

1 *House* *Bill No. 672* *Conroy, Rotley*  
 2 *Undated* *INTRODUCED BY* *Ray L. Callum* *Manuel*  
 3 *Bartholme* *Mular* *Ryan* *Roth* *Hyper* *Sala* *Jensen*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT DISTRICT *Justice*  
 5 JUDGES, WHEN SENTENCING CRIMINAL DEFENDANTS, TO RESTRICT *Edibly*  
 6 ELIGIBILITY FOR PAROLE; AND TO PROVIDE THAT PERSONS WITH *Collis*  
 7 THREE FELONY CONVICTIONS AND PERSONS WHO HAVE BEEN CONVICTED *Hurwitz*  
 8 OF A FELONY COMMITTED WHILE ON PAROLE ARE INELIGIBLE FOR *Leen*  
 9 PAROLE; AMENDING SECTIONS 95-2206 AND 95-3214, R.C.M. 1947. *Lynch*  
 10 *Ernst* *Williams* *Barrett*  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Warwick* *Hansen* *Menshor*  
 12 Section 1. Section 95-2206, R.C.M. 1947, is amended to *Dotz*  
 13 read as follows:

*Krohn*  
*Storia*  
*17/9/97*  
*W*  
*Smith*  
*Wells*  
*Wells*

14 "95-2206. Sentence. (1) Whenever any person has been  
 15 found guilty of a crime or offense upon a verdict or a plea  
 16 of guilty the court may:  
 17 (a) Defer imposition of sentence for a period not  
 18 to exceed one (1) year for any misdemeanor; for a period not  
 19 to exceed three (3) years for any felony. The sentencing  
 20 judge may impose upon the defendant any reasonable  
 21 restrictions or conditions during the period of the deferred  
 22 imposition. Such reasonable restrictions or conditions may  
 23 include:  
 24 (i) jail base release;  
 25 (ii) jail time not to exceed ninety (90) days;

1 (c)(iii) conditions for probation;  
 2 (d)(iv) restitution;  
 3 (e)(v) any other reasonable conditions deemed  
 4 necessary for rehabilitation or for the protection of  
 5 society;  
 6 (f)(vi) any combination of the above.  
 7 (b) Suspend execution of sentence up to the maximum  
 8 sentence allowed for the particular offense. The sentencing  
 9 judge may impose on the defendant any reasonable  
 10 restrictions during the period of suspended sentence. Such  
 11 reasonable restrictions may include:  
 12 (i) jail base release;  
 13 (ii) jail time not to exceed (90) days;  
 14 (c)(iii) conditions for probation;  
 15 (d)(iv) restitution;  
 16 (e)(v) any other reasonable conditions deemed  
 17 necessary for rehabilitation or for the protection of  
 18 society;  
 19 (f)(vi) any combination of the above.  
 20 If any restrictions or conditions are violated, any  
 21 elapsed time, except jail time, shall not be a credit  
 22 against the sentence, unless the court shall otherwise  
 23 order.  
 24 (3)(c) Impose a fine as provided by law for the  
 25 offense.

1        ~~4~~(d) Commit the defendant to a correctional  
2 institution with or without fine by law for the offense.

3        ~~5~~(e) Impose any combination of subsections ~~2~~~~1~~ or ~~3~~  
4 ~~1~~(b), ~~1~~(c) or ~~4~~~~1~~(d) above.

5        ~~6~~(2) The district court may also impose any of the  
6 following restrictions or conditions on the above sentence  
7 which it deems necessary to obtain the objective of  
8 rehabilitation and the protection of society:

9        (a) prohibit the defendant the right to hold public  
10 office;

11        (b) prohibit the defendant the right to own or carry a  
12 dangerous weapon;

13        (c) prohibit freedom of association;

14        (d) prohibit freedom of movement;

15        (e) any other limitation reasonably related to the  
16 objectives of rehabilitation or the protection of society.

17        ~~7~~(3) The judge in the justice court shall not have  
18 the authority to restrict an individual's rights as  
19 enumerated in subsection ~~6~~(2).

20        ~~4~~ Any judge who has suspended the execution of a  
21 sentence or deferred the imposition of a sentence of  
22 imprisonment under this section, or his successor, is  
23 authorized thereafter, in his discretion, during the period  
24 of such suspended sentence or deferred imposition of  
25 sentence to revoke such suspension or impose sentence and

1 order such person committed, or may, in his discretion,  
2 order the prisoner placed under the jurisdiction of the  
3 state board of pardons as provided by law, or retain such  
4 jurisdiction with this court. Prior to the revocation of an  
5 order suspending or deferring the imposition of sentence,  
6 the person affected shall be given a hearing.

7        ~~5~~ The district court may impose the restriction that  
8 a defendant sentenced under subsection ~~1~~(d) be ineligible  
9 for parole for all or any part of his term of imprisonment."

10        Section 2. Section 95-3214, R.C.M. 1947, is amended to  
11 read as follows:

12        \*95-3214. Parole authority and procedure. (1) The  
13 board shall release on parole, by appropriate order, any  
14 person confined in the Montana state prison, except persons  
15 under--sentence--of--death listed in subsection (2), when in  
16 its opinion there is reasonable probability that the  
17 prisoner can be released without detriment to himself or to  
18 the community, provided:

19        (a) That no convict serving a time sentence shall be  
20 paroled until he has served at least one-quarter (1/4) of  
21 his full term, less good time allowances off, as provided in  
22 section 80-1905; except that no convict designated a  
23 persistent felony offender under section 95-2206.5 may be  
24 paroled until he has served at least one-third (1/3) of his  
25 full term, less good time allowances off, as provided in

1 section 80-1905. A first offender serving a time sentence  
 2 may be paroled after he has served, upon his term of  
 3 sentence, twelve and one-half (12 1/2) years. A persistent  
 4 felony offender as defined in section 95-2206.5 may be  
 5 paroled after he has served, upon his term of sentence,  
 6 seventeen and one-half (17 1/2) years.

7 (b) No convict serving a life sentence shall be  
 8 paroled until he has served thirty (30) years, less the good  
 9 time allowances off, as provided in section 80-1905.

10 (2) The following persons are ineligible for parole:

11 (a) persons under sentence of death;

12 (b) persons who are ineligible for parole by virtue of  
 13 a restriction on their sentences imposed under 95-2206(5);

14 (c) persons who have been convicted of three<sup>felony</sup> offenses,  
 15 each of which was committed on a separate occasion, in this  
 16 state or any other jurisdiction, for which a sentence to a  
 17 term of imprisonment in excess of 1 year could have been  
 18 imposed;

19 (d) persons who, while released on parole, have  
 20 committed and been convicted of an<sup>felony</sup> offense in this state or  
 21 any other jurisdiction for which a sentence to a term of  
 22 imprisonment in excess of 1 year could have been imposed.

23 (2)(3) Within two (2) months after his admission and  
 24 at such intervals thereafter as it determines, the board  
 25 shall consider all pertinent information regarding each

1 prisoner, including the circumstances of his offense, his  
 2 previous social history and criminal record, his conduct,  
 3 employment, and attitude in prison, and the reports of and  
 4 physical and mental examinations which have been made.

5 ~~(3)(4)~~ Before ordering the parole of any prisoner, the  
 6 board shall interview him. A parole shall be ordered only  
 7 for the best interest of society, not as an award of  
 8 clemency or a reduction of sentence or pardon. A prisoner  
 9 shall be placed on parole only when the board believes that  
 10 he is able and willing to fulfill the obligations of a  
 11 law-abiding citizen. Every prisoner while on parole shall  
 12 remain in the legal custody of the institution from which he  
 13 was released, but shall be subject to the orders of the  
 14 board.

15 ~~(4)(5)~~ The board may adopt other rules it considers  
 16 proper or necessary, with respect to the eligibility of  
 17 prisoners for parole, and the conduct of parole hearings or  
 18 conditions to be imposed upon parolees. When an order for  
 19 parole is issued it shall recite the conditions thereof."

-End-

STATE OF MONTANA

REQUEST NO. 434-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 9, 19 77, there is hereby submitted a Fiscal Note for House Bill 672 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to permit district judges, when sentencing criminal defendants, to restrict eligibility for parole; and to provide that persons with three (3) felony convictions and persons who have been convicted of a felony committed while on parole are ineligible for parole.

ASSUMPTIONS:

1. Within the current prison population, 132 persons have been convicted of three (3) or more felony offenses. 37 have been convicted of felony offenses while on parole and 5 are under sentence of death.
2. The average sentence for the above persons is 16.5 years and the average length of stay under current law is 2 years and 11 months.
3. Cost for keeping a person in prison is \$26.87 per day.

FISCAL IMPACT:

Under the time limits to complete this fiscal note, it was not possible to analyze each individual file to determine possible parole eligibility under current law. However, taking the population (174) as a whole, it will cost \$4,675 each day that the population remains. This figure will be \$1,706,375 for one year.

If the 174 persons served the full sentence (average 16.5 years) rather than the average length of stay (2 years, 11 months), the additional cost would be \$23,166,508.

*Richard L. Drayton*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-77

Approved by Committee  
on Judiciary

HOUSE BILL NO. 672

INTRODUCED BY COLBURN, TEAGUE, MANUEL, GOULD, CONROY, ROTH,  
KENNY, JOHNSTON, R. BAETH, STOBIE, MULAR, RYAN, KEYSER, SEIFERT,  
JENSEN, McLANE, EUDAILY, ELLIS, HURWITZ, LIEN, LYNCH,  
BARRETT, HANSEN, MENAHAN, PORTER, WILLIAMS, ERNST, WYRICK,  
SIVERTSEN, SEVERSON, FABREGA, KRUPP, PISTORIA, VINGER, COX,  
AAGESON, SMITH, FEDA, OUILICI, MOORE, UNDERDAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT DISTRICT  
JUDGES, WHEN SENTENCING CRIMINAL DEFENDANTS, TO RESTRICT  
ELIGIBILITY FOR PAROLE; AND TO PROVIDE THAT PERSONS WITH  
THREE CERTAIN FELONY CONVICTIONS AND CERTAIN PERSONS WHO  
HAVE BEEN CONVICTED OF A FELONY COMMITTED WHILE ON PAROLE  
ARE INELIGIBLE FOR PAROLE; AMENDING SECTIONS 95-2206 AND  
95-3214, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 95-2206, R.C.M. 1947, is amended to  
read as follows:

"95-2206. Sentence. (1) Whenever any person has been  
found guilty of a crime or offense upon a verdict or a plea  
of guilty the court may:

(a) Defer imposition of sentence for a period not  
to exceed one (1) year for any misdemeanor; for a period not  
to exceed three (3) years for any felony. The sentencing

judge may impose upon the defendant any reasonable  
restrictions or conditions during the period of the deferred  
imposition. Such reasonable restrictions or conditions may  
include:

(i) jail base release;

(ii) jail time not to exceed ninety (90) days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions deemed  
necessary for rehabilitation or for the protection of  
society;

(vi) any combination of the above.

(b) Suspend execution of sentence up to the maximum  
sentence allowed for the particular offense. The sentencing  
judge may impose on the defendant any reasonable  
restrictions during the period of suspended sentence. Such  
reasonable restrictions may include:

(i) jail base release;

(ii) jail time not to exceed (90) days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions deemed  
necessary for rehabilitation or for the protection of  
society;

(vi) any combination of the above.

SECOND READING

1 If any restrictions or conditions are violated, any  
2 elapsed time, except jail time, shall not be a credit  
3 against the sentence, unless the court shall otherwise  
4 order.

5 ~~(3)(c)~~ Impose a fine as provided by law for the  
6 offense.

7 ~~(4)(d)~~ Commit the defendant to a correctional  
8 institution with or without fine by law for the offense.

9 ~~(5)(a)~~ Impose any combination of subsections ~~(2)~~ ~~(3)~~  
10 ~~(1)(b)~~, ~~(1)(c)~~ or ~~(4)(1)(d)~~ above.

