

1 HOUSE BILL NO. 583

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3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL JUSTICE LAWS; ALLOWING

5 AN INCARCERATED ~~INDIVIDUAL~~ PERSON TO EARN EDUCATION CREDITS, ~~OR~~ WORK CREDITS, ~~OR~~

6 SELF-IMPROVEMENT CREDITS THAT REDUCE THE TIME BEFORE THE ~~INDIVIDUAL~~ PERSON MAY BE

7 CONSIDERED FOR PAROLE; ~~ALLOWING AN INDIVIDUAL WHO IS ON PROBATION OR PAROLE~~

8 ~~SUPERVISION TO EARN BEHAVIORAL CREDITS THAT REDUCE THE TIME SERVED UNDER~~

9 ~~SUPERVISION~~; PROVIDING FOR CALCULATION AND DOCUMENTATION OF THE CREDITS; REQUIRING

10 THE DEPARTMENT OF CORRECTIONS TO SCREEN ~~INMATES INCARCERATED PERSONS~~ FOR

11 EDUCATION LEVEL; REQUIRING THE DEPARTMENT OF CORRECTIONS TO PROVIDE CERTAIN

12 EDUCATIONAL SERVICES IN PRISONS ~~AND CERTAIN HOLDING FACILITIES, INCLUDING DETENTION~~

13 ~~CENTERS~~; ALLOWING A CORRECTIONAL OFFICER TO PARTICIPATE IN EDUCATION CLASSES;

14 REQUIRING THE DEPARTMENT OF CORRECTIONS TO COMPILE A LIST OF CERTAIN SELF-

15 IMPROVEMENT PROGRAMS; ALLOWING CERTAIN ~~INDIVIDUALS INCARCERATED PERSONS~~ TO EARN

16 SELF-IMPROVEMENT CREDITS FOR PARTICIPATION IN SELF-IMPROVEMENT PROGRAMS;

17 PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-102 AND ~~46-23-216~~ 46-23-203,

18 MCA; AND PROVIDING AN A DELAYED EFFECTIVE DATE."

19

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

21

22 NEW SECTION. Section 1. Definitions. As used in [sections 1 through ~~76~~], the following definitions

23 apply:

24 ~~(1) "Behavioral credit" means a credit earned by a returning citizen as provided in [section 4].~~

25 ~~(2)~~(1) "Compliance violation" has the meaning provided in 46-18-203.

26 ~~(3)~~(2) "Department" means the department of corrections established in 2-15-2301.

27 ~~(4)~~(3) "Detention center" has the meaning provided in 7-32-2241.

28 ~~(5)~~(4) "Education credit" means a credit earned by ~~a returning citizen~~ an incarcerated person who

1 completes educational programs as provided in [section 3].

2 ~~(6) "Returning citizen" means an individual sentenced for a criminal offense and whose sentence~~
3 ~~includes a period of incarceration, probation, parole, or any combination of incarceration, probation, or parole.~~

4 ~~(7)(5)~~ "Self-improvement credit" means a credit earned as provided in [section ~~76~~].

5 ~~(8)(6)~~ "State prison" includes the prisons listed in 53-30-101(3), ~~a prerelease facility, and a contracted~~
6 ~~or holding facility or detention center that holds state inmates for 4 or more months.~~

7 ~~(9)(7)~~ "Work credit" means a credit earned as provided in [section 3].

8
9 **NEW SECTION. Section 2. Credit calculations.** ~~(1)~~ The department shall calculate ~~a returning~~
10 ~~citizen's an incarcerated person's~~ education credits, work credits, ~~behavioral credits,~~ and self-improvement
11 credits quarterly and notify the ~~returning citizen incarcerated person~~ of the total credits the ~~returning citizen~~
12 ~~incarcerated person~~ has earned. The department shall provide the ~~returning citizen incarcerated person~~ with
13 ~~two copies a copy~~ of the most recent calculation. The calculation must include the date of parole eligibility ~~or the~~
14 ~~expiration date of the returning citizen's sentence based on the assumption that all possible education credits,~~
15 ~~work credits, behavioral credits, and self-improvement credits are awarded. The calculation form must include a~~
16 ~~notice that the date is tentative and subject to change if the returning citizen fails to accrue education credits,~~
17 ~~work credits, behavioral credits, or self-improvement credits at the assumed rate.~~

18 ~~(2) The returning citizen shall sign and return to the department one copy of calculation to~~
19 ~~acknowledge receipt, and the department shall retain that copy in its files. The returning citizen may keep the~~
20 ~~second copy.~~

21
22 **NEW SECTION. Section 3. Education credits -- work credits -- rulemaking.** (1) (a) To ensure that
23 ~~a returning citizen a person incarcerated in a state prison~~ has an opportunity to earn education credits, the
24 department of corrections shall facilitate education programs in all state prisons as follows:

25 (b) within ~~45~~ 21 days of ~~a returning citizen's an incarcerated person's~~ entry into a state prison, the
26 department shall determine the level of education attained by the ~~returning citizen incarcerated person~~;

27 (c) within 30 days of the screening required in subsection (1)(b), the department shall offer each
28 ~~returning citizen incarcerated person~~ the opportunity to enroll in education classes, including vocational

1 programs, apprenticeships, internships, and accredited educational programs leading to a certificate or degree;
2 and

3 (d) within 180 days of ~~a returning citizen's request~~ an incarcerated person's screening, the
4 department shall ensure the ~~returning citizen person~~ starts classes.

