

# **Board of Pardons and Parole**

## *Background Paper: Board Structure, Duties, and Operations*

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for the Commission on Sentencing  
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### Background

#### *Board Structure, Composition, and Staff*

The Board of Pardons and Parole (Board) is a seven-member board established in section 2-15-2302, MCA. It is responsible for making recommendations on applications for executive clemency and final decisions to deny, grant, or revoke parole. The statutes governing the Board's composition and duties and authorizing its powers are generally contained in Title 46, chapter 23, MCA.

Although the Board has broad rulemaking authority, legislation in the 2015 legislative session removed a previous exemption for the Board from most provisions of the Montana Administrative Procedure Act (MAPA), which governs how and when state executive agencies can adopt administrative rules. The Board retains an exemption from the contested case and judicial review of contested case provisions of MAPA.

The Board is administratively attached to the Department of Corrections (Department) but is an independent, quasi-judicial board, and the Department does not have control over Board policies or oversight of its decisions. Members are reimbursed \$75 for each day they perform Board duties.

Members are appointed by the Governor to serve staggered 4-year terms. The terms are staggered in such a way that the Governor appoints three members in the first year of the Governor's term, two in the second year, and two in the third year. One member of the Board must be an enrolled member of an Indian tribe that is located in Montana and is recognized by the state or federal government. At least one member must be a mental health professional, as that term is defined in section 53-21-102, MCA.<sup>1</sup> As a quasi-judicial board, the Board must include one member who is an attorney licensed to practice law in Montana.

All members must have knowledge of:

- American Indian culture and problems; and
- serious mental illness and recovery from mental illness.

Training in both topic areas is required and governed by rules adopted by the Board. Board members are also required by law to have academic training or related work

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<sup>1</sup>Laws 2013, Chapter 209. (Senate Bill No. 11. Short title: Generally revise criminal justice system laws related to mental illnesses.)

experience in at least one of the following fields: criminology, education, medicine, psychiatry, psychology, law, social work, sociology, psychiatric nursing, or guidance and counseling.

Section 2-15-2302, MCA, requires a majority vote of the Board to implement "any policy, procedure, or administrative rule" and a majority vote of the members of a hearing panel to issue decisions on parole or recommendations on clemency. Two- or three-member hearing panels are used to conduct hearings and to make parole decisions and clemency recommendations. If a two-member panel cannot reach agreement on a decision, a third member is appointed to review the files and reach a decision.

The Board chair is designated by the Governor and the Board votes to determine the vice chair.

**Parole Board Members, as of November 2015<sup>2</sup>**

| Member           | Occupation                          | Date Appointed | Term Expires |
|------------------|-------------------------------------|----------------|--------------|
| Darryl Dupuis    | Retired Educator                    | 3/1/2014       | 1/1/2018     |
| Sandy Heaton     | Licensed Mental Health Professional | 3/1/2014       | 1/1/2018     |
| Pete Lawrenson   | Business Management                 | 5/1/2013       | 1/1/2017     |
| Coleen Magera    | Attorney                            | 5/1/2013       | 1/1/2017     |
| Bill McChesney   | Retired                             | 3/1/2015       | 1/1/2019     |
| Mary Kay Puckett | Consultant                          | 5/1/2013       | 1/1/2017     |
| Mark Staples     | Attorney                            | 1/1/2015       | 1/1/2019     |

The Board is supported by 11 staff. Nine staff work at the Board's main office in Deer Lodge. Two parole analysts work at regional offices, one in Billings and one in Great Falls.

*Funding*

Funding for Board activities is appropriated from the General Fund and is contained in House Bill No. 2.

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<sup>2</sup>As provided on the Board's website, <http://bopp.mt.gov/AboutBOPP/overview>.

|                           | FY 2016   | FY 2017   |
|---------------------------|-----------|-----------|
| General Fund <sup>3</sup> | \$865,215 | \$879,570 |
| • Personal Services       | \$700,587 | \$724,384 |
| • Operating Expenses      | \$164,628 | \$155,186 |

\* Source: Legislative Fiscal Division

## Board Duties

State law grants the Board authority to make parole decisions for eligible prisoners and to recommend that the Governor grant or deny clemency to a convicted person.

