

SJ 3: Study the Board of Pardons and Parole

Considerations for modifying the current MAPA exclusion

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Background

At the December 2013 meeting the Law and Justice Interim Committee (LJIC) requested information about the possibility of removing the current MAPA exemption for the Board of Pardons and Parole (BOPP). Listed below are several considerations the LJIC may want to discuss when considering whether to request a bill remove some or all of the current MAPA exemption and when considering the content of the bill request.

Bill Draft Considerations:

Current status: The BOPP is currently exempt from MAPA, however-- it is subject to the requirements of 2-4-103 Rules and statements to be made available to public, 2-4-201 Rules describing agency organization and procedures, 2-4-202 Model Rules, and 2-4-306 Filing and format -- adoption and effective dates -- dissemination of emergency rules, and its rules must be published in the ARM and register.

Generally speaking the BOPP must comply with the MAPA requirements dealing with the format of rules and the availability of rules to the public but not with the standards for review contained in 2-4-305. Also exempted are the provisions of part 6 of MAPA dealing with contested cases and Part 7 which addresses judicial review of contested cases.

Basis of current status: When MAPA was passed by a Special Session of the Montana Legislature in 1971 the Legislature utilized a study by John P. McCrory who was a contractor hired by the Legislative Council to study and present a proposal for a Montana Administrative Procedure Act.

Mr. McCrory recommended exempting the BOPP from MAPA because of the broad grants of discretion given to the BOPP to grant or deny parole. Montana Administrative Procedures Study, Report of Study on Montana Administrative Procedures and Proposal for a Montana Administrative Procedure Act, McCrory, p. 103-104 (1970).

In addition the BOPP is also exempted from the contested case and judicial review procedures related to its decisions found in part 6 and 7 of MAPA.

Bill Drafting Concerns: The easiest bill to draft would be to simply remove the exemption found in 2-4-102(2)(a)(i). However, this would potentially open up the board to the contested case and judicial review procedures found in part 6 and 7 of MAPA if a parole hearing meets the definition of a "contested case".

The definition of contested case is found in 2-4-102(4): "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

One issue is simply the volume of contested cases that could be filed if paroles hearings are considered to be contested cases and parts 6 and 7 apply to the BOPP. The bill could be drafted to exempt parts 6 and 7 or to remove the current exemption completely. The LJIC would need to provide guidance on this issue.