11 ~~(6)(2)~~ The district court may also impose any of the  
12 following restrictions or conditions on the above sentence  
13 which it deems necessary to obtain the objective of  
14 rehabilitation and the protection of society:

15 (a) prohibit the defendant the right to hold public  
16 office;

17 (b) prohibit the defendant the right to own or carry a  
18 dangerous weapon;

19 (c) prohibit freedom of association;

20 (d) prohibit freedom of movement;

21 (e) any other limitation reasonably related to the  
22 objectives of rehabilitation or the protection of society.

23 ~~(7)(3)~~ The judge in the justice court shall not have  
24 the authority to restrict an individual's rights as  
25 enumerated in subsection ~~(6)(2)~~.

1 ~~(4)~~ Any judge who has suspended the execution of a  
2 sentence or deferred the imposition of a sentence of  
3 imprisonment under this section, or his successor, is  
4 authorized thereafter, in his discretion, during the period  
5 of such suspended sentence or deferred imposition of  
6 sentence to revoke such suspension or impose sentence and  
7 order such person committed, or may, in his discretion,  
8 order the prisoner placed under the jurisdiction of the  
9 state board of pardons as provided by law, or retain such  
10 jurisdiction with this court. Prior to the revocation of an  
11 order suspending or deferring the imposition of sentence,  
12 the person affected shall be given a hearing.

13 ~~(5) The district court may impose the restriction that~~  
14 ~~a defendant sentenced under subsection (1)(d) UPON A SECOND~~  
15 ~~CONVICTION, ONE OF WHICH IS AN OFFENSE AGAINST THE PERSON~~  
16 ~~LISTED IN CHAPTER 5 OF TITLE 95, be ineligible for parole~~  
17 ~~for all or any part of his term of imprisonment."~~

18 Section 2. Section 95-3214, R.C.M. 1947, is amended to  
19 read as follows:

20 "95-3214. Parole authority and procedure. (1) The  
21 board shall release on parole, by appropriate order, any  
22 person confined in the Montana state prison, except persons  
23 ~~under--sentence--of--death listed in subsection (2)~~, when in  
24 its opinion there is reasonable probability that the  
25 prisoner can be released without detriment to himself or to

1 the community, provided:

2 (a) That no convict serving a time sentence shall be  
 3 paroled until he has served at least one-quarter (1/4) of  
 4 his full term, less good time allowances off, as provided in  
 5 section 80-1905; except that no convict designated a  
 6 persistent felony offender under section 95-2206.5 may be  
 7 paroled until he has served at least one-third (1/3) of his  
 8 full term, less good time allowances off, as provided in  
 9 section 80-1905. A first offender serving a time sentence  
 10 may be paroled after he has served, upon his term of  
 11 sentence, twelve and one-half (12 1/2) years. A persistent  
 12 felony offender as defined in section 95-2206.5 may be  
 13 paroled after he has served, upon his term of sentence,  
 14 seventeen and one-half (17 1/2) years.

15 (b) No convict serving a life sentence shall be  
 16 paroled until he has served thirty (30) years, less the good  
 17 time allowances off, as provided in section 80-1905.

18 (2) The following persons are ineligible for parole:

19 (a) persons under sentence of death;

20 (b) persons who are ineligible for parole by virtue of  
 21 a restriction on their sentences imposed under 95-2206(5);

22 (c) persons who have been convicted of three offenses,  
 23 ONE OF WHICH IS AN OFFENSE AGAINST THE PERSON LISTED IN  
 24 CHAPTER 5 OF TITLE 94 AND each of which was committed on a  
 25 separate occasion, in this state or any other jurisdiction;

1 for which a sentence to a term of imprisonment in excess of  
 2 1 year could have been imposed;

3 (d) persons who, UNDER SENTENCE FOR A TERM OF  
 4 IMPRISONMENT IN EXCESS OF 1 YEAR, while released on parole,  
 5 have committed and been convicted of an offense in this  
 6 state or any other jurisdiction for which a sentence to a  
 7 term of imprisonment in excess of 1 year could have been  
 8 imposed, IF THE OFFENSE RESULTING IN THE SENTENCE PAROLED  
 9 FROM OR THE OFFENSE COMMITTED WHILE ON PAROLE IS ONE AGAINST  
 10 THE PERSON LISTED IN CHAPTER 5 OF TITLE 94.

