

Parole and Probation Reform Proposals – Montana Coalition for Safety and Justice

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PART A – THE PAROLE HEARING AND DECISIONMAKING PROCESS

Issue Summary

A significant number of inmates are denied parole at the initial hearing even though they have completed all programming required at sentencing and have clear conduct. Friends and family members report that during some parole hearings Board members did not treat witnesses respectfully, asked inappropriate questions, made judgmental or unprofessional statements, or allowed victims to malign or threaten the inmate or the inmate's family or friends during the hearing. Inmates have reported feeling manipulated by questions that seemed designed to trap them rather than to give them a fair opportunity to explain why they believe they should be paroled. There is a growing sense of unfairness and bias with respect to parole decisions, which hurts the credibility of the entire system, leads to anger and resentment within the prison population, and is counter-productive to the goal of successful re-entry. Although the Board's rules articulate that the parole decision will be based on the consideration of stated factors and the Board states that it strives for consistency and fairness, the forms used do not provide an objective assessment instrument to help guide their decision making process. Moreover, although current statutes articulate the need to have qualified and informed people on the board, the board does not function as a complete Board. Decisions are made by panels of two. This means that the various perspectives and experiences of all Board members are not brought to bear on the parole decision. Furthermore, a hearing is held irrespective of whether the parole decision is obvious. This is not only inefficient and time consuming, but it also sets up situations where the parole hearing seems to the offender to be no more than a pointless exercise. Parole hearings cause a great deal of anxiety for inmates and a perception of unfairness and meaningless manipulation only adds to the overall level of stress, frustration, and anger inside the prison.

Proposals

- 1. Enact a policy statement** - Enact a policy statement from the Legislature to help guide the Board's decision-making process. The statement should:
 - a. incorporate principles related to rehabilitation, restitution, and restorative justice and note that the 25% that is established as the mandatory minimum for time to be served in prison already incorporates the element of punishment

- b. establish that parole is not a shortening of a sentence or a reprieve from punishment, but is a stepping down in the level of state supervision while the offender completes his or her sentence.
 - c. state that a decision to parole should reflect an objective finding that the offender is considered capable of complying with parole conditions and of ceasing criminal behavior, and that the offender is, therefore, worthy of parole
 - d. state that because parole is a stepping down in the level of state supervision while the offender completes his or her sentence, the parole decision should be based only on an evaluation of:
 - i. conduct while in prison,
 - ii. satisfactory completion of court-required programs, and
 - iii. an objective assessment of whether the offender may be released without posing a significant risk to public safety
 - e. distinguish the role of Board from the role of the sentencing court. In other words, state that the parole hearing is not intended to be a redo of the sentencing hearing or a second-guessing of the court's sentence determination
 - f. limit the authority of the Board in the Pardon and Commutation process to the issuance of a recommendation that is forwarded to the Governor. The recommendation should be based on the factors contained item d with input from the sentencing Judge.
 - g. state that, as noted in the National Institute of Corrections (U.S. Dept. of Justice), that the purpose of a parole hearing is to:
 - i. provide an opportunity for an offender to present his or her perspective
 - ii. allow additional facts or information about the case to be gathered
 - iii. verify the accuracy of facts or information in the file
 - iv. allow interested persons (judges, prosecutors, victims, friends, and family) to provide input about the possibility of parole
 - v. create an opportunity to evaluate the inmate's parole plan
2. **Adopt an objective assessment system to be a guideline for parole decisions.** Adoption of a proven risk assessment system that looks at many factors has improved the number of successful re-entries. In Michigan has since full adoption of such a system in 2008 has reduced the prison population by more than 15% and lowered the 3 year recidivism rate by 10%. A comparable reduction in Montana's current recidivism rate and population reduction would yield an approximate savings of \$28,263,600 based on 2012 prison population numbers and revocation/new crime rates as reported by the Department of Corrections. A review of current systems as adopted by over 15 States should be conducted with consideration given to expert technical advice, and input from all stakeholders, including victims and victim advocates, offenders and offenders' families or friends, and community service providers who would be supporting parolees. (There are technical assistance grants available from the Council of State Governments for Justice Reinvestment initiatives, for which this project

may qualify.) The task force should propose to the next interim LJIC a risk assessment system that will:

- a. be simple, easily explained, and easily understood
- b. assess the potential risk to public safety based on factors such as the nature of the crime (i.e., was the crime violent, sexual, a crime against property only, non-violent, etc.) and the offender's criminal history, age, time elapsed since the crime, time already served, etc.
- c. assess the offender's level of rehabilitation (i.e. conduct while in prison, completion of programs, self-improvement efforts)
- d. provide a composite score that will indicate whether the inmate is a good candidate for parole, is an average candidate for parole, or is not a good candidate for parole.

3. Use the assessment tool as a guideline and provide for a more balanced and streamlined process.

Enact legislation that will be effective upon the approval by the LJIC of an assessment tool (LJIC approval is important because Board rules are not subject to administrative rule review, or statutorily provide for the assessment tool). The legislation should:

- a. require the Board to use the objective assessment tool as a guideline when considering whether an offender is a good candidate for parole.
- b. ensure that all board member perspectives and qualifications are brought to bear on parole decision by providing that:
 - i. all board members shall initially review a summary of each inmate's file and assessment tool scores (*see Texas policy*)
 - ii. if a majority of parole board members agree with the assessment score indicating that parole should be granted or denied, a hearing is not required
 - iii. however, a parole hearing must be held if a majority of members have questions about a score, want more information, or are not sure they agree with the score, or if the results of the assessment score are inconclusive (i.e., in the middle of the range)
 - iv. authorize the Board to make a decision other than what is indicated by the assessment tool, but only if a parole hearing is held and the Board provides in writing a "substantial and compelling reason" for departing from the guideline. Prohibit the consideration of gender, race, ethnicity, national origin, or religion (*see Michigan policy*).
 - v. a candidate for parole may object to the assessment score on the basis that incorrect or incomplete information was provided for the assessment. If corrected or new information is found to change the assessment score, then the board shall reconsider the offender's request for parole. (*see Michigan policy*).

4. **Provide better training.** Require Board members to be trained before they can participate in making a parole decision. In addition to the training already required with respect to Native American culture and the impact of mental illness, the training should include:
 - a. a review of the purpose, role, and functions of the board, including the legislative policy statement
 - b. the philosophical foundations for and the practical use of the assessment instrument
 - c. a review of emerging best practices and research related to parole decisions, including any Montana-specific data to help illuminate how parole decisions are working out
 - d. the effects of prolonged incarceration on offender families and the ability of the offender to succeed upon re-entry

5. **Add to a qualified board membership.** To provide perspective on parole with respect to the impact on social service providers, victims, communities, and offender families, require at least one board member be a licensed social worker, therapist, or counselor with experience dealing with re-entry issues

PART B – CONDITIONAL PAROLE

Issue Summary

The Board regularly imposes program requirements as a condition that must be met prior to parole that was not required by the court or even recommended by the prison program staff. For example, in a number of cases, the Board has required that an offender complete the boot camp program even though the offender did not apply for the program and was not sentenced by a court to complete the program. Another example is that the Board has required some inmates to complete sex offender programming even though the crime for which the offender was sentenced was not a sexual crime. The Board has also required some inmates complete Sex Offender II treatment even though the court required only the completion of Sex Offender I classes. Another problem is that it is nearly impossible for the inmate to secure a job from within prison walls (the 10-day furlough is not an effective answer to this problem). But the Board continues to require that employment be secured before parole is granted, even though the Board could grant parole and then require the parolee be actively engaged in seeking employment. The cumulative effect of these practices is to create a situation where a large number of inmates have technically been granted parole, but have not been released because of the pre-conditions. This is costly to the state, places a heavy burden on the treatment program providers, and results in inmates who are unsuitable for boot camp being required to attend, but then "washing out", and then being punished for their failure because they failed to complete required programming.

