State Of Montana
BOARD OF PARDONS AND PAROLE

ORIENTATION MANUAL

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A MESSAGE TO THE READER

We hope this edition of the Montana Board of Pardons and Parole Orientation Manual will be useful to offenders, correctional personnel, court officials, attorneys, and other interested persons. The format of each section makes Board policies and procedures available for quick reference. It is intended to give general information and guidelines only and to better inform all interested persons of the fundamental duties of the Montana Board of Pardons and Parole. For additional information and specific rules refer to the Administrative Rules of Montana and visit our website which can be found at https://bopp.mt.gov/ or on the State of Montana Home Page under Government Agencies. The Manual is designed to be made electronically available to inmates on the Edovo tablets or legal kiosks throughout prison facilities to assist them in preparing themselves for the parole process. Inmates located at facilities that do not provide electronic options may acquire a paper copy by making request to assigned facility staff.

FUNDAMENTALS

The Montana Board of Pardons and Parole is comprised of six members. The Governor appoints each member for staggered six-year terms subject to confirmation by the State Senate. The Governor appoints the Chair in accordance with State law. The Board was created by legislative action in 1955. There has been some form of parole in Montana since 1889. In 1979, the addition of the auxiliary member was provided by the legislature. In 1999, a second auxiliary member was added; in 2003, two additional auxiliary members were added. In 2017, the Board's structure was modified from a part-time citizen Board to full-time members.

Legislation passed in 2017 substantially changed Montana's Board of Pardons and Parole. Most notably, the legislation created a full-time, five-member professional board. The legislation also charged the Board with adopting guidelines to structure and guide parole decisions and release conditions. The guidelines must include consideration of an inmate's:

- risk and needs levels, as determined by a validated risk and needs assessment
- participation in risk-reducing programs and treatment
- institutional behavior as reflected by disciplinary records
- offense severity

Further legislation passed in 2025 added a 6th Board Member. The Board is a quasi-judicial agency of the Executive Branch of State government. The Board is a separate agency from the Department of Corrections and is attached only to the Department of Corrections administratively. All functions of the Board are performed independently from that of the Department of Corrections. The role of the Department of Corrections is likewise independent from the Board.

CORRECTIONAL POLICY OF THE STATE OF MONTANA

46-18-101. MCA: Correctional and sentencing policy

(1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.
(2) The correctional and sentencing policy of the state of Montana is to:
    (a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;
    (b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;
    (c) provide restitution, reparation, and restoration to the victim of the offense; and
    (d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, MCA, costs of court-appointed counsel as provided in 46-8-113, MCA, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles.

PARAMOUNT OBJECTIVES OF THE BOARD

1. The primary objective of the Board is to carefully review each eligible offender after serving ¼ of their term, unless otherwise mandated by the sentencing court. Parole may be granted when, in the Board's opinion, there is a reasonable probability that the offender can be released without detriment to the inmate or community. Additionally, The Board must also consider risk and need levels, participation in risk reduction programming programs, institutional conduct, and offense severity.
2. To make every feasible effort to bring about the rehabilitation of those inmates incarcerated or released.
3. To allow, when requested, a victim to present a statement concerning the effects of the crime on the victim or family including, but not limited to, their opinion on release of an offender.
4. To return promptly to custody parolees who are unable or unwilling to adjust to parole supervision and who violate the conditions of their release.
5. To protect society by not releasing inmates shown to be a menace to society, except a possible release of an inmate who would soon be discharged without supervision at the end of the inmate's sentence and it is thought better to return the inmate to society under strict supervision.

6. To recommend pardons and/or commutation of sentences to the Governor for those individuals considered appropriate for this extraordinary privilege.
7. To approve grants of Conditional Discharge from Supervision (CDFS) and set the conditions of such.

ROLE AND FUNCTION OF THE PAROLE BOARD

The Parole Board monitors the inmate and collects data from the courts, police, prison, and supervising agents. It studies the need for an accomplishment of each of the four purposes in each case. Decisions on each case are tailored to the crime, history of the offender, and institutional adjustment/treatment accomplishments and parole guidelines. The Board then makes its decision by considering the probability that the offender can be released without being a detriment to him/herself or the community. In this way, the Board's unique central position and authority reduce sentencing disparity. The Board members have within their power the ability to release early after eligibility or delay until later in the sentence to, in the name of fairness to the individual, reduce excessive harshness or extend parole denial or excessive leniency. Do not underestimate the importance of a parole Board's investigative and decision-making authority being centralized. They thus can compare each case with hundreds of others. Parole supervision does work. Years of study by the National Council on Crime and Delinquency indicate a lower recidivism rate for persons released from prison on parole as opposed to those who simply discharge their sentence. Therefore, discretion in releasing inmates is essential. This discretion is best placed with an independent, informed, just, and careful Parole Board. Along with parole responsibilities, the Board is also charged with making decisions and recommendations on Executive Clemency or Pardon and Commutation, or the lessening of a sentence. However, the ultimate decision on Executive Clemency rests with the Governor.

HISTORY OF THE BOARD OF PARDONS AND PAROLE

Creation of the Board of Pardons (1889). The origins of the Board of Pardons and Parole can be traced to the 1889 Montana Constitution. Article VII, Section 9, of the constitution authorized the Governor to grant pardons, remit fines and forfeitures, and commute punishments subject to the approval of a Board of Pardons.

In 1891, the Legislature determined that the Board of Pardons would be composed of three elected state officials: the Secretary of State, Attorney General, and State Auditor. The duties assigned to the Board were limited to advising the Governor when he chose to exercise his constitutional power to grant an absolute or conditional pardon, remit a fine or forfeiture, or commute a punishment. If the Governor wished to take such action, the Board scheduled a hearing, solicited testimony during the hearing from parties supporting or opposing the Governor's action, and then recommended to the Governor whether a pardon should be granted, a fine or forfeiture remitted, or a punishment commuted.

Parole by the Board of Prison Commissioners (1907). Sixteen years later, the Legislature provided for the parole of prisoners (Ch. 95, L. 1907). The 1907 legislation authorized the State Board of Prison Commissioners, consisting of the Governor,

Secretary of State, and Attorney General, to parole an inmate of the Montana State Prison.

Parole and Executive Clemency Functions Merged (1955). For the next 48 years, a dual board system existed. The Board of Pardons reviewed Executive Clemency matters, while the State Board of Prison Commissioners handled paroles. In 1955, however, the functions of the two boards were combined and assigned to a reconstituted Board of Pardons (Ch. 153, L. 1955). The Board consisted of three members appointed by the Governor with the advice and consent of the Senate. Members served staggered six-year terms.

In addition to administering the laws governing parole and Executive Clemency, the Board was charged with supervising probations and suspended sentences.