11 (3)(3) Within two (2) months after his admission and  
 12 at such intervals thereafter as it determines, the board  
 13 shall consider all pertinent information regarding each  
 14 prisoner, including the circumstances of his offense, his  
 15 previous social history and criminal record, his conduct,  
 16 employment, and attitude in prison, and the reports of and  
 17 physical and mental examinations which have been made.

18 (3)(4) Before ordering the parole of any prisoner, the  
 19 board shall interview him. A parole shall be ordered only  
 20 for the best interest of society, not as an award of  
 21 clemency or a reduction of sentence or pardon. A prisoner  
 22 shall be placed on parole only when the board believes that  
 23 he is able and willing to fulfill the obligations of a  
 24 law-abiding citizen. Every prisoner while on parole shall  
 25 remain in the legal custody of the institution from which he

1 was released, but shall be subject to the orders of the  
2 board.

3 ~~{4}{15}~~ The board may adopt other rules it considers  
4 proper or necessary, with respect to the eligibility of  
5 prisoners for parole, and the conduct of parole hearings or  
6 conditions to be imposed upon parolees. When an order for  
7 parole is issued it shall recite the conditions thereof."

-End-



## 1 HOUSE BILL NO. 672

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4 JENSEN, McLANE, EUDAILY, ELLIS, HURMITZ, LIEN, LYNCH,  
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8  
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10 JUDGES, WHEN SENTENCING CRIMINAL DEFENDANTS, TO RESTRICT  
11 ELIGIBILITY FOR PAROLE; AND TO PROVIDE THAT PERSONS WITH  
12 THREE CERTAIN FELONY CONVICTIONS AND CERTAIN PERSONS WHO  
13 HAVE BEEN CONVICTED OF A FELONY COMMITTED WHILE ON PAROLE  
14 ARE INELIGIBLE FOR PAROLE; AMENDING SECTIONS 95-2206 AND  
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20 \*95-2206. Sentence. (1) Whenever any person has been  
21 found guilty of a crime or offense upon a verdict or a plea  
22 of guilty the court may:

23 (1)(a) Defer imposition of sentence for a period not  
24 to exceed one (1) year for any misdemeanor; for a period not  
25 to exceed three (3) years for any felony. The sentencing

1 judge may impose upon the defendant any reasonable  
2 restrictions or conditions during the period of the deferred  
3 imposition. Such reasonable restrictions or conditions may  
4 include:

5 ~~(a)(i)~~ jail base release;

6 ~~(b)(iii)~~ jail time not to exceed ninety (90) days;

7 ~~(c)(iii)~~ conditions for probation;

8 ~~(d)(iv)~~ restitution;

9 ~~(e)(v)~~ any other reasonable conditions deemed  
10 necessary for rehabilitation or for the protection of  
11 society;

12 ~~(f)(vi)~~ any combination of the above.

13 ~~(2)(b)~~ Suspend execution of sentence up to the maximum  
14 sentence allowed for the particular offense. The sentencing  
15 judge may impose on the defendant any reasonable  
16 restrictions during the period of suspended sentence. Such  
17 reasonable restrictions may include:

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24 society;

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1 If any restrictions or conditions are violated, any  
2 elapsed time, except jail time, shall not be a credit  
3 against the sentence, unless the court shall otherwise  
4 order.

5 ~~(3)(c)~~ Impose a fine as provided by law for the  
6 offense.

7 ~~(4)(d)~~ Commit the defendant to a correctional  
8 institution with or without fine by law for the offense.

9 ~~(5)(a)~~ Impose any combination of subsections ~~(2)~~~~(3)~~  
10 ~~(1)(b), (1)(c)~~ or ~~(4)(1)(d)~~ above.

11 ~~(6)(2)~~ The district court may also impose any of the  
12 following restrictions or conditions on the above sentence  
13 which it deems necessary to obtain the objective of  
14 rehabilitation and the protection of society:

15 (a) prohibit the defendant the right to hold public  
16 office;

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18 dangerous weapon;

19 (c) prohibit freedom of association;

20 (d) prohibit freedom of movement;

21 (e) any other limitation reasonably related to the  
22 objectives of rehabilitation or the protection of society.

