

1 HOUSE BILL NO. 135

2 INTRODUCED BY SMITH

3 BY REQUEST OF THE BOARD OF PARDONS AND PAROLE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING THE BOARD
6 OF PARDONS AND PAROLE; REVISING THE STRUCTURE OF THE BOARD BY ADDING A SECOND
7 AUXILIARY MEMBER TO THE BOARD AND BY PROVIDING FOR STAGGERED TERMS FOR BOARD
8 MEMBERS; REVISING THE LAW RELATING TO MEDICAL PAROLE FOR PRISONERS; REVISING THE
9 BOARD'S AUTHORITY TO GRANT MEDICAL PAROLE TO PRISONERS WHO ARE PHYSICALLY
10 INCAPACITATED BY ELIMINATING THE REQUIREMENT THAT THE PRISONER MUST BE HIGHLY UNLIKELY
11 TO PRESENT A CLEAR AND PRESENT DANGER TO PUBLIC SAFETY; AMENDING SECTIONS 2-15-2302
12 AND 46-23-210, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND
13 A TERMINATION DATE."
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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1617 **Section 1.** Section 2-15-2302, MCA, is amended to read:

18 **"2-15-2302. Board of pardons and parole -- composition -- allocation -- quasi-judicial.** (1) There
19 is a board of pardons and parole.

20 (2) The board consists of three members and ~~an~~ two auxiliary ~~member~~ members, at least one of
21 whom ~~shall~~ must have particular knowledge of Indian culture and problems. Members of the board,
22 including the auxiliary ~~member~~ members, ~~shall~~ must possess academic training ~~which~~ that has qualified
23 them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social
24 work, sociology, or guidance and counseling. Related work experience in the areas listed may be
25 substituted for these educational requirements.

26 (3) ~~The~~ An auxiliary member shall attend any meeting that a regular board member is unable to
27 attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board
28 member.

29 (4) ~~One member and the auxiliary member shall serve terms concurrent with the governor. The~~
30 ~~remaining members shall serve staggered 4 year terms.~~ (a) In January 1997, or as soon thereafter as

1 possible, the governor shall appoint:

2 (i) one member and one auxiliary member to terms that expire in January 2001;

3 (ii) one member to a term that expires in January 2002; and

4 (iii) one auxiliary member to a term that expires in January 2003.

5 (b) In January 1999, the governor shall appoint one member to a term that expires in January 2003.

6 (5) The terms of board members and auxiliary members run with the position, and if a vacancy
7 occurs, the governor shall appoint a person to fill the unexpired portion of the term.

8 ~~(6)~~ (6) The board is allocated to the department for administrative purposes only as prescribed in
9 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

10 ~~(7)~~ (7) The board, including the auxiliary ~~member~~ members, is designated as a quasi-judicial board
11 for purposes of 2-15-124, except board members must be compensated as provided by legislative
12 appropriation and the terms of board members must be staggered as provided in subsection (4).

13 (8) The provisions of 2-15-124(2) do not apply to the board."

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15 **Section 2.** Section 2-15-2302, MCA, is amended to read:

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29 staggered 4-year terms. The governor shall appoint one member and one auxiliary member in January of
30 the first year of the governor's term, one member in January of the second year of the governor's term,

1 and one member and one auxiliary member in January of the third year of the governor's term.

2 (5) The terms of board members and auxiliary members run with the position and if a vacancy
3 occurs, the governor shall appoint a person to fill the unexpired portion of the term.

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11 **Section 3.** Section 46-23-210, MCA, is amended to read:

12 **"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order a
13 person placed in a correctional institution or program, except a person under sentence of death. To be
14 eligible for a medical parole, a person must have an examination and written diagnosis by a physician
15 licensed under Title 37 to practice medicine. The diagnosis must include:

16 (a) a determination that the person suffers from an incapacitating physical condition, disease, or
17 syndrome ~~that renders the person highly unlikely to present a clear and present danger to public safety;~~

18 (b) a description of the physical condition, disease, or syndrome and a detailed description of the
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20 (c) a prognosis addressing the likelihood of the person's recovery from the physical condition,
21 disease, or syndrome and the extent of any potential recovery.

22 (2) The diagnosis must be reviewed and accepted by the department before the board may consider
23 granting a medical parole.

