

UNIVERSITY OF MINNESOTA

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

A publication by the Robina Institute of Criminal Law and Criminal Justice

**PENNSYLVANIA**



**ROBINA INSTITUTE**  
OF CRIMINAL LAW AND CRIMINAL JUSTICE

# PROFILES IN PAROLE RELEASE AND REVOCATION:

**Examining the Legal Framework  
in the United States**

## Pennsylvania

By

Alexis Lee Watts, Cecelia Klingele, Kevin R. Reitz, Edward E. Rhine, and Mariel Alper<sup>1</sup>

© 2016. Regents of the University of Minnesota. All Rights Reserved.

# CONTENTS

## 1. Background; Sentencing System

a. Sentencing Framework .....	3
b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority? .....	3
c. Which Agencies Are Responsible for the Supervision of Released Prisoners?.....	3
d. Which Agency Has Authority Over Parole Revocation?.....	3
e. Pennsylvania Statistical Profile .....	3

## 2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System .....	8
b. Good Time, Earned Time, and Other Discounts.....	8
c. Principles and Criteria for Parole Release Decisions.....	8
d. Parole Release Guidelines.....	9
e. Risk and Needs Assessment Tools .....	10
f. Medical or Compassionate Release.....	10
g. Executive Clemency Power .....	10
h. Emergency Release for Prison Crowding .....	10

## 3. Parole Release Hearing Process

a. Format of Release Hearings.....	10
b. Information Before the Board; Factors the Board May Consider .....	10
c. Prisoners' Procedural Rights.....	11
d. Victims and Other Participants .....	11
e. Burden of Proof or Standards of Persuasion.....	11
f. Possible Outcomes at Parole Release Hearings; Form of Decisions.....	11
g. Administrative or Judicial Review of Parole Denial.....	11
h. Rescission of Parole Release Dates.....	11

## 4. Supervision Practices

a. Purposes of Supervision.....	12
b. Are All or Only Some Releasees Placed on Supervision? .....	12
c. Length of Supervision Term.....	12
d. Conditions of Supervision.....	12
e. Fees and Other Financial Sanctions .....	13

# CONTENTS

## 5. Parole Revocation

a. Principles and Criteria of “When to Revoke” .....	13
b. Revocation Guidelines.....	14
c. Risk and Needs Assessment Tools .....	14
d. Preliminary and Final Revocation Procedures.....	14
e. Offenders’ Procedural Rights .....	14
f. Victims and Other Participants.....	14
g. Burden of Proof or Standards of Persuasion.....	14
h. Revocation and Other Sanctions .....	14
i. Issuing Parole Revocation Decisions.....	15
j. Administrative or Judicial Review of Parole Revocation Decisions.....	15
k. Re-Release Following Revocation .....	15

## 6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction.....	15
b. Location in Government .....	15
c. Purpose (Vision/Principles/Rationale) .....	15
d. Appointment and Qualifications of Board Members.....	16
e. Tenure of Board Members, Ease of Removal.....	16
f. Training and Continuing Education .....	16
g. Workload .....	16
h. Reporting and Accountability of Parole Board .....	16

## 7. County-Level Parole in Pennsylvania..... 16

## End Notes..... 17

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

Alexis Lee Watts, Cecelia Klingele, Kevin R. Reitz, Edward E. Rhine, and Mariel Alper

### 1. Background; Sentencing System

#### a. Sentencing Framework

Prison sentences in Pennsylvania are indeterminate for the vast majority of cases.<sup>2</sup> Pennsylvania has adopted mandatory minimum penalties and a “three strikes” law for certain crimes. The state also has a permanent Commission on Sentencing which formulated sentencing guidelines, effective in 1982.<sup>3</sup> Although judges must consider these guidelines, and must give reasons for sentences that depart from them, the sentencing guidelines are effectively advisory: they are not legally enforced on appeal.<sup>4</sup>

#### b. Does the State Have a Parole Board or other Agency with Discretionary Prison Release Authority?

The Pennsylvania Board of Probation and Parole, which is an independent administrative board, holds discretionary release authority over individuals confined in state correctional facilities.<sup>5</sup> However, individuals confined in county correctional facilