

1 HOUSE BILL NO. 399

2 INTRODUCED BY M. HOPKINS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE CRIMINAL
 5 SENTENCING OF YOUTH OFFENDERS; REVISING SENTENCING LAWS TO INCLUDE A RESTRICTION
 6 ON A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF RELEASE FOR YOUTH OFFENDERS;
 7 ESTABLISHING MITIGATING FACTORS A COURT SHALL CONSIDER WHEN IMPOSING A SENTENCE ON
 8 A YOUTH OFFENDER; ESTABLISHING PAROLE CRITERIA THE BOARD OF PARDONS AND PAROLE
 9 SHALL CONSIDER FOR A YOUTH OFFENDER; ALLOWING A SENTENCE REVIEW HEARING FOR
 10 CERTAIN CRIMINALLY CONVICTED YOUTH; ESTABLISHING THAT A YOUTH OFFENDER IS ELIGIBLE
 11 FOR PAROLE CONSIDERATION AFTER SERVING A MAXIMUM OF 15 YEARS OF THE SENTENCE;
 12 LIMITING THE AMOUNT OF TIME THAT A YOUTH OFFENDER MAY BE ORDERED TO SERVE BEFORE
 13 BEING GRANTED A SUBSEQUENT PAROLE HEARING OR REVIEW; REVISING THE RULEMAKING
 14 AUTHORITY OF THE BOARD OF PARDONS AND PAROLE; AMENDING SECTIONS 41-5-2503, 41-5-2510,
 15 46-18-202, 46-18-219, 46-18-223, 46-23-201, 46-23-202, 46-23-208, AND 46-23-218, MCA; AND PROVIDING
 16 AN APPLICABILITY DATE."

17

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

19

20 **NEW SECTION. Section 1. Restriction on sentence of youth offender to life imprisonment**
 21 **without possibility of release -- mitigating circumstances.** (1) A court may not sentence an offender to a life
 22 sentence without the possibility of release if the offender was less than 18 years of age at the time of the
 23 commission of the offense or offenses for which the offender is to be sentenced.

24 (2) In addition to other factors required by law to be considered prior to the imposition of a sentence,
 25 when determining the appropriate sentence to be imposed for an offender who was less than 18 years of age at
 26 the time of the commission of the offense or offenses for which the offender is to be sentenced, the court shall
 27 consider the following mitigating circumstances:

28 (a) the offender's:

- 1 (i) age at the time of the offense or offenses;
- 2 (ii) impetuosity;
- 3 (iii) family and community environment;
- 4 (iv) ability to appreciate the risks and consequences of the offender's conduct;
- 5 (v) intellectual capacity;
- 6 (vi) ability to participate meaningfully in the offender's defense;
- 7 (vii) capacity for rehabilitation;
- 8 (viii) school records and special education evaluations;
- 9 (ix) trauma history;
- 10 (x) faith and community involvement; and
- 11 (xi) involvement in the child welfare system;
- 12 (b) the outcomes of a comprehensive mental health evaluation conducted by a mental health
- 13 professional licensed in the state to treat adolescents;
- 14 (c) peer or familial pressure;
- 15 (d) whether and to what extent an adult was involved in the offense or offenses; and
- 16 (e) any other mitigating factors or circumstances.
- 17 (3) Subsection (2)(b) may not be construed to require that a comprehensive mental health evaluation
- 18 be conducted.

19

20 **NEW SECTION. Section 2. Parole factors for youth offenders.** (1) When making a determination

21 regarding nonmedical parole release for a prisoner who was less than 18 years of age at the time of the

22 commission of the offense or offenses for which the prisoner was sentenced and in addition to the criteria in 46-

23 23-208 and the parole guidelines established pursuant to 46-23-218(3), the hearing panel shall give great

24 weight to the following mitigating factors:

- 25 (a) the diminished culpability of youth as compared to that of adults;
- 26 (b) the hallmark features of youth;
- 27 (c) a review of the prisoner's educational and court documents;
- 28 (d) the age and immaturity of the prisoner at the time of the offense or offenses;

- 1 (e) whether and to what extent an adult was involved in the offense or offenses;
- 2 (f) the prisoner's home and community environment at the time of the offense or offenses, including
- 3 any history of abuse, trauma, and involvement in the child welfare system;
- 4 (g) any subsequent growth and increased maturity of the prisoner during incarceration;
- 5 (h) the prisoner's participation in available rehabilitative and educational programs while in prison or
- 6 use of self-study for self-improvement; and
- 7 (i) any other mitigating factors or circumstances the hearing panel considers relevant.
- 8 (2) A prisoner who was less than 18 years of age at the time of the commission of the offense or
- 9 offenses for which the prisoner was sentenced may have an attorney present to represent the prisoner's
- 10 interests at a parole hearing.
- 11 (3) If the hearing panel denies parole, it shall state the reasons for denial in writing and address the
- 12 panel's consideration of the factors in subsection (1).

