

SENATE BILL NO. 64

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF

6 PARDONS AND PAROLE; REVISING THE BOARD'S SIZE AND STRUCTURE; PROVIDING THAT THE

7 BOARD IS A FULL-TIME BOARD; REVISING THE QUALIFICATIONS AND COMPENSATION OF BOARD

8 MEMBERS; PROHIBITING A BOARD DESIGNEE FROM PERFORMING CERTAIN ACTS; REVISING THE

9 LENGTH OF TIME THE BOARD MAY ORDER A PRISONER TO SERVE BEFORE ANOTHER HEARING OR

10 REVIEW AFTER A PAROLE DENIAL; REVISING WHEN THE BOARD MAY ASSIGN CONDITIONS OF

11 PAROLE; REVISING THE BOARD'S RULEMAKING AUTHORITY; REQUIRING THE DEPARTMENT OF

12 CORRECTIONS AND THE BOARD TO COLLECT AND REPORT CERTAIN DATA; REVISING SUPERVISION

13 AND REVOCATION PROCEDURES; REQUIRING THE BOARD TO REVIEW CERTAIN ADMINISTRATIVE

14 RULES AND REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE; AMENDING SECTIONS

15 46-23-103, 46-23-104, 46-23-110, 46-23-201, 46-23-202, 46-23-208, 46-23-215, 46-23-218, 46-23-1001,

16 46-23-1003, 46-23-1021, 46-23-1023, 46-23-1024, AND 46-23-1025, MCA; REPEALING SECTION 2-15-2302,

17 MCA; PROVIDING A TRANSITION SCHEDULE; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY

18 DATE, AND A TERMINATION DATE."

19

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

21

22 NEW SECTION. **Section 1. Montana board of pardons and parole -- composition and**

23 **qualifications -- allocation -- quasi-judicial.** (1) There is a board of pardons and parole CONSISTING OF THREE

24 MEMBERS.

- 25 (2) Board members must possess at least one of the following qualifications:
- 26 (a) a college degree in criminology, corrections, or a related social science;
- 27 (b) at least 5 years of related work experience in corrections, the criminal justice system, or criminal law;
- 28 or
- 29 (c) a law degree.
- 30 (3) Consideration should be given to balancing members' expertise or knowledge of:

1 (a) American Indian culture;

2 (b) serious mental illness and recovery from serious mental illness; and

3 (c) victim awareness.

4 (4) Board members shall serve staggered 6-year terms. The terms of board members run with the
5 position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

6 (5) The governor shall designate the presiding officer, as provided in 2-15-124. The governor may
7 designate a different presiding officer at any time. If the governor designates a different presiding officer, the
8 former presiding officer still serves as a board member unless removed for cause pursuant to 2-15-124(6).

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

11 (7) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that [board
12 members must be compensated as provided in [section 2],] the terms of board members must be staggered as
13 provided in subsection (4), and the provisions of 2-15-124(1) do not apply to the board.

14 (8) A favorable vote of a majority of the members of the board is required to implement a policy,
15 procedure, or administrative rule. A favorable vote of the majority of the members of a hearing panel, as defined
16 in 46-23-103, is required to make decisions regarding parole and executive clemency.

17

18 **NEW SECTION. Section 2. Compensation of board members.** (1) Board members must be paid a
19 salary within the pay band, as defined in 2-18-101, determined by the department of administration as provided
20 in subsection (2). Board members must receive longevity, expense reimbursement, leave, insurance, and other
21 benefits provided to classified state employees under Title 2, chapter 18, and must receive pay adjustments
22 consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304.

23 (2) The department of administration shall determine the appropriate occupation and pay band for the
24 board members in the same manner that it determines the occupation and pay bands for employees in state
25 government pursuant to Title 2, chapter 18.

26 (3) The governor shall set the salary of the board members within the pay band established by the
27 department of administration.

28

29 **Section 3.** Section 46-23-103, MCA, is amended to read:

30 **"46-23-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions

1 apply:

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

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

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

6 (4) "Hearing panel" means a panel appointed by the presiding officer of the board and made up of two
7 or three board members or, if required by 46-23-104, a hearings officer ~~appointed~~ to conduct parole hearings,
8 revocation hearings, rescission hearings, and administrative parole reviews and to make recommendations in
9 matters of executive clemency.

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

13 (6) "Victim" means a victim as defined in 46-18-243."
14

15 **Section 4.** Section 46-23-104, MCA, is amended to read:

16 **"46-23-104. Board of pardons and parole.** (1) The board of pardons and parole is responsible for
17 executive clemency and parole as provided in this chapter.

18 (2) The board shall ~~meet monthly at a place determined by the board and at other~~ work full time and
19 meet in hearing panels at the times and places that the board considers necessary.

20 (3) The principal office of the board is in Deer Lodge.

21 (4) (a) The presiding officer of the board ~~or a designee in consultation with the members~~ shall appoint
22 hearing panels and their presiding officers to conduct hearings and to issue final decisions concerning parole and
23 recommendations concerning executive clemency and shall request out-of-state releasing authorities to conduct
24 hearings pursuant to Article IV(6) of the Western Interstate Corrections Compact. The presiding officer of the
25 board ~~or a designee~~ shall attempt to make hearing panel appointments in a manner that ensures equitable
26 distribution of workload among board members.

27 (b) If a hearing panel consisting of two members is unable to reach a unanimous decision, the presiding
28 officer of the board shall appoint a third member, who may be the presiding officer or a hearings officer
29 designated by the presiding officer to consider all pertinent information and render a final decision concerning
30 parole or a recommendation concerning executive clemency. A hearings officer may be appointed to a hearing

1 panel in the event of an absence of two of the three board members.

2 (c) The hearing panels have the full authority and power of the board to order the denial, grant, or
3 revocation of parole and to make recommendations in matters of executive clemency."

4

5 **Section 5.** Section 46-23-110, MCA, is amended to read:

6 **"46-23-110. (Temporary) Records -- dissemination.** (1) (a) The department and the board shall keep
7 a record of the board's acts and decisions. Citizens may inspect and make copies of the public records of the
8 board, as provided in 2-6-1003, 2-6-1006, 2-6-1007, and this section.

9 (b) The board shall video-record and audio-record ~~all meetings held pursuant to 46-23-104(2)~~ and all
10 hearings conducted under part 2 or part 3 of this chapter or 46-23-1025. A recording may not personally identify
11 the victim without the victim's written consent.

12 (c) Except as provided in subsection (2), the board shall make video recordings publicly available.

13 (2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure
14 under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information
15 in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

16 (3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board
17 staff member shall review the record requested and determine whether any document in the file or any content
18 in a video recording is subject to a personal privacy or safety interest that clearly exceeds the merits of public
19 disclosure.

20 (4) The board may assert the privacy or safety interest and may withhold a document or redact content
21 of a video recording if the board determines that the demand for individual privacy clearly exceeds the merits of
22 public disclosure or if the document's or recording's contents would compromise the safety, order, or security of
23 a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

24 (5) The board may not withhold from public scrutiny under subsections (2) through (4) any more
25 information than is required to protect an individual privacy interest or a safety interest.

26 (6) The board may charge a reasonable fee for copying and inspecting records.

27 (7) The board may limit the time and place that the records may be inspected or copied. (Terminates
28 June 30, 2019--sec. 2, Ch. 402, L. 2015.)

29 **46-23-110. (Effective July 1, 2019) Records -- dissemination.** (1) The department and the board shall
30 keep a record of the board's acts and decisions. Citizens may inspect and make copies of the public records of

1 the board, as provided in 2-6-1003, 2-6-1006, 2-6-1007, and this section.

2 (2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure
3 under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information
4 in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

5 (3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board
6 staff member shall review the file requested and determine whether any document in the file is subject to a
7 personal privacy or safety interest that clearly exceeds the merits of public disclosure.

8 (4) The board may assert the privacy or safety interest and may withhold a document if the board
9 determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the
10 document's contents would compromise the safety, order, or security of a facility or the safety of facility personnel,
11 a member of the public, or an inmate of the facility if disclosed.

12 (5) The board may not withhold from public scrutiny under subsections (2) through (4) any more
13 information than is required to protect an individual privacy interest or a safety interest.

14 (6) The board may charge a reasonable fee for copying and inspecting records.