23 ~~(7)(3)~~ The judge in the justice court shall not have  
24 the authority to restrict an individual's rights as  
25 enumerated in subsection ~~(6)(2)~~.

1 ~~(4)~~ Any judge who has suspended the execution of a  
2 sentence or deferred the imposition of a sentence of  
3 imprisonment under this section, or his successor, is  
4 authorized thereafter, in his discretion, during the period  
5 of such suspended sentence or deferred imposition of  
6 sentence to revoke such suspension or impose sentence and  
7 order such person committed, or may, in his discretion,  
8 order the prisoner placed under the jurisdiction of the  
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10 jurisdiction with this court. Prior to the revocation of an  
11 order suspending or deferring the imposition of sentence,  
12 the person affected shall be given a hearing.

13 ~~(5) The district court may impose the restriction that~~  
14 ~~a defendant sentenced under subsection (1)(d) UPON A SECOND~~  
15 ~~CONVICTION, ONE OF WHICH IS AN OFFENSE AGAINST THE PERSON~~  
16 ~~LISTED IN CHAPTER 5 OF TITLE 94, be ineligible for parole~~  
17 ~~for all or any part of his term of imprisonment."~~

18 Section 2. Section 95-3214, R.C.M. 1947, is amended to  
19 read as follows:

20 "95-3214. Parole authority and procedure. (1) The  
21 board shall release on parole, by appropriate order, any  
22 person confined in the Montana state prison, except persons  
23 under--sentence--of--death listed in subsection (2), when in  
24 its opinion there is reasonable probability that the  
25 prisoner can be released without detriment to himself or to

1 the community, provided:

2 (a) That no convict serving a time sentence shall be  
3 paroled until he has served at least one-quarter (1/4) of  
4 his full term, less good time allowances off, as provided in  
5 section 80-1905; except that no convict designated a  
6 persistent felony offender under section 95-2206.5 may be  
7 paroled until he has served at least one-third (1/3) of his  
8 full term, less good time allowances off, as provided in  
9 section 80-1905. A first offender serving a time sentence  
10 may be paroled after he has served, upon his term of  
11 sentence, twelve and one-half (12 1/2) years. A persistent  
12 felony offender as defined in section 95-2206.5 may be  
13 paroled after he has served, upon his term of sentence,  
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15 (b) No convict serving a life sentence shall be  
16 paroled until he has served thirty (30) years, less the good  
17 time allowances off, as provided in section 80-1905.

18 ~~(2) The following persons are ineligible for parole:~~

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23 ~~ONE OF WHICH IS AN OFFENSE AGAINST THE PERSON LISTED IN~~  
24 ~~CHAPTER 5 OF TITLE 94 AND each of which was committed on a~~  
25 ~~separate occasion, in this state or any other jurisdiction.~~

1 ~~for which a sentence to a term of imprisonment in excess of~~  
2 ~~1 year could have been imposed;~~

3 ~~(d) persons who, UNDER SENTENCE FOR A TERM OF~~  
4 ~~IMPRISONMENT IN EXCESS OF 1 YEAR, while released on parole,~~  
5 ~~have committed and been convicted of an offense in this~~  
6 ~~state or any other jurisdiction for which a sentence to a~~  
7 ~~term of imprisonment in excess of 1 year could have been~~  
8 ~~imposed, IF THE OFFENSE RESULTING IN THE SENTENCE PAROLED~~  
9 ~~FROM OR THE OFFENSE COMMITTED WHILE ON PAROLE IS ONE AGAINST~~  
10 ~~THE PERSON LISTED IN CHAPTER 5 OF TITLE 94.~~

11 ~~(2)(3)~~ Within two (2) months after his admission and  
12 at such intervals thereafter as it determines, the board  
13 shall consider all pertinent information regarding each  
14 prisoner, including the circumstances of his offense, his  
15 previous social history and criminal record, his conduct,  
16 employment, and attitude in prison, and the reports of and  
17 physical and mental examinations which have been made.

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19 board shall interview him. A parole shall be ordered only  
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22 shall be placed on parole only when the board believes that  
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