

UNIVERSITY OF MINNESOTA

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

A publication by the Robina Institute of Criminal Law and Criminal Justice

**MONTANA**



**ROBINA INSTITUTE**  
OF CRIMINAL LAW AND CRIMINAL JUSTICE

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

### Montana

By

Alexis Lee Watts, Steven Graziano, Eric Arch, Edward E. Rhine

The authors would like to thank Meaghan Mulcahy, Parole Analyst, Montana Board of Pardons and Parole, for comments on an early 2017 draft of this report. However, in-state experts did not review this document recently enough to comment on the major statutory changes enacted later in 2017 under Montana S.B. 64. We encourage readers to use this profile as an informative guide, but to exercise caution in relying solely on the description of the parole process in Montana without checking additional sources. We also welcome corrections to the profile.

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### 1. Background; Sentencing System

#### a. Sentencing Framework

Article VII, Section 9 of the original (1889) Montana Constitution authorized the governor to grant pardons subject to the approval of the board of pardons; a paroling authority called the State Board of Prison Commissioners followed in 1907. In 1955, parole and executive clemency functions merged; in 1971, the board was transferred to the Department of Institutions (now the Department of Corrections) for administrative purposes. Finally, the Board was renamed the Board of Pardons and Parole in 1995.<sup>1</sup>

Montana has no sentencing commission or sentencing guidelines. Judges may sentence anyone convicted of a crime to a term of years as specified in the statute related to that crime.<sup>2</sup> If a felony sentence does not have a penalty specified, a judge may impose up to 10 years in state prison and/or a \$50,000 fine.<sup>3</sup>

#### b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?

Yes, the Montana Board of Pardons and Parole.<sup>4</sup>

<http://bopp.mt.gov/>

#### c. Which Agencies Are Responsible for the Supervision of Released Prisoners?

The Montana Department of Corrections is responsible for the supervision of parolees through its Division of Probation and Parole.<sup>5</sup>

<http://cor.mt.gov/>

#### d. Which Agency Has Authority Over Parole Revocation?

The Montana Board of Pardons and Parole has authority over parole revocation.<sup>6</sup>

### 2. Parole Release and Other Prison-Release Mechanisms

#### a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

*General rules of release eligibility.* A prisoner serving a "time" sentence may not be paroled until they have served at least 1/4 of that sentence.<sup>7</sup> In Montana, a sentencing judge who imposes a state prison term of more than one year may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving the term.<sup>8</sup>

Separate sentences must generally run consecutively.<sup>9</sup> If an offender receives a consecutive sentence after incarceration but before a parole ruling is made on the initial sentence, parole eligibility is determined by aggregating the original sentence and the consecutive sentence. However, if the parole ruling on the initial sentence has already been made, the offender will not be eligible for parole on the consecutive sentence until after the offender discharges the original sentence unless a hearing panel orders otherwise. Due to the fact that an offender may still be eligible for parole on the first sentence, the hearing panel may allow the second term to commence for the purposes of calculating parole eligibility. Note, however, that this does not shorten the length of the consecutive sentence.<sup>10</sup>

*Violent or sex offenders.* Mandatory minimum sentencing exists for several violent and/or sexual crimes including a ten-year mandatory minimum for certain crimes.<sup>11</sup> Persistent felony offenders (those with a second felony conviction committed within five years of the first conviction or release on parole) also face mandatory five-to-ten year minimum sentences (or a large fine).<sup>12</sup>

*Life sentences.* A prisoner serving a life sentence is not eligible for parole until the prisoner has served a 30-year term of incarceration.<sup>13</sup>

*Recurring eligibility after denial of release.* If a hearing panel denies parole, it may order that the prisoner serve up to six years if confined for a sexual or violent offense, or up to one year if the prisoner is confined for any other offense, before a hearing panel conducts another hearing review.<sup>14</sup> However, per Board policy, the cases of offenders with prison discharge dates are reviewed every one to six years, depending on discharge date. If an offender's review is more than one year away, the offender may submit a request for early administrative review based on changed circumstances or new information that would affect suitability for parole.<sup>15</sup>

### **b. Good Time, Earned Time, and Other Discounts**

Due to truth-in-sentencing reforms implemented in the late 1990's, good time credit is no longer available in Montana.<sup>16</sup>

### **c. Principles and Criteria for Parole Release Decisions**

*General statutory standard for release decisions.* By statute, a hearing panel may release an eligible offender on non-medical parole only when, in its opinion:

- (a) there is reasonable probability that the offender can be released without detriment to himself/herself or to the community;
- (b) release is in the best interests of society;
- (c) the offender is able and willing to fulfill the obligations of a law-abiding citizen; and
- (d) the offender does not require continued correctional treatment that cannot be found in the community, or mental health therapy, vocational or other programs only available in the correctional facility that will substantially enhance the offender's capacity to lead a law-abiding life if released.<sup>17</sup>

*Statutory factors the board must consider.* In making a release decision, the Board must consider:

- (a) the circumstances of the offense;
- (b) the offender'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 offender's conduct, employment, and attitude in prison, including particularly whether the offender has taken advantage of opportunities for treatment and whether the offender 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 offender's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the offender will conform the offender's behavior to the requirements of law;
- (f) the adequacy of the offender's release plan;
- (g) the offender's ability and readiness to assume obligations and undertake responsibilities;
- (h) the offender's education and training;
- (i) the offender's family status and whether the offender has relatives who display an interest or whether the offender has other close and constructive associations in the community;
- (j) the offender's employment history and occupational skills and the stability of the offender's past employment;
- (k) the type of residence, neighborhood, or community in which the offender plans to live;
- (l) the offender's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;
- (m) the offender's mental health needs;
- (n) the offender's attitude toward law and authority;
- (o) the offender'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;
- (q) whether parole at this time would diminish the seriousness of the offense; and
- (r) any and all other factors which the hearing panel determines to be relevant.<sup>18</sup>

*Special standard for sex offenders.* Sex offender treatment is often a requirement for sex offenders or other offenders who commit crimes with an underlying sexual motive. A trial court can make treatment a prerequisite for parole eligibility if appropriate.<sup>19</sup>

### **d. Parole Release Guidelines**

The board is working under the statutory expectation that it will develop parole guidelines to structure and guide parole release decisions and the imposition of release conditions.<sup>20</sup> S.B. 64, signed by the governor in 2017, included a provision requiring that the Board adopt parole guidelines.<sup>21</sup> It is not clear, however, if such guidelines have yet been promulgated and adopted relative to the decision to grant or deny parole release.

## e. Risk and Needs Assessment Tools

According to in-state sources, in January 2002, the Board began using a validated assessment tool developed by the Center for Effective Public Policy, “unique to Montana’s offender population and demographic. The Montana Board of Pardons and Parole remains committed to assessing inmate risk prior to making release decisions. All inmates [...] are assessed and given a numeric score, according to the risk tool. It should be noted that the tool is not used for any sexual offenders, DUI offenders, or women. All sex offenders are given a tier level, thus the risk assessment would be redundant. It was determined that DUI offenders are much harder to develop a scale for because of their background and the fact that many of them do not have a criminal lifestyle. At the time of the development of the tool, the State of Montana did not have sufficient women offenders to track and therefore it does not apply to them. A risk assessment tool for these three offender types may be a consideration for a future Board to adopt. The parole assessment tool helps the Board render more consistent, soundly based, prompt and explainable parole decisions. The risk assessment tool remains only one part of the Board’s consideration. The actuarial risk assessment scale measures risk level of committing a new crime within (18) months after release from prison based on seven categories. The Montana Board of Pardons and Parole also considers the Montana Offender Reentry Risk Assessment (MORRA) and the Women’s Risk and Needs Assessment (WRNA), when available.”<sup>22</sup>

## f. Medical or Compassionate Release

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: (1) is not under sentence of death or sentence of life imprisonment without possibility of release; (2) is unlikely to pose a detriment to the person, victim, or community; and (3) has a medical condition requiring extensive medical attention or has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.<sup>23</sup> Medical parole may be requested via application by the Board, the Department of Corrections, or an inmate’s spouse, parent, child, grandparent, or sibling.<sup>24</sup> Conditions of medical parole must include placement in an environment approved by the MDC. They may also include periodic medical examinations and diagnoses at the parolee’s expense. If the Board or the Department determines that the person’s condition has improved or that they are likely to pose a detriment to themselves, a victim, or the community, a hearing panel may revoke medical parole.<sup>25</sup>

## g. Executive Clemency Power

The governor has the power to grant commutation of a sentence to one that is less severe, respite, pardon, or remission of fines or forfeitures.<sup>26</sup> All applications for executive clemency must first be made with the Board. A Board hearing panel will consider each application and determine whether or not a hearing should be held. The governor can overrule a Board decision not to hold a hearing. After a hearing, the Board may recommend that clemency be granted or denied, but the governor is not bound by their decision and has final authority to grant or deny clemency.<sup>27</sup>

## h. Emergency Release for Prison Crowding

If the inmate population of a correctional institution or the system exceeds emergency capacity for 30 consecutive days, the director of the MDC may temporarily stop admissions to the institution or system. This may mean keeping inmates in detention in the jurisdiction holding them or placing inmates in detention in another jurisdiction. To this end, the MDC may enter into contracts with the federal government, other states, or county commissioners to confine inmates. Thus, inmates are transferred if overcrowding occurs rather than released.<sup>28</sup>

# 3. Parole Release Hearing Process

## a. Format of Release Hearings

An offender may apply for parole in order to come before a hearing panel within two months of release eligibility. However, a hearing panel will consider an eligible offender for parole release even if the offender does not submit an application for parole. A hearing panel, appointed by the presiding officer of the board, must consist of at least three board members.<sup>29</sup>

During the parole hearing, the panel will consider the prisoner’s score under the parole guidelines and all case-specific pertinent information regarding each eligible offender, including the factors listed above in §2c of this report.<sup>30</sup> The presiding hearing panel member must conduct hearings informally and must have discretion to allow or not allow any proposed testimony. Board staff must make a video and audio record of all hearings.<sup>31</sup> The Board has the discretion to appoint an attorney as a legal advisor to represent it at any hearings or proceedings.<sup>32</sup> The Board also has the authority to compel the attendance of any witnesses it deems necessary for the investigation of an inmate’s case at a hearing.<sup>33</sup>

## b. Information Before the Board; Factors the Board May Consider

Before a hearing panel considers an offender for release on parole, board staff must make available:

- The offender's previous social history and criminal record;
- The offender's education, conduct, and associations;
- The offender's occupation or prospects for employment;
- The offender's treatment record in prison;
- Facts and circumstances of the crime for which the offender was sentenced;
- Information received from the community where the crime was committed; and
- Any reports of physical or mental examinations which have been made of the offender.<sup>34</sup>

The Board must consider an offender's parole plan, which should include:

- The offender's proposed living situation;
- The offender's proposed gainful employment or other suitable means of support, or a training or schooling program;
- The offender's proposed aftercare programs; and
- The offender's proposed budget for payment of court-ordered fines, fees, restitution, and other financial obligations, including child support.<sup>35</sup>

## c. Prisoners' Procedural Rights

Inmates may attend their parole release hearing. Offenders who appear for parole hearings may have a representative, including an attorney, present with them.<sup>36</sup> Oral testimony is permitted at the discretion of the Board.<sup>37</sup>

Inmates also have access to their parole files insofar as the information is public under the Montana constitution's "right-to-know" provisions.<sup>38</sup> However, this is not a due process issue because only limited due process is guaranteed in parole release proceedings.<sup>39</sup>

## d. Victims and Other Participants

Victims may request notification of an offender's parole eligibility dates, appearances, and release. It is the victim's obligation to request such information in writing and to keep the Board apprised of name, address, or phone

number changes.<sup>40</sup> A victim may present a statement regarding the effects of the crime on the victim. A victim's statement may include but is not limited to: the manner in which the crime was committed, the circumstances surrounding the crime, and the victim's opinion regarding whether the hearing panel should grant the offender parole. A victim's statement may be kept confidential at the discretion of the presiding hearing panel member, if the presiding member finds that the victim's privacy interest outweighs the public's right to know. A recording of the hearing will not personally identify the victim without the victim's consent.<sup>41</sup>

The board may request from prison officials a report concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.<sup>42</sup>

"Board hearings are open to the public; however, all persons attending hearings that take place in a secure facility must gain approval to enter the facility from the facility's chief of security or designee as required by the facility's policy. While at the facility, persons must comply with the facility's policies including applicable security policies. The facility may exclude or escort from the facility any person who fails to gain approval to enter the facility or fails to comply with the facility's policies. At the discretion of the hearing panel, additional witnesses may be heard outside of the secure facility."<sup>43</sup>

## e. Burden of Proof or Standards of Persuasion

There does not appear to be a defined burden of proof for parole release.

## f. Possible Outcomes at Parole Release Hearings; Form of Decisions

During the hearing, the hearing panel will either notify the offender of the panel's decision and the reasons for the decision or the hearing panel may take the decision under advisement.<sup>44</sup> A final decision of the hearing panel must be by a majority vote.<sup>45</sup> "If the hearing panel denies the offender parole, the disposition must state the reasons for denial."<sup>46</sup>

Following the parole hearing, the hearing panel may make any of the following dispositions:

- Grant parole;
- Grant conditional parole, subject to approval and verification of the parole plan;
- Grant conditional parole to occur within a specified time period or upon completion of a contingency, including but not limited to: completion of treatment or prerelease, completion of additional clear conduct, or completion of a specific amount of time on the sentence;
- Continue the offender to a subsequent reconsideration hearing (at an interval required by law). [The Board may order that the offender's file will not be subject to administrative review unless the offender applies for an early review based on a change of circumstances or new information];
- Schedule an administrative review; or
- Pass the offender to discharge if the date of discharge is less than six years away or if the offender has requested to serve to discharge (i.e., "serve all").<sup>47</sup>