5 (2) ~~Returning citizens~~ A person who ~~are is~~ incarcerated on [the effective date of this act] must have 6
6 months of clear conduct to enroll in an education class.

7 (3) ~~Education~~ Except as provided in subsection (6), education credits accrue at the following rates for
8 education levels attained while the ~~returning citizen person~~ is incarcerated in a state prison and as long as the
9 ~~returning citizen incarcerated person~~ maintains a C average:

10 (a) for achieving ~~6th up to a~~ 7th grade education proficiency, 60 days credit;

11 (b) for achieving 8th grade education proficiency, 60 days credit;

12 (c) for receiving a high school equivalency diploma, 180 days credit;

13 (d) for receiving a 2-year associate's degree, credits equal to ~~one-quarter one-fifth~~ of the ~~returning~~
14 ~~citizen's person's~~ sentence;

15 (e) for completing a 1-year vocational education program, credits equal to ~~one-fifth one-sixth~~ of the
16 ~~returning citizen's person's~~ sentence;

17 (f) for completing a 2-year vocational education program, credits equal to one-fifth of the person's
18 sentence;

19 ~~(f)(g)~~ for receiving 3 years of college credit, credits equal to ~~one-third one-quarter~~ of the ~~returning~~
20 ~~citizen's person's~~ sentence; and

21 ~~(g)(h)~~ for receiving a 4-year ~~graduate undergraduate~~ degree, credits equal to ~~one-half one-third~~ of the
22 ~~returning citizen's person's~~ sentence.

23 (4) For every 10 days of work performed in a job while incarcerated, a ~~returning citizen person~~ earns
24 ~~3 days~~ 2 days of work credit.

25 (5) The department may adopt administrative rules to award an incarcerated person education credits
26 for completing individual education classes.

27 ~~(5)(6)~~ Education credits and work credits earned under this section are for the purposes of calculating
28 ~~a returning citizen's an incarcerated person's~~ date of eligibility for parole consideration.

1 ~~(6)(7)~~ Education credits may not be awarded for education received prior to incarceration. Education
2 credits may not be awarded for education taken to complete a degree that the incarcerated person started prior
3 to incarceration.

4 ~~(7)(8)~~ Any ~~individual person~~ incarcerated in a state prison must have an equal opportunity to enroll in
5 educational classes and may not be denied except as provided in [section ~~54~~].

6 ~~(8)(9)~~ The department may not revoke ~~a returning citizen's an incarcerated person's~~ education credits
7 or work credits after the credits are earned.

8 ~~(9)(10)~~ ~~A returning citizen~~An incarcerated person who commits a ~~disciplinary major rule~~ infraction
9 within an educational program may, at the request of the teacher and only after the state prison staff applies
10 progressive discipline procedures, be denied access to educational programs for no more than 1 year.

11 ~~(11)~~ If an incarcerated person who is enrolled in a college class is transferred to a different state
12 prison or to a prerelease or treatment center, the department shall give the person an opportunity to complete
13 the class by computer, if the class is offered by computer, by correspondence, or any other means possible.

14
15 ~~NEW SECTION. Section 4. Behavioral credits -- types. (1) (a) A returning citizen who is on parole~~
16 ~~and who is on time for a scheduled appointment, tests clean on a urinalysis, and abides by the conditions of~~
17 ~~parole is eligible for behavioral credits. For each 30 days that a returning citizen who is on parole meets the~~
18 ~~behavioral requirements, 30 days must be removed from the remaining time the returning citizen shall serve on~~
19 ~~parole.~~

20 ~~(b) Behavioral credits may not accrue to a returning citizen who is on parole during a calendar month~~
21 ~~in which a violation of parole has been reported to the board of pardons and parole as provided in 46-23-1025.~~
22 ~~If the board or its hearing panel determines that the violation is a compliance violation or, if the violation is not a~~
23 ~~compliance violation but the board or its hearing panel chooses to continue the returning citizen's parole without~~
24 ~~any changes in conditions, the returning citizen must be awarded the behavioral credits that were suspended~~
25 ~~during the parole violation decisionmaking process. If the board or the hearing panel determines the violation is~~
26 ~~not a compliance violation and modifies the terms of parole or revokes parole, the returning citizen may not be~~
27 ~~awarded behavioral credits for the time in which the violation was pending.~~

28 ~~(2) (a) A returning citizen who is on probation and who is on time for a scheduled appointment, tests~~

1 ~~clean on a urinalysis, and abides by the conditions of probation is eligible for behavioral credits. For each 30~~
2 ~~days that a returning citizen who is on probation meets the behavioral requirements, 30 days must be removed~~
3 ~~from the remaining time the returning citizen shall serve on probation.~~