13

14 **Section 3.** Section 41-5-2503, MCA, is amended to read:

15 **"41-5-2503. Disposition of criminally convicted youth.** (1) The district court, in sentencing a youth

16 adjudicated in district court pursuant to 41-5-206, shall:

17 (a) consider the mitigating circumstances in [section 1(2)];

18 ~~(a)(b)~~ except as provided in [section 1(1)]. impose any sentence allowed by the statute that

19 established the penalty for the offense of which the youth is convicted as if the youth were an adult and any

20 conditions or restrictions allowed by statute;

21 ~~(b)(c)~~ retain jurisdiction over the case until the criminally convicted youth reaches the age of 21; and

22 ~~(e)(d)~~ order the department to submit a status report to the court, county attorney, defense attorney,

23 and juvenile probation officer every 6 months until the youth attains the age of 21. The report must include a

24 recommendation from the department regarding the disposition of the criminally convicted youth.

25 (2) The district court shall review the criminally convicted youth's sentence pursuant to 41-5-2510

26 before the youth reaches the age of 21 if a hearing has not been requested under 41-5-2510."

27

28 **Section 4.** Section 41-5-2510, MCA, is amended to read:

1 **"41-5-2510. Sentence review hearing.** (1) When a youth has been convicted as an adult pursuant to
 2 the provisions of 41-5-206, ~~except for offenses punishable by death or life imprisonment or when a sentence of~~
 3 ~~100 years could be imposed~~, the county attorney, defense attorney, or youth may, at any time before the youth
 4 reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall
 5 notify the court of the youth's impending birthday no later than 90 days before the youth's 21st birthday.

6 (2) After reviewing the status report and upon motion for a hearing, the court shall determine whether
 7 to hold a criminally convicted youth sentence review hearing. When determining whether to hold a review
 8 hearing, the court shall consider the mitigating circumstances in [section 1(2)].

9 (3) If the court, in its discretion, determines that a sentence review hearing is warranted or is required
 10 under 41-5-2503, the hearing must be held within 90 days after the filing of the request or determination. The
 11 sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

12 ~~(3)(4)~~ The sentencing court shall review the department's records, formal youth court records, victim
 13 statements, and any other pertinent information.

14 ~~(4)(5)~~ The sentencing court, shall determine whether the criminally convicted youth has been
 15 substantially rehabilitated based on a preponderance of the evidence after considering the following:

16 (a) __criminal, social, psychological, and any other records of the youth;

17 (b) __any evidence presented at the hearing; ~~and~~

18 (c) __any statements by the victim, ~~and by the parent or parents or guardian of the youth,~~ and any other
 19 advocates for the youth; and

20 (d) the mitigating circumstances in [section 1(2)] shall determine whether the criminally convicted
 21 youth has been substantially rehabilitated based upon a preponderance of the evidence.

22 ~~(5)(6)~~ In the event that the sentencing court determines that the youth has been substantially
 23 rehabilitated, the court shall determine whether to:

24 (a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions
 25 pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless
 26 otherwise specified;

27 (b) impose all or part of the remaining sentence and make any additional recommendations to the
 28 department regarding the placement and treatment of the criminally convicted youth; or

1 (c) impose a combination of options allowed under subsections ~~(5)(a)~~ (6)(a) and ~~(5)(b)~~ (6)(b), not to
2 exceed the total sentence remaining.