### g. Administrative or Judicial Review of Parole Denial

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. 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. If the offender presents sufficient evidence the chair or designee will forward the case to a hearing panel for its consideration.<sup>48</sup>

An offender may also request an administrative review of their parole file after an initial decision has been made, but before the Board is legally required to rehear the case. Staff will screen the request and determine if one of the following criteria is met:

- (i) a change in the offender's status since the last administrative review that would demonstrate that the offender is able and willing to fulfill the obligations of a law-abiding citizen;
- (ii) the offender has maintained good conduct and if not, the nature and severity of the misconduct is negligible;

- (iii) the offender has completed treatment or educational programs;
- (iv) the offender has fulfilled other conditions ordered by the hearing panel or has been unable to fulfill them due to factors outside the offender's control;
- (v) the hearing panel's previous disposition was based on erroneous information or misinformation;
- (vi) the offender has developed a suitable release plan or there has been a substantial change in the offender's previous release plan to warrant reconsideration;
- (vii) the victim or community no longer objects to the offender's release; or
- (viii) correctional staff has made a recommendation for an earlier administrative review.

Following an administrative review, the hearing panel in its sole discretion may order no change in the previous parole decision, may schedule the offender to reappear before a hearing panel for a parole hearing, may modify or rescind a previously granted parole, or may grant a parole. If the panel grants a parole, board staff must inform any registered victim.<sup>49</sup>

Finally, inmates may file a writ of *habeas corpus* claiming that their due process rights have been violated or that their continued incarceration is otherwise illegal.<sup>50</sup>

### h. Rescission of Parole Release Dates

A hearing panel may conduct a hearing and rescind a previously granted parole if the offender has not left confinement or is on furlough status and the panel finds one of the following has occurred:

- (1) the offender has committed disciplinary violations;
- (2) there is a substantial change in the approved release plan; or
- (3) new evidence or information shows the offender does not deserve a release.<sup>51</sup>

In lieu of scheduling a rescission hearing, the Board, through its staff, may delay the offender's release from confinement for up to 120 days for the reasons listed above. Unless a hearing panel otherwise orders, before an offender leaves prison confinement on parole, the offender must be clear of major disciplinary misconduct for a minimum of 120 days.<sup>52</sup>

## 4. Supervision Practices

*Parole supervision rate.* On December 31, 2016, the parole supervision rate was 131 parolees per 100,000 adult residents. This is less than the 50-state average of 303 parolees per 100,000 adult residents.<sup>53</sup>

### a. Purposes of Supervision

According to regulation, the principal objective of the Board is to affect the release from confinement of appropriate eligible offenders before the completion of the full term of commitment while still fully protecting society.<sup>54</sup>

According to the Department of Corrections, their work: (1) enhances public safety; (2) supports the victims of crime; (3) promotes positive change in offender behavior; (4) reintegrates offenders into the community.<sup>55</sup>

In addition, the stated goals of the Department specify:

“(1) for offenders, to increase public safety through reduced recidivism; (2) for victims, to increase victim safety and peace of mind by providing accurate, timely information and support; (3) for the public, to inform and educate through effective communication; (4) for MDC employees, to increase pride through increased professionalism.”<sup>56</sup>

The Montana legislature views supervision as a means to assist the parolee in adjusting to community life, and to inform parolees of the restoration of their rights upon successful completion of their sentence. This must be conducted using effective communication strategies and other evidence-based practices as deemed necessary.<sup>57</sup>

### b. Are All or Only Some Releasees Placed on Supervision?

The department must retain custody of all persons placed on parole and must supervise the persons during their parole periods in accordance with the conditions set by the Board.<sup>58</sup> However, a parolee may later receive a conditional discharge from supervised release from the Board, as discussed below.

### c. Length of Supervision Term

*Maximum supervision terms.* A prisoner on parole is considered released on parole until the expiration of the maximum term or terms for which the prisoner was sentenced. This means that supervision periods can last until the term of imprisonment is fully served.<sup>59</sup>

*Early termination.* “Upon recommendation of the probation and parole officer, the Board may conditionally discharge a parolee from supervision before expiration of the parolee’s sentence if the Board determines that a conditional discharge from supervision is in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense.”<sup>60</sup> This grants the parolee a reprieve from further supervision, so long as they obey the conditions of parole; it also releases them from the obligation to pay supervision fees.<sup>61</sup>

*Extension of supervision term.* There does not appear to be a mechanism to extend the supervision term beyond the maximum sentence imposed.

*Incentives; “goal parole.”* The Department of Corrections must acknowledge achievements by a parolee who, by completion of certain activities, has shown a willingness to reenter society as a productive and responsible member.<sup>62</sup> Thus, parolees may earn “parole achievement credits” which are later considered in decisions involving conditional discharge. These achievements include:

- (1) obtaining a high school diploma or a high school equivalency diploma;
- (2) obtaining a degree from an accredited postsecondary educational institution;
- (3) completion of an approved apprenticeship program;
- (4) completion of an accredited vocational certification program;
- (5) employment of at least 20 scheduled hours a week, for 6 or more months;
- (6) attendance at a faith-based, social service, or rehabilitation activity for 6 or more months; or
- (7) any other achievement designated by an MDC rule.<sup>63</sup>

### d. Conditions of Supervision

When a hearing panel orders an offender paroled, the panel must recite the conditions. In determining a parolee’s conditions to address the prisoner’s criminogenic factors, the panel shall consider the parole guidelines and the parole plan provided by the Department.<sup>64</sup>

The offender is subject to the following standard rules unless otherwise ordered by the panel:

- (1) The offender must obtain prior approval from his/her supervising officer before taking up residence in any location. The offender must not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer’s designee. The offender must make the residence open and

available to an officer for a home visit or for a search upon reasonable suspicion. The offender will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

- (2) The offender must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.
- (3) The offender must seek and maintain employment or maintain a program approved by the Board or the supervising officer. Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.
- (4) Unless otherwise directed, the offender must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The offender must personally contact his/her supervising officer or designee when directed by the officer.
- (5) The offender is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.
- (6) The offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real or personal property, or purchasing an automobile, or incurring a debt.
- (7) Upon reasonable suspicion that the offender has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the offender, and the offender must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the offender has violated the conditions of supervision.
- (8) The offender must comply with all municipal, county, state, and federal laws and ordinances and must conduct himself/herself as a good citizen. The offender is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The offender must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.
- (9) The offender is prohibited from using or possessing alcoholic beverages and all intoxicants or mind altering chemicals. The offender is required to submit to bodily fluid testing for intoxicants or mind altering chemicals on a random or routine basis and without reasonable suspicion.

(10) The offender is prohibited from gambling.