4 ~~(b) Behavioral credits may not accrue to a returning citizen who is on probation during a calendar~~
5 ~~month in which a probation violation is alleged. If a court determines that the violation is a compliance violation~~
6 ~~or, if the violation is not a compliance violation but the court chooses to continue the returning citizen's~~
7 ~~probation without any changes in conditions, the returning citizen must be awarded the behavioral credits that~~
8 ~~were suspended during the probation violation decisionmaking process. If the court determines the violation is~~
9 ~~not a compliance violation and modifies the terms of probation or revokes the returning citizen's probation, the~~
10 ~~returning citizen may not be awarded behavioral credits for the time in which the violation was pending.~~

11 ~~(3) The department may not revoke a returning citizen's behavioral credits after the credits are~~
12 ~~earned.~~

13
14 **NEW SECTION. Section 4. Exceptions.** The following types of ~~returning citizens incarcerated~~
15 ~~people~~ may take all educational classes but may not earn education credits, work credits, ~~behavioral credits,~~ or
16 self-improvement credits:

17 (1) A person whose sentence includes incarceration for a sexual offense as defined in 46-23-502 and
18 who was designated by a judge as a level 3 sexually violent predator as provided in 46-23-509 may not receive
19 education credits, work credits, ~~behavioral credits,~~ or self-improvement credits until the ~~offender person~~ is
20 reassigned to a risk level lower than level 3.

21 (2) A person who is determined by the department's risk assessment tool to be a high-risk offender
22 may not receive education credits or work credits until all assigned treatment programs are completed or the
23 person is reassessed at a lower risk level.

24 (3) A person sentenced to death or to life without the possibility of parole may not receive education
25 credits or work credits.

26
27 **NEW SECTION. Section 5. Educational attainment by correctional officer.** A correctional officer
28 who has been employed for 1 year may participate in an educational program if offered by the facility in which

1 the officer works. Nothing in this section may be construed to give the correctional officer a contract right to an
2 educational program.

3
4 NEW SECTION. Section 6. Self-improvement programs -- credits. (1) The department of
5 corrections shall provide a list of self-improvement programs that are offered by public, private, and faith-based
6 organizations.

7 (2) ~~A returning citizen under supervision by the department of corrections as provided in 46-23-1011~~
8 ~~or 46-23-1021 An incarcerated person~~ may earn credits for voluntarily completing the programs on the list. For
9 each completed program, ~~a returning citizen an incarcerated person~~ will earn ~~60 days of self-improvement~~
10 ~~credit self-improvement credits equal to one-sixth of the number of days of the completed program. The credits~~
11 ~~must be to be~~ used for the purposes of calculating ~~a returning citizen's an incarcerated person's~~ date of
12 eligibility for parole, ~~release date, or sentence expiration date.~~

13
14 **Section 7.** Section 46-18-102, MCA, is amended to read:

15 **"46-18-102. Rendering judgment and pronouncing sentence -- use of two-way electronic audio-**
16 **video communication.** (1) The judgment must be rendered in open court. For purposes of this section, a
17 judgment rendered through the use of two-way electronic audio-video communication, allowing all of the
18 participants to be heard in the courtroom by all present and allowing the party speaking to be seen, is
19 considered to be a judgment rendered in open court. Audio-video communication may be used if neither party
20 objects and the court agrees to its use and has informed the defendant that the defendant has the right to
21 object to its use. The audio-video communication must operate as provided in 46-12-201.

22 (2) If the verdict or finding is not guilty, judgment must be rendered immediately and the defendant
23 must be discharged from custody or from the obligation of a bail bond.

24 (3) (a) Except as provided in 46-18-301, if the verdict or finding is guilty, sentence must be
25 pronounced and judgment rendered within a reasonable time.

26 (b) When the sentence is pronounced, the judge shall clearly state for the record the reasons for
27 imposing the sentence and notify the defendant of the education credits, work credits, behavioral credits, and
28 self-improvement credits awarded pursuant to [sections 1 through 76] that may shorten the defendant's term of

1 ~~imprisonment or supervision on probation or parole.~~"

2

3 **Section 8.** Section 46-23-201, MCA, is amended to read:

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

- 7 (a) confined in a state prison;
- 8 (b) sentenced to the state prison and confined in a prerelease center;
- 9 (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;
- 10 (d) sentenced to be committed to the custody of the director of the department of public health and
11 human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana
12 developmental center, or the Montana mental health nursing care center.

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

16 (3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has
17 served at least one-fourth of the prisoner's full term minus education credits or work credits earned pursuant to
18 [section 3] or self-improvement credits earned pursuant to [section 6].

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

21 (5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years if the prisoner is
22 confined for a sexual or violent offense, as defined in 46-23-502, or up to 1 year if the prisoner is confined for
23 any other offense before a hearing panel conducts another hearing or review."

24

25 ~~**Section 9.** Section 46-23-216, MCA, is amended to read:~~

26 ~~**"46-23-216. Duration of parole.** (1) A prisoner on parole is considered released on parole until the~~
27 ~~expiration of the maximum term or terms for which the prisoner was sentenced less the education credits, work~~
28 ~~credits, behavioral credits, and self-improvement credits awarded pursuant to [sections 2 through 7].~~