15 (7) The board may limit the time and place that the records may be inspected or copied."
16

17 **Section 6.** Section 46-23-201, MCA, is amended to read:

18 **"46-23-201. Prisoners eligible for nonmedical parole ~~rulemaking~~.** (1) Subject to the restrictions
19 contained in subsections (2) through (4) and the parole criteria in 46-23-208, the board may release on
20 nonmedical parole by appropriate order any person who is:

21 (a) confined in a state prison;

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

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

24 (d) sentenced to be committed to the custody of the director of the department of public health and
25 human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental
26 center, or the Montana mental health nursing care center.

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

30 (3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has

1 served at least one-fourth of the prisoner's full term.

2 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served
3 30 years.

4 (5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years if the prisoner is
5 confined for a sexual or violent offense, as defined in 46-23-502, or up to 1 year if the prisoner is confined for any
6 other offense before a hearing panel conducts another hearing or review. ~~The board shall adopt by administrative~~
7 ~~rule a process by which a prisoner may request an earlier hearing or review."~~

8

9 **Section 7.** Section 46-23-202, MCA, is amended to read:

10 **"46-23-202. Initial parole hearing.** Within the 2 months prior to a prisoner's official parole eligibility date
11 or as soon after that date as possible, the department shall make the prisoner available for a hearing before a
12 hearing panel. The hearing panel shall consider ~~all available~~ the prisoner's score under the parole guidelines and
13 other case-specific and pertinent information regarding the prisoner, including the criteria in 46-23-208."

14

15 **Section 8.** Section 46-23-208, MCA, is amended to read:

16 **"46-23-208. Nonmedical parole criteria -- information board may consider.** (1) The board may
17 release an eligible prisoner on nonmedical parole only when:

18 (a) there is reasonable probability that the prisoner can be released without detriment to the prisoner or
19 to the community;

20 (b) release is in the best interests of society;

21 (c) the prisoner is able and willing to fulfill the obligations of a law-abiding citizen; and

22 (d) the prisoner does not require:

23 (i) continued correctional treatment that cannot be found in the community; or

24 (ii) other programs available only in a correctional facility that will substantially enhance the prisoner's
25 capability to lead a law-abiding life if released, including mental health therapy or vocational training.

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

27 (3) For a prisoner sentenced to be committed to the custody of the director of the department of public
28 health and human services as provided in 46-14-312:

29 (a) the board may require as a condition of parole participation in a supervised mental health treatment
30 program, if consistent with mental health services reentry recommendations by the department of corrections,

1 to ensure that the prisoner continues to treat the prisoner's mental disorder; and

2 (b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health
3 treatment program described in subsection (3)(a), in which case the prisoner must be recommitted to the custody
4 of the director of the department of public health and human services pursuant to 46-14-312.

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

7 (a) the circumstances of the offense;

8 (b) the prisoner's social history and prior criminal record, including the nature and circumstances of the
9 offense, date of offense, and frequency of previous offenses;

10 (c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the prisoner
11 has taken advantage of opportunities for treatment and whether the prisoner is clear of major disciplinary
12 violations prior to the hearing;

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

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

16 (f) the adequacy of the prisoner's release plan;

17 (g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;

18 (h) the prisoner's education and training;

19 (i) the prisoner's family status and whether the prisoner has relatives who display an interest or whether
20 the prisoner has other close and constructive associations in the community;

21 (j) the prisoner's employment history and occupational skills and the stability of the prisoner's past
22 employment;

23 (k) the type of residence, neighborhood, or community in which the prisoner plans to live;

24 (l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;

25 (m) the prisoner's mental ~~and physical makeup~~ health needs;

26 (n) the prisoner's attitude toward law and authority;

27 (o) the prisoner's behavior and attitude during any previous experience of supervision and the recency
28 of the supervision;

29 (p) written or oral statements from criminal justice authorities or any other interested person or the
30 interested person's legal representative, including written or oral statements from a victim regarding the effects

1 of the crime on the victim. A victim's statement may also include but is not limited to the circumstances
 2 surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the
 3 offender should be paroled.

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

5 (r) any and all other factors that the hearing panel determines to be relevant.

6 (5) A victim's statement may be kept confidential."
 7

8 **Section 9.** Section 46-23-215, MCA, is amended to read:

9 **"46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of the
 10 department but is subject to the orders of the board.