(11) The offender must pay all fines, fees, and restitution ordered by the sentencing court.<sup>65</sup>

"A hearing panel may order additional special conditions. Additionally, a hearing panel must consider MDC requests for special conditions. Any special conditions imposed by the MDC must be approved by a hearing panel. Special conditions must not be unrealistic or vague and must be reasonably related to the offender's crime, public safety, or the circumstances and rehabilitation of the offender."<sup>66</sup>

*Sex offenders.* The Board may require the prisoner convicted of a sexual offense to refrain from direct or indirect contact with a victim of the crime or with an immediate family member of the victim. If a victim or an immediate family member requests that the prisoner not contact the victim or immediate family member, the Board must require the prisoner to refrain from contact with the victim or immediate family member. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.<sup>67</sup>

Sex offenders are divided into risk levels by the Department of Corrections. Level three sex offenders may be required to undergo electronic monitoring for the duration of their parole.<sup>68</sup>

*Modification of conditions.* The Board may call a hearing panel which reviews a parolee's record and can render a decision to modify their parole conditions.<sup>69</sup>

*Incentives; lighter conditions.* Again, parolees may be conditionally discharged from supervision prior to their full parole term based on good behavior and/or parole achievement credits; however, there do not appear to be any other incentives related to lighter conditions.

## e. Fees and Other Financial Sanctions

*Parole supervision fees.* A person supervised by the Department of Corrections must pay to the Department a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision.<sup>70</sup> The Court, Department of Corrections, or the Board may reduce or waive a supervision fee or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.<sup>71</sup>

*Payments for drug and alcohol testing and treatment.* If offenders refuse to admit to drug or alcohol use but come up positive upon administration of a drug/alcohol test, they will be charged the cost of the preliminary test kit. Offenders may be exempt if they are indigent or if they are current on all restitution/supervision fees.<sup>72</sup>

*Restitution.* If restitution was imposed as part of the sentence, the order of parole must contain a condition to pay restitution to the victim.<sup>73</sup> If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed.<sup>74</sup>

If the prisoner has violated a condition of release requiring the payment of restitution, the supervising parole officer must notify the victim of the offense prior to the hearing and give the victim an opportunity to provide written or oral comment.<sup>75</sup> If the hearing panel finds that because of circumstances beyond the prisoner's control the prisoner is unable to make the required restitution payments, the hearing panel may not revoke the prisoner's parole for failure to pay restitution. The hearing panel 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 prisoner.<sup>76</sup>

*Child support.* Payment of child support is not an explicit condition of parole; however, parolees must obey all laws and this includes child support statutes. The Board may also order special conditions such as contacting the Child Support Enforcement Division to arrange payments.<sup>77</sup>

*Other financial obligations.* The offender must seek and maintain employment or maintain a program approved by the Board or the supervising officer.<sup>78</sup> The offender is prohibited from gambling.<sup>79</sup> The offender must pay all fines and fees ordered by the sentencing court.<sup>80</sup>

*Incentives; reduction of economic sanctions.* As of this writing, there are no incentives related to economic sanctions.<sup>81</sup>

## 5. Parole Revocation

*Parole revocation proceedings.* In 2016, 22 parolees were returned to incarceration with a new sentence and 206 were returned due to parole revocation.<sup>82</sup>

*Absconders.* It is unclear how many parolees absconded from supervision in 2016.

### a. Principles and Criteria of "When to Revoke"

*Policy considerations.* With Montana's state prison and jail populations on the rise,<sup>83</sup> the ultimate stated goal of new policy reforms targeting parole revocation has been "to cut the rate of criminal offenders who, while on parole or probation, violate rules or commit new crimes and then are sent to prison."<sup>84</sup> With specific attention on minor and technical infractions and violations, legislative reform focused on establishing a full-time parole board and enacted standards to be used in revocation hearings.<sup>85</sup> Under the new system, the Board is given direct and specific guidelines to consider in revoking an offender's parole. In theory, this creates a more uniform system in which offenders are returned to prison less frequently due to parole violations.<sup>86</sup>

*Legal predicates.* Any violation of any condition of release may result in parole revocation.<sup>87</sup>

*Compliance violation.* A compliance violation is a violation of supervision that is not:

- (a) A new criminal offense;
- (b) Possession of a firearm in violation of a condition of probation or parole;
- (c) Behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of an offense or a member of the victim's immediate family or support network;
- (d) Absconding; or
- (e) Failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.<sup>88</sup>

*Statutorily enumerated factors.* The Board must consider the nature of the violations and the criteria for release decisions in deciding whether to revoke parole.<sup>89</sup>

## b. Revocation Guidelines

Upon considering relevant criteria, the decision of whether or not to revoke an offender's parole remains in the sole discretion of the Board.<sup>90</sup> However, prior to that decision, the Department must rely on an incentives and interventions grid as reference during the supervision and the revocation process.<sup>91</sup> The grid must include guidance and procedures to determine when and how to:

- (a) Request a warrant or arrest without a warrant;
- (b) Use a 72-hour detention;
- (c) Initiate an intervention hearing;
- (d) Seek departmental approval to use up to 90-day interventions; and
- (e) Exhaust and document appropriate graduated violations responses before initiating the revocation process.<sup>92</sup>

"The grid must recommend the least restrictive placement for offenders based on the result of a validated risk and needs assessment." All decisions must be documented and specify other less secure sanctions options considered by the parole officer.<sup>93</sup>

## c. Risk and Needs Assessment Tools

A risk and needs assessment is considered in the parole revocation process.<sup>94</sup> It is unclear which risk and needs assessment is utilized at this phase.

## d. Preliminary and Final Revocation Procedures

*Arrest or summons.* At any time during parole release, the Department of Corrections may issue a warrant for the arrest of a parolee for violation of any of the conditions of release. Alternatively, they may issue a notice to appear to answer to a violation charge.<sup>95</sup> A parole officer may authorize a detention center to hold an arrested parolee without bail for 72 hours, during which time s/he shall: (a) authorize the detention center to release the parolee; (b) initiate an intervention hearing; or (c) begin the revocation process with an initial hearing.<sup>96</sup>

*Initial hearing.* An initial hearing must be held within 5 days of arrest,<sup>97</sup> unless it is waived by the parolee, the parolee is charged with a violation of law, the parole officer authorizes release of the parolee, or unless the parole officer initiates an informal violation intervention hearing under Mont. Code Ann. § 46-23-1024(4).<sup>98</sup> The initial hearing, held either onsite or via interactive videoconference, must

involve a determination of probable cause by an independent officer who need not be a judicial officer. If probable cause is found, the officer must determine whether there is probable cause to hold the parolee until an informal violation intervention hearing or final hearing is held. The hearing officer must also "make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation."<sup>99</sup>

*Informal violation intervention hearing.* As an alternative to an initial hearing, upon suspected violation of parole, a parole officer may initiate an informal violation intervention hearing.<sup>100</sup> The purpose of such hearing is to seek compliance with parole conditions in lieu of a formal revocation hearing. The hearing shall be conducted by a hearings officer and the board. If it is determined, by a preponderance of the evidence, that a parole condition has been violated, the hearings officer shall use the department's incentives and interventions grid to determine an appropriate response.<sup>101</sup> Options for responses include:

- (i) order the parolee to serve or receive credit for serving up to 30 days of detention;
- (ii) recommend electronic monitoring or day reporting for up to a 90-day period;
- (iii) recommend placement in a community corrections facility or program for up to a 90-day period, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program; or
- (iv) direct the probation and parole officer to initiate a petition for revocation if the violation is not a compliance violation or if it is a compliance violation and the appropriate responses under the department's incentives and interventions grid have been exhausted.<sup>102</sup>

If the officer recommends one of the above responses, s/he must notify the parolee of the recommendation and of the parolee's right to have the matter referred for a revocation hearing instead.<sup>103</sup>

*Revocation hearing.* After finding probable cause, and initiating a petition for revocation, the parole officer must immediately notify the board with a report, which must be placed in the offender's file.<sup>104</sup> The report must contain the findings of the preliminary hearing officer as well as a description of the exhaustion of appropriate violation responses under the department's incentives and interventions grid.<sup>105</sup>

Unless waived by the parolee, the Board must schedule a final revocation hearing within 90 days of receiving the summary of the preliminary hearing or of receipt of notice of conviction or return to Montana custody.<sup>106</sup> A parolee who contests a violation must present any requests for information from the parolee's file, a list of witnesses and exhibits, a list of information to be presented, and a request for subpoenas at least 20 days before the hearing.<sup>107</sup>

Upon receipt of the report, the hearing panel must hold a hearing on the violation charged. If the violation is a compliance violation there are two options. If all the appropriate violation responses under the department's incentives and interventions grid have not been exhausted, the parolee shall be referred back to his/her hearing officer.<sup>108</sup> If the board finds that all responses under the incentives and interventions grid have been exhausted, the hearing panel may:

- (a) continue the parole without a change in conditions; or
- (b) continue the parole with modified or additional terms and conditions, which may include placement in:
  - (i) a secure facility designated by the department for up to 9 months; or
  - (ii) a community corrections facility or program designated by the department for up to 9 months, including but not limited to placement in a pre-release center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program.<sup>109</sup>

If the board finds that the violation was not a compliance violation, the board may:

- (a) continue the parole without a change in conditions;
- (b) continue the parole with modified or additional terms and conditions, which may include placement as provided in subsection (2)(b) for up to 9 months; or
- (c) revoke the parole or enter an order as the hearing panel sees fit.<sup>110</sup>

The presiding hearing panel member will conduct the hearing and will make an audio and video record of it.<sup>111</sup> All decisions regarding sanctions, placements or revocation must be documented in the offender's file.<sup>112</sup>

### e. Offenders' Procedural Rights

At the preliminary hearing, the parolee has the right to notice of the hearing and must be allowed to appear and speak on their own behalf, as well as introduce relevant information to the hearing officer.<sup>113</sup> For example, the parolee may have witnesses who can present relevant testimony attend the hearing.<sup>114</sup>

"At the final revocation hearing the parolee may be represented by counsel at the parolee's expense, and may present witness testimony if the testimony relates to the violations. An indigent parolee may request appointed counsel if difficult or complex issues are present and if the parolee is unable to articulate the issues. A decision on the request for appointed counsel will be rendered by a board hearing panel after due consideration of the request."<sup>115</sup>

### f. Victims and Other Participants

Victims do not have any special right to attend a revocation hearing, however, they are public meetings and can only be closed by the presiding officer for the purposes of discussing matters of individual privacy that "clearly exceed the merits of public disclosure."<sup>116</sup>

### g. Burden of Proof or Standards of Persuasion

A decision of the Board in a revocation hearing is by a preponderance of the evidence.<sup>117</sup>

### h. Revocation and Other Sanctions

If the hearing panel determines that the prisoner has violated the provisions of release, the hearing panel must determine the amount of time, if any, that will be counted as time served while the prisoner was in violation of the provisions of release.<sup>118</sup>

### i. Issuing Parole Revocation Decisions

Every decision regarding parole requires a favorable vote of a majority of the board members.<sup>119</sup> The board staff will deliver a copy of the board's written decision to the offender within 21 days of the decision. It must include reasons for the decision and disposition, and a summary of the evidence on which the board relied.<sup>120</sup>

## j. Administrative or Judicial Review of Parole Revocation Decisions

Parole revocation decisions may be subject to administrative review in the same manner as parole release decisions. An offender can submit a request for reconsideration within 60 days of the written disposition. Reconsideration by a new panel will occur if the offender can present evidence that revocation was based on erroneous or false information or that the hearing was not conducted according to Board procedure.<sup>121</sup>

Judicial review is also available. All appellate decisions in Montana are made by the state's Supreme Court. An issue not properly reserved for appeal may be reviewed for plain error.<sup>122</sup>

## k. Re-Release Following Revocation

At the conclusion of a revocation hearing, the Board may set a re-parole date. It may also set a review hearing after one year, or set no re-parole date if the final discharge date is within one year.<sup>123</sup>

## 6. Parole Board; Institutional Attributes

### a. Source of Authority and Jurisdiction

By statute, the Board is responsible for executive clemency and parole.<sup>124</sup> It also has the authority to make rules regarding such matters.<sup>125</sup>

### b. Location in Government

The Board is a quasi-judicial independent agency, located in the Executive Branch of the government for administrative purposes only.<sup>126</sup>

### c. Purpose (Vision/Principles/Rationale)

According to the Board's mission statement, the Board "administer[s] a parole system that is balanced with public safety, offender accountability and rehabilitation, as well as, protecting the interests of victims and communities, with the goal of successfully reintegrating merited offenders back into society through a reentry process. All employees and members of the Board are committed to securing the effective application of and improvements to the clemency and release system, as well as the laws upon which they are based. The parole process is carried out in an effective, fair, safe, and efficient fashion."<sup>127</sup>

Furthermore, the Board "envisions a parole and pardon system that promotes fair and consistent decisions based on public safety, victim concerns, successful inmate re-entry and sensible use of state resources."<sup>128</sup>

### d. Appointment and Qualifications of Board Members

Allocated within the Department of Corrections, there shall be five members of the Board.<sup>129</sup> Board members are paid a salary within the occupational wage range set by the department of administration.<sup>130</sup>

*Qualifications?* Board members must meet certain qualifications. To be on the board, an individual must have: (1) a college degree in criminology, corrections, or a related social science; (2) at least 5 years of extensive work experience in corrections, the criminal justice system, or criminal law; or (3) a law degree.<sup>131</sup> A well balanced board is key. In formulating the board, members' expertise or knowledge of the following should be taken into consideration: (a) American Indian culture; (b) serious mental illness and recovery from serious mental illness; and (c) victim awareness.<sup>132</sup>

### e. Tenure of Board Members, Ease of Removal

Board members must serve staggered 6-year terms.<sup>133</sup> Board members may be removed by the governor for cause.<sup>134</sup>

### f. Board Meetings

Board members shall work full time, meeting in hearing panels<sup>135</sup> as deemed necessary.<sup>136</sup>

### g. Training and Continuing Education

Before participating on a hearing panel,<sup>135</sup> a new board member must receive orientation from board staff regarding:

- State and federal law and rules pertinent to board operations;
- Offender pathology, treatment, and supervision; and
- Department of Corrections' organization, programs, and policy.<sup>137</sup>

Members must have knowledge of American Indian culture and problems. This training must cover the cultures and problems of Montana tribes and reservations,

statistical and comparative data regarding correctional populations, distinctions between urban and reservation populations, and federal, state, local community services available to those paroled or discharged.<sup>138</sup> In addition, board members shall attend annual training aimed at strengthening the knowledge and skills necessary for case management, interviewing, and parole decision-making.<sup>139</sup> Finally, board members *may* attend nationally recognized correctional training or a comparable program.<sup>140</sup>

#### **h. Workload**

In the fiscal year spanning July 2016 to June 2017, the Board reviewed 2,430 cases including 951 parole considerations where the offender waived appearance, conducted 1,183 parole interviews, and reviewed 202 violations.<sup>141</sup>

#### **i. Reporting and Accountability of Parole Board**

The Board reports once every two years to the governor.<sup>142</sup> It also publishes final Board dispositions and statistical data online each month.<sup>143</sup>

The Board records its acts and decisions and makes the majority of it available to the public upon request. There are, however, records which are not available for the public's view if the Board deems an individual's privacy interest or public safety interest outweighs the merits of public disclosure.<sup>144</sup>

## END NOTES

- <sup>1</sup> Mont. Bd. of Pardons & Parole, *Biennial Report* at 5 (Jan. 2015), <http://bopp.mt.gov/Portals/42/about/Legislative%20Report%202015.pdf> · <http://bopp.mt.gov/Portals/42/about/Legislative%20Report%202015.pdf> [Hereinafter *Biennial Report*].
- <sup>2</sup> Mont. Code Ann. § 46-18-201(3) (2018).
- <sup>3</sup> Mont. Code Ann. § 46-18-213 (2018).
- <sup>4</sup> Mont. Code Ann. § 46-23-104(1) (2018).
- <sup>5</sup> Mont. Code Ann. § 46-23-215(1) (2018).
- <sup>6</sup> Mont. Code Ann. § 46-23-1025 (2018).
- <sup>7</sup> Mont. Code Ann. § 46-23-201(3) (2018).
- <sup>8</sup> Mont. Code Ann. § 46-18-202(2) (2018).
- <sup>9</sup> Mont. Code Ann. § 46-18-401(1) (2018).
- <sup>10</sup> Mont. Admin. R. 20.25.305(2)–(3) (2018).
- <sup>11</sup> Offenses with mandatory minimums include mitigated deliberate homicide or deliberate homicide, aggravated assault, kidnapping and aggravated kidnapping, robbery, sexual assault, sexual intercourse without consent, or aggravated promotion of prostitution. Mont. Code Ann. § 46-18-205(2) (2018). The court may impose alternative sentencing in some cases related to dangerous drugs under Mont. Code Ann. § 45-9-202 (2018). Some mandatory minimum sentences may be excused based on the youth of the offender, the offender's mental capacity at the time of the crime, duress, liability as an accomplice rather than a principal, no serious bodily injury, or presence of psychosexual therapeutic needs best met outside of a prison. Mont. Code Ann. § 46-18-222 (2018).
- <sup>12</sup> Mont. Code Ann. § 46-18-502 (2018). The ten-year sentence will be imposed if the offender was already considered a persistent felony offender at time of last conviction. Mitigating factors, such as youth of the offender, listed in *supra* note 11, apply to this statute as well.
- <sup>13</sup> Mont. Code Ann. § 46-23-201(4) (2018).
- <sup>14</sup> *Id.* at (5).
- <sup>15</sup> Mont. Admin. R. 20.25.402(6) (2018).
- <sup>16</sup> See Susan Barth Fox, *Correctional Standards and Oversight Committee, Policies on Good Time and the Effects on Sentencing Practices: History and Survey Results*, 3 (1998), <http://leg.mt.gov/content/Committees/Interim/2013-2014/Law-and-Justice/Meetings/February-2014/Exhibits/good-time-fox-report-1998-8146SFMA.pdf>.
- <sup>17</sup> Mont. Code Ann. § 46-23-208(1) (2018).
- <sup>18</sup> *Id.* at (4).
- <sup>19</sup> *State v. Bullman*, 203 P.3d 768, 773–74 (Mont. 2009); *State v. Marshall*, 170 P.3d 923, 925 (Mont. 2007).
- <sup>20</sup> Mont. Code Ann. § 46-23-218 (3) (2018).
- <sup>21</sup> Mont. S.B. 64, Reg. Sess. 2017-2018 (2017). Retrieved May 28, 2019, from <https://leg.mt.gov/bills/2017/billhtml/SB0064.htm>
- <sup>22</sup> Correspondence with Meaghan Mulcahy, Parole Analyst, Montana Board of Pardons and Parole (March 1, 2017).
- <sup>23</sup> Mont. Code Ann. § 46-23-210(1) (2018).
- <sup>24</sup> *Id.* at (3) (“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.”).
- <sup>25</sup> *Id.* at (6). Possible placements include, but are 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.
- <sup>26</sup> Mont. Code Ann. § 46-23-301(1)(a) (2018). The governor may not grant clemency to anyone related/connected to them within four degrees of consanguinity or two degrees of affinity; or to someone who has worked/works in the office of the governor since they took office. *Id.* at (5).
- <sup>27</sup> *Id.* at (2)–(4). Factors the Board may consider in evaluating an application include the circumstances surrounding the crime of conviction, the applicant’s criminal record, and individual circumstances related to social conditions prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency. *Id.* at (3)(a)
- <sup>28</sup> Mont. Code Ann. § 53-30-106(1)–(2) (2018).
- <sup>29</sup> Mont. Code Ann. §§ 46-23-103(4), 46-23-202 (2018); Mont. Admin. R. 20.25.402(6) (2018).
- <sup>30</sup> Mont. Code Ann. § 46-23-202 (2018).
- <sup>31</sup> Mont. Admin. R. 20.25.401(2) (2018).
- <sup>32</sup> Mont. Code Ann. § 46-23-105 (2018) (“The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.”).
- <sup>33</sup> Mont. Code Ann. § 46-23-205(1) (2018).
- <sup>34</sup> Mont. Admin. R. 20.25.504(1) (2018). See also Mont. Code Ann. § 46-23-203 (2018) (“It shall be the duty of all prison officials to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner over whom the board has jurisdiction under parts 1, 2, 3, and 10 of this chapter, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.”).
- <sup>35</sup> Mont. Admin. R. 20.25.306(2) (2018).
- <sup>36</sup> Mont. Admin. R. 20.25.401(1), (12) (2018) (“(1) An eligible offender may apply and come before a hearing panel or an out-of-state releasing authority for nonmedical parole consideration within two months of time fixed by law as calculated by the prison records department . . . (12) Offenders who appear for parole hearings may have a representative, including an attorney, present with them.”).
- <sup>37</sup> *Id.* at (2) (“The presiding hearing panel member shall conduct hearings informally and must have discretion to allow or not allow any proposed testimony.”).
- <sup>38</sup> Mont. Const. Art. II, § 9 (“No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.”).
- <sup>39</sup> *Worden v. Mont. Bd. of Pardons & Paroles*, 962 P.2d 1157, 1165 (Mont. 1998).
- <sup>40</sup> Mont. Bd. Pardons & Parole, *Information for Victims*, <http://bopp.mt.gov/VictimInfo> (last visited Jul. 14, 2018).
- <sup>41</sup> Mont. Admin. R. 20.25.401(5)–(7) (2018).
- <sup>42</sup> Mont. Code Ann. § 46-23-203 (2018) (requiring that prison officials must also make prisoners available to the board at all times).
- <sup>43</sup> Mont. Admin. R. 20.25.401(11) (2018).
- <sup>44</sup> *Id.* at (13).
- <sup>45</sup> Mont. Code Ann. § 2-15-2305(8) (2018).
- <sup>46</sup> Mont. Admin. R. 20.25.501(3) (2018).
- <sup>47</sup> *Id.* at (2).
- <sup>48</sup> *Id.* at (7).
- <sup>49</sup> Mont. Admin. R. 20.25.402(4), (6) (2018).
- <sup>50</sup> See, e.g., Mont. Code Ann. § 46-22-101 (2018) (“[With some exceptions related to appeal of conviction or of revocation of a suspended/deferred sentence], every person imprisoned or otherwise restrained of liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint.”); see also *Sage v. Gamble*, 929 P.2d 822 (Mont. 1996) (indicating that petitioning for a writ of habeas corpus is a possible way to challenge parole revocation).
- <sup>51</sup> Mont. Admin. R. 20.25.601(1) (2018).
- <sup>52</sup> Mont. Admin. R. 20.25.601 (4), (5) (2018) (“If the offender is a resident of a community-based program, the offender must be clear of Class 100 and 200 disciplinary violations for at least 90 days.”).

