

**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act providing that the governor may determine whether an clemency hearing takes place and whether clemency is granted if the Board of Pardons and Parole denies an applicant a hearing or denies clemency; amending sections 46-23-301, 46-23-302, and 46-23-307, MCA."

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

Section 1. Section 46-23-301 , MCA, is amended to read:

"46-23-301. Cases of executive clemency -- application for clemency -- definitions. (1) (a) "Clemency" means kindness, mercy, or leniency that may be exercised by the governor toward a convicted person. The governor may grant clemency in the form of:

- (i) the remission of fines or forfeitures;
- (ii) the commutation of a sentence to one that is less severe;
- (iii) respite; or
- (iv) pardon.

(b) "Pardon" means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an application for clemency, except that an application may not be filed with respect to a sentence

of death while an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through 46-18-310. The board shall consider cases of executive clemency only upon application. All applications for executive clemency must be made to the board. An application for executive clemency in capital cases may be filed with the board no later than 10 days after the district court sets a date of execution. Applications may be filed only by the person convicted of the crime, by the person's attorney acting on the person's behalf and with the person's consent, or by a court-appointed next friend, guardian, or conservator acting on the person's behalf. After a hearing panel has considered an application for executive clemency and has by majority vote favored a hearing, the hearing panel shall cause an investigation to be made of and base any recommendation it makes on:

(a) all the circumstances surrounding the crime for which the applicant was convicted;

(b) the applicant's criminal record; and

(c) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(d) If the hearing panel does not favor a hearing by majority vote, the hearing panel shall transmit the application to the governor. The governor shall review the application and determine whether a hearing is appropriate. If the governor determines that a hearing is appropriate, the governor shall transmit the application

to the hearing panel. The hearing panel shall cause an investigation to be made and base any recommendation it makes on the factors set forth in subsections (a) through (c).

(3) A hearing panel may recommend that clemency be granted or denied. ~~In noncapital cases, if the hearing panel recommends that clemency be denied, the application may not be forwarded to the governor and the governor may not take action on the case. In capital cases, the~~ The hearing panel shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the hearing panel, but the governor shall review the record of the hearing and the hearing panel's recommendation before granting or denying clemency. The governor has the final authority to grant or deny clemency. ~~in those cases forwarded to the governor. An appeal may not be taken from the governor's decision to grant or deny clemency."~~

{Internal References to 46-23-301: None.}

Section 2. Section 46-23-302 , MCA, is amended to read:

"46-23-302. Order for hearing on application for executive clemency. After a hearing panel has considered an application for executive clemency and has by majority vote favored a hearing or the governor has determined that a hearing is appropriate, ~~it~~ the hearing panel shall pass an order in substance as follows:

"Whereas, the Board of Pardons and Parole has officially received an application for executive clemency concerning, a

convict confined in the state prison (or concerning , who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of committed at , in the county of , State of Montana, on the day of , 20 , and sentenced for a term of years.

Therefore, it is ordered that , the day of , 20 , is set for the consideration of the executive clemency matter and all persons having an interest in the matter who desire to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture are notified to be present at o'clock of that day, at

Further, it is ordered that a copy of this order be printed and published in the (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at , in the county of , once each week for 2 weeks beginning , 20 , and ending "

{ Internal References to 46-23-302:

46-23-305 }

Section 3. Section 46-23-307 , MCA, is amended to read:

"46-23-307. Decision of board. Within 30 days after the hearing of ~~any capital a case or in noncapital cases where the decision is made to recommend clemency be granted,~~ the hearing panel must make a decision in writing, ~~and if such decision be made to recommend executive clemency, the~~ a copy of the decision together with all

papers used in each case shall be immediately transmitted to the governor."

{*Internal References to 46-23-307: None.*}

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