

## Sub-Chapter 1

## Organization

20.25.101 ORGANIZATION OF THE BOARD (1) The board of pardons and parole consists of three members, and two auxiliary members, appointed by the governor, whose duties are to administer executive clemency and parole processes and procedures, to make final decisions on work and educational furlough, supervised releases, and to secure the effective application of and improvements to the clemency and release system as well as of the laws upon which they are based. The board chair is specifically designated by the governor; the vice-chair and secretary are designated by a majority vote of the board. Board members will not seek or hold public office, if it would create a conflict of interest while a member of the board. The Governor for good cause, after an appropriate hearing may remove board members. Board administrative personnel are accredited representatives of the board and are responsible to the board. The executive director is responsible for all day to day financial, administrative, and personnel policies and procedures. The board chair and executive director are the official spokespersons for the board and the executive director is responsible for coordinating board member work schedules and assigning cases as necessary.

(2) The board's principal office is located at 300 Maryland Avenue, Deer Lodge, Montana. It is open during regular business hours, Mondays through Fridays. As the board's staff is not always immediately available at the office, it is suggested that appointments be arranged in advance. The board staff structure of authority is organized as follows: (1) executive director, (2) administrative officers, (3) classification and treatment specialist, and (4) administrative support. All staff and members will receive appropriate training in order to successfully perform their duties and responsibilities. Training curriculums will be developed, evaluated and updated based on an annual assessment that identifies current training needs. The board members and staff will participate in federal, state, and regional criminal justice planning efforts and meet periodically with relevant criminal justice personnel.

(3) The board will meet at least monthly for the purpose of interviewing inmates, conducting hearings and transacting its business. The board may conduct meetings at correctional facilities, pre-release centers, or regional prisons. The

board may designate one of its members, one of its staff members, or an out-of-state adult correctional releasing authority to conduct hearings relative to parole release, plans for release on parole or revocation hearings.

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(4) Dates and locations for impending each month's hearings are set at ~~the previous~~ monthly meetings, and notice thereof is given to all interested parties. ~~However, H~~ hearing schedules are subject to change, and notice thereof will be given to all interested parties.

(5) The board is allocated to the department of corrections for administrative purposes only. As such, the board hires its own personnel and exercises its quasi-judicial and policy making function independently of the department and without approval or control of the department. None of the foregoing shall be construed in any way to preclude the board from implementing a common information system, participating in correctional planning efforts, and sharing a common database with the department germane to the functions of the board. (History: 46-23-218, MCA; IMP, 2-15-121, 2-15-124, 2-15-2302, and 46-23-104, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

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## Sub-Chapter 2

### Objectives of Release

20.25.201 OBJECTIVES (1) The principal objectives of the board ~~are is to~~:

(a) Carefully review each eligible offender nearing the end of the period of incarceration set by the district court;

(b) Make a reasonable effort to bring about the rehabilitation of those offenders incarcerated or released and demand all offenders demonstrate they are no longer a danger to society before seriously considering parole;

(c) Allow victims to present a statement concerning the effects of the crime on the victim or family; including but not limited to, their opinion on parole of an offender;

(d) Set specific conditions which must be met prior to parole;

(e) Set specific conditions for offenders once on parole that must be agreed to prior to parole;

(f) Return promptly to custody parolees who are found to be unable or unwilling to adjust to parole supervision, violate conditions of parole, or are endangering public

safety;

(g) Protect society by not prematurely releasing offenders and ensuring sufficient time in custody for violent and dangerous offenders;

(h) Investigate and recommend to the governor pardons and commutations of sentences for offenders meeting specific criteria and;

(i) Carefully review, approve or deny conditional discharges from supervision.

~~effect the release into the community of an inmate prior to the completion of term while still fully protecting society.~~  
Parole Release may be granted when, in the board's opinion, there is a reasonable probability that the inmate can be released without detriment to the inmate or the community. When granted parole release the inmate is subject to the conditions imposed by the board and the supervision authorized by governing statutes, rules and policies of the department.

(2) Satisfying the minimum time-of-incarceration requirement, which is a condition precedent to eligibility for release consideration, does not confer upon an inmate a right to release. A release may be granted only for the best interest of society and when the board believes the inmate is able and willing to fulfill the obligations of a law-abiding citizen but not as an award of clemency or a reduction of sentence or pardon.

