

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising parole criteria; and amending sections 46-23-201 and 46-23-202, MCA."

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

NEW SECTION. **Section 1. Nonmedical parole criteria -- information the board may consider.** (1)The board may release an eligible offender on nonmedical parole only when, in its opinion:

- (a) there is a reasonable probability that the offender can be released without detriment to the offender or to the community;
- (b) release is in the best interests of society;
- (c) the offender is able and willing to fulfill the obligation of a law-abiding citizen; and
- (d) the offender does not require continued correctional treatment or mental health therapy, vocational or other programs available in a correctional facility that will substantially enhance the offender's capability to lead a law-abiding life if released.

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

(3) 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 (3)(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.

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

(a) the offender's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the offender will conform the offender's behavior to the requirements of law;

(b) the adequacy of the offender's release plan;

(c) the offender's ability and readiness to assume obligations and undertake responsibilities;

(d) the offender's education and training;

(e) the offender's family status and whether the offender has relatives who display an interest or whether the offender has other close and constructive associations in the community;

(f) the offender's employment history, occupational skills, and the stability of the offender's past employment;

(g) the type of residence, neighborhood, or community in which

the offender plans to live;

(h) the offender's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;

(i) the offender's mental and physical makeup;

(j) the offender's prior criminal record, including the nature and circumstances of the offense, date of the offense, and frequency of previous offenses;

(k) the offender's attitude towards law and authority;

(l) the offender's conduct, employment, and attitude in the institution, including particularly whether the offender has taken advantage of opportunities for treatment and whether the offender is clear of major disciplinary violations prior to the hearing;

(m) the offender's behavior and attitude during any previous experience of supervision and the recency of the supervision;

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

(o) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the offender should be paroled.

(p) whether parole at this time would diminish the seriousness of the offense; and

(q) any and all other factors that the hearing panel determines

to be relevant.

(5) A victim's statement may be kept confidential.

Section 2. 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)~~(4) 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 criteria in [section 1], 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) 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) 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) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

~~(5) 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) 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)~~(5) 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:

46-23-217x 3/11 }

Section 3. Section 46-23-202 , MCA, is amended to read:

"46-23-202. Initial parole hearing ~~--- conduct of hearing.~~

Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the department shall make the prisoner available for a hearing before a hearing panel. The hearing panel shall consider all available and pertinent information regarding the prisoner, including:

~~—— (1) the circumstances of the offense;~~

~~—— (2) the prisoner's previous social history and criminal record;~~

~~—— (3) the prisoner's conduct, employment, and attitude in prison;~~

~~—— (4) the reports of any physical, psychological, and mental evaluations that have been made; and~~

~~—— (5) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the prisoner should be paroled. The victim's statement may be kept confidential the criteria in [section 1]."~~

{Internal References to 46-23-202:

Unofficial Draft Copy

As of: August 19, 2014 (11:16AM)

LC1j95

46-24-212 }

- END -

{Name : Rachel J. Weiss
Title : Research Analyst
Agency : Legislative Services Division
Phone : 406-444-5367
E-Mail : rweiss@mt.gov}

DRAFT