11 (2) (a) When a hearing panel issues an order for parole, the order must recite the conditions of parole.
 12 The hearing panel shall consider the parole guidelines governing conditions and the parole plan provided by the
 13 department before imposing conditions of parole to address the prisoner's criminogenic factors. If restitution was
 14 imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution
 15 to the victim. The prisoner may not be paroled until the prisoner provides a biological sample for purposes of Title
 16 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the prisoner was convicted
 17 of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense.

18 (b) The board may require the prisoner convicted of a sexual offense to refrain from direct or indirect
 19 contact with a victim of the crime or with an immediate family member of the victim. If a victim or an immediate
 20 family member requests that the prisoner not contact the victim or immediate family member, the board shall
 21 require the prisoner to refrain from contact with the victim or immediate family member. If the victim is a minor,
 22 a parent or guardian of the victim may make the request on the victim's behalf.

23 (c) An order for parole or any parole agreement signed by a prisoner may contain a clause waiving
 24 extradition.

25 (3) Whenever a hearing panel grants a parole to a prisoner on the condition that the prisoner obtain
 26 employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while
 27 incarcerated, the hearing panel or the presiding officer of the board ~~or a designee~~ may grant the prisoner a
 28 furlough, not to exceed two consecutive 10-day periods, for purposes of fulfilling the condition. While on furlough,
 29 the prisoner is not on parole and is subject to official detention as defined in 45-7-306. The prisoner remains in
 30 the legal custody of the department and is subject to all other conditions ordered by the hearing panel or the

1 presiding officer of the board ~~or a designee.~~

2 (4) For the purposes of this section, "sexual offense" and "violent offense" have the meanings provided
3 in 46-23-502."

4

5 **Section 10.** Section 46-23-218, MCA, is amended to read:

6 **"46-23-218. Authority of board to adopt rules -- purpose for training -- data collection.** (1) The
7 board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for
8 parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference
9 administrative reviews, progress reviews, clemency proceedings, the conditions to be imposed upon parolees,
10 the training of board members regarding American Indian culture and problems, and other matters pertinent to
11 service on the board.

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

16 (3) In consultation with the department, the board shall adopt rules to establish:

17 (a) parole guidelines to structure and guide parole release decisions and the imposition of release
18 conditions. The guidelines must include, in decreasing order of importance, the prisoner's:

19 (i) risk and needs levels, as determined by a validated risk and needs assessment;

20 (ii) participation in risk-reducing programs and treatment;

21 (iii) institutional behavior as reflected by disciplinary records; and

22 (iv) offense severity.

23 (b) a process by which a prisoner who has been denied parole and has more than 1 year before a
24 scheduled hearing or review may request an earlier hearing or review; and

25 (c) criteria for consideration of conditional discharges, which must include supervision compliance,
26 residential stability, employment stability, engagement in treatment, and other factors indicative of adequate
27 reentry stability.

28 (4) The board and the department shall compile data to validate the parole guidelines after gathering
29 recidivism results for the last 3 years and every 5 years thereafter. The board may adopt rules to govern the
30 transition to use of parole guidelines. The data collection must start by April 2018.

1 (5) The board shall annually assess and prioritize inservice training needs and arrange for training to
 2 strengthen knowledge and skills needed for case assessment, interviewing, and parole decisionmaking. Board
 3 members, parole analysts, and the hearings officers shall attend the training, as well as other board and
 4 department staff as needed."

5

6 **Section 11.** Section 46-23-1001, MCA, is amended to read:

7 **"46-23-1001. Definitions.** As used in this part, unless the context requires otherwise, the following
 8 definitions apply:

9 (1) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to
 10 a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts
 11 by the probation and parole officer to locate the offender have been unsuccessful.

12 ~~(1)~~(2) "Board" means the board of pardons and parole provided for in 2-15-2302 [section 1].