(3) A parole release that has been granted may be rescinded as a result of improper conduct, substantial change in approved release plan, or new evidence or information.

(4) The board, through its staff, may delay a release that has been granted and not scheduled for rescission, up to 120 days as a result of improper conduct or new evidence or information. Unless the board otherwise orders, inmates must be clear of major disciplinary reports for a minimum of 120 days prior to release unless the inmate is a resident of a community based program, in which case a minimum of 90 days shall be required.

(5) An inmate granted a ~~release~~ parole is subject to revocation of the ~~release~~ parole for violation of laws or of the conditions of the supervision agreement, including conditions of the board or rules made by the department of corrections, all of which are to be contained in a written agreement signed by the inmate prior to release. Parole is not effective until the conditions are signed by the inmate and the board issues the parole certificate. If a violation is established, the board may continue or revoke the parole, or enter such other order as it may see fit. The determination of further release shall be consistent with the rules adopted for release hearings. (History: 46-23-218, MCA; IMP, 46-23-218,

MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

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20.25.202 DEFINITIONS For the purposes of this chapter, these definitions apply:

(1) "Board" means the board of pardons and parole and accredited representatives as authorized in 2-15-2302 and 46-23-104, MCA.

(2) "Controlling sentence" means the sentence(s) that, based on a district court judgment, requires the longest period of time served to parole eligibility.

(3) "Dead time" means the time from the issuance of a parole violation warrant to the date a violator is arrested on that warrant, or the time a parole violator serves in a correctional facility for a separate felony offense committed on parole. The board has sole discretion to determine whether this time will be counted as time served under the term.

(4) "Department" means the department of corrections as authorized in 2-15-230, MCA.

(5) "Hearing" means the personal appearance of an inmate before the board for release consideration, executive clemency, or revocation.

(6) "Inmate/offender" means any person sentenced by a state district court to a term of confinement in a state correctional institution or program.

(7) "Parole" means the release of an inmate into the community prior to the completion of sentence subject to the orders of the board and the supervision of the department.

(8) "Parole certificate" means the document signed by the board chairman and executive director authorizing the release from confinement to parole.

(9) "Parole eligibility" means the earliest possible date a person may be released from confinement to parole supervision.

(10) "Rescission" means an action of the board that annuls or voids a prior release disposition.

(11) "Review" means the informal administrative process of considering the conduct and progress of an inmate to determine if a reappearance or parole is desirable.

(12) "Rules" means the conditions, limitations, and restrictions upon which parole is based.

(13) "Sentence" means the penalty imposed by a particular district court for a specific felony offense.

(14) "Sentence commencement" means to begin service of a consecutive sentence which was imposed after reception and for crimes committed in prison or while on parole, furlough, or supervised release without the granting of parole. Commencement of a consecutive sentence is for parole eligibility purposes only.

(15) "Term" means the total period of time for which an inmate was ordered to serve in a state correctional institution or program.

(16) "Victim" means a person or family members of a person upon whom a crime has been committed. (History: 46-23-218, MCA; IMP, 46-23-218, MCA; NEW, 1999 MAR p. 290, Eff. 2/12/99.)

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### Sub-Chapter 3

#### Eligibility for Parole Consideration

20.25.301 MINIMUM TIME; PERIODIC EVALUATION (1) No inmate serving a term may be eligible for nonmedical parole until the offender has served at least one-fourth of the full term.

(2) No inmate serving a life sentence may be granted nonmedical parole until the offender has served 30 years.

(3) The board, through its pre-parole program, will make available to inmates a copy of a packet outlining the parole process and the recommended treatment release plan. This packet will be made available within a timely period after reception at a correctional facility. The board, through its staff, may review and amend the parole program as necessary. The inmate will be advised of any amendments.

