



AN ACT GENERALLY REVISING CRIMINAL JUSTICE SYSTEM LAWS RELATED TO OFFENDERS WITH MENTAL ILLNESS; REVISING REQUIREMENTS FOR PAROLE AND PROBATION OFFICERS AND MEMBERS OF THE BOARD OF PARDONS AND PAROLE; REVISING LAWS RELATED TO CONDITIONS OF RELEASE, BAIL, AND PAROLE OF OFFENDERS WITH MENTAL ILLNESS; REVISING THE DEFINITION OF "MENTAL DISEASE OR DEFECT"; AMENDING SECTIONS 2-15-2302, 46-9-108, 46-9-301, 46-14-101, 46-23-201, AND 46-23-1003, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-2302, MCA, is amended to read:

"2-15-2302. Board of pardons and parole -- composition -- allocation -- quasi-judicial. (1) There is a board of pardons and parole.

(2) (a) The board consists of seven members, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. One member must be an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board.

(b) Board members must have knowledge of serious mental illness and recovery from serious mental illness gained through annual training as required by rules adopted by the board. One member must be a mental health professional as defined in 53-21-102.

(c) Members of the board Board members must possess academic training that has qualified them for professional practice in a field such as criminology, education, medicine, psychiatry, psychology, law, social work, sociology, psychiatric nursing, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The governor shall attempt to establish geographic balance among board members.

(4) Board members shall serve staggered 4-year terms. The governor shall appoint three members in

January of the first year of the governor's term, two members in January of the second year of the governor's term, and two members in January of the third year of the governor's term. The provisions of 2-15-124(2) do not apply to the board.

(5) The terms of board members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

(8) A favorable vote of at least a majority of the seven members of the board is required to implement any policy, procedure, or administrative rule. A favorable vote of at least a majority of the members of a hearing panel, as defined in 46-23-103, is required to make decisions regarding parole and executive clemency, and the provisions of 2-15-124(8) do not apply."

Section 2. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, including in a case of partner or family member assault the restrictions

contained in a no contact order issued under 45-5-209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;

~~(j)~~(k) the defendant shall furnish bail in accordance with 46-9-401; or

~~(k)~~(l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 3. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases in which bail is determined to be necessary, bail must be reasonable in amount and the amount must be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to ensure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

- (4) not oppressive;
- (5) commensurate with the nature of the offense charged;
- (6) considerate of the financial ability of the accused;
- (7) considerate of the defendant's prior record;
- (8) considerate of the length of time the defendant has resided in the community and of the defendant's ties to the community;
- (9) considerate of the defendant's family relationships and ties;
- (10) considerate of the defendant's mental health status and of the defendant's participation in a mental health treatment program;
- ~~(10)~~(11) considerate of the defendant's employment status; and
- ~~(11)~~(12) sufficient to include the charge imposed in 46-18-236."

Section 4. Section 46-14-101, MCA, is amended to read:

"46-14-101. Mental disease or defect -- purpose -- definition. (1) The purpose of this section is to provide a legal standard of mental disease or defect under which the information gained from examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall apply this standard:

- (a) in any determination regarding:
 - (i) a defendant's fitness to proceed and stand trial;
 - (ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense; and
 - (b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of commission of the offense for which the defendant was convicted, the defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law.
- (2) (a) As used in this chapter, "mental disease or defect" means an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.

(b) The term "mental disease or defect" does not include but may co-occur with one or more of the

following:

- (i) an abnormality manifested only by repeated criminal or other antisocial behavior;
- (ii) a developmental disability, as defined in 53-20-102;
- (iii) drug or alcohol intoxication; or
- (iv) drug or alcohol addiction."

Section 5. 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) 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~~ 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.

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

Section 6. Section 46-23-1003, MCA, is amended to read:

"46-23-1003. Qualifications of probation and parole officers. (1) Probation and parole officers must have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2)(c) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees are exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness. In addition, each probation and parole officer must receive training in accordance with standards adopted by the Montana public safety officer standards and training council established in 2-15-2029. The training must be at the Montana law enforcement academy unless the council finds that training at some other place is more appropriate."

Section 7. Applicability. [Section 1] applies to appointments made on or after January 1, 2014.

- END -

I hereby certify that the within bill,
SB 0011, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 11
INTRODUCED BY M. CAFERRO

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