13 (3) "Compliance violation" means a violation of the conditions of supervision that is not:

14 (a) a new criminal offense;

15 (b) possession of a firearm in violation of a condition of probation or parole;

16 (c) behavior by the offender or any person acting at the offender's direction that could be considered
 17 stalking, harassing, or threatening the victim of an offense or a member of the victim's immediate family or support
 18 network; ~~or~~

19 (d) absconding; OR

20 (E) FAILURE TO ENROLL IN OR COMPLETE A REQUIRED SEX OFFENDER TREATMENT PROGRAM OR A TREATMENT
 21 PROGRAM DESIGNED TO TREAT VIOLENT OFFENDERS.

22 ~~(2)~~(4) "Department" means the department of corrections provided for in 2-15-2301.

23 ~~(3)~~(5) "Parole" means the release to the community of a prisoner by the decision of the board prior to
 24 the expiration of the prisoner's term, subject to conditions imposed by the board and subject to supervision of the
 25 department.

26 ~~(4)~~(6) "Probation" means the release by the court without imprisonment, except as otherwise provided
 27 by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and
 28 subject to the supervision of the department upon direction of the court."

29

30 **Section 12.** Section 46-23-1003, MCA, is amended to read:

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

7 (b) Work experience that may be substituted for the educational requirements in subsection (1)(a)
8 includes experience in the areas of criminology, education, medicine, psychiatry, psychology, law, LAW
9 ENFORCEMENT, social work, sociology, psychiatric nursing, or guidance and counseling.

10 (2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain
11 16 hours a year of training in subjects relating to the powers and duties of probation officers, at least 1 hour of
12 which must include training on serious mental illness and recovery from serious mental illness. In addition, each
13 probation and parole officer must receive training in accordance with standards adopted by the Montana public
14 safety officer standards and training council established in 2-15-2029. The training must be at the Montana law
15 enforcement academy unless the council finds that training at some other place is more appropriate."
16

17 **Section 13.** Section 46-23-1021, MCA, is amended to read:

18 **"46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed on
19 parole and shall supervise the persons during their parole periods in accordance with the conditions set by the
20 board.

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

24 (3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the
25 parolee's probation and parole officer, who shall report on the parolee's progress under the rules of the board.

26 (4) The probation and parole officer shall regularly advise and consult with the parolee, use effective
27 communication strategies and other behavioral change techniques, assist the parolee in adjusting to community
28 life, and inform the parolee of the restoration of rights on successful completion of the sentence.

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

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

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

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

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

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

13 ~~(f) If the department certifies to the board that the workload of a district probation and parole office has
14 exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner
15 to that district office unless it grants a conditional discharge to a parolee being supervised by that district office.
16 The department may recommend parolees to the board for conditional discharge. The board may accept or reject
17 the recommendations of the department. The department shall determine the optimum workload for each district
18 probation and parole office."~~

19
20 **Section 14.** Section 46-23-1023, MCA, is amended to read:

21 **"46-23-1023. Arrest of alleged parole violator.** (1) At any time during release on parole or conditional
22 release, the department may issue a warrant for the arrest of the parolee for violation of any of the conditions of
23 release or a notice to appear to answer to a charge of violation. The notice must be served personally upon the
24 parolee. The warrant must authorize all officers named in the warrant to return the parolee to the actual custody
25 of the penal institution from which the parolee was released or to any other suitable detention facility designated
26 by the department.

27 (2) Any probation and parole officer may arrest the parolee without a warrant or may deputize any other
28 officer with power to arrest to do so by giving the officer oral authorization and within 12 hours delivering to the
29 place of detention a written statement setting forth that the parolee has, in the judgment of the probation and
30 parole officer, violated the conditions of the parolee's release. A written statement or oral authorization delivered

1 with the parolee by the arresting officer to the official in charge of the institution from which the parolee was
 2 released or other place of detention is sufficient warrant for the detention of the parolee or conditional releasee
 3 if the probation and parole officer delivers a written statement within 12 hours of the arrest. The probation and
 4 parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the
 5 circumstances of violation.

6 (3) Pending a hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the
 7 parolee may, if circumstances warrant, be incarcerated in the institution.

8 (4) A probation and parole officer may authorize a detention center to hold a parolee arrested under this
 9 section without bail for 72 hours. Within 72 hours following the parolee's detention, the probation and parole
 10 officer shall:

11 (a) authorize the detention center to release the parolee;

12 (b) initiate an intervention hearing; or

13 (c) initiate the revocation process with an initial hearing."