(4) Prior to an inmate's official nonmedical parole eligibility date, the board, through its staff and pre-parole program, shall gather for the board's formal deliberations, all pertinent information on each eligible inmate. This information shall include but not be limited to the nature of the offense(s), social history, criminal record, institutional work and conduct records, rehabilitative efforts, treatment attainments in the institution, and any reports of physical or mental examinations which may have been made while in custody. (History: 46-23-218, MCA; IMP, 46-23-201, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.302 PAROLE PLAN (1) Each inmate should prepare a comprehensive release plan for the board's consideration, including a suitable living situation, gainful employment or a training or schooling program that has been guaranteed by some



the person's physical capacity has improved to the extent that the person is likely to pose a possible detriment to society, the board may revoke the medical parole and return the person to the custody of the department.

(5) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(6) After receiving a request for a medical parole hearing from the warden/superintendent or their designate, the board will schedule a hearing in a timely manner.

(7) Prior to the medical parole hearing, the board, through its staff, shall gather for the board's formal deliberations, all pertinent information on each inmate, including but not limited to the nature of the offense, social history, criminal history, institutional performance, and any medical and mental examinations which may have been made while in custody.

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(8) Upon receiving notification from the department that a medical parolee is eligible for nonmedical parole, the board will consider the person for nonmedical parole according to the rules established for nonmedical parole consideration. Unless the board otherwise orders or there has been a substantial change in the person's physical condition, disease or syndrome, after medical parole consideration an applicant may not reappear for medical parole consideration for a period of 12 months.

(9) A grant or denial of medical parole does not affect a person's eligibility for nonmedical parole.

(10) Revocation procedures for a medical parolee shall be consistent with the procedural rules adopted for revocation of release. (History: 46-23-218, MCA; IMP, 46-23-210, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.303 FURTHER ELIGIBILITY (1) Unless the board otherwise orders, an inmate should have a minimum of 120 days disciplinary-clear status before appearing before the board and prior to release on parole, unless the inmate is a resident of a community based program, in which case a minimum of 90 days may be required. The board, through its staff, may

delay release up to 120 days from the date of each major disciplinary report if the board determines that rescission is not in order.

(2) A detainer or hold filed against the inmate shall not bar the offender's appearance before the board. At its discretion the board may parole an inmate to a detainer. A detainer not exercised may require the reappearance of the inmate before the board for further consideration. If the board grants a parole to a plan other than the detainer, the authority filing the detainer or hold will be given written notice by the department as to the approximate date the inmate will be released.

(3) An inmate designated ineligible for parole by a state district court until specific condition(s) or restriction(s) are met, will not appear before the board until the ineligibility condition(s) have been satisfied. Upon satisfying the restriction(s) or condition(s), and if otherwise eligible for parole, the inmate may request an appearance before the board and will be added to the next available board for consideration.

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(4) An inmate may voluntarily waive a parole hearing and may remain on this status for a period of six months. Inmates who waive their parole hearing will have a mandatory parole hearing within six months or as close to six months as scheduling permits. The hearing month will be automatically set and the inmate will appear at a regularly scheduled board meeting, unless the inmate requests a hearing prior to this date and provides 30 days written notice to the board. The board, through its staff, will review all waivers for legitimacy and may accept or reject any waiver, if deemed necessary and proper. Subsequent waivers must have the approval of the accredited representatives of the board. (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.304 ADDITIONAL CONSECUTIVE SENTENCES (1) If the inmate is received with two or more sentences running consecutively, the sentences will be added together for parole eligibility purposes, unless the court orders otherwise.

(2) If the inmate receives an additional sentence after reception at the institution, but before a board disposition



capability of reviewing qualified offenders prior to nonmedical parole eligibility. If an offender meets medical parole criteria and has previously served to nonmedical parole eligibility and the board has rendered a decision, the offender may apply for parole consideration based on medical considerations. The board may impose any appropriate conditions including medical parole conditions.

(3) All interviews and hearings before the board shall be conducted informally under the direction of the chair, designated chair or designated hearings officer. The length of the hearings will be determined by the nature of the particular case. A Board designated hearing officer must have at least three years experience in criminal justice position or equivalent experience in related fields or have served on the board for at least six months. If the offense was committed prior to March 20, 1989, the board may not designate one of its staff members or any other adult releasing authority to preside over an initial appearance, and the initial appearance must be before at least one board member. An offender may waive in writing the right to appear before at least one board member.