3 ~~(6)(7)~~ The sentencing court may revoke a suspended sentence of a criminally convicted youth
4 pursuant to 46-18-203."
5

6 **Section 5.** Section 46-18-202, MCA, is amended to read:

7 **"46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of
8 the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers
9 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

10 (a) prohibition of the offender's holding public office;

11 (b) prohibition of the offender's owning or carrying a dangerous weapon;

12 (c) restrictions on the offender's freedom of association;

13 (d) restrictions on the offender's freedom of movement;

14 (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title
15 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

16 (f) a requirement that the offender surrender any registry identification card or license issued under
17 50-46-303;

18 (g) any other limitation reasonably related to the objectives of rehabilitation and the protection of the
19 victim and society.

20 (2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term
21 exceeding 1 year and the offender was 18 years of age or older at the time of the commission of the offense or
22 offenses, the sentencing judge may also impose the restriction that the offender is ineligible for parole and
23 participation in the supervised release program while serving that term. If the restriction is to be imposed, the
24 sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is
25 necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the
26 judgment must contain a statement of the reasons for the restriction.

27 (3) If a sentencing judge requires an offender to surrender a registry identification card or license
28 issued under 50-46-303, the court shall return the card or license to the department of public health and human

1 services and provide the department with information on the offender's sentence. The department shall revoke
2 the card for the duration of the sentence and shall return the card if the offender successfully completes the
3 terms of the sentence before the expiration date listed on the card."
4

5 **Section 6.** Section 46-18-219, MCA, is amended to read:

6 **"46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in [section 1]
7 or subsection (3) of this section, if an offender convicted of one of the following offenses was previously
8 convicted of one of the following offenses or of an offense under the laws of another state or of the United
9 States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to
10 life in prison, unless the death penalty is applicable and imposed:

- 11 (i) 45-5-102, deliberate homicide;
- 12 (ii) 45-5-303, aggravated kidnapping;
- 13 (iii) 45-5-625, sexual abuse of children;
- 14 (iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or
- 15 (v) 45-5-508, aggravated sexual intercourse without consent.

16 (b) Except as provided in [section 1] or subsection (3) of this section, if an offender convicted of one
17 of the following offenses was previously convicted of two of the following offenses, two of any combination of
18 the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of
19 another state or of the United States that, if committed in this state, would be one of the offenses listed in
20 subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is
21 applicable and imposed:

- 22 (i) 45-5-103, mitigated deliberate homicide;
- 23 (ii) 45-5-202, aggravated assault;
- 24 (iii) 45-5-215, strangulation of a partner or family member;
- 25 (iv) 45-5-302, kidnapping;
- 26 (v) 45-5-401, robbery; or
- 27 (vi) 45-5-603(2)(b), aggravated promotion of prostitution of a child.

28 (2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under

1 subsection (1):

2 (a) shall serve the entire sentence;

3 (b) shall serve the sentence in prison;

4 (c) may not for any reason, except a medical reason, be transferred for any length of time to another
5 type of institution, facility, or program;

6 (d) may not be paroled; and

7 (e) may not be given time off for good behavior or otherwise be given an early release for any reason.

8 (3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1),
9 pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this
10 section do not apply to the offender's present sentence.

11 (4) The imposition or execution of the sentences prescribed by this section may not be deferred or
12 suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this
13 section prevails.

14 (5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are
15 locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private
16 contractor.

17 (b) Prison does not include a work release center, prerelease center, boot camp, or any other type of
18 facility that does not provide secure detention."

19

20 **Section 7.** Section 46-18-223, MCA, is amended to read:

21 **"46-18-223. Hearing to determine application of exceptions.** (1) When the application of an
22 exception provided for in 46-18-222 is an issue, the court shall grant the defendant a hearing prior to the
23 imposition of sentence to determine the applicability of the exception.

24 (2) The hearing shall be held before the court sitting without a jury. The defendant and the
25 prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who
26 appear at the hearing.

27 (3) If the court is asked to determine the applicability of the exception in 46-18-222(1), the court shall
28 give great weight to the mitigating circumstances listed in [section 1(2)].

1 ~~(3)~~(4) If it appears by a preponderance of the information, including information submitted during the
 2 trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none
 3 of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall
 4 state the reasons for its decision in writing and shall include an identification of the facts relied upon in making
 5 its determination. The statement shall be included in the judgment."
 6

7 **Section 8.** Section 46-23-201, MCA, is amended to read:

8 "**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in
 9 subsections (2) through (4), ~~and~~ the parole criteria in 46-23-208, and the provisions of [section 2], the board
 10 may release on nonmedical parole by appropriate order any person who is:

- 11 (a) confined in a state prison;
 12 (b) sentenced to the state prison and confined in a prerelease center;
 13 (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;
 14 (d) sentenced to be committed to the custody of the director of the department of public health and
 15 human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana
 16 developmental center, or the Montana mental health nursing care center.

