



## Montana Board of Pardons and Parole

1002 Hollenbeck Road, Deer Lodge, MT 59722 || 406-846-1404

**Greg Gianforte, Governor**

**Steve K. Hurd, Board Chair**

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May 10, 2022

TO: All CONCERNED

FROM: Joseph McElroy, Chief of Staff

The Montana Board of Pardons and Parole will be conducting a business meeting, Deer Lodge, Montana on Monday June 20, 2022, at 11:00 a.m. The agenda will be as follows:

**11:00 a.m.** Consideration of Adoption Notice regarding MAR 20-25-71.

Amendment of ARM 20.25.101; 20.25.102; 20.25.103; 20.25.201;  
20.25.306; 20.25.307; 20.25.401; 20.25.402; 20.25.501; 20.25.504;  
20.25.601; 20.25.702; 20.25.801; 20.25.901; 20.25.902; 20.25.904.

Repeal ARM 20.25.202 and 20.25.505.

The Montana Board of Pardons and Parole with vote to approve draft adoption notice. (See attached).

**11:30 a.m.** Public Comment period

Please contact the Montana Board of Pardons and Parole for direction on accessing this meeting on or Before 4:30 p.m., Monday, June 19, 2022. You can either email [mt.bopp@mt.gov](mailto:mt.bopp@mt.gov) or call (406)846-1404.

BEFORE THE BOARD OF PARDONS AND PAROLE  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULES I and II; the amendment of	)	AMENDMENT, AND REPEAL
ARM 20.25.101, 20.25.102,	)	
20.25.103, 20.25.201, 20.25.306,	)	
20.25.307, 20.25.401, 20.25.402,	)	
20.25.501, 20.25.504, 20.25.601,	)	
20.25.702, 20.25.801, 20.25.901,	)	
20.25.902, 20.25.904; and the repeal	)	
of ARM 20.25.202 and 20.25.505	)	
pertaining to Board of Pardons and	)	
Parole paroling decision, early parole	)	
consideration, administrative reviews	)	
and reappearances, board operating	)	
processes, and executive clemency	)	
functions	)	
	)	

TO: All Concerned Persons

1. On February 11, 2022, the Board of Pardons and Parole (the Board) published MAR Notice No. 20-25-71 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 193 of the 2022 Montana Administrative Register, Issue Number 3.

2. The Board has adopted and amended the following rules as proposed: New Rule I (20.25.403); New Rule II (20.25.804); 20.25.101, 20.25.102, 20.25.103, 20.25.306, 20.25.307, 20.25.401, 20.25.402, 20.25.504, 20.25.601, 20.25.702, 20.25.801, and 20.25.903.

3. The Board has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

20.25.201 OBJECTIVES

(1) and (2) remain as proposed.

(3) The board's primary responsibility in making decisions about parole and ~~executive clemency~~ is public safety. The board applies Montana law in affording offenders with impartial hearings, respecting offender rights, and considering the safety of victims and the public.

(4) remains as proposed.

20.25.501 DECISION AND RECONSIDERATION (1) A final decision of the

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hearing panel must be by a majority vote, must be in writing, and must be signed by at least two panel members. ~~The board will not grant early consideration.~~

(2) through (7) remain as proposed.

20.25.901 APPLICATIONS FOR CLEMENCY (1) and (2) remain as proposed.

(3) An offender whose application has been denied may not reapply for executive clemency unless the offender submits evidence of substantial change in circumstances since the last application. A hearing panel will screen reapplications for clemency and if the offender has submitted evidence of substantial change of circumstances, it will determine if it will order an investigation and hearing as indicated in pursuant to ARM 20.25.902. Clemency applications that have been submitted and denied prior to October 1, 2015, may be resubmitted to the board for additional consideration, subject to the applicable provisions of the administrative rules.

~~(4) Clemency applications that has been submitted and denied prior to 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.~~

~~(a) If a resubmitted application is substantively similar to a previously denied application, then the board shall proceed as follows:~~

~~(i) Board staff will first assess whether an application is substantively similar to a previous application. The staff shall submit a report to the hearing panel with its assessment of whether the application is substantively similar to a previous application.~~

~~(ii) If an application is 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.~~

~~(iii) The panel may, in its discretion, direct that further investigation or evaluation be conducted, or that an additional hearing be held.~~

~~(b) 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.~~

~~(c) Upon completion of its assessment, the board shall within ten 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 to the Governor's office and the applicant a board recommended disposition summarizing the reasons for denial.~~

~~(d) 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.~~

~~(e) 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) and (6) remain as proposed but are renumbered (4) and (5).