14

15 **Section 15.** Section 46-23-1024, MCA, is amended to read:

16 **"46-23-1024. Initial hearing after arrest.** (1) After the arrest of the parolee, ~~a~~ an initial hearing must be
 17 held ~~within a reasonable time~~, unless:

18 (a) the hearing is waived by the parolee; ~~or~~

19 (b) the parolee has been charged in any court with a violation of the law; or

20 (c) the probation and parole officer authorizes release or initiates an intervention hearing under
 21 subsection (4).

22 (2) The initial hearing is an onsite hearing but may be conducted via interactive videoconference and
 23 must be held to determine whether there is probable cause or reasonable grounds to believe that the arrested
 24 parolee has committed acts that would constitute a violation of parole conditions. An independent officer, who
 25 need not be a judicial officer, shall preside over the hearing. The hearing must be conducted at or reasonably
 26 near the place of the alleged parole violation or arrest and ~~as promptly as convenient~~ within 5 days after arrest.
 27 The parolee must be given notice of the hearing and must be allowed to appear and speak in the parolee's own
 28 behalf and introduce relevant information to the hearings officer.

29 (3) The hearings officer shall make a summary of what transpires at the hearing in terms of the
 30 responses and position of the parolee and the substance of the documents or evidence given in support of parole

1 revocation. Based on the information given to the hearings officer, the hearings officer shall determine whether
 2 there is probable cause and then determine whether to initiate an informal violation intervention hearing or to hold
 3 the parolee for the final decision of the board of pardons and parole as provided in 46-23-1025.

4 (4) (a) In lieu of an initial hearing, a probation and parole officer who reasonably believes that a parolee
 5 has violated a condition of parole:

6 (i) shall consult the department's incentives and interventions grid to determine an appropriate response;

7 and

8 (ii) may initiate an informal violation intervention hearing to gain the parolee's compliance with the
 9 conditions of parole without a formal revocation hearing.

10 (b) A hearings officer designated by the department shall conduct the intervention hearing. The hearing
 11 may be conducted by interactive videoconference.

12 (c) If the hearings officer determines by a preponderance of the evidence that a parolee has violated a
 13 condition of parole, the hearings officer shall consult the department's incentives and interventions grid and
 14 determine an appropriate response, including whether to:

15 (i) order the parolee to serve or receive credit for serving up to 30 days of detention;

16 (ii) recommend confinement, electronic monitoring, or day reporting for up to a 90-day period; or

17 (iii) direct the probation and parole officer to initiate a petition for revocation under 46-23-1025 if the
 18 violation is not a compliance violation or if it is a compliance violation and the appropriate responses under the
 19 department's incentives and interventions grid have been exhausted.

20 (5) If the hearings officer recommends a response under subsection (4)(c)(ii), the officer shall notify the
 21 parolee of the recommendation and of the parolee's right to instead have the matter referred for a revocation
 22 hearing under 46-23-1025.

23 (6) The provisions of Title 46, chapter 9, regarding release on bail of a person charged with a crime are
 24 not applicable to a parolee ordered to be held in a county detention center or other facility under this section."

25

26 **Section 16.** Section 46-23-1025, MCA, is amended to read:

27 **"46-23-1025. Report to and action by board.** (1) If the hearings officer determines that there is
 28 probable cause to believe that the prisoner has violated a condition of parole and directs the probation and parole
 29 officer to initiate a petition for revocation, the probation and parole officer shall immediately notify the board and
 30 shall submit in writing a report showing in what manner the prisoner has violated the conditions of release and

1 describe the exhaustion of appropriate violation responses according to the department's incentives and
 2 interventions grid. This report must be accompanied by the findings of the hearings officer.

3 (2) Upon receipt of a report, the board shall cause the prisoner to be promptly brought before a hearing
 4 panel for a hearing on the violation charged under rules that the board may adopt. The hearing may be conducted
 5 via interactive videoconference. If the violation is established; and the hearing panel finds that the violation is a
 6 compliance violation and that appropriate violation responses under the department's incentives and interventions
 7 grid have not been exhausted, the panel shall notify the department and refer the matter back to the hearings
 8 officer. If the violation is established and the hearing panel finds that the violation is a compliance violation and
 9 that appropriate violation responses under the department's incentives and interventions grid have been
 10 exhausted, the hearing panel may:

11 (a) continue or revoke the parole without a change in conditions; or

12 (b) continue the parole with modified or additional terms and conditions, which may include imprisonment
 13 in a secure facility for up to 9 months.