Board Transferred to Department of Institutions (1971). Under the 1971 Executive Reorganization Act, the Board of Pardons was transferred to the Department of Institutions (now called the Department of Corrections) for administrative purposes only. In addition, the position of State Director of Probation and Parole was renamed the Administrator of Probation and Parole (Ch. 272, L. 1971).

Qualifications for Board Members/Probation and Parole Functions Placed in Department (1975). In 1975, the Legislature established statutory qualifications for members of the Board of Pardons (Ch. 333, L. 1975). Additionally, the Legislature abolished the position of Administrator of Probation and Parole and transferred responsibility for probation and parole field services from the Board to the Department of Institutions.

Ineligible-for-Parole Restriction Authorized (1977). Also in 1977, the Legislature permitted district judges to sentence felony offenders to imprisonment with no possibility of parole or participation in the prisoner furlough program (Ch. 580, L. 1977). This restriction could be imposed if the judge sentenced a felon to imprisonment in the state prison for a term exceeding one year. A judge imposing the restriction was required to state in writing his reason for doing so.

Auxiliary Board Members Added (1979, 1995, and 2003). These four members are required to attend meetings that a regular Board member cannot attend. Auxiliary members have all the rights and responsibilities of regular Board members.

Change in Montana Code Annotated Section 46-23-201 (1995). The 1995 Legislature eliminated good time for the purposes of parole eligibility. Unless the court otherwise orders, all inmates will serve 25% of their sentence prior to becoming parole eligible. The Legislature also eliminated the provision that requires parole appearance on a time sentence after 17½ years and required 30 years to be served on a life sentence. Additionally, the 1995 Legislature eliminated the 120-day early consideration and non-dangerous/dangerous designation. This applies to crimes committed on or after April 13, 1995

Change in Conditions of Parole (1999). The 1999 Legislature changed the requirements of 46-23-215 in that the new statute requires that an offender may not be paroled until he or she provides a biological sample (DNA) if the offender has not already done so if

he or she was convicted of or was found to be guilty of a sexual offense or violent offense as defined in 46-23-502. This law was to apply retroactively to March 27, 1995.

Changes in Sentences to Be Handed Down (1999). The 1999 Legislature provided that under 46-18-201, a district court may commit an offender to the Department of Corrections for placement in an appropriate facility; however, all but the first five years of the commitment to the DOC must be suspended.

Change in the Board's Ability to Make Rules and Confidentiality (1999). The 1999 Legislature authorized 46-23-110, in that the Board may release information and citizens may review and make copies of the public records of the Board. However, constitutionally protected records are not subject to disclosure and the Board may assert a privacy or safety interest and withhold a document.

Ability of the Board to Conduct Hearings (1999). The 1999 Legislature authorized the Board to hold any parole hearing or revocation hearing via an interactive videoconference and allowed the holding of an administrative hearing via a telephone conference (46-23-109, MCA).

Board Member Training and Hearing Panels (2003). The 2003 legislature required that all Board members receive training in American Indian culture and problems. Additionally, hearing panels made up of two parole board members were authorized.

Revision of Medical Parole (2007). The 2007 legislature modified the medical parole statute to exclude a prisoner under sentence of death or life without parole. It also modified the condition of the offender by changing incapacitating physical condition, disease or syndrome to having a medical condition requiring extensive medical attention, or may cause death within 6 months. The DOC must first have the prisoner examined and an extensive medical report completed and approved prior to the Board being able to consider the prisoner. It also modified the statute to include a report to the legislature concerning medical parole releases.

Changes in Administrative rules of Montana (2010). The Board of Pardons and Parole revised its Administrative Rules of Montana and the rules were published in November, 2010. The new rules were amended to reflect current practices of the Board. The 2011 Legislature passed legislation generally revising the makeup, operations, and procedures of the Board.

Changes in Montana Code (2017). The Board was drastically modified from a part-time citizen Board to full-time members. The Board also implemented guidelines to help in predictability and consistency in parole decisions by utilizing the MORRA/WRNA risk and needs assessments.

APPOINTMENT OF PAROLE BOARD MEMBERS:

Parole Board members serve staggered terms, and all members must receive or have received training in American Indian culture and problems.

Board of Pardons and Parole -- composition -- allocation -- quasi-judicial.

(1) There is a board of pardons and parole consisting of six members.

(2) Board members must possess at least one of the following qualifications:
    (a.)a college degree in criminology, corrections, or a related social science;
    (b.)at least 5 years of extensive work experience in corrections, the criminal justice system, or criminal law; or
    (c.)a law degree.
(3) Consideration should be given to balancing members' expertise or knowledge of:
    (a.)American Indian culture;
    (b.)serious mental illness and recovery from serious mental illness; and
    (c.)victim awareness.
(4) Board members shall serve staggered 6-year terms. The terms of board members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.
(5) The governor shall designate the presiding officer, as provided in 2-15-124. The governor may designate a different presiding officer at any time. If the governor designates a different presiding officer, the former presiding officer still serves as a board member unless removed for cause pursuant to 2-15-124(6)
(6) The board is allocated to the department of corrections for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.
(7) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that board members must be compensated as provided in [section 2], the terms of board members must be staggered as provided in subsection (4), and the provisions of 2-15-124(1) do not apply to the board.
(8) A favorable vote of a majority of the members of the board is required to implement a policy, procedure, or administrative rule. A favorable vote of the majority of the members of a hearing panel, as defined in 46-23-103, is required to make decisions regarding parole and executive clemency.

Compensation of Board Members

(1) Board members must be paid a salary within the pay band, as defined in 2-18-101, determined by the department of administration as provided in subsection (2). Board members must receive longevity, expense reimbursement, leave, insurance, and other benefits provided to classified state employees under Title 2, chapter 18, and must receive pay adjustments consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304.
(2) The department of administration shall determine the appropriate occupation and pay band for the board members in the same manner that it determines the occupation and pay bands for employees in state government pursuant to Title 2, chapter 18.
(3) The governor shall set the salary of the board members within the pay band established by the department of administration.

LEGAL AUTHORITY OF BOARD OF PARDONS AND PAROLE

LEGAL ADVISOR:

46-23-105 MCA, 1999:

The Board may appoint any qualified attorney or the Attorney General to act as its legal advisor and represent it at all proceedings whenever so requested by the Board.

INFORMATION FROM COURTS TO BOARD:

46-23-106 MCA, 1999:

It is the duty of the court disposing of any criminal case to cause to be transmitted to the Board of Pardons and Parole statistical data in accordance with regulations issued by the Board regarding all dispositions of defendants whether found guilty or discharged.