17 (2) Persons under sentence of death, persons sentenced to the department who have been placed by
 18 the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences
 19 imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

20 (3) A Except as provided in subsection (5), a prisoner serving a time sentence may not be paroled
 21 under this section until the prisoner has served at least one-fourth of the prisoner's full term.

22 (4) A Except as provided in subsection (5), a prisoner serving a life sentence may not be paroled
 23 under this section until the prisoner has served 30 years.

24 (5) A prisoner who was less than 18 years of age at the time of the commission of the offense or
 25 offenses for which the prisoner was sentenced is eligible for parole after the prisoner has served no more than
 26 15 years unless the prisoner is eligible for an earlier parole consideration. The provisions of this subsection
 27 apply regardless of any mandatory minimums, sentencing enhancements, or multiple sentences ordered to be
 28 served consecutively provided that the mandatory minimums, sentencing enhancements, or multiple sentences

1 are for crimes committed by the prisoner before the prisoner reached 18 years of age.

2 ~~(5)(6)~~ (a) If a hearing panel denies parole, it may order that the prisoner serve;

3 (i) except as provided in subsection (6)(b), up to 6 years if the prisoner is confined for a sexual or
4 violent offense, offense as defined in 46-23-502, before a hearing panel conducts another hearing or review; or

5 (ii) up to 1 year if the prisoner is confined for any other offense before a hearing panel conducts
6 another hearing or review.

7 (b) If a hearing panel denies parole to a prisoner who was less than 18 years of age at the time of the
8 commission of the sexual or violent offense or offenses, the hearing panel may not order that the prisoner serve
9 more than 3 years before a hearing panel conducts another hearing or review."

10

11 **Section 9.** Section 46-23-202, MCA, is amended to read:

12 **"46-23-202. Initial parole hearing.** Within the 2 months prior to a prisoner's official parole eligibility
13 date or as soon after that date as possible, the department shall make the prisoner available for a hearing
14 before a hearing panel. The hearing panel shall consider the prisoner's score under the parole guidelines and
15 other case-specific and pertinent information regarding the prisoner, including the criteria in 46-23-208 and the
16 mitigating factors in [section 2], if applicable."

17

18 **Section 10.** Section 46-23-208, MCA, is amended to read:

19 **"46-23-208. Nonmedical parole criteria -- information board may consider.** (1) The board may
20 release an eligible prisoner on nonmedical parole only when:

21 (a) there is reasonable probability that the prisoner can be released without detriment to the prisoner
22 or to the community;

23 (b) release is in the best interests of society;

24 (c) the prisoner is able and willing to fulfill the obligations of a law-abiding citizen; and

25 (d) the prisoner does not require:

26 (i) continued correctional treatment that cannot be found in the community; or

27 (ii) other programs available only in a correctional facility that will substantially enhance the prisoner's
28 capability to lead a law-abiding life if released, including mental health therapy or vocational training.

1 (2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.

2 (3) For a prisoner sentenced to be committed to the custody of the director of the department of public
3 health and human services as provided in 46-14-312:

4 (a) the board may require as a condition of parole participation in a supervised mental health
5 treatment program, if consistent with mental health services recommendations provided by a mental health
6 professional, as that term is defined in 53-21-102, to ensure that the prisoner continues to treat the prisoner's
7 mental disorder; and

8 (b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health
9 treatment program described in subsection (3)(a), in which case the prisoner must be recommitted to the
10 custody of the director of the department of public health and human services pursuant to 46-14-312.