(4) Unless the board otherwise orders, interested persons of legal age who wish to appear before the board or the board's designee and have relevant statements to present shall notify the board in writing not less than ~~three~~ ten days prior to the regularly scheduled formal hearing of the reason for intent to appear before the board, or the board's designee, the date of intended appearance and the relationship of the individual to the inmate at whose hearing the person intends to appear. The board or its designee shall have discretion to determine the relevancy of the proposed testimony and the number of interested persons who shall appear at any hearing. Such determinations will be made on a case-by-case basis. All persons attending hearings that take place in a secure facility must follow the facilities security policies and procedures.

(5) The board or the board's designee will permit a victim to present a statement concerning:

- (a) the effects of the crime on the victim;
- (b) the circumstances surrounding the crime; and,
- (c) the victim's opinion regarding whether the offender should be paroled.

(6) At the board's or the board's designee's discretion, the victim's statement may be kept confidential.

(7) The board or the board's designee shall consider the victim's statement along with the other information presented in determining whether to recommend or grant parole.

(8) If the board or the board's designee is going to discuss confidential information, ~~it may close the meeting may be closed~~ to protect the individual privacy rights or safety interests of the persons providing that information and of the persons who are the subject of the information being provided. ~~All social records, including the presentence report, the pre-parole report, and the supervision history obtained in the discharge of official duty are deemed confidential criminal justice information. However, the board may, in its discretion, when the best interest or welfare of a particular defendant or inmate makes such action desirable or helpful, permit open discussion of the social record or any parts thereof in the presence of the inmate or his attorney. Once the board or its designee has finished considering the confidential information, it the meeting shall be reopened the meeting and deliberate on the decision.~~

(9) When a board member or board staff member has been designated as a hearings officer, the hearing officer will issue a recommended case disposition ~~to the full board and to the inmate and advise the inmate of the date, and location of the board hearing meeting~~ at which time a final decision will be rendered. Decisions of the board require concurrence by at least two board members.

(10) When an inmate has met the requirements of the law regarding parole, and the rules made thereunder, the board may issue an order granting the inmate permission to serve the remainder of the sentence outside the prison under such conditions as the board may impose.

(11) The board will reach its own conclusions under the law as to the desirability of granting a release to any inmate. The conclusions of the board shall be incorporated in a written case disposition sheet, whether the parole is approved or denied, and will include any special conditions to be required of the parolee. The case disposition sheet will be placed in the inmate's file. ~~Unless the board or a court otherwise orders, all information, records and reports received by the board shall be kept confidential and made a part of the inmate's personal file.~~

(12) The board or accredited representatives will keep a record of the board's acts and decisions. Information contained in the board's records may be kept confidential if

the board or accredited board staff determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the information would compromise the safety, order, or security of a facility or the safety of facility personal, a member of the public, or an inmate of the facility if disclosed.

(a) A charge of at least 25 cents per copy and a handling fee for copying and inspecting records will be imposed. Board staff may limit the time and place those records may be inspected or copied.

(b) The board will disseminate research finding to all appropriate parties. The executive director or designee must approve all dissemination of research data. All research dissemination must consider the potential effect on the security and operation of correctional facilities, the public and the operational integrity of the board. Privacy interests of offenders and other parties for cases under study will be ensured when research projects are considered.

~~(12)~~ (13) All orders denying parole or of authorizing release on parole must be issued from the board and must be signed by at least two board members.

~~(13)~~ (14) When an inmate has been denied parole, written notification of that decision must be issued to the inmate by the board and must include the reason(s) for the denial and a notice of the date on which the applicant may reapply. If parole is denied, the inmate may be required to serve until discharge. If a parole is denied, earlier review of an inmate's case, other than the date set by the board, requires approval of the board. The board staff will determine which requests have sufficient merit to require final board review and approval. This determination may require a progress and conduct report from the department of corrections. In the event an early appearance or administrative review is granted, the inmate will be notified by the board. Specific hearing procedures include:

- (a) Initial appearance.
- (b) Reappearance.
- (c) Periodic administrative progress review that have an outside limit not exceeding eight years.
- (d) Passed to discharge.

~~(14)~~ (15) An inmate who is not interested in parole release may waive the right to personally appear before the

board. The inmate will acknowledge the fact that the board will render a decision based on the written record and on the fact the inmate is not interested in parole.