SUBPOENAS-ISSUANCE, SERVICE, ENFORCEMENT AND PENALTY:

46-23-205 through 207 MCA, 1947:

The Board has the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the Board or any member thereof. The Board may also make application for enforcement of the subpoena to any court in cases of contumacy or refusal of any person to obey a subpoena issued. There is statutory authority to be fined or imprisoned for failure to attend and/or testify to answer a lawful inquiry. This also applies to failure to produce records, books, papers, and other documents.

AUTHORITY OF BOARD TO ADOPT RULES:

46-23-218. Authority of board to adopt rules -- purpose for training-data collection.

(1) The Board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference administrative reviews, progress reviews, clemency proceedings, the conditions to be imposed upon parolees, the training of Board members regarding American Indian culture and problems, and other matters pertinent to service on the Board.

(2) The legislature finds that American Indians incarcerated in state prisons constitute a disproportionate percentage of the total inmate population when compared to the American Indian population percentage of the total state population. The training of Board members regarding American Indian culture and problems is necessary in order for the Board to deal appropriately with American Indian inmates appearing before the board.

CONDITIONS OF PAROLE:

46-23-215 MCA, 2017:

An offender, while on parole, remains in the legal custody of the department but is subject to the orders of the Board.

PAROLE IS NOT PROBATION:

Parole is the release to the community of a person imprisoned by a District Court for a felony crime by the decision of the Board prior to the expiration of the inmate's term, subject to conditions imposed by the Board and subject to supervision by the Department.

Probation is the suspension or deferral of a prison or Department commitment by the District Court. The District Court retains jurisdiction, and the offender is placed under community supervision subject to the conditions imposed by the court.

Conditional Release is the release to the community of an inmate under the auspices of the Department of Corrections and subject to their rules. **This release is not parole release.** These inmates will no longer remain eligible for parole consideration during their release. Should a Conditional Release inmate violate the conditions of his/her release and be designated to the MSP/MWP, they would then become eligible for parole when prison records advises the minimum time has been served on their sentence.

PAROLE AND REVOCATION HEARINGS ADMINISTRATIVE REVIEWS-TELEPHONE-VIDEO CONFERENCE:

46-23-109 MCA, 1999:

The Board may, in its discretion, hold any parole hearing or revocation hearing via interactive videoconference and may hold an administrative review via telephone conference.

RECORDS-DISSEMINATION:

46-23-110. Records -- dissemination.

(1) (a) The department and the board shall keep a record of the board's acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided in 2-6-1003, 2-6-1006, 2-6-1007, and this section.

(b) The board shall video-record and audio-record all meetings held pursuant to 46-23-104(2) and all hearings conducted under part 2 or part 3 of this chapter or 46-23-1025. A recording may not personally identify the victim without the victim's written consent.

(c) Except as provided in subsection (2), the board shall make video recordings publicly available.

(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

(3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board staff member shall review the record requested and determine whether any document in the file or any content in a video recording is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure.

(4) The board may assert the privacy or safety interest and may withhold a document or redact content of a video recording if the board determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the document's or recording's contents would compromise the safety, order, or security of a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

(5) The board may not withhold from public scrutiny under subsections () through (4) any more information than is required to protect an individual privacy interest or a safety interest.

(6) The board may charge a reasonable fee for copying and inspecting records.(7) The board may limit the time and place that the records may be inspected or copied. (Terminates June 30, 2019--sec. 2, Ch. 402, L. 2015.)

The Board receives volumes of requests to review files and are prioritized based on the next scheduled hearing date.

ADMINISTRATIVE ATTACHMENT:

2-15-2302, MCA, states there is a Board of Pardons and Parole. It consists of seven members.

The Board is attached to the Department of Corrections for administrative purposes only (2-15-121). But as a quasi-judicial board under 2-15-124, it is set apart, hires its own personnel, and sets its own policy independent of the Department of Corrections and without approval or control of the Department of Corrections. As such, the Parole Board does not run the prison nor is it in charge of supervising parole and probation officers. The Parole Board does not set sentences and probation is not an act of the Board.

PAROLE PROCESS

(See Appendix for Parole Process Map)

PAROLE ELIGIBILITY:

Parole is a discretionary release of an offender from confinement after the offender has served part of the offender's sentence. Law sets the mandatory time served per sentence. The offender will continue under state supervision and custody and under set conditions until completion of the sentence of confinement. If these conditions are violated, the offender can be re-imprisoned. The Montana Board of Pardons and Parole is the only paroling authority in this state. When making parole release decisions, the Board considers the probability that the inmate can be released without being a detriment to him/herself or the community.

Eligibility for parole depends upon the term, the amount of good time earned, and the date the crime was committed. An inmate meeting the qualifications is automatically considered for parole. However, no inmate has a right to a parole. A parole may be granted only in the best interest of society and when the Board feels that a person is willing and able to be a law-abiding citizen. A parole is not a reduction of sentence or an award of clemency.

PROCESS:

All calculations for parole eligibility are done by the Records Department at Montana State Prison and Montana Women's Prison. The inmate will be notified in writing prior to the inmate's eligibility date. The inmate then will develop a parole plan to be presented to the Board. Institutional staff will conduct a pre-parole school approximately 30 days in advance of their scheduled Board meeting to aide and facilitate the completion of this release plan.

A.R.M. 20.25.306 PAROLE PLAN

(1) The board through its pre-parole program, will make available to offenders a copy of a packet outlining the parole process and the recommended parole release plan.
(2) Each offender who applies for a grant of parole should prepare a comprehensive release plan for the panel's consideration. The parole plan should include the following:

    (a) the offender's proposed living situation;
    (b) the offender's proposed gainful employment or other suitable means of support, or a training or schooling program;
    (c) the offender's proposed aftercare programs; and
    (d) the offender's proposed budget for payment of court-ordered fines, fees, restitution, and other financial obligations including child support.

(3) Substantial changes in the parole plan that is submitted at the time of the parole hearing must be reviewed and approved by the hearing panel.

The purpose of this Orientation Manual is provide inmates with the information necessary to understand the parole process and the recommended parole release plan and is available on the Edovo Tablets or Legal Kiosks throughout Montana Correctional Facilities. It is the inmate's responsibility to review the contents of the Orientation Manual prior to a scheduled parole hearing.

The offender will appear before the Board members, at which time oral testimony is taken from the offender, as well as all interested parties and the members review the offender's records. In most cases, a written disposition is rendered immediately following the hearing.

CALCULATIONS

An offender may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law

governing the offender's sentence. Serving the minimum term of imprisonment only means the offender is eligible to appear before the Board; it does not mean the offender has a right to be released on parole. That decision is in the discretion of the Board.