11 (4) In making its determination regarding nonmedical parole release, a hearing panel shall consider
12 all available and pertinent information regarding the prisoner, including the following factors:

13 (a) the circumstances of the offense;

14 (b) the prisoner's social history and prior criminal record, including the nature and circumstances of
15 the offense, date of offense, and frequency of previous offenses;

16 (c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the
17 prisoner has taken advantage of opportunities for treatment and whether the prisoner is clear of major
18 disciplinary violations prior to the hearing;

19 (d) the reports of any physical, psychological, and mental evaluations that have been made;

20 (e) the prisoner's maturity, stability, sense of responsibility, and development of traits and behaviors
21 that increase the likelihood the prisoner will conform the prisoner's behavior to the requirements of law;

22 (f) the adequacy of the prisoner's release plan;

23 (g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;

24 (h) the prisoner's education and training;

25 (i) the prisoner's family status and whether the prisoner has relatives who display an interest or
26 whether the prisoner has other close and constructive associations in the community;

27 (j) the prisoner's employment history and occupational skills and the stability of the prisoner's past
28 employment;

- 1 (k) the type of residence, neighborhood, or community in which the prisoner plans to live;
- 2 (l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of
3 chemicals;
- 4 (m) the prisoner's mental health needs;
- 5 (n) the prisoner's attitude toward law and authority;
- 6 (o) the prisoner's behavior and attitude during any previous experience of supervision and the
7 recency of the supervision;
- 8 (p) written or oral statements from criminal justice authorities or any other interested person or the
9 interested person's legal representative, including written or oral statements from a victim regarding the effects
10 of the crime on the victim. A victim's statement may also include but is not limited to the circumstances
11 surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the
12 offender should be paroled.
- 13 (q) whether parole at this time would diminish the seriousness of the offense; and
- 14 (r) any and all other factors that the hearing panel determines to be relevant.

15 (5) In addition to the factors listed in subsection (4), if the prisoner is currently seeking parole for an
16 offense or offenses committed when the prisoner was less than 18 years of age, the hearing panel shall
17 consider the mitigating factors in [section 2].

18 ~~(5)~~(6) A victim's statement may be kept confidential."
19

20 **Section 11.** Section 46-23-218, MCA, is amended to read:

21 **"46-23-218. Authority of board to adopt rules -- purpose for training -- data collection.** (1) The
22 board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for
23 parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference
24 administrative reviews, progress reviews, clemency proceedings, the conditions to be imposed upon parolees,
25 the training of board members regarding American Indian culture and problems, and other matters pertinent to
26 service on the board.

27 (2) The legislature finds that American Indians incarcerated in state prisons constitute a
28 disproportionate percentage of the total inmate population when compared to the American Indian population

1 percentage of the total state population. The training of board members regarding American Indian culture and
2 problems is necessary in order for the board to deal appropriately with American Indian inmates appearing
3 before the board.

4 (3) In consultation with the department, the board shall adopt rules to establish:

5 (a) parole guidelines to structure and guide parole release decisions and the imposition of release
6 conditions. The guidelines must include, in decreasing order of importance, the prisoner's:

7 (i) risk and needs levels, as determined by a validated risk and needs assessment;

8 (ii) participation in risk-reducing programs and treatment;

9 (iii) institutional behavior as reflected by disciplinary records; and

10 (iv) offense severity.

11 (b) a process by which a prisoner who has been denied parole and has more than 1 year before a
12 scheduled hearing or review may request an earlier hearing or review; ~~and~~

13 (c) criteria for consideration of conditional discharges, which must include supervision compliance,
14 residential stability, employment stability, engagement in treatment, and other factors indicative of adequate
15 reentry stability; and

16 (d) hearing and administrative review procedures that ensure a hearing panel considers the mitigating
17 factors established in [section 2] for a prisoner who was less than 18 years of age at the time of the commission
18 of the offense or offenses for which the prisoner is serving time and to give the prisoner a meaningful
19 opportunity to obtain parole.

20 (4) The board and the department shall compile data to validate the parole guidelines after gathering
21 recidivism results for the last 3 years and every 5 years thereafter. The board may adopt rules to govern the
22 transition to use of parole guidelines. The data collection must start by April 2018.

23 (5) The board shall annually assess and prioritize inservice training needs and arrange for training to
24 strengthen knowledge and skills needed for case assessment, interviewing, and parole decisionmaking. Board
25 members, parole analysts, and the hearings officers shall attend the training, as well as other board and
26 department staff as needed."

27
28 NEW SECTION. Section 12. Codification instruction. (1) [Section 1] is intended to be codified as

1 an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section
2 1].

3 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 2, and the
4 provisions of Title 46, chapter 23, part 2, apply to [section 2].

5
6 NEW SECTION. **Section 13. Applicability.** [This act] applies to offenses committed on or after [the
7 effective date of this act].

8 - END -