## END NOTES

- <sup>53</sup> Danielle Kaeble, Bureau of Justice Statistics, Probation and Parole in the United States, 2016 at 18 (Appendix Table 5) (Apr. 2018), <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.
- <sup>54</sup> Mont. Admin. R. 20.25.201(1) (2018).
- <sup>55</sup> Mont. Dep't of Corr., About Montana Department of Corrections, <http://cor.mt.gov/about> (last visited Jul. 14, 2018).
- <sup>56</sup> *Id.*
- <sup>57</sup> Mont. Code Ann. § 46-23-1021(4) (2018).
- <sup>58</sup> Mont. Code Ann. § 46-23-1021(1) (2018).
- <sup>59</sup> Mont. Code Ann. § 46-23-216(1)-(2) (2018) (“The period served on parole must be considered service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole has performed the obligations of the release, the board must make a final order or discharge and issue a certificate of discharge to the prisoner.”).
- <sup>60</sup> Mont. Code Ann. § 46-23-1021(6)(a) (2018).
- <sup>61</sup> *Id.* at (6) (“Any of the achievements listed in 46-23-1027(2) must be considered a significant achievement by the board in deciding whether to grant a conditional discharge from supervision to a parolee. (c) If the board discharges a parolee from supervision, the department is relieved of the obligation of supervising the parolee. (d) For good cause, the board may return a parolee who was conditionally discharged to the status of a regular parolee. (e) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.”).
- <sup>62</sup> Mont. Code Ann. § 46-23-1027(1) (2018).
- <sup>63</sup> Mont. Code Ann. § 46-23-1027(2) (2018).
- <sup>64</sup> Mont. Code Ann. § 46-23-215(2)(a) (2018).
- <sup>65</sup> Mont. Admin. R. 20.25.702(1) (2018).
- <sup>66</sup> Mont. Admin. R. 20.25.702(3) (2018).
- <sup>67</sup> Mont. Code Ann. § 46-23-215(2)(b) (2018).
- <sup>68</sup> Mont. Code Ann. § 46-23-1010(1) (2018).
- <sup>69</sup> Mont. Admin. R. 20.25.501(8) (2018) (“A duly constituted hearing panel will make the following administrative decisions at the board’s monthly business meeting after panel members have reviewed the offender’s case record. These decisions do not require the approval of the members who made the most recent parole determination: . . . (c) the addition or deletion of special conditions; . . . (f) a change or modification of a previous hearing panel decision that does not reverse a parole denial or a parole grant decision.”).
- <sup>70</sup> Mont. Code Ann. § 46-23-1031(1)(a) (2018). If a person is under continuous satellite-based monitoring, they must pay to the Department a supervisory fee of no more than \$4,000 a year.
- <sup>71</sup> *Id.* at (1)(c).
- <sup>72</sup> Mont. Dep’t of Corr., Procedure No. PPD 3.1.2000 at 6 (June 23, 2015), [www.cor.mt.gov/Portals/104/ProbationParole/PPDOperationalProcedures/PPD%203.1.2000%20Offender%20Drug%20Testing%20Program.pdf](http://www.cor.mt.gov/Portals/104/ProbationParole/PPDOperationalProcedures/PPD%203.1.2000%20Offender%20Drug%20Testing%20Program.pdf).
- <sup>73</sup> Mont. Code Ann. § 46-18-241(1) (2018) (“As provided in 46-18-201, a sentencing court must, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss. The duty to pay full restitution under the sentence remains with the offender or the offender’s estate until full restitution is paid, whether or not the offender is under state supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or parole.”).
- <sup>74</sup> *Id.* at (3).
- <sup>75</sup> Mont. Code Ann. § 46-23-1025(4) (2018).
- <sup>76</sup> *Id.* at (5).
- <sup>77</sup> Correspondence with Meaghan Mulcahy, *supra* note 21.
- <sup>78</sup> Mont. Admin. R. 20.7.1101(3) (2018) (“Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision”); see also Mont. Code Ann. § 46-23-215(3) (2018), (“[W]henever a hearing panel grants a parole to a prisoner on the condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the hearing panel or the presiding officer of the board may grant the prisoner a furlough, not to exceed two consecutive 10-day periods, for purposes of fulfilling the condition.”).
- <sup>79</sup> Mont. Admin. R. 20.7.1101(10) (2018).
- <sup>80</sup> Mont. Admin. R. 20.7.1101(11) (2018).
- <sup>81</sup> Correspondence with Meaghan Mulcahy, *supra* note 21.
- <sup>82</sup> Kaeble, *supra* note 52, at 22 (Appendix Table 7).
- <sup>83</sup> Justice Center: The Council of State Gov’t, *Montana’s Justice Reinvestment Approach: Curbing State Prison Population Growth and Reinvesting in Local Public Safety Strategies* at 2 (June 2017), [https://csgjusticecenter.org/wp-content/uploads/2017/06/6.6.17\\_Montana\\_Justice-Reinvestment-Approach1.pdf](https://csgjusticecenter.org/wp-content/uploads/2017/06/6.6.17_Montana_Justice-Reinvestment-Approach1.pdf), (“The prison and supervision populations were projected to increase 14 and 15 percent, respectively, by FY2023, requiring at least \$51 million and up to hundreds of millions of dollars to construct and operate new prison facilities and hire new supervision officers.”).
- <sup>84</sup> Mike Dennison, *Montana Launches Ambitious Sentencing Reforms, to Slow Prison Populations*, KTVH, Aug. 28, 2017, <http://www.ktvh.com/2017/08/montana-launches-ambitious-sentencing-reforms-to-slow-prison-populations/> (“The changes are supposed to save the state at least \$70 million in correctional spending over the next six years, by preventing the projected increase in the prison population and cutting the number of offenders on probationary supervision by as many as 2,600 people.”).
- <sup>85</sup> *Id.*; American Civil Liberties Union of Mt., *2017 Montana Legislative Summary* at 1 (2017), [https://www.aclumontana.org/sites/default/files/wysiwyg/end\\_of\\_session\\_report\\_long.pdf](https://www.aclumontana.org/sites/default/files/wysiwyg/end_of_session_report_long.pdf).
- <sup>86</sup> Dennison, *supra* note 83.
- <sup>87</sup> Mont. Code Ann. § 46-23-1025 (2018).
- <sup>88</sup> Mont. Code Ann. § 46-23-1001(3) (2018).
- <sup>89</sup> Mont. Admin. R. 20.25.801(16) (2018).
- <sup>90</sup> See *id.* (“If the board decides the parolee has violated parole, the hearing panel may, considering the nature of the violations and the criteria for release grant decision, take any of the following actions: . . .”).
- <sup>91</sup> Mont. Code Ann. § 46-23-1024(4)(c) (2018).
- <sup>92</sup> Mont. Code Ann. § 46-23-1028(1) (2018).
- <sup>93</sup> *Id.* at (2).
- <sup>94</sup> *Id.*
- <sup>95</sup> Mont. Code Ann. § 46-23-1023(1) (2018).
- <sup>96</sup> *Id.* at (4).
- <sup>97</sup> Mont. Code Ann. § 46-23-1024 (2) (2018).
- <sup>98</sup> *Id.* at (1).
- <sup>99</sup> *Id.* at (2), (3).
- <sup>100</sup> *Id.* at (4)(a)(ii).
- <sup>101</sup> *Id.* at (4)(c).
- <sup>102</sup> *Id.*
- <sup>103</sup> *Id.* at (5); see also Mont. Code Ann. § 46-23-1025 (2018).
- <sup>104</sup> Mont. Code Ann. § 46-23-1025(1) (2018).
- <sup>105</sup> *Id.*
- <sup>106</sup> Mont. Admin. R. 20.25.801(12) (2018).
- <sup>107</sup> *Id.* at (14).
- <sup>108</sup> Mont. Code Ann. § 46-23-1025(2) (2018).
- <sup>109</sup> *Id.*
- <sup>110</sup> *Id.* at (3).
- <sup>111</sup> Mont. Admin. R. 20.25.801(15) (2018).
- <sup>112</sup> Mont. Code Ann. § 46-23-1025(7) (2018).
- <sup>113</sup> Mont. Code Ann. § 46-23-1024(2) (2018).
- <sup>114</sup> Mont. Admin. R. 20.25.801(6) (2018).
- <sup>115</sup> *Id.* at (13).
- <sup>116</sup> Mont. Code Ann. § 2-3-203(3) (2018).

