References to 46-23-103:*
2-15-2302 }

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

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

(a) confined in a state prison;

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

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

(d) 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 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.

(2) Except as provided in subsection(7), the board is prohibited from assigning conditions of parole that were not assigned by the sentencing judge or the department.

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

~~(3)~~(4) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least

one-fourth of the prisoner's full term.

~~(4)~~(5) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

~~(5)~~(6) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

~~(6)~~(7) 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 (6)(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.

~~(7)~~(8) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request an earlier hearing or review."

{*Internal References to 46-23-201:*

46-23-217 }

Section 4. Section 46-23-215, MCA, is amended to read:

"46-23-215. Conditions of parole. (1) A prisoner while on parole remains in the legal custody of the department but is subject to the orders of the board.

(2) When a hearing panel issues an order for parole, the order must recite the conditions of parole. The board is prohibited from assigning conditions of parole that were not assigned by the sentencing judge or the department.

(3) If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim.

(4) The prisoner may not be paroled until the prisoner provides a biological sample for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense as defined in 46-23-502. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a hearing panel grants a parole to a prisoner and the department or the sentencing judge requires ~~on the condition~~ that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the hearing panel or the presiding officer of the board or a designee may grant the prisoner a

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furlough, not to exceed two consecutive 10-day periods, for purposes of fulfilling the condition. While on furlough, the prisoner is not on parole and is subject to official detention as defined in 45-7-306. The prisoner remains in the legal custody of the department and is subject to all other conditions ordered by the hearing panel or the presiding officer of the board or a designee."

{*Internal References to 46-23-215:*
46-23-210 * }

Section 5. Section 46-23-218, MCA, is amended to read:

"46-23-218. Authority of board to adopt rules -- purpose for training. (1) The board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference administrative reviews, progress reviews, clemency proceedings, ~~the conditions to be imposed upon parolees,~~ the training of board members regarding American Indian culture and problems, and other matters pertinent to service on the board.

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

before the board."

{*Internal References to 46-23-218:*
46-23-210 }

Section 6. Section 46-23-1001, MCA, is amended to read:

"46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of the prisoner's term, subject to conditions imposed by ~~the board~~ the sentencing judge or the department and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court."

{*Internal References to 46-23-1001:*
61-8-731 * }

Section 7. Section 46-23-1002, MCA, is amended to read:

"46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

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(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, including conditions of parole, except that the department may not make any rule conflicting with conditions of parole ~~imposed by the board~~ or conditions of probation imposed by a court."

{*Internal References to 46-23-1002:*
44-4-401 45-8-317 61-8-731 * }

Section 8. Section 46-23-1021, MCA, is amended to read:

"46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the sentencing judge or the ~~department. board.~~

(2) The department shall assign personnel to assist a person who is eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's

progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist the parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful completion of the sentence.

(5) The probation and parole officer shall keep records as the board or department may require. All records must be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of the parolee's sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Any of the achievements listed in 46-23-1027(2) must be considered a significant achievement by the board in deciding whether to grant a conditional discharge from supervision to a parolee.

(c) If the board discharges a parolee from supervision, the department is relieved of the obligation of supervising the parolee.

(d) For good cause, the board may return a parolee who was conditionally discharged to the status of a regular parolee.

(e) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

(f) If the department certifies to the board that the

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workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

{*Internal References to 46-23-1021:*
46-18-1003 46-23-1020 46-23-1020 }

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