24 (3) The board shall require as a condition of medical parole that the person agree to placement in
25 an environment chosen by the department during the parole period, including but not limited to a hospital,
26 nursing home, or family home. The board may require as a condition of parole that the person agree to
27 periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis
28 must be submitted to the board and department by the examining physician. If either the board or
29 department determines that the person's physical capacity has improved to the extent that the person is
30 likely to pose a possible detriment to society, the board may revoke the parole and return the person to the

1 custody of the department.

2 (4) Medical parole may be requested by the board, the department, an incarcerated person, or an
3 incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the
4 administrator of the correctional institution in which the person is incarcerated.

5 (5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

6 (6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply
7 to nonmedical parole."

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9 **NEW SECTION. Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act]
10 is effective on passage and approval.

11 (2) [Section 2] is effective January 1, 2001.

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13 **NEW SECTION. Section 5. Retroactive applicability.** The terms of members and auxiliary members
14 appointed pursuant to [section 1] apply retroactively, within the meaning of 1-2-109, to January 1, 1997.

15

16 **NEW SECTION. Section 6. Termination.** [Section 1] terminates December 31, 2000.

17

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0135, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act generally revising the laws governing the Board of Pardons and Parole; revising the structure of the board by adding a second auxiliary member to the board and by providing for staggered terms for board members; revising the law related to medical parole for prisoners who are physically incapacitated by eliminating the requirement that the prisoner must be highly unlikely to present a clear and present danger to public safety and providing effective dates, a retroactive applicability date and a termination date.

ASSUMPTIONS:

1. The cost per inmate per day for Montana State Prison (MSP) is \$44.47, including external medical costs.
2. The number of inmates eligible for medical parole on annual basis is 10.
3. The Board of Pardons normally paroles 50% of offenders who are eligible. Therefore, an average of 5 offenders per year would be paroled at a savings of \$81,158 (44.47 x 365 x 5).
4. Any medical costs of parolees will be assumed by the offender or by Medicaid if the offender is Medicaid eligible.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	(81,158)	(81,158)
 <u>Funding:</u>		
General Fund (01)	(81,158)	(81,158)

Dave Lewis 1-13-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Liz Smith 1-14-97
 LIZ SMITH, PRIMARY SPONSOR DATE

Fiscal Note for HB0135, as introduced

HB 135

APPROVED BY COM
ON JUDICIARY

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13 **NEW SECTION. Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act]
14 is effective on passage and approval.

15 (2) [Section 2] is effective January 1, 2001.

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17 **NEW SECTION. Section 5. Retroactive applicability.** The terms of members and auxiliary members
18 appointed pursuant to [section 1] apply retroactively, within the meaning of 1-2-109, to January 1, 1997.

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20 **NEW SECTION. Section 6. Termination.** [Section 1] terminates December 31, 2000.

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-END-

1 HOUSE BILL NO. 135

2 INTRODUCED BY SMITH

3 BY REQUEST OF THE BOARD OF PARDONS AND PAROLE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING THE BOARD
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11 ~~TO PRESENT A CLEAR AND PRESENT DANGER TO PUBLIC SAFETY~~; AMENDING SECTIONS 2-15-2302
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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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1 possible, the governor shall appoint:

2 (i) one member and one auxiliary member to terms that expire in January 2001;

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5 (b) In January 1999, the governor shall appoint one member to a term that expires in January 2003.

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FREE CONFERENCE COMMITTEE

on House Bill 135

Report No. 1, April 16, 1997

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 135** (reference copy -- salmon) and recommend that **House Bill 135** be amended as follows:

1. Page 3, line 23.

Strike: "IT FINDS"

2. Page 3, line 24.

Strike: "THAT"

3. Page 3, line 25.

Strike: "PERSON SUFFERS FROM AN"

Following: "SYNDROME"

Strike: "THAT"

And this FREE Conference Committee report be adopted.

For the House:

For the Senate:

Wm. E. Boharski

Representative Boharski, Chair

Al Bishop

Senator Bishop, Chair

Rep. Liz Smith

Representative Smith

Benny Jobs

Senator Jobs

Mural Pease

Representative Pease

Opew Doherty

Senator Doherty

ADOPT

REJECT

FCCR#1

AC HB 135-1

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HB 135

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