Law and Justice Interim Committee

67th Montana Legislature

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March 11, 2022

TO: Law and Justice Interim Committee
FROM: Julianne Burkhardt, Staff Attorney
RE: Administrative Rule Activity

Board of Pardons and Parole (BOPP)

MAR 2022 Issue No. 13, July 8, 2022: The BOPP issued a Notice of Adoption, Amendment, and Repeal concerning the adoption of NEW RULES I and II; the amendment of ARM 20.25.101, 20.25.102, 20.25.103, 20.25.201, 20.25.306, 20.25.307, 20.25.401, 20.25.402, 20.25.501, 20.25.504, 20.25.601, 20.25.702, 20.25.801, 20.25.901, 20.25.902, 20.25.903, 20.25.904; and the repeal of ARM 20.25.202 and 20.25.505 pertaining to parole decisions, early parole consideration, administrative reviews and reappearances, board operating processes, and executive clemency functions. A public hearing was held on March 3, 2022, via remote conferencing.

NEW RULE 1 EARLY CONSIDERATION – 20.25.403 -- This new rule was taken from ARM 20.25.402 and placed in a new rule for better organization and clarity. The BOPP determined that separating the topic of early consideration from the topics of administrative review and reappearances provided better clarity. An offender can only submit one request for reconsideration per year. This rule was adopted as proposed.

NEW RULE II BOARD RESPONSES TO PAROLE VIOLATIONS – 20.25.804 -- This proposed new rule implements the statutory requirement from 46-23-1028, MCA, that the Montana Incentives and Interventions Grid (MIIG) be exhausted before revocation. This rule was adopted as proposed.

ARM 20.25.101 ORGANIZATION OF THE BOARD – These rule changes address the legislative amendments contained in Senate Bill 64 (2017) that changed the BOPP from a volunteer board to a full-time board and eliminated the executive director position and some staff positions. In addition, the BOPP eliminated the requirement for "clear conduct" from the criteria for early consideration. As a result, institutional conduct will not necessarily disqualify an offender from early consideration. The amendments were adopted as proposed.

ARM 20.25.102 BOARD TRAINING – The proposed rules change eliminates language that unnecessarily repeats statutory language. The amendments were adopted as proposed.

ARM 20.25.103 DISSEMINATION OF INFORMATION – This proposed amendment adds additional relevant criminal offenses and removes subsection (12). The amendments were adopted as proposed.

ARM 10.25.201 OBJECTIVES – The proposed changes to subsection (3) clarify that the BOPP's primary responsibility is public safety when making decisions about parole and clemency. Language regarding transfers of offenders from prison to prerelease or community treatment was eliminated because the Department of Corrections (DOC) has this authority. The amendments were adopted with changes based on public comment.

ARM 20.25.306 PAROLE PLAN – The proposed amendments are made to eliminate provisions that unnecessarily repeat statutory language. The amendments were adopted as proposed.

ARM 20.25.307 MEDICAL PAROLE – The proposed amendments are made for clarification and to eliminate provisions that unnecessarily repeat statutory language. The amendments were adopted as proposed.

ARM 20.25.401 HEARING PROCEDURE – These amendments are proposed to better describe how the BOPP conducts its operations. They are not intended to be substantive. The amendments were adopted as proposed.

ARM 20.25.402 ADMINISTRATIVE REVIEW AND, REAPPEARANCE, AND EARLY REVIEW – Subsection (6) is deleted and is inserted in NEW RULE I as discussed above. The amendments were adopted as proposed.

ARM 20.25.501 DECISION AND RECONSIDERATION – These amendments are intended to be housekeeping and to maintain consistency with the amendments to ARM 20.25.402, above. The amendments were adopted with changes based on public comment.

ARM 20.25.504 INVESTIGATION -- The proposed amendments are made to eliminate provisions that unnecessarily repeat statutory language. The amendments were adopted as proposed.

ARM 20.25.601 RESCISSION HEARING – The proposed amendment eliminates a provision that allows staff to delay an offender's release because it is inaccurate. The amendments were adopted as proposed.

ARM 20.25.702 CONDITIONS OF SUPERVISION -- These proposed amendments are made to eliminate provisions that unnecessarily repeat statutory language. The amendments were adopted as proposed.

ARM 20.25.801 ON-SITE HEARING AND REVOCATION OF PAROLE – The proposed amendments are offered because on-site hearings are a function of the DOC. The amendments were adopted as proposed.

ARM 20.25.901 APPLICATIONS FOR CLEMENCY—The proposed amendments remove references to the staff role in assessing clemency applications because following the implementation of Senate Bill 64 (2017), staff no longer perform clemency assessments. The amendments were adopted with changes based on public comment.

ARM 20.25.902 INVESTIGATIONS FOR CLEMENCY AND ORDER FOR HEARING – These amendments are not intended to be substantive. The amendments were adopted as proposed.

ARM 20.25.903 HEARING PROCEDURE FOR CLEMENCY – The proposed amendment removes the reference to the ability of indigent offenders to request counsel because the BOPP does not have the budget or authority to appoint counsel. The amendments were adopted as proposed.

ARM 20.25.904 RECOMMENDATION CONCERNING CLEMENCY – The proposed amendment changes internal operating rules of the BOPP. The amendments were adopted with changes based on public comment.

Repeal of ARM 20.25.202 DEFINITIONS and ARM 20.25.505 CRITERIA FOR RELEASE GRANT DECISIONS ON NONMEDICAL PAROLE – The repeal of these two rules is being proposed to eliminate provisions that unnecessarily repeat statutory language. These administrative rule sections were repealed.

The Department of Justice

MAR 2022 Issue No. 15, MAR Notice No. 23-16-265, August 5, 2022: The Department of Justice issued a NOTICE OF PROPOSED AMENDMENT regarding the amendment of ARM 23.16.102, 23.16.103, 23.16.110, 23.16.502, 23.16.1716, 23.16.1826, 23.16.1913, 23.16.1916, 23.16.1916A, 23.16.1920, and 23.16.2001 concerning the Gambling Control Division and the address change of the headquarters for the Gambling Control Division.