20.25.902 INVESTIGATIONS FOR CLEMENCY AND ORDER FOR HEARING (1) remains as proposed.

~~(a) The hearing panel, based on its the staff's preliminary review, may accept or reject the application. The panel will base its decision to accept or reject an application on:~~

~~(i) all the circumstances surrounding the crime for which the applicant was convicted; and~~

~~(ii) the individual circumstances relating to social conditions of the applicant prior to the commission of the crime, at the time the offense was committed, and at the time of the application for clemency.~~

~~(b) If a hearing panel decides to reject the application, it shall within ten working days transmit the application to the Governor's office for review by the Governor. 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.~~

~~(c) (2) If a hearing panel decides to accept the application, it will request the department to conduct an investigation within 90 days of its request. The hearing panel may request a psychological evaluation of the applicant, a background check of the applicant, and any other reports the panel deems necessary as part of the investigation-preliminary review.~~

~~(d) (3) After investigation-preliminary review, a hearing panel shall consider whether to hold a hearing on the application pursuant to 46-23-301, MCA.~~

~~(e)(4) Pursuant to 46-23-302, 46-23-303, and 46-23-305, if if in the opinion of the hearing panel sufficient cause appears to conduct a hearing on the application, the panel shall initiate an investigation and will sign an order indicating the following:~~

~~(i) remains as proposed but is renumbered (a).~~

~~(ii) remains as proposed but is renumbered (b).~~

~~(iii) remains as proposed but is renumbered (c).~~

~~(iv) remains as proposed but is renumbered (d).~~

~~(f) If the panel recommends denial of the application without a hearing, it shall:~~

~~(i) within ten working days transmit the application to the Governor's office for review by the Governor; and~~

~~(ii) forward a board recommended disposition summarizing the reasons for denial and post the recommended denial on the board's web site within 21 calendar days of the board's decision.~~

~~(g) If ordered by the Governor, the board shall conduct a hearing. The board shall direct that further investigation into specific aspects of an application be conducted if requested by the Governor.~~

~~(2) (5) If the board receives an application for clemency for an inmate for whom the death penalty has been imposed, the board will set a date for a hearing on~~

the application. The Board staff will give notice of the hearing date, as prescribed by law, and as described in ~~(1)(e)(4)~~.

#### 20.25.904 RECOMMENDATION CONCERNING CLEMENCY

~~(1) Upon conclusion of the hearing the hearing panel will take the entire case under advisement or may issue an immediate recommendation. If the panel takes the case under advisement, it must make a recommendation in writing within 30 days to grant or deny clemency. Upon completion of its preliminary review or hearing, the hearing panel shall transmit within 30 days to the governor, the application or reapplication along with its recommendation to grant or deny clemency, together with relevant documentation.~~

~~(a) In cases in which the death penalty has not been imposed, the hearing panel will make a recommendation to grant or deny clemency.~~

~~(b) The hearing panel shall forward to the Governor's office its recommendation to grant or deny clemency, together with all relevant documents for the Governor's final determination. If the hearing panel makes a recommendation that the Governor grant clemency, it shall also forward a proposed executive order to the Governor's office. If the panel does not recommend clemency, it will forward a board-recommended disposition summarizing the reasons for denial.~~

~~(c) In cases in which the death penalty has been imposed, the hearing panel will, immediately after making its decision, forward all relevant documents and a recommendation to grant or deny clemency to the governor for the governor's final determination.~~

~~(2) If the governor grants executive clemency, the signed executive order will be sent to the Secretary of State. The Secretary of State will file the attested order and return the attested order to the board for dissemination to the applicant, Department of Corrections, Department of Justice, and Federal Bureau of Investigation ID bureau for appropriate action. If a hearing was held, the hearing panel may take the entire case under advisement or may issue an immediate recommendation.~~

~~(3) In cases in which the death penalty has been imposed, the hearing panel will, immediately after making its decision, forward all relevant documents and a recommendation to grant or deny clemency to the Governor for the Governor's final determination.~~