~~(15)~~ (16) The board may conduct hearings wherein the inmate appears before the board by means of two-way interactive video teleconferencing and administrative reviews by means of telephone conference.

(17) The Board or its designee may hold any hearing via interactive videoconference and may hold any administrative review via telephone conference.

(History: 46-23-108 and 46-23-218, MCA; IMP, 46-23-204, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

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## Sub-Chapter 5

## Decisions of the Board

20.25.501 DECISION (1) A final decision of the board must be by a majority vote and the orders of the board are not reviewable. If a parole applicant has evidence that a Board decision was based in inaccurate or false information, or that the hearing was not conducted according to Board policy, the parole applicant may apply to the Executive Director for reconsideration. Notice of the request for reconsideration and relevant evidence must be received within 60 days following the delivery of the written disposition to the applicant.

(History: 46-23-218, MCA; IMP, 46-23-107, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.502 FORM AND DELIVERY (1) All final decisions of the board must be in writing and shall be signed by at least two board members. The decision of the board, including reasons for such, must be delivered to the inmate in a timely manner. (History: 46-23-218, MCA; IMP, 46-23-202, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.503 PREFERENCE TO FIRST OFFENDERS (REPEALED)  
(History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.504 INVESTIGATION (1) An inmate may not be granted a release on parole by the board until it has made, or caused to be made, an investigation concerning:

- (a) The inmate's previous social history and criminal record;
- (b) The inmate's education, conduct and associations;
- (c) The inmate's occupation or prospects for employment;
- (d) The inmate's treatment record in prison;
- (e) Facts and circumstances of the crime for which sentenced;
- (f) Information received from the community where the crime was committed;
- (g) Summary and recommendation of a parole officer concerning the offender release plan; and
- (h) Any reports of physical or mental examinations which have been made of the offender. (History: 46-23-218, MCA; IMP,



- (i) The offender's mental and/or physical makeup;
- (j) The offender's prior criminal record, including the nature and circumstances of the offense, date of offense and frequency of previous offenses;
- (k) The offender's attitude toward law and authority;
- (l) The offender's conduct in the institution, including particularly whether the inmate has taken advantage of opportunities for treatment, and whether the inmate is clear of major disciplinary reports prior to the hearing;
- (m) The offender's behavior and attitude during any previous experience of supervision and the recency of such experience;
- (n) Victim(s) statement; and
- (o) Any and all other factors which the board determines to be relevant-, including recommendations of professional board staff, recommendations correctional personnel, and risk assessment materials. (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

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## Sub-Chapter 6

### Rescission of Parole

20.25.601 RESCISSION HEARING (1) In-custody misconduct by an inmate who has been granted a nonmedical parole, medical parole, supervised release, or furlough but who has not yet been released to supervision may result in a rescission hearing before the board.

(2) The misconduct must be of sufficiently serious nature as to be documented in a formal disciplinary report and acted upon by institutional authorities.

(3) Any substantial change in the inmate's proposed parole plan not previously approved by the board may result in a hearing.

(4) Any additional information received by the board that was not available at the time of the release hearing may result in a hearing. (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94.)

20.25.602 PROCEDURE (1) The board shall determine hearing procedures. (History: 46-23-218, MCA; IMP, 46-23-204, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.603 DECISION (1) The board will make a determination with regard to rescission of the release or reaffirmation of release granted after all relevant information is considered, including the inmate's own testimony regarding extenuation or mitigation. An offender may voluntarily waive personally appearing before the board and the board will render a decision based in the written record and on the fact the offender is not interested in testifying. (History: 46-23-218, MCA; IMP, 46-23-204, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93.)

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## Sub-Chapter 7

### Release on Supervision

20.25.701 RELEASE (1) An inmate released on nonmedical or medical parole must be under supervision for the maximum term for which the inmate, at the time of release, was subject to imprisonment, less any good time earned in accordance with the law.

(2) At any time before the expiration of sentence, the board may, in its discretion, when the ends of parole are accomplished, discharge the parolee from further supervision.

(3) If release is granted, it must be accepted by the inmate subject to all rules and conditions as set forth by the board herein, and release may be subject to revocation for violations thereof.