The following represents general guidelines involving changes in the parole eligibility statutes:

(a) For crimes committed on or after January 31, 1997, the offender must serve one-fourth of the full term of a time sentence and 30 years of a life sentence and good time for discharge purposes was removed.
(b) For crimes committed on or after April 13, 1995, to January 30, 1997, the offender must serve one-fourth of the full term of a time sentence. For a life sentence an inmate must serve 30 years prior to being eligible for parole consideration. Good time for parole eligibility was removed but inmates receive day for day good time for discharge purposes only.
(c) For crimes committed between July 1, 1977 and April 11, 1995, the offender must serve one-fourth of the full term of a time sentence less any good time allowance and 30 years on a life sentence, less any good time allowance. An offender designated dangerous or convicted of MCA 45-9-109 (effective July 1, 1991) must serve one-half of the full term of a time sentence, less any good time allowance. Offenders whose parole eligibility dates are governed by this time period are subject to an outer limit of 17 ½ years for parole eligibility, excluding additional consecutive sentences for crimes committed while in prison or on parole. Offenders may also have additional time for separate sentences received upon admission.
(d) The Board shall use the total term rather than individual sentences for each offense as a basis for its parole eligibility calculations. (Case v. Mahoney) The Board shall aggregate consecutive sentences for the purposes of calculating a single parole eligibility date, unless the court ordered the offender ineligible for parole.
(e) Offenders who receive additional sentences for crimes committed in prison or on parole remain eligible for parole on the prior sentence. The Board may parole an offender from the prior sentence to begin serving the subsequent consecutive sentence. In this instance, the sentences continue to run consecutive (46-23-217 MCA).
(f) The controlling sentence among two or more concurrent sentences shall be used to calculate parole eligibility.

All sentence calculations are completed by the DOC Records Bureau. All questions concerning calculated parole eligibility and discharge dates must be directed to DOC Records. The BOPP does not have any involvement in time calculation and will not respond.

HEARING TYPES:

INITIAL HEARING - An offender appears before the full Board or a hearing panel. Public notice is provided and the Board hears testimony from all persons having relevant testimony for or against parole.

REAPPEARANCE - An offender denied parole may be granted an appearance at a later date. An offender appears before the full Board or waives a full Board hearing. Public notice is provided and the hearing panel hears testimony from all persons having relevant testimony for or against parole.

ADMINISTRATIVE REVIEW - An offender denied parole may be set for a progress review. Progress and conduct reports are reviewed by a panel of three (3) Board Members via conference call and a decision is rendered. An offender is notified in writing of the decision. Generally, the Board does not release from this review violent offenders, sex offenders, or any other offender who has had opposition at previous hearings. Exceptions may include an imminent discharge date, lack of up to date community opposition, or failure of a requesting party to notify the Board of a change in status in accordance with 46-24-213, MCA. If parole is proposed, a public hearing is normally scheduled and notices are provided to interested persons.

PASSED TO DISCHARGE - Following a Board hearing or review, the Board may require an offender to serve until discharge without further consideration. This may include an offender not interested in parole release. An offender with more than two years remaining on a sentence is generally not passed to discharge.

INSTITUTIONAL SCREENING:

With passage of HB426 during the 2023 Montana Legislative Session, the Department of Corrections was granted statutory authority to consider inmates within 14 months of parole eligibility or discharge of sentence for placement into an appropriate community corrections treatment or prerelease program prior to their Initial Appearance before the parole board. Inmates placed into community corrections programs prior to appearance before the parole board will appear as scheduled at the appropriate point in the prerelease program. Inmates placed into treatment programs with a scheduled prerelease to follow are encouraged to voluntarily waive their appearance until they have completed treatment and transferred to prerelease as they will have greater access to resources in developing a comprehensive parole plan to present to the parole board during their parole appearance.

The BOPP participates in Institution Screening through an assigned BOPP staff Institutional Screening Coordinator that works in coordination with DOC to select viable candidates through the screening process. The BOPP IS Coordinator may object to DOC placement prior to appearance before the parole board in offenses that warrant public input at a parole hearing prior to placement in a less secure setting. Institutional Screening, however, is a DOC process and all questions or issues from inmates related to Institutional Screening criteria/qualifications must be directed to the DOC. The BOPP cannot effectively answer questions regarding DOC processes or policies.

The BOPP does not have any objection or statutory authority to prohibit an inmate from approaching the DOC for consideration for placement into a community corrections program through Institutional Screening up to 14 months prior to discharge of their remaining prison sentence after the Board has denied parole and passed the inmate to discharge. As the inmate would remain at the program for the remainder of their sentence, parole would not apply and the BOPP would have no need for involvement in

such placement determinations. Discretion in this circumstance would fall directly within DOC statutory authority to determine placement and programming.

MEDICAL PAROLE:

46-23-210. Medical parole.

(1) The board may release on medical parole by appropriate order any person confined in a state prison or adult community corrections facility or any person sentenced to a state prison and confined in a prerelease center who:
    (a) is not under sentence of death or sentence of life imprisonment without possibility of release;
    (b) is unlikely to pose a detriment to the person, victim, or community; and
    (c) (i) has a medical condition requiring extensive medical attention; or
    (ii) has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.

(2) A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. If the court does not respond within 30 days to a written request from the department, the person is considered to be approved by the court for medical parole. The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).

(3) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:
    (a) a description of the medical attention required to treat the person's medical condition;
    (b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and
    (c) a prognosis addressing the likelihood of the person's recovery from the medical condition or diagnosis and the extent of any potential recovery. The prognosis may include whether the person has a medical condition causing the likelihood of death within 6 months.

(4) The application must be reviewed and accepted by the department before the board may consider granting a medical parole.

(5) Upon receiving the application from the department, the hearing panel shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.

(6) The hearing panel shall require as a condition of medical parole that the person agree to placement in an environment approved by the department during the

parole period, including but not limited to a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program, or to a family home. The hearing panel may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's medical condition has improved to the extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the person, victim, or community, a hearing panel may revoke the parole and return the person to the custody of the department.

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

(8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.

(9) Before July 1 of each even-numbered year, the board and the department shall report to the children, families, health, and human services interim committee and the law and justice interim committee regarding the outcome related to any person released on medical parole since the last report, including health care costs and payments related to the care of the person released on medical parole.

NOTIFICATION AND COMMUNITY RESPONSE:

The Board notifies, accepts input, and reviews any comments received relative to the release of an offender from sentencing court judges, related county attorneys, sheriff offices, chiefs of police, and probation and parole officers. Also reviewed are victim impact statements and letters from victims, relatives and area citizens with interest in a particular case. Upon request, victims and victim's families are notified of any Board action and may appear before a hearing panel to present testimony. In certain circumstances, this testimony may be held confidential.

ALTERNATIVES TO PRISON PLACEMENT:

The Board may place an offender in any residential treatment/rehabilitation program contracted with the Department of Corrections prior to parole as deemed necessary for the offender. Examples of residential treatment/rehabilitation programs are pre-release, Connections, WATCh, Nexus, and other appropriate programs across the State. Persons in residence at these facilities continue to be classified as inmates, as per institutional policy. Generally, for parole purposes, court ordered programs and Board directed programs obtained in these facilities are acceptable to the Board.

PRE-PAROLE INVESTIGATION:

Before the Board interviews an inmate for parole consideration, it requests detailed reports and recommendations from prison counselors and, if a case warrants, from professional staff, such as psychologists. Sources of information are arrest and court records, pre-sentence investigations, existing psychological evaluations and reports from other treatment programs an inmate may have attended. Also considered are

institutional work and conduct records, rehabilitative efforts, and community response. This information is considered confidential criminal justice information. The hearing panel views this information as advancing a penological interest and will review all requests to release this information individually.

PRE-PAROLE SCHOOL AND RE-ENTRY:

Normally, depending on location, offenders appearing before the Board will be afforded the opportunity to attend a pre-parole school. The parole process will be explained and notice of the date and time of the hearings will be given to parole applicants. In circumstances when pre-parole school is not available due to the Inmate's location, this Inmate Orientation Manual will take the place of the pre-parole school. The Orientation Manual is to be available through Edovo Tablets, Legal Kiosks, and hard copies may be provided by facility staff by request of the inmate. Inmates that experience difficulty with reading comprehension or English as a second language will need to make requests for assistance through assigned facility staff. Institutional staff will assist offenders with the completion of a parole application. Every effort is made to provide the offender with a copy of the Board of Pardons and Parole Orientation Manual.

PAROLE PLAN:

Each inmate scheduled for Board consideration must prepare a comprehensive parole plan. Each plan will include a suitable living situation and gainful employment, training, or school program guaranteed by a responsible and reputable person, firm, or institution. It is the responsibility of all inmates to make sure all information is correct in the parole report. Inmates may request to attach addendums such as written statements to the Board, treatment program acceptance letters, employment or rental property verification, etc. The Parole Board stresses that the inmates take ownership of the parole plan when working with facility staff as the parole plan will be one of the criteria that will determine if parole is granted or denied. All plans will be reviewed by the Adult Probation and Parole staff of the Department prior to release on parole. The Board may grant a parole with the substantial prospect of gainful employment or schooling.

To appear before the Board and prior to release on parole, an inmate must have a minimum of 120 days of disciplinary-free status. If the inmate resides in a community-based facility, 90 days will be required. If a parole has been granted, the Board may delay release up to 120 days from the date of each disciplinary report considered, if it is determined that rescission is not in order. The Board may also delay release for a longer period of time if the violation is deemed to warrant such a delay.

A detainer or hold filed against an inmate shall not bar the offender's appearance before the Board. An inmate may be paroled to a detainer. If such detainer has not been exercised, the inmate will reappear before the Board unless otherwise directed. If the Board grants a parole other than to the detainer, the authority filing the detainer or hold will be given written notice as to the approximate date the inmate will be released. The Board will not generally release to an untried indictment and encourages inmates to exercise their right to a speedy trial.

FACTORS IN PAROLE DECISIONS: (criteria)

46-23-208. Nonmedical parole criteria -- information board may consider.

(1) The board may release an eligible prisoner on nonmedical parole only when:
  (a) there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community;
  (b) release is in the best interests of society;
  (c) the prisoner is able and willing to fulfill the obligations of a law-abiding citizen; and
  (d) the prisoner does not require:
    (i.) continued correctional treatment that cannot be found in the community; or
    (ii.) other programs available only in a correctional facility that will substantially enhance the prisoner's capability to lead a law-abiding life if released, including mental health therapy or vocational training.

(2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.

(3) For a prisoner sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312:
  (a) the board may require as a condition of parole participation in a supervised mental health treatment program, if consistent with mental health services recommendations provided by a mental health professional, as that term is defined in 53-21-102, to ensure that the prisoner continues to treat the prisoner's mental disorder; and
  (b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (3)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.

(4) In making its determination regarding nonmedical parole release, a hearing panel shall consider all available and pertinent information regarding the prisoner, including the following factors:
  (a) the circumstances of the offense;
  (b) the prisoner's social history and prior criminal record, including the nature and circumstances of the offense, date of offense, and frequency of previous offenses;
  (c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the prisoner has taken advantage of opportunities for treatment and whether the prisoner is clear of major disciplinary violations prior to the hearing;
  (d) the reports of any physical, psychological, and mental evaluations that have been made;
  (e) the prisoner's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the prisoner will conform the prisoner's behavior to the requirements of law;

(f) the adequacy of the prisoner's release plan;
(g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;
(h) the prisoner's education and training;
(i) the prisoner's family status and whether the prisoner has relatives who display an interest or whether the prisoner has other close and constructive associations in the community;
(j) the prisoner's employment history and occupational skills and the stability of the prisoner's past employment;
(k) the type of residence, neighborhood, or community in which the prisoner plans to live;
(l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;
(m) the prisoner's mental health needs;
(n) the prisoner's attitude toward law and authority;
(o) the prisoner's behavior and attitude during any previous experience of supervision and the recency of the supervision;
(p) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the offender should be paroled.
(q) whether parole at this time would diminish the seriousness of the offense; and
(r) any and all other factors that the hearing panel determines to be relevant.

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

The Board has designated certain factors as important when considering a person for parole. They will determine the following:

1. If the inmate can be released without being a detriment to him/herself or the community.
2. If the best interests of society are furthered.
3. If the inmate is able and willing to fulfill the obligations of a law-abiding citizen.
4. If continued correctional treatment would substantially enhance the inmate's capacity to lead a law-abiding life.

The Board will not parole an inmate if there is a substantial reason to believe the inmate will engage in further criminal conduct or will not conform to specific conditions of parole. Community safety will take priority.

BOARD CONSIDERATIONS:

History

1. Education, training, occupational skills, and employment history
2. Past use of narcotics or habitual excessive use of alcohol

3. Circumstances of the offense for which the inmate is serving a sentence
4. Criminal record, including nature of crimes, recency, and frequency
5. Behavior and attitude while previously supervised on probation or parole

Prison Record

1. Attitude toward law and authority
2. Institutional conduct, including disciplinary reports
3. Work evaluations and work history
4. Utilization of treatment opportunities
5. Utilization of vocational and educational opportunities
6. Maturity, stability, and behaviors consistent with the general population
7. Noticeable attitude changes since incarceration
8. Mental or physical makeup; for instance, physical and emotional status

Forward View

1. Family status, including whether the offender's relatives or other close associates in the community display an interest
2. Residence, neighborhood, or community of planned residence
3. Adequacy of parole plan
4. Availability of community resources and their value to the inmate

WAIVER:

An inmate may voluntarily waive a parole hearing by notifying the Board in writing. However, an Inmate may not waive more than two times between each appearance. After a second waiver is granted, a Hearing will be scheduled within 6 months. This hearing is meant to be mandatory. The Inmate may request to waive their attendance and not participate at the hearing, but a hearing will be conducted in the Inmate’s absence through a file review of all records available to the Board.

Any inmate who has waived a hearing may see the Board earlier by giving at least 30 days written notice. The Board will place this offender on the next available hearing list. Additional waivers may be allowed under certain circumstances, but must be approved by Board staff. Generally, only two waivers are allowed for each term.

HEARING PROCEDURE:

An inmate will systematically come before the Board for a non-medical parole interview approximately two months prior to the actual eligibility date or as soon thereafter as possible. Eligibility dates are calculated by the Prison Records Department. Written communication relating to parole hearings may be filed with Board staff at anytime.

An inmate designated ineligible for parole by a State District Court until certain restrictions or conditions are met will not appear for a hearing until these conditions or restrictions have been satisfied. Upon completion of the restrictions or conditions (certified by the appropriate Department staff), the inmate may request an appearance before the Board and will be added to the next available Board for parole consideration.

All interviews and hearings before the Board are conducted informally under the direction of the Chairperson or a designate. An inmate who is not interested in parole

release may waive the right to personally appear before the Board. The inmate will acknowledge that fact and the Board will render a decision based on the written record and on the indication the inmate is not interested in parole release.

PUBLIC PARTICIPATION:

Outside persons interested in appearing before the Board must notify the Board by phone or Email **at least 10 working days prior to the hearing**. At that time, they will state their intent, the date of the intended appearance, relationship to the inmate, and the reason for appearance. All persons requesting to appear before the Board will be required to provide their social security number and date of birth. The Board has discretion in determining the number of persons who can attend the hearing. This determination is on a case-by-case basis. The Board generally excludes minors from appearing; those interested in appearing must be more than 18. The Department has instituted a policy of running background checks on outside persons wishing to appear. Generally, the Department of Corrections will not allow a person with a felony conviction or who has certain misdemeanor convictions to enter a correctional facility.

To protect individual privacy rights, the Board may close a meeting or sections of the meeting to discuss confidential information.

NOTIFICATION OF DECISION:

All decisions regarding parole will be issued from the Board and signed by at least two Board members. Offenders appearing before the Board will be advised verbally of the decision. The disposition of the Board will also be in writing and will include any special conditions or terms to be required of those granted parole. The disposition also includes the standard conditions of parole. When an inmate has been denied parole, his or her written notification will include the date of his or her next Board appearance and/or review or discharge dates. This document of notification will include the decision and, in the case of denial, will show reasons for that denial and make recommendations for self-help programs, if the Board has an opinion in that regard. (See Appendix for examples of parole and denial dispositions.)

RECONSIDERATION:

Board decisions are by majority vote and **are not subject to appeal**.

If the offender can present evidence that the hearing panel's decision was based on erroneous or false information, or that a hearing was not conducted according to board procedure, a newly appointed hearing panel may reconsider the decision.

(a) The offender must submit a written request for reconsideration to the board chair or designee within 60 days following the delivery of the written disposition.
(b) If the offender presents sufficient evidence the chair or designee will forward the case to a hearing panel for its consideration.

The requesting offender must submit evidence with their request. Allegations, presumptions, and/or speculation do not meet the burden of proof.

RESCISSION AND RELEASE DELAY:

A parole may be withdrawn prior to release as a result of improper conduct, substantial changes in the parole plan as originally presented to the Board, or new evidence or information which was not available for the hearing at which parole was granted.

The Board may delay a parole that has been granted for up to 120 days as a result of improper conduct or new evidence or information if rescission is not in order. If the inmate is the resident of a community-based program, the delay may be a minimum of 90 days with clear conduct.

PAROLE SUPERVISION:

When the inmate has met the requirements of the law regarding parole, the Board may issue an order of release granting the offender permission to serve the remainder of his or her term outside prison, under such terms and conditions as the Board may impose.

Offenders placed on parole are required to comply with the standard conditions of Montana parole (shall not change place of residence without PO's approval; shall not leave assigned district without PO's written permission; shall maintain employment or a program approved by the Board or PO, must inform employer of parole status, and must obtain PO's permission prior to any change of employment; shall report to PO as scheduled; shall not own, possess, or be in control of any firearms or deadly weapons, including black powder as defined by law; shall not possess any chemical agents such as O.C. spray; shall obtain PO's permission before making any financial transactions; shall submit to search by PO at any time without a warrant; shall comply with all laws and ordinances, conduct yourself as a good citizen, and report any arrests or contacts with law enforcement to your PO; shall not possess or use illegal drugs or drug paraphernalia and shall not possess or use any drugs unless prescribed by a licensed physician; shall not possess or consume intoxicants/alcohol; shall submit to breathalyzer testing or bodily fluid testing as requested by a PO; shall not gamble; pay fines/fees; pay victim restitution where applicable; pay supervision fees). Based on the individual circumstances of each case, the Board may also impose additional special conditions, some of which include: chemical dependency, mental health, or sex offender counseling; no bars; no checking or credit card accounts; no casinos; and compliance with any conditions recommended by the District Court. There may be additional conditions that become standard to all parole releases, as determined by the DOC. (All conditions paraphrased).

No inmate will be granted a release from prison until the supervising community agent has examined and approved the inmate's proposed plan.

An inmate's acceptance of parole is an agreement to submit to all rules and conditions as set by the Board and violations thereof subject the parolee to revocation. Such rules and conditions include standard rules and special conditions. All rules and conditions will be stated in writing and will be part of an agreement signed by the parolee. The rules must be signed, witnessed, and a parole certificate issued prior to a parole being effective. If restitution was imposed as part of the sentence, the order of parole must contain restitution to the victim. The parolee is also required to pay a supervision fee, as

determined by the DOC. The Board can waive or modify the payment of the fee if recommended by the supervising officer.

10 DAY FURLOUGH:

Whenever a hearing panel grants a parole to an offender on the condition that the offender obtains employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the hearing panel or designee may grant the offender a furlough, not to exceed two 10-day periods, for purposes of fulfilling the condition.

While on furlough, the offender remains in the legal custody of the department and is subject to all other conditions recited by the hearing panel. If the offender fails to report as ordered to the supervising parole officer or fails to return to the facility as ordered in the furlough permit, the offender may be charged with escape pursuant to MCA 45-7-306 and 46-23-215.

If an offender on furlough violates any conditions of the furlough (report to PO immediately upon arrival and daily thereafter, no alcohol or bars, no drugs, no weapons on person or in household, submit to search, no travel without permission, carry furlough permit at all times), the supervising parole officer may immediately arrest the offender or have the offender arrested pursuant to MCA 46-23-1023. Any violation of a Furlough Program condition may result in the immediate termination of the furlough. Prior to the offender's return to prison, a disciplinary hearing will be conducted.

An offender who secures acceptable living arrangements and/or employment specifically approved by the supervising officer may be eligible to be placed on parole status without returning to the correctional facility. If the offender is not able to secure a job and/or employment in the 10-day time frame, the Board of Pardons and Parole may grant an extension of up to 10 days with a recommendation from the supervising officer. An extension shall be granted only for the number of days required for the inmate to complete the required task. The second furlough will not exceed ten days under any circumstances. Failure to complete the required task prior to the end of the second 10-day period will result in the offender's return to custody.

The Board of Pardons and Parole does not issue furloughs for family hardship, offender or offender family illness, funeral attendance, etc. The Montana Department of Corrections must be contacted and will consider such requests in accordance with DOC Policy.

CONDITIONAL DISCHARGE FROM PAROLE SUPERVISION:

Should a parole officer recommend, and the Board determines it is in the best interest of the parolee and society, the Board may grant a Conditional Discharge From Supervision. However, parole may be revoked if the parolee violates any condition the Board imposes. The parolee may then be returned to active supervision or custody. Consideration for Conditional Discharge from Supervision must be initiated through the supervising parole officer to the BOPP. Direct requests for Conditional Discharge from Supervision from parolees will not be considered.

FINAL DISCHARGE:

When a person is released on parole, the projected date of discharge from parole supervision will be stated on the parole certificate. If all sentences have been completed, the person will receive written notice of discharge signed by the Governor and the Board of Pardons and Parole (no certificate is issued if a probation term follows). The Board discharge order includes restoration of civil and political rights in the State of Montana. The Final Discharge is signed by the Governor and filed with the Secretary of State.

PAROLE REVOCATION

REVOCATION ARREST:

When a parolee has allegedly violated a condition of his release, a warrant may be issued for the parolee's arrest. Any probation and parole officer may arrest the parolee without a warrant or may deputize any other officer with power to arrest by giving the officer **oral authorization** and within 12 hours delivering to the place of detention a warrant setting forth the alleged violations.

ON-SITE HEARING:

In most circumstances, or with several exceptions, a parolee thus arrested is afforded a preliminary hearing within a reasonable time at or near the place of the alleged violation. The parolee's supervising officer and a hearing officer should conduct this hearing. The independent hearing officer need not be a judicial officer. The purpose of the hearing is to determine whether there is probable cause to believe the parolee violated one or more parole conditions or whether he\she should be held under arrest pending the Board's decision on revocation. No preliminary hearing is necessary if the parolee is convicted of a felony offense during the period of supervision, or if the parolee is arrested in a state in which the parolee has no permission to travel or reside. If no on-site hearing is necessary the board may utilize the court judgment and conviction or out-of-state arrest documents in lieu of the on-site hearing summary. The Board will schedule a full revocation hearing for the parolee at the next regularly scheduled Board meeting within 90 days of receipt of the on-site hearing summary. The hearing may be continued if the parolee has not yet returned to a secure facility.

If the offender has violated a condition of release requiring the payment of restitution, the supervising parole officer will notify the victim of the offense prior to the final revocation hearing and give the victim an opportunity to be heard. If the Board finds that due to circumstances beyond the offender's control, the offender is unable to make the required restitution payments, the Board may not revoke the offender's parole for failure to pay restitution. The Board may modify the time or method of making restitution and may extend the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the offender.

FORMAL BOARD REVOCATION HEARING:

A parolee may request a continuance of the full revocation hearing for substantial reason. The parolee may, at their own expense, be represented by council and have witnesses. The purpose of the full hearing is to make final decision on whether there is a violation of parole conditions and whether the violation warrants revocation. If a parolee admits to the violation, the parolee can waive his or her right to a hearing before the Board.

The hearing will be recorded. A written copy of the decision will be given to the parolee in a timely manner. The Board decision is based on the reports of the supervising officer, the report of the on-site hearing if there was one, and information and evidence presented at the hearing. The burden of proof is a preponderance of the evidence. At the hearing, the parolee may be reinstated on parole. The parolee may be held in the custody of the institution awaiting an approved plan.

Any parolee who commits a crime while on parole or conditional release and who is convicted and sentenced will serve the sentence consecutively with the remainder of the original term, unless ordered concurrent by the District Court.

The Board will determine if the issue of dead time applies and how much is to be applied in individual cases. Dead time is that portion of time spent on parole that is not to be counted toward time served on the original sentence or time served in an out-of-state correctional facility for a separate felony offense(s).

EXECUTIVE CLEMENCY

46-23-301. Cases of executive clemency -- application for clemency -- definitions. (1) (a) "Clemency" means kindness, mercy, or leniency that may be exercised by the governor toward a convicted person. The governor may grant clemency in the form of:

(i.) the remission of fines or forfeitures;
(ii.) respite;
(iii.) ***Pardon*** - a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction. **An individual may not apply for a pardon unless the offense for which he/she seeks a pardon has been commuted or discharged.**
(iv.) ***Commutation*** - involves the mitigation of a criminal punishment through the substitution of a lesser sentence for a greater one.

Traditionally, the legal effect of a commutation has been quite different from that of a pardon. Commutation involves the mitigation of a criminal punishment through the substitution of a lesser sentence for a greater one. Except in jurisdictions with legal provisions to the contrary, a commutation ***does not*** restore civil rights lost upon conviction.

The substitution of a lesser sentence for a greater one occurs in four principal contexts. Commutation may be granted:

(1) to make immediately eligible for parole those offenders not yet eligible under the terms of their sentences;
(2) to make eligible for parole those who were excluded from eligibility for parole under their original sentences;
(3) to end lengthy parole, when the individual appears able to live without further supervision; and
(4) to avoid the death penalty, by the substitution of life imprisonment. Commutation may be granted conditionally; any conditions may be imposed that are legal, moral, and possible to perform. If the conditions are valid, a noncompliance may lead to the revocation of the commutation.

The Board of Pardons and Parole, as the officials responsible to the Governor for Executive Clemency under the Constitution and laws of the State of Montana, consider commutation of a sentence an ***extraordinary*** remedy. A recommendation to grant commutation will be made only when an applicant is able to demonstrate that exceptional and compelling circumstances warrant the substitution of a lesser penalty other than that authorized by the Legislature and imposed by the sentencing court. The Board of Pardons and Parole will proceed with respect for the prerogatives of the legislative and judicial branches of the State government, and for the rights of the applicant. A recommendation to the Governor to grant commutation will be made only if it's in the interest of justice and is consistent with public safety.

Since commutation is an extraordinary remedy, the applicant has the burden of demonstrating by clear and convincing evidence that:

(1) can prove by overwhelming evidence the individual is innocent of a crime for which the individual was convicted;
(2) has demonstrated an extended period of exemplary performance;
(3) submits evidence discovered subsequent to the conviction that clearly shows the individual was completely justified in committing the crime; or
(4) can satisfactorily prove that further incarceration would be grossly unfair, that a death penalty should be avoided, or extraordinary mitigating or extenuating circumstances exist.

In weighing the evidence of exceptional and compelling circumstances presented by the applicant, clemency officials shall investigate:

(1) the nature of the crime of which the applicant stands convicted; and
(2) relevant institutional, social, psychological, and psychiatric records of the applicant.

If said investigation indicates that release of the applicant would present a measurable risk to public safety, that determination **will** override even the most substantial showing of exceptional and compelling circumstances and result in a recommendation of denial to the Governor.

APPLICATION:

The board shall consider cases of executive clemency only upon application. Application forms for Executive Clemency may be obtained from the Board of Pardons

and Parole. The application is also available on the Board's website at https://bopp.mt.gov/.

Applications must be in writing, signed by the applicant, and filed with the Board of Pardons and Parole Chief of Staff. An application for executive clemency in capital cases may be filed with the board no later than 10 days after the district court sets a date of execution. Applications may be filed **only** by the person convicted of the crime, by the inmate's attorney acting on the person's behalf and with consent, or by a court-appointed next friend, guardian, or conservator acting on the offender's behalf.

Unless the Board orders otherwise or there has been a substantial change in circumstances as determined by the Board, a person may not reapply for Executive Clemency.

POLICY:

(1) 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 the period of supervision.
(2) Executive Clemency may be recommended to the Governor for an individual who:
  (a) can prove by overwhelming evidence the individual is innocent of a crime for which the individual was convicted;
  (b) has demonstrated an extended period of exemplary performance;
  (c) submits evidence discovered subsequent to the conviction that clearly shows the individual was completely justified in committing the crime; or
  (d) can satisfactorily prove that further incarceration would be grossly unfair, that a death penalty should be avoided, or extraordinary mitigating or extenuating circumstances exist.
(3) When considering a recommendation for Executive Clemency, the Board will consider the nature of the crime, the attitude of the judge and the prosecuting attorney, the attitude of the community toward the applicant, the attitude of the victim and victim's family, 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.
(4) 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.
(5) Under the statutes and the constitution of Montana, the granting of Executive Clemency is the sole responsibility of the Governor.

INVESTIGATIONS:

(1) After a hearing panel has considered an application for executive clemency and has by majority vote favored a hearing, the hearing panel shall cause an investigation to be made of and base any recommendation it makes on:
  i. all the circumstances surrounding the crime for which the applicant was convicted;

ii. the applicant's criminal record; and
iii. the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(2) If the hearing panel does not favor a hearing by majority vote, the hearing panel shall transmit the application to the governor. The governor shall review the application and determine whether a hearing is appropriate. If the governor determines that a hearing is appropriate, the governor shall transmit the application back to the hearing panel.

(3) A hearing panel may recommend that clemency be granted or denied. The hearing panel shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the hearing panel, but the governor shall review the record of the hearing and the hearing panel's recommendation before granting or denying clemency. The governor has the final authority to grant or deny clemency. An appeal may not be taken from the governor's decision to grant or deny clemency.

(4) (a) A hearing panel may not recommend clemency if the applicant:

i. is related or connected to the governor by consanguinity within the fourth degree or by affinity within the second degree as provided in 1-1-219; or
ii. works or has worked in the office of the governor since the governor took office.

(b) The governor may not grant clemency to an applicant described in subsection (4)(a).

HEARINGS:

(1) When the Board determines that sufficient cause appears, a public hearing will be conducted. The Board must cause a notice of the consideration to be published in the newspaper therein designated at least once a week for 2 weeks prior to the hearing and, at the same time, cause to be deposited in the post office at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the applicant. The Board will then hear all pertinent facts and information of the petitioner, the petitioner's 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. Should the Board vote to deny the application, it will be forwarded to the Governor.

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

(3) Unless the Board orders otherwise or there has been a substantial change in circumstances as determined by the Board, a person may not reapply for Executive Clemency.

This manual is meant to be used as a guide to understanding the parole process. It does not grant any specific rights, nor does it imply the Board will render a specific disposition. If you have questions about your rights under the law, contact your private attorney. The Board professional staff may be able to clarify your questions and contact information is available at the address on the front cover of this manual. This manual is to be made available to inmates through the Edovo Tablet or Legal Kiosk systems at applicable facilities. Inmates may request a hard copy of the manual through their assigned case manager or case specialist if housed in a location that does not have the ability to provide electronic review options.

Definitions:

"Board" means the Board of Pardons and Parole as authorized in 2-15-2302 and 46-23-104, MCA.

"Capital Offense" means an offense for which the District Court imposed the death penalty.

"Controlling Sentence," means the sentence(s) that, based on a District Court Judgment, requires the longest period of time served to parole eligibility.

"Dead Time" means the period of time from the date a parole violation warrant is issued to the date a violator is arrested on the warrant and the determination whether this time should be counted as time under the term. This also includes time served in another state for a crime committed on parole.

"Department" means the Department of Corrections as authorized in 2-15-230, MCA.

"Hearing," means the personal appearance of an inmate before the Board for release consideration, Executive Clemency, or revocation.

"Hearing Officer" means the appointment of a Board Member, Board staff, or other paroling authority for purposes of conducting a hearing.

"Hearing Panel" means a panel made up of two or three board members appointed to conduct parole hearings, revocation hearings, rescission hearings, and administrative parole reviews and to make final decisions and recommendations in matters of executive clemency.

"Inmate/Prisoner/Offender" means any person sentenced by a State District Court to a term of confinement in a State correctional institution or program.

"Institutional Screening" means the DOC practice of selecting inmates to be considered for placement into a community corrections program.

"Parole" means the release of an inmate into the community prior to the completion of a sentence subject to the orders of the Board and the supervision of the Department.

"Parole Certificate" means the document signed by the Board Chairman and Executive Director authorizing the release of an inmate from confinement to parole.

"Parole Eligibility" means the earliest possible date a person may be released from confinement to parole supervision.

"Rescission" means an action of the Board that annuls or voids a prior release disposition.

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

"Rules" mean the conditions, limitations, and restrictions upon which parole is subject.

"Sentence" means the penalty imposed by a particular District Court for a specific felony offense.

"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.

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

"Victim" means a person who suffers loss of property, bodily injury, or death as a result of: the commission of an offense; the good faith effort to prevent the commission of an offense; the good faith effort to apprehend a person reasonably suspected of committing an offense; the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim; a governmental entity that suffers loss of property as a result of the commission of an offense in this state; or an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss. A victim does not include a person who is accountable for the crime arising from the same transaction.