### *Granting of Parole*

The Board's main duty is to make parole decisions. Montana law requires that a prisoner serving a time sentence must serve at least 1/4 of the person's full term before becoming eligible for parole; a prisoner serving a life sentence must serve 30 years before becoming eligible for parole.<sup>4</sup>

The Board may grant nonmedical parole to an eligible person who is:<sup>5</sup>

- confined in a state prison;
- sentenced to a state prison and confined in a prerelease center;
- sentenced to prison as an adult but confined in a youth correctional facility; or
- sentenced to the custody of the director of the Department of Public Health and Human Services and confined in the State Hospital, the Montana Developmental Center, or the Montana Mental Health Nursing Care Center.

The Board may *not* grant nonmedical parole to a person who:<sup>6</sup>

- is sentenced to death;

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<sup>3</sup>In addition to the amounts listed in the table, the Board received \$72,910 in both FY 2016 and FY 2017 to fund 1.00 FTE multimedia analyst to implement the requirement in HB 28 (Laws 2015, Chapter 402) that the Board audio-record and video-record Board meetings and hearing panels. Another \$72,728 in FY 2016 and \$28,860 in FY 2017 funds operating costs for the implementation of the bill's requirements. These amounts were allocated to the Board by the Governor's Office using general fund money that was appropriated in HB 2 to the Governor.

<sup>4</sup>Section 46-23-201(3) and (4). Also, "good time" was eliminated by the Legislature in 1995 and effective in 1997. Prisoners who were convicted of crimes committed before the elimination of good time became effective can still accrue good time for time served on those offenses.

<sup>5</sup>Section 46-23-201(1), MCA.

<sup>6</sup>Section 46-23-201(2), MCA.

- is sentenced to the Department of Corrections and was placed by the Department in a state prison temporarily for assessment or sanction;
- is sentenced by a judge to a term in state prison of more than 1 year and the judge restricts the person's right to parole as part of the sentence; or
- is sentenced to life without parole pursuant to section 46-18-219, MCA, which provides sentencing requirements for offenders who have previously been convicted of certain felony offenses.

Montana law makes parole discretionary based on the judgment of the Board when "there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community".<sup>7</sup> That discretionary language -- "the board may release" -- is different from the prescriptive "shall" that existed in the applicable law before 1989. Nonmedical parole may be granted only when "release is in the best interests of society"<sup>8</sup> 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 the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."<sup>9</sup>

Once granted parole, a prisoner is subject to the supervision of the Department and to any conditions imposed by the Board. The Department may adopt rules to govern the conduct of a parolee if those rules do not conflict with any condition of parole imposed by the Board or a court.<sup>10</sup>

#### *Medical Parole*

The Board may also release a prisoner on medical parole. To be eligible for medical parole, a prisoner cannot be sentenced to death or life without parole, must be "unlikely to pose a detriment" to the prisoner, any victims, or the community, and must have either a condition that requires "extensive medical attention" or a medical condition that will likely cause the prisoner's death within 6 months.<sup>11</sup>

After the Department, the Board, the prisoner, or a close family member of the prisoner (spouse, parent, child, grandparent, or sibling) submits an application and report on the condition, the Department reviews the report. If the Department accepts the report, the Board then holds a hearing on the application. The prisoner must agree to a Board-approved placement for the parole period, submit to additional examinations or diagnoses required by the Board, and submit reports of those examinations to the

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<sup>7</sup>Section 46-23-208(1)(a), MCA.

<sup>8</sup>Section 46-23-208(1)(b), MCA.

<sup>9</sup>Section 46-23-208(1)(c), MCA.

<sup>10</sup>Section 46-23-1002(3), MCA.

<sup>11</sup>Section 46-23-210, MCA.

Board. The grant of medical parole can be revoked. If a person is denied medical parole, the person may still be considered for nonmedical parole. Since 2010, three offenders have been paroled using the medical parole statutes. In that same time span, 22 others were paroled for medical issues under the regular parole process.<sup>12</sup>

### *Executive Clemency*

Article VI, section 12, of the Montana Constitution authorizes the Governor to "grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law." Clemency is defined in statute as "kindness, mercy, or leniency that may be exercised by the Governor toward a convicted person." It may take the form of:

- suspension or remission of fines or forfeitures;
- commuting a sentence to one that is less severe;
- respite; or
- a pardon.<sup>13</sup>