## END NOTES

- <sup>117</sup> Mont. Admin. R. 20.25.801(15) (2018).
- <sup>118</sup> Mont. Code Ann. § 46-23-1025(6) (2018).
- <sup>119</sup> Mont. Code Ann. § 2-15-2305(8) (2018).
- <sup>120</sup> Mont. Admin. R. 20.25.801(9) (2018).
- <sup>121</sup> *Id.* at (7).
- <sup>122</sup> See, e.g., *State v. Haagenson*, 232 P.3d 367, 370–71 (Mont. 2010).
- <sup>123</sup> Correspondence with Meaghan Mulcahy, *supra* note 21.
- <sup>124</sup> Mont. Code Ann. § 46-23-104(1) (2018).
- <sup>125</sup> Mont. Code Ann. § 46-23-218(1) (2018) (“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.”).
- <sup>126</sup> See Mont. Code Ann. § 2-15-121(1) (2018) (“An agency allocated to a department for administrative purposes only in this chapter shall [...] exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department. . . .”).
- <sup>127</sup> 2015 Biennial Report, *supra* note 1 at vi.
- <sup>128</sup> *Id.*
- <sup>129</sup> Mont. Code Ann. § 2-15-2305 (1), (6) (2018).
- <sup>130</sup> Mont. Code Ann. § 46-23-111(1) (2018).
- <sup>131</sup> Mont. Code Ann. § 2-15-2305(2) (2018); Mont. Code Ann. § 46-23-1003(1)(b) (2018) (“Work experience that may be substituted for the educational requirements in subsection (1)(a) includes experience in the areas of criminology, education, medicine, psychiatry, psychology, law, law enforcement, social work, sociology, psychiatric nursing, or guidance and counseling.”).
- <sup>132</sup> *Id.* at (3).
- <sup>133</sup> *Id.* at (4).
- <sup>134</sup> Mont. Code Ann. § 2-15-124(6) (2018).
- <sup>135</sup> Mont. Code Ann. § 46-23-103(4) (2018) (“‘Hearing panel’ means a panel appointed by the presiding officer of the board and made up of at least three board members to conduct parole hearings, revocation hearings, recession hearings, and administrative parole reviews and to make recommendations in matters of executive clemency.”).
- <sup>136</sup> Mont. Code Ann. § 46-23-104(2) (2018).
- <sup>137</sup> Mont. Admin. R. 20.25.102(4) (2018).
- <sup>138</sup> Mont. Admin. R. 20.25.102 (2018) (“A board member who has not received training regarding American Indian issues may not hear or decide American Indian cases until the member has completed the training.”).
- <sup>139</sup> Mont. Code Ann. § 46-23-218(5) (2018) (“Board members, parole analysts, and the hearings officers shall attend the training, as well as other board and department staff as needed.”).
- <sup>140</sup> Mont. Admin. R. 20.25.102(3) (2018).
- <sup>141</sup> Mont. Bd. Pardons & Parole, *Statistical Data FY 2017*, <http://bopp.mt.gov/Portals/42/StatisticalData/2017FiscalYear.pdf> (last visited Jul. 15, 2018).
- <sup>142</sup> See 2015 Biennial Report, *supra* note 1.
- <sup>143</sup> See Statistics, <http://bopp.mt.gov/Statistics> (last visited Jul. 18, 2018); Final Dispositions, <https://bopp.mt.gov/Dispositions> (last visited Jul. 15, 2018).
- <sup>144</sup> See generally Mont. Code Ann. § 46-23-110 (2018) (outlining privacy procedures regarding the Board’s records).