Proposals

1. Prohibit the Board from requiring the completion of a program that was not ordered by the court.

2. Prohibit the Board from requiring an inmate to secure employment before being released on parole, but allow the Board to require that the parolee actively seek employment once on parole.

PART C – TECHNICAL VIOLATIONS OF PAROLE

Issue Summary

A significant number of parolees and probationers are incarcerated in state institutions due to technical violations the violations are vary from a missed appointment, inability to pay for treatment or supervision fees, or result of substance abuse. The Department of Corrections reports only 5% of all parolees and probationers return to prison due to a new conviction.

This effectively imprisons offenders for a public health and financial issues rather than for a criminal behavior. Furthermore, many violations are actually rooted in the offender's inability to find employment or suitable housing. This not only ratchets up the cost of corrections, but creates a vicious cycle of repeat offenses and further jeopardized public safety and that pushes offenders deeper and deeper into the prison system. A strategic approach to handling technical parole violations could reduce costs and allow the state to reinvest the savings into community-based treatment programs. Additional savings would be realized from lower spending on social benefit programs by the Department of Public Health and Human Services. Returning offenders to custody for non-criminal reasons creates a loss to families of income and support forcing these families into TANF, Food Stamps and other programs to survive.

Proposal

1. The LJC should sponsor legislation creating incentives for good behavior and achievement by parolees and probationers, coupled with community based sanctions for non-criminal behavior where appropriate. The legislation should eliminate re-incarceration for non-criminal offences.
2. The incentives would include
 - a. reduced supervision fees.
 - b. good citizenship credits of 1 or 2 days for each day in the community without a technical violation. (see Nevada statutes)
 - c. incentives would include the Achievement guidelines listed in 46-
3. Community based sanctions. These sanctions would include:
 - a. increased travel restriction
 - b. curfews
 - c. loss of good citizenship credits
 - d. community Service

The savings of the proposed system is significant. Approximately 1,200 probationers and parolees are returned to custody for technical violations each year. The cost of re-incarcerating for non-criminal behavior is \$43,200,000 calculated at DOC's reported individual cost for 1 year is \$36,000 per prisoner.

PART D – PROMOTING POSITIVE RE-ENTRY BY REDUCING BARRIERS

Issue Summary

The collateral consequences of a conviction are far reaching and extend beyond the borders of Montana in ways that create barriers to employment and housing for a lifetime. These collateral consequences work to increase recidivism by erecting lifetime barriers of even minor offences. The consequences for even a misdemeanor can bar an individual from working as an electrician or plumber. Education has been shown in several studies conducted over 40 years to reduce recidivism. A notable difference in successful vs. unsuccessful re-entry is the ex-prisoners' who had attended school or a vocational training program had the greatest success rates. Other key factors in success in various studies were the availability of meaningful employment, and housing. Those who entered a full service mentoring program and attended school\training had the greatest success rate. Recidivism dropped to 3.5% for college graduates. Overall recidivism rates were reduced by more than 50%.

To overcome the collateral consequences of a conviction requires recognition of the offenders work towards successful re-entry. Montana enacted the Achievement Credit for Parolees (HB 452 2007) which created a list of achievements that would be weighed in favor of the individual in determining if a conditional discharge would be granted. A Certificate of Rehabilitation issued by the state as contemplated would in the majority of cases allow the offender to overcome collateral barriers to employment.

Proposal

1. Enact legislation that creates a Certificate of Rehabilitation that is issued when an offender meets certain standards of success. The Certificate would benefit society and the offender by opening doors based on citizenship and hard work. Lower recidivism equates to safer communities and employed offenders are far less likely to re-offend after years of positive behavior. A review of statistical data from the State of Montana and Department of Justice show that after 3 years of successful re-entry into the community the probability of re-offending is statistically insignificant and is not tracked.
2. The Certificate of Rehabilitation issuance would be based in part on the criteria set forth in MCA 46-23-1027 Parole Achievement Credit.
3. The Certificate would be issued after an offender has completed of 3 years of Parole ,Probation or combination of both or having discharged a sentence and while in the community archive a minimum of 2 achievements contained in t16-23-1027