A person seeking executive clemency must apply to the Board; a hearing panel then recommends if the application warrants an investigation and hearing. If the hearing panel decides that a hearing is not warranted, the Board then forwards the application to the Governor. The Governor can then review it to determine if a hearing is appropriate. If so, the Governor transmits the application back to the hearing panel to conduct a hearing. After a hearing is held, the panel may recommend that the requested clemency be granted or denied. That recommendation and the application are then sent to the Governor, who has the final authority to grant or deny clemency. The Governor's decision may not be appealed.<sup>14</sup> The Governor may not grant clemency to certain individuals, including certain relatives or individuals who work or have worked in the Governor's office since the Governor took office.<sup>15</sup>

Each interim, the Governor must report to the Legislature about each pardon, commutation, respite, or remission that the Governor made since the last report. The report must contain information specific to the convict and crime, the date of the Governor's action, the reason for granting clemency, and any objections of any of the members of the Board.<sup>16</sup>

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<sup>12</sup>E-mailed correspondence with Board staff. For those offenders paroled for medical reasons using the regular parole process, the parole disposition included that the person was paroled for medical reasons.

<sup>13</sup>Section 46-23-301, MCA.

<sup>14</sup>Section 46-23-301(4), MCA.

<sup>15</sup>Section 46-23-301(5), MCA.

<sup>16</sup>Section 46-23-316, MCA.

### *Post-Parole Duties*

Although the Board does not provide for the day-to-day supervision of a parolee, it still plays a role in a parolee's life. The Board can set conditions for the person's conduct on parole; the Department then monitors the parolee in accordance with those conditions. The Board can also discharge a parolee from supervision or revoke a parole.

A conditional discharge releases a parolee from supervision by the Department for the time remaining on a sentence. It also means the parolee does not have to pay the supervision fees assigned as part of a sentence or of the terms of parole. The person must still abide by all the conditions imposed by the sentencing court and the Board. The Board may conditionally discharge a person upon the recommendation of a probation and parole officer if the Board finds that the discharge is "in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense."<sup>17</sup>

In determining whether to release a person on a conditional discharge, the Board must consider as significant achievements the following accomplishments:<sup>18</sup>

- obtaining a high-school diploma or high school equivalency diploma;
- obtaining a degree from a postsecondary educational institution;
- completing an apprenticeship program or vocational certification program;
- employment of at least 20 scheduled hours a week for at least 6 months;
- or
- attending a faith-based, social service, or rehabilitation activity for at least 6 months.<sup>19</sup>

For "good cause", the Board may return a person on conditional discharge to supervision. The Board may also revoke the parole of the person.<sup>20</sup>

A conditional discharge can be revoked if:

- the person is charged with a felony;
- the person is charged with certain misdemeanors for which a possible sentence is incarceration for 6 months or more; or
- the person violates any condition set by the court or the Board.<sup>21</sup>

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<sup>17</sup>Section 46-23-1021(6), MCA.

<sup>18</sup>Section 46-23-1021(6)(b), MCA.

<sup>19</sup>Section 46-23-1027(2), MCA.

<sup>20</sup>Section 46-23-1021(6)(d) and (6)(e), MCA.

<sup>21</sup>Section 46-23-1020(2), MCA.

### *Violation of the Parole Terms*

If a person is released on parole or conditional release, the Department may issue a warrant or arrest the person for violation of the terms of release. After the arrest, the parolee is granted a hearing on the violation unless the parolee waives the hearing or is charged in a court for a different crime. The hearing must happen "as promptly as convenient" after the arrest, and the purpose of the hearing is to determine if there is probable cause or reasonable grounds to believe the person has acted in a way that would be a violation of the conditions of parole placed on the person.<sup>22</sup>

If the hearings officer determines there is probable cause to hold the person, the probation and parole officer must notify the Board. The Board also receives the findings of the hearings officer and a written report from the probation and parole officer about the way in which the parole terms were violated. A Board hearing panel then conducts a hearing on the parole violation. If the panel determines there was a violation of the conditions of parole, the panel can continue the parole of the person, revoke it, or modify the initial parole order.<sup>23</sup>

However, the hearing panel may not revoke a person's parole for failure to pay restitution if it finds that the failure to pay was for "circumstances beyond the prisoner's control".<sup>24</sup>

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<sup>22</sup>Section 46-23-1024, MCA.

<sup>23</sup>Section 46-23-1025, MCA.

<sup>24</sup>Section 46-23-1025(4), MCA.