(4) An offender sentenced under 46-18-201, may not be paroled until the offender provides or has provided a biological sample to the department of corrections.

(5) The department may grant a furlough, not to exceed 10 days, if a parole condition imposed by the board is

difficult to fulfill while incarcerated. Offenders remain under the legal custody of the department and are subject to all conditions recited by the board and the department of corrections.

History: 46-23-218, MCA; IMP, 46-23-215, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.702 CONDITIONS ON SUPERVISION (1) When an order to nonmedical parole or medical parole is issued, the board shall recite the conditions of release and the inmate shall sign the department's standard rules for the conduct of persons placed on supervision. A copy of the conditions must be given to the inmate. Parole is not effective until the conditions are signed by the inmate and the board issues a parole certificate.

(2) A parolee shall pay a monthly supervisory fee ~~of \$10 a month~~ for each month under supervision. The board may reduce or waive the fee or suspend the monthly payment if payment would cause the parolee significant financial hardship. (History: 46-23-218, MCA; IMP, 46-23-215, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.703 SPECIAL CONDITIONS (1) The board of pardons and parole may order additional special conditions. The department of corrections may also request special conditions provided they are not in conflict with those of the board or of the sentencing court. Any special conditions imposed by the department must be approved by the board. Special conditions should be reasonably related to the offender's current and/or past offenses, and/or provide for the public safety, and/or provide for the rehabilitation of the offender. All rules and conditions must be stated in writing and must be made a part of any agreement signed by the inmate.

(2) If restitution was imposed as part of a sentence under 46-18-201, MCA, the order for parole must contain a condition to pay restitution to the victim.

(3) The payment of restitution, fines and/or court costs as a special condition of parole may be ordered only when one or more of the following apply:

(a) The parolee has a suspended term to follow parole;

(b) The amount or amounts of restitution, fines and/or costs have been predetermined by the district court;

(c) An assessment of the parolee's ability to pay is submitted to the board as part of the investigation for placement and periodic assessments shall be made by the parole officer as warranted;

(d) The sentencing court specifically recommended payment of restitution, fines and/or costs as a condition of parole and the court has made a prior determination of the amount of obligation and an assessment of the parolee's ability to pay is submitted to the board; and

(e) Collection procedures are the responsibility of the department of corrections.

(4) The board shall consider and include the mandated conditions of medical parole as special conditions. (History: 46-23-218, MCA; IMP, 46-23-215, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.704 CONDITIONAL DISCHARGE FROM SUPERVISION (1)

Upon recommendation of the supervising ~~officer~~ authorities, the board may conditionally discharge a parolee from parole supervision before the expiration of the sentence, if the board determines that such conditional 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. However, the board retains the right to revoke a parole, even when conditionally discharged from supervision, if the parolee violates any laws or ordinances and/or conditions that the board has imposed upon the parolee.

(2) The board retains the right to return a parolee to active supervision or secure custody even when conditionally discharged from supervision, upon request of the supervising agency and if, in the board's opinion, this action is in the best interest of society and the parolee.

(3) Parolees convicted of violent offenses may be recommended for conditional discharge after the parolee has served a minimum time on parole of:

(a) Four consecutive years of satisfactory parole adjustment; or

(b) Three consecutive years of exemplary parole adjustment.





## Sub-Chapter 8

## Revocation of Parole

20.25.801 REVOCATION HEARINGS (1) If a medical or nonmedical parolee is returned to the institution upon a warrant issued by the department of corrections, after having had (or waived the right to) an on-site hearing, probable cause having been found, the board, in a timely manner, will schedule a full revocation hearing for the parolee at a regularly scheduled board meeting.

(2) If the parolee waives the right to an on-site hearing, the parolee shall sign a waiver to that effect and additionally must admit to the violations as outlined in the revocation document.

(3) If the parolee waives the right to a formal board hearing, the parolee shall sign a waiver to that effect and additionally must admit to the violations as outlined in the revocation document.

(4) The board prefers that does not require an on-site hearing be conducted unless if:

(a) The parolee is convicted of a felony offense during the period of supervision. The conviction clearly establishes probable cause, provides minimal due process, and the final revocation hearing may be confined to mitigation. The court judgment and conviction may be used as the revocation document;

(b) The parolee is arrested in another state where he had no permission to be. Presence in another jurisdiction without permission clearly establishes probable cause.

