

1 HOUSE BILL NO. 189

2 INTRODUCED BY D. TENENBAUM

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A NONMEDICAL PAROLE PROGRAM FOR
5 PRISONERS OVER THE AGE OF 64 WHO HAVE SERVED AT LEAST 15 YEARS OF THEIR SENTENCE
6 WITH EXCEPTIONS; AND AMENDING SECTIONS 46-18-202, 46-23-201, AND 46-23-208, MCA."

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

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10 **Section 1.** Section 46-18-202, MCA, is amended to read:

11 **"46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of
12 the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers
13 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- 14 (a) prohibition of the offender's holding public office;
- 15 (b) prohibition of the offender's owning or carrying a dangerous weapon;
- 16 (c) restrictions on the offender's freedom of association;
- 17 (d) restrictions on the offender's freedom of movement;
- 18 (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title
19 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;
- 20 (f) a requirement that the offender surrender any registry identification card or license issued under
21 50-46-303;
- 22 (g) any other limitation reasonably related to the objectives of rehabilitation and the protection of the
23 victim and society.

24 (2) ~~Whenever~~ Except as provided in 46-23-201(6), whenever the sentencing judge imposes a
25 sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose
26 the restriction that the offender is ineligible for parole and participation in the supervised release program while
27 serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing.
28 If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose

1 the restriction as part of the sentence and the judgment must contain a statement of the reasons for the
2 restriction.

3 (3) If a sentencing judge requires an offender to surrender a registry identification card or license
4 issued under 50-46-303, the court shall return the card or license to the department of public health and human
5 services and provide the department with information on the offender's sentence. The department shall revoke
6 the card for the duration of the sentence and shall return the card if the offender successfully completes the
7 terms of the sentence before the expiration date listed on the card."

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9 **Section 2.** Section 46-23-201, MCA, is amended to read:

10 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in
11 subsections (2) through (4) and the parole criteria in 46-23-208, the board may release on nonmedical parole
12 by appropriate order any person who is:

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

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

22 (3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has
23 served at least one-fourth of the prisoner's full term.

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

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

1 (6) Except for persons under a sentence of death, and persons convicted of deliberate homicide, as
2 defined in 45-5-102(1)(a), when the victim was a peace officer killed while performing the officer's duty,
3 prisoners who are 64 years of age or older and have served at least 15 years of their sentence are eligible for
4 consideration for nonmedical parole. The provisions of 46-18-202(2) do not apply to this subsection."
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6 **Section 3.** Section 46-23-208, MCA, is amended to read:

7 **"46-23-208. Nonmedical parole criteria -- information board may consider.** (1) The board may
8 release an eligible prisoner on nonmedical parole only when:

- 9 (a) there is reasonable probability that the prisoner can be released without detriment to the prisoner
10 or to the community;
- 11 (b) release is in the best interests of society;
- 12 (c) the prisoner is able and willing to fulfill the obligations of a law-abiding citizen; and
- 13 (d) the prisoner does not require:
- 14 (i) continued correctional treatment that cannot be found in the community; or
- 15 (ii) other programs available only in a correctional facility that will substantially enhance the prisoner's
16 capability to lead a law-abiding life if released, including mental health therapy or vocational training.
- 17 (2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.
- 18 (3) For a prisoner sentenced to be committed to the custody of the director of the department of public
19 health and human services as provided in 46-14-312:
- 20 (a) the board may require as a condition of parole participation in a supervised mental health
21 treatment program, if consistent with mental health services recommendations provided by a mental health
22 professional, as that term is defined in 53-21-102, to ensure that the prisoner continues to treat the prisoner's
23 mental disorder; and
- 24 (b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health
25 treatment program described in subsection (3)(a), in which case the prisoner must be recommitted to the
26 custody of the director of the department of public health and human services pursuant to 46-14-312.
- 27 (4) In making its determination regarding nonmedical parole release, a hearing panel shall consider
28 all available and pertinent information regarding the prisoner, including the following factors:

- 1 (a) the circumstances of the offense;
- 2 (b) the prisoner's social history and prior criminal record, including the nature and circumstances of
3 the offense, date of offense, and frequency of previous offenses;
- 4 (c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the
5 prisoner has taken advantage of opportunities for treatment and whether the prisoner is clear of major
6 disciplinary violations prior to the hearing;
- 7 (d) the reports of any physical, psychological, and mental evaluations that have been made;
- 8 (e) the prisoner's age, maturity, stability, sense of responsibility, and development of traits and
9 behaviors that increase the likelihood the prisoner will conform the prisoner's behavior to the requirements of
10 law;
- 11 (f) the adequacy of the prisoner's release plan;
- 12 (g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;
- 13 (h) the prisoner's education and training;
- 14 (i) the prisoner's family status and whether the prisoner has relatives who display an interest or
15 whether the prisoner has other close and constructive associations in the community;
- 16 (j) the prisoner's age employment history and occupational skills and the stability of the prisoner's past
17 employment;
- 18 (k) the type of residence, neighborhood, or community in which the prisoner plans to live;
- 19 (l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of
20 chemicals;
- 21 (m) the prisoner's mental health needs;
- 22 ~~(n) the prisoner's attitude toward law and authority;~~
- 23 ~~(n)~~ (n) the prisoner's behavior and attitude during any previous experience of supervision and the
24 recency of the supervision;
- 25 ~~(p)~~ (o) written or oral statements from criminal justice authorities or any other interested person or the
26 interested person's legal representative, including written or oral statements from a victim regarding the effects
27 of the crime on the victim. A victim's statement may also include but is not limited to the circumstances
28 surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the

1 offender should be paroled.

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

3 ~~(+)(q)~~ any and all other factors that the hearing panel determines to be relevant.

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

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