

Montana Board of Pardons and Parole
[DRAFT] Policy Implementing House Bill 43, Executive Clemency
Adopted [vote], date []

Effective October 1, 2015

Temporary

(1) This policy is adopted for the purpose of facilitating implementation of House Bill 43, passed during the 2015 legislative session. HB 43 recognizes and effectuates the Governor's exclusive constitutional authority to grant or deny clemency. Montana Const. art. VI, §12. Pursuant to HB 43, the Governor has authority to review all of the Board's clemency recommendations and make a final, binding determination.

(2) The existing Administrative Rules of Montana, including but not limited to 20.25.901 through 904, remain in effect with the exception of those provisions nullified by the passage of HB 43. Specifically, the following language is nullified and of no effect:

- (a) any reference in the administrative rules that indicates or implies a final disposition of an application for clemency without the opportunity for gubernatorial review;
- (b) the last sentence of 20.25.904 (a), reading, "If the panel does not recommend a grant of clemency, it will not forward the application to the governor."

(3) This policy and the administrative rules are intended to be read together.

(4) CLEMENCY APPLICATIONS THAT HAVE BEEN SUBMITTED AND DENIED PRIOR TO OCTOBER 1, 2015:

- (a) Applications previously submitted and denied prior to the effective date of HB 43, October 1, 2015, may be resubmitted to the Board for additional consideration, subject to this section (4) and the applicable provisions of the administrative rules.
- (b) If a resubmitted application is ~~materially identical~~ **substantively similar** to a previously denied application, then the Board shall proceed as follows:
 - a. Board staff will first assess whether an application is ~~materially identical~~ **substantively similar** to a previous application. The staff shall submit a report to the hearing panel with its assessment of whether the application is ~~materially identical~~ **substantively similar** to a previous application.
 - b. If an application is ~~materially identical~~ **substantively similar** to a previous application, the Board's hearing panel may assess the application without further investigation, evaluation, or a hearing. The panel may rely on the existing record.

- c. The panel may, in its discretion, direct that further investigation or evaluation be conducted, or that an additional hearing be held.
- (c) If a resubmitted application includes substantive new material or evidence, the panel may request that an investigation be conducted with regard to the new material or evidence. The panel, in its discretion, may also request a psychological evaluation or schedule a hearing that may be limited to the new material or evidence.
- (d) Upon completion of its assessment, the Board shall ~~immediately~~ **within 10 working days** forward to the Governor's Office its recommendation to grant or deny clemency, together with all relevant documents. The Board shall also forward to the Governor's Office a proposed executive order if its recommendation is to grant clemency. If the Board's recommendation is to deny clemency, it shall forward a ~~proposed letter~~ **Board recommended disposition** to the applicant summarizing the reasons for denial.
- (e) If the Board recommends denial of a resubmitted application without a hearing, it will give notice to the applicant and will post the recommended denial on the Board's web site within 21 calendar days of the Board's recommendation.
- (f) The Board shall conduct a hearing if, after review by the Governor's Office, the Governor directs that a hearing be conducted. The Board shall direct that further investigation into specific aspects of an application be conducted if requested by the Governor.

(5) NEW CLEMENCY APPLICATIONS:

- (a) Applications for clemency that are pending (no final panel decision has been made) as of October 1, 2015, and applications submitted on or after October 1, 2015, will be assessed pursuant to this section (5) and to the applicable administrative rules.
- (b) Upon receipt of an application for clemency under this section (5), the Board staff shall conduct a preliminary review of the application and submit a report to a hearing panel for its consideration.
- (c) The hearing panel may request that an investigation be conducted. Based upon the initial staff report, the panel may also request that a psychological evaluation be conducted as part of the investigation, or other reports as necessary.
- (d) Upon receipt of any requested reports, the panel, in its discretion, shall decide whether to hold a hearing.
- (e) Upon completion of its assessment, the Board shall ~~immediately~~ **within 10 working days** forward to the Governor's Office its recommendation to grant or deny clemency, together with all relevant documents. The Board shall also forward to the Governor's Office a proposed executive order if its

recommendation is to grant clemency. If the Board's recommendation is to deny clemency, it shall forward a proposed letter ~~proposed letter~~ **Board recommended disposition** to the applicant summarizing the reasons for denial.

- (f) If the Board recommends denial of a new application without a hearing, it will give notice to the applicant and will post the recommended denial on the Board's web site within 21 calendar days of the Board's recommendation.
- (g) The Board shall conduct a hearing if, after review by the Governor's Office, the Governor directs that a hearing be conducted. The Board shall direct that further investigation into specific aspects of an application be conducted if requested by the Governor.

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