(c) The offender waives in writing the hearing and admits to all violations.

(d) Dead time---time served in another state for a crime on parole---detainer--see legal revocation--humna rights Moody v. Dagget

(5) The parolee may request a continuance of the formal revocation hearing but only for good and substantial reason, as determined by the board.

(6) The parolee may be represented by counsel, and may present witness testimony relating only to the violations. The offender is responsibility for contacting witnesses. Witnesses must contact the board office at least ten days prior to the hearing for authorization to be present.

(7) If not represented by counsel, an indigent parolee may request counsel if difficult or complex issues are present. A decision on the request will be rendered by the

board after due consideration.

(8) The conduct of the revocation hearing will be determined by the board, and the hearing will be recorded. When a decision is made, a written copy of the decision will be given to the parolee in a timely manner.

(9) The length of the hearing will be determined by the nature of the particular case.

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(10) The decision of the board following a revocation hearing is to be based on the reports of the supervising officer, the report of the on-site hearing, if one is conducted, and the information and evidence presented at the hearing. The burden of proof to be sustained at a revocation proceeding requires only a preponderance of evidence.

(11) The board will determine whether the time from the issuing of the violation warrant to the date of the parolee's arrest and return to Montana custody or any part of that time will be counted as dead time or as time served under the sentence.

(12) If the parolee is to be reinstated on supervision, the parolee may be held in custody for up to 30 days until an approved plan is ~~effected~~ developed.

(13) If a violation is established, the board may continue or revoke the supervision or enter any other appropriate order. This determination will be based on the nature of the violations and the criteria for release grant decisions. (History: 46-23-218, MCA; IMP, 46-23-215, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.802 CONTESTED REVOCATION HEARINGS (1) A parolee or his/her counsel who contests all or part of an on-site determination shall, if requested by the board, prior to the formal board revocation hearing, present to the board staff the following:

- (a) A statement of admission of facts contained in the on-site hearing report which the parolee does not challenge;
- (b) The parolee's specific objections to or denial of each controverted charge in the on-site hearing report;
- (c) A statement of issues of facts to be presented;
- (d) A statement of issues of law to be presented;
- (e) A request for subpoenaed witnesses and documents;
- (i) Subpoenas will be issued only at board's direction and only for extraordinary reasons.



## Sub-Chapter 9

## Executive Clemency

20.25.901 APPLICATIONS (1) Application forms for executive clemency may be obtained at the Board of Pardons and Parole, 300 Maryland Avenue, Deer Lodge, Montana 59722.

(2) Applications must be in writing, signed by the qualified applicant and filed with the executive director of the board of pardons and parole. Applications may be filed only by the person convicted of the crime, by the person's attorney acting on the person's behalf and with his/her consent, or by a court-appointed next friend, guardian, or conservator acting on the person's behalf.

(3) The applications shall state the type of executive clemency requested, the particulars of the crime, giving dates of commission, the court of conviction, the circumstances relating to the social condition of the applicant and the reasons for the request for executive clemency. Unless the board otherwise orders or there has been a substantial change in circumstances, as determined by the board, a person may not reapply for executive clemency for a period of 36 months.

(4) In capital cases, the application for executive clemency must be received by the board at least 30 days prior to the date of execution. The board may waive the 30-day requirement for good cause shown. (History: 46-23-218, MCA; IMP, 42-23-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.901A EXECUTIVE CLEMENCY POLICY (1) Pardon is a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) Commutation involves the mitigation of a criminal punishment through the substitution of a lesser sentence for a greater one. Commutations may be granted conditionally if, in the board's opinion, the conditions are in the best interest of society and do not unreasonably infringe on an individual's constitutional rights. Non-compliance may be followed with revocation of the commutation.

(3) The board may also recommend to the governor that a respite or a remission of fines or forfeitures be granted.

(4) Any person convicted of a crime after July 1, 1973, will automatically have restored all civil rights that may have been lost, if any, upon completion of supervision.



