

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

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rule I pertaining to parole guidelines ) PROPOSED ADOPTION AND  
and the amendment of ARM ) AMENDMENT  
20.25.704 pertaining to conditional )  
discharge from supervision )

TO: All Concerned Persons

1. On September 21, 2020, at 11:00 a.m., the Board of Pardons and Parole (board) will hold a public hearing via Zoom Webinar to consider the proposed adoption and amendment of the above-stated rules. Due to Covid-19 health safety considerations, holding an in-person public hearing is not currently a viable option. Participants may access the Zoom Webinar hearing at [https://mt.gov.zoom.us/webinar/register/WN\\_CVo9BOPuRcCle-psFlaJ\\_A](https://mt.gov.zoom.us/webinar/register/WN_CVo9BOPuRcCle-psFlaJ_A). Participants will be able to listen to the hearing but will not be able to orally present data, views, or arguments during the Zoom Webinar hearing. Participants wishing to submit data, views, or arguments will need to do so in writing and by the deadline set out in paragraph 7 of this notice.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 5:00 p.m. on September 17, 2020, to advise us of the nature of the accommodation that you need. Please contact Griffin Burns, Department of Corrections, P. O. Box 201301, Helena, Montana 59620-1301; telephone (406) 444-1551; fax (406) 444-3920; TDD/Montana Relay Service (406) 444-4290; or e-mail [GBurns@mt.gov](mailto:GBurns@mt.gov).

3. The rule proposed to be adopted provides as follows:

NEW RULE I PAROLE GUIDELINES (1) The purpose of the parole guidelines is to structure and guide parole release decisions and decisions relating to imposition of release conditions. Guidelines are a tool that ensure that members of the Board of Pardons and Parole (board) consider the identified factors when reviewing individual cases. Guidelines are not, in themselves, dispositive of the board's decisions. They provide a framework to facilitate reasonable consistency in paroling decisions.

(2) The board will consider in its guidelines the following factors in decreasing order of importance:

(a) The resulting score contained in a validated risk and needs assessment instrument administered to the offender by trained and certified corrections personnel and provided to the board for parole purposes. The resulting score on the risk and needs assessment is based on a point-range of 0 to 6 with 0 being low risk and 6 being very high or high risk, depending on the assessment instrument used.

General validated risk and needs assessment instruments reviewed by the board are the Montana Offender Reentry and Risk Assessment (MORRA) for a male offender and the Women's Risk/Needs Assessment (WRNA) for a female offender. Sub-population or specialized assessments are reviewed if they are made available to the board. Sex-offender assessments are administered by a sex offender treatment therapist meeting the qualification standards set in ARM Title 20, chapter 7, subchapter 3. If both a general assessment instrument and a sub-population specific instrument are administered to an offender, the higher of the two scores will take precedence.

(b) Risk reduction program and treatment completion, scored as follows:

- (i) 0 points for completion of all required programming, no programs recommended, or sentence did not allow sufficient time for completion;
- (ii) 1 point for current enrollment in risk reduction programming;
- (iii) 2 points for being on the waitlist for risk reduction programming; or
- (iv) 5 points for refusal to participate in or having been terminated from risk reduction programming.

(c) Institutional behavior, scored as follows:

- (i) 0 points for having no infractions in the past 6 months;
- (ii) 2 points for having major infractions but no highest severity infractions within the past 6 months; or
- (iii) 3 points for having any highest severity major infraction in the past 6 months.

(d) Severity of the offense currently being served by a parole-eligible offender under 46-23-201, MCA, scored as follows:

- (i) 0 points for non-violent; or
- (ii) 2 points for a violent offense or a sex offense as those terms are defined in 46-18-104, MCA.

(3) Generally, an aggregate score of 0 to 8 points under (2)(a) through (2)(d) weighs in favor of the offender and an aggregate score of 9 or more points under (2)(a) through (2)(d) weighs against the offender. The board is not bound to grant or deny parole based solely on the aggregate score.

(4) For purposes of applying the parole guidelines set out in (1)(c), the Board adopts the list of institutional infractions and the characterizations of their severity currently used in "state prisons" as that term is defined in 53-30-101, MCA. The current list will be maintained by the board on its website <https://bopp.mt.gov/> at all times.

(5) Board decisions concerning imposition of parole release conditions are based in part upon the domains evaluated by the risk and needs instruments. These include, but are not limited to: Education, Employment and Social Support; Substance Abuse and Mental Health; Criminal Attitudes and Behavioral Patterns and upon indicated treatment recommendations contained therein.

(6) The board may develop one or more forms to use in applying the guidelines.

AUTH: 46-23-218, MCA

IMP: 46-23-208, 46-23-218, MCA

REASON: The legislature mandated that the Board of Pardons and Parole (board) adopt administrative rules establishing parole guidelines to structure and guide parole release decisions and imposition of release conditions. (46-23-218(3), MCA). This rule implements the statutory mandate by establishing a point system and scoring model to ensure that the guidance can be applied objectively and consistently.