~~(4) The board shall also give notice to the applicant of its recommended disposition and the reasons for its recommendation to deny or approve the application or reapplication.~~

~~(5) The board shall post its recommended disposition on the board's website within 21 calendar days of its recommendation.~~

~~(6) If the governor grants executive clemency, the signed executive order will be sent to the Secretary of State. The Secretary of State will file the attested order and return the attested order to the board for dissemination to the applicant, Department of Corrections, Department of Justice, and Federal Bureau of Investigation ID bureau for appropriate action.~~

4. The Board has repealed the following rules: 20.25.202 and 20.25.505.

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5. The Board has thoroughly considered the comments and testimony received. A summary of the comments that were received and the Board's responses thereto are as follows:

COMMENT #1: The commenter requested that the proposal notice be distributed to all inmates who are within 12 or fewer months of parole because it is unfair to change rules when an inmate may have been planning and preparing for years for a hearing. The commenter stated the inmates need to be able to send comments and that the rule hearing should be postponed until April or May.

RESPONSE #1: The proposal notice was published February 11, 2022, Comment #1 was received February 14, 2022, the hearing was conducted March 3, 2022, and the comment period closed at 5:00 pm on March 11, 2022, all as provided in MAR Notice No. 20-25-71, and in accord with statutory requirements (2-4-302, MCA). Accordingly, the Board declines the request for postponement.

If the rule hearing were postponed as requested, then in the interim, more inmates would come within 12 or fewer months of parole, inevitably prompting more requests for postponements, and so on.

An inmate may request at any time to be added to the consolidated Department of Corrections-Board of Pardons and Parole interested persons list as explained in paragraph 8 of published MAR No. 20-25-71. Indeed, Comment #2 was received from an inmate who had previously requested to have his name added to the interested persons list.

COMMENT #2: The commenter made 3 general comments as follows: 1) the proposed rule amendments omit important information that is included in statute; 2) the Board has not reduced the prison population by paroling more parole-eligible offenders in accordance with legislative intent; and 3) the Board has engrafted criteria that are in conflict with the enabling statute.

RESPONSE #2: 1) The commenter is correct, in part. The Board purposely deleted existing language from rules which unnecessarily duplicated statutory language. It did so to comply with 2-4-305(2), MCA, which states in pertinent part: "Rules may not unnecessarily repeat statutory language". Elimination of duplicative statutory language from rules will make the rules more concise and avoid possible future discrepancies arising between rules and statutes as statutory language is amended and the duplicative language in rule is not amended to match it or be removed. 2) The commenter's second comment is a general observation or opinion that the Board releases too few parole eligible individuals to reduce the prison population. That subject is outside the scope of MAR No. 20-25-71 and will therefore not be addressed herein. 3) The commenter's third comment pertains to alleged engrafting of unspecified parole-related criteria in an unidentified rule causing it to conflict with an unspecified enabling statute. Insufficient information was provided in

the comment to enable the board to substantively respond. No evidentiary support was submitted with the comment. For these reasons the Board declines to respond to issue number 3 raised by the commenter.

COMMENT #3: A commenter recommended that the board review and: 1) remove from the executive clemency rules, language that is already specified in statute pursuant to 2-4-305(2), MCA; 2) reorganize the substance of the executive clemency rules; 3) eliminate redundancy between rules; and 4) make uniform a 30-day requirement for recommendations to be made to the Governor. The commenter requested removal of the reference to executive clemency in 20.25.201 pertaining to the board's objectives. The commenter also called the board's attention to a seemingly extraneous and out-of-place sentence that the board proposed to add to 20.25.501(1), noting that the meaning of the sentence is unclear. The commenter recommended that the board review that sentence again.

RESPONSE #3: The board agreed with the commenter and made all specifically recommended changes to the executive clemency rules. The board also removed the reference to executive clemency in 20.25.201 pertaining to the Board's objectives and eliminated the extraneous, out-of-place, and unclear sentence from 20.25.501(1) in the proposal notice.

/s/ Colleen E. Ambrose  
Colleen E. Ambrose  
Rule Reviewer

/s/ Steve Hurd  
Steve Hurd  
Chair  
Board of Pardons and Parole

Certified to the Secretary of State [Month Day, 20##]