14 (3) If the hearing panel finds that the violation is not a compliance violation, the panel may:

15 (a) continue the parole without a change in conditions;

16 (b) continue the parole with modified or additional terms and conditions, which may include imprisonment
 17 in a facility for up to 9 months; or

18 (c) revoke the parole or may enter an order as it the hearing panel sees fit.

19 ~~(3)~~(4) If the prisoner has violated a condition of release requiring the payment of restitution, the
 20 supervising parole officer shall notify the victim of the offense prior to the hearing required by 46-23-1024 and
 21 give the victim an opportunity to provide written or oral comment.

22 ~~(4)~~(5) If the hearing panel finds that because of circumstances beyond the prisoner's control the prisoner
 23 is unable to make the required restitution payments, the hearing panel may not revoke the prisoner's parole for
 24 failure to pay restitution. The hearing panel may modify the time or method of making restitution and may extend
 25 the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the
 26 prisoner.

27 ~~(5)~~(6) If the hearing panel determines that the prisoner has violated the provisions of release, the hearing
 28 panel shall determine the amount of time, if any, that will be counted as time served while the prisoner was in
 29 violation of the provisions of release."
 30

1 **NEW SECTION. Section 17. Board to review administrative rules -- report.** (1) The board shall
2 review its administrative rules that were adopted prior to [the effective date of this section], as required in 2-4-314.

3 (2) The board shall update the law and justice interim committee during the 2017-2018 interim at times
4 requested by the committee. The update must include the progress and results of the review and other
5 information requested by the committee.

6 (3) The law and justice interim committee may recommend to the 66th legislature those modifications,
7 additions, or deletions of the board's rulemaking authority that the committee considers necessary.

8
9 **NEW SECTION. Section 18. Repealer.** The following section of the Montana Code Annotated is
10 repealed:

11 2-15-2302. Board of pardons and parole -- composition -- allocation -- quasi-judicial.

12
13 **NEW SECTION. Section 19. Transition.** (1) The seven-member board of pardons and parole,
14 established in 2-15-2302, must become the three-member board of pardons and parole, established in [section
15 1], on [the effective date of this section].

16 (2) Within 30 days of [the effective date of this section], the governor shall appoint three full-time board
17 members who fulfill the requirements of [section 1] and according to the following schedule:

18 (a) one member who shall serve a term that ends on the first day of January 2023 and until the member's
19 successor is appointed;

20 (b) one member who shall serve a term that ends on the first day of January 2021 and until the member's
21 successor is appointed; and

22 (c) one member who shall serve a term that ends on the first day of January 2019 and until the member's
23 successor is appointed.

24 (3) The governor may appoint an individual who previously served as a board member before [the
25 effective date of this section] to a term provided for in subsection (3) or (5).

26 (4) After the expiration of a term provided for in subsection (3), the governor shall appoint a person to
27 serve a full 6-year term as provided in [section 1]. A member who previously served an abbreviated term may be
28 reappointed for a full 6-year term.

29
30 **NEW SECTION. Section 20. Codification instruction.** (1) [Section 1] is intended to be codified as an

1 integral part of Title 2, chapter 15, part 23, and the provisions of Title 2, chapter 15, part 23, apply to [section 1].

2 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 1, and the
3 provisions of Title 46, chapter 23, part 1, apply to [section 2].

4

5 **NEW SECTION. Section 21. Effective dates.** (1) Except as provided in subsection (2), [this act] is
6 effective January 1, 2018.

7 (2) [Sections 10 and 17 and this section] are effective on passage and approval.

8

9 **NEW SECTION. Section 22. Applicability.** [This act] applies to hearings conducted under Title 46,
10 chapter 23, parts 2 or 3, and parole supervision and revocation hearings conducted under Title 46, chapter 23,
11 part 10, on or after [the effective date of this section].

12

13 **NEW SECTION. Section 23. Termination.** [Section 2] and the bracketed language in [section 1]
14 terminate June 30, 2019.

15

- END -