The board, in consultation with the Department of Corrections, is mandated to consider an offender's institutional behavior as reflected by disciplinary records, in developing parole guidelines. (46-23-218, MCA). Section (4) of the proposed new rule states how institutional behavior is factored into the parole guidelines' point system and scoring model.

In developing the guidelines within the parameters established by the legislature, a working group of the board consulted and worked in conjunction with the Council on State Governments and the National Parole Resource Center. Factors deemed essential to accomplish the mission of the board when reviewing individual cases were identified as were the tools needed to guide the decision-making process. For many years, parole boards across the nation have worked to identify and agree on decision-making tools for use in their decision-making process. The most commonly used tool is the risk and needs assessment instrument. The validated instruments assess both static and dynamic risk and identify the criminogenic needs that are driving the risk to reoffend. The board uses the Supplemental Reentry Tool (MORRA), the Reentry Tool (MORRA), the Institutional Assessment (WRNA) and the applicable sex offender assessment (STATIC 2002R) instruments. The existence of a parole guideline framework helps the Board to exercise due diligence in reviewing relevant information in all cases. The development of guidelines can be an important tool in assuring continuity and reasonable consistency to minimize variances that can accompany the turnover in board membership.

Validation of the guidelines is a lengthy process because it involves examination and statistical analysis of data collected after the parole guidelines have been in use for some time. The statutory parameters for the guidelines and the framework for the point system and scoring model have been in use by the board since August 2017. Statistical data has been collected since April 2018 as required by 46-23-218, MCA. The MORRA and WRNA instruments, developed by the University of Cincinnati, are validated instruments.

The validated risk and needs assessment instrument used for sex offenders differs from the validated MORRA and WRNA general risk and needs assessment instruments. The rule clarifies how the sex offender-specific risk and needs assessment bears on the guidelines' scoring model if a sex offender-specific assessment instrument is used in conjunction with a general/standard MORRA or WRNA assessment instrument.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

20.25.704 CONDITIONAL DISCHARGE FROM SUPERVISION (1) through (3) remain the same.

(4) When a hearing panel considers granting a conditional discharge from supervision, it will consider the ~~achievement credits the parolee has accrued pursuant to 46-23-1027, MCA.~~ following criteria:

(a) supervision compliance:

(i) no positive drug or alcohol tests or any drug or alcohol use admissions in the last six months;

(ii) free of non-compliance violations during the required supervision time;

and

(iii) has been accountable for working on and meeting goals established in case plan or through supervision with parole officer;

(b) residential stability:

(i) has a permanent residence and is self-sufficient regarding housing costs with or without public assistance and is not homeless or at risk of homelessness;

(c) employment stability:

(i) currently employed and has been employed for majority of time while under parole supervision; or

(ii) has demonstrated the ability to be financially self-sufficient; and

(iii) has fulfilled court-ordered restitution obligation;

(d) engagement in treatment:

(i) successful completion of all board-ordered and court-ordered treatment and programming;

(e) other factors indicative of adequate reentry stability; and

(f) the achievement credits the parolee has accrued pursuant to 46-23-1027,

MCA.

(5) If a hearing panel grants a conditional discharge from supervision it may order the parolee to submit written reports to the board ~~once a year in January of each year~~, reporting the parolee's address, and any contacts the parolee has had with law enforcement.

(6) A hearing panel may revoke a conditional discharge from supervision and return a parolee to active supervision or amend the conditions of the conditional discharge from supervision if, in the opinion of a hearing panel, this action is in the best interest of society ~~and the parolee has committed any of the violations listed in (7).~~

~~(7) The board may revoke a parole even when the parolee is conditionally discharged from supervision, if the parolee:~~

~~(a) is charged with a felony offense;~~

~~(b) is charged with a misdemeanor offense for which the parolee could be sentenced to incarceration for a period of more than six months; or~~

~~(c) the parolee fails to report his/her address and law enforcement contacts.~~

AUTH: 46-23-218, MCA

IMP: 46-23-215, 46-23-1020, 46-23-1021, MCA

REASON: The rule amendments are needed to assure conformity of the rule with the statutes being implemented and for clarity purposes. In (4), the board provided guidance as to what constitutes "supervision compliance," "residential

stability," "employment stability," and "engagement in treatment" to facilitate consistent application of the criteria to parolees by the hearing panels.

5. Concerned persons may submit written data, views, or arguments to: Griffin Burns, Department of Corrections, 5 S. Last Chance Gulch, P.O. Box 201301, Helena, Montana 59620-1301; telephone (406) 444-1551; fax (406) 444-4920; or e-mail GBurns@mt.gov, and must be received no later than 5:00 p.m., September 29, 2020.

6. Lorraine Schneider, Department of Corrections, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by hand-delivered letter and email on June 7, 2019.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

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

/s/ Annette Carter  
Annette Carter  
Chair  
Board of Pardons and Parole

Certified to the Secretary of State August 18, 2020.