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(5) Executive clemency may be recommended for an individual who:

- (a) Can satisfactorily prove innocence of a crime for which the person is serving or has served time;
- (b) Has demonstrated exemplary performance;
- (c) Submits newly discovered evidence showing complete justification or non-guilt on the part of the person;
- (d) Suffers from terminal illness or from a chronic disability;
- (e) Can satisfactorily prove that further incarceration would be grossly unfair;
- (f) Can satisfactorily prove that a death penalty should be avoided; or
- (g) Can satisfactorily prove extraordinary mitigating or extenuating circumstances exist.

(6) When considering a recommendation for executive clemency the board shall consider the nature of the crime, the comments of the judge, the prosecuting attorney, the community, and the victims and victims' family regarding clemency for the applicant, and a consideration of whether release would pose a threat to the public safety. The public safety determination overrides even the most substantial showing of exceptional or compelling circumstances.

(7) All parties who have entered a plea of guilty or who have been found guilty by a jury are to be deemed guilty. However, the board may initiate an investigation into a case where there is offered substantial evidence showing innocence or complete justification on the part of the person convicted.

(8) Under the statutes and the constitution of Montana, the granting of executive clemency is the sole responsibility of the governor. (History: 46-23-218, MCA; IMP, 46-23-301, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.902 INVESTIGATIONS (1) At least 30 days will ordinarily be required for an investigation by the staff of the department of corrections and the board. The board may require other reports that, in the board's opinion, are necessary. When all necessary material is received and filed with the executive director, the application will be considered by the board at a meeting following the receipt of

such investigation. If in the opinion of the board sufficient cause appears to order a full hearing thereon, as provided by law, such date of hearing will be set and notice given to all concerned in the manner prescribed by law.

(2) In noncapital cases, if in the opinion of the board insufficient cause appears to necessitate a hearing, the application for executive clemency will be denied and notice given to all concerned.

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(3) In capital cases, a hearing will be conducted and the board shall transmit the application to the governor with either a recommendation that clemency be granted or a recommendation that clemency be denied. (History: 46-23-218, MCA; IMP, 46-23-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.903 HEARING PROCEDURE (1) Procedure for the hearing on an accepted application for executive clemency must be determined by the board. (History: 46-23-218, MCA; IMP, 46-23-306, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.904 DECISION (1) When the board determines that sufficient cause appears, a public hearing will be conducted. The board will hear all relevant facts and information of the petitioner, their counsel and witnesses, as well as any opponents to the petition, with a recording made thereof. Upon conclusion of the hearing the board will take the entire case under advisement and will forward a decision of recommendation to the governor for final determination. A decision of denial will not be forwarded to the governor for final determination.

(2) In capital cases, the board will forward a decision of recommendation or denial to the governor for final determination.

(3) Under the statutes of Montana the granting of executive clemency is the sole responsibility of the governor. (History: 46-23-218, MCA; IMP, 46-23-315, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94.)

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### Sub-Chapter 10

#### Pardons and Restoration

20.25.1001 POLICY (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1002 CONTENTS OF APPLICATION FOR PARDON (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1003 INVESTIGATION (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1004 CONDUCT OF HEARING (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1005 DECISION OF THE BOARD (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

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### Sub-Chapter 11

#### Supervised Release/Furlough Hearings

20.25.1101 CONDUCT OF HEARING (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)

20.25.1102 APPLICATION (REPEALED) (History: 46-23-218,

MCA; IMP, 46-23-411, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; REP, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.1102A SUPERVISED RELEASE/FURLOUGH POLICY  
(REPEALED)

(History: 46-23-218, MCA; IMP, 46-23-412, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; REP, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.1102B INVESTIGATION (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; REP, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.1103 HEARING PROCEDURE (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; NEW, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; REP, 1999 MAR p. 290, Eff. 2/12/99.)

20.25.1104 DECISION OF THE BOARD (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-412, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; AMD, 1993 MAR p. 297, Eff. 2/26/93; AMD, 1994 MAR p. 168, Eff. 1/28/94; REP, 1999 MAR p. 290, Eff. 2/12/99.)

Rules 20.25.1105 and 20.25.1106 reserved

20.25.1107 REVOCATION OF FURLOUGH (REPEALED) (History: 46-23-218, MCA; IMP, 46-23-218, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1552, Eff. 12/1/78; REP, 1993 MAR p. 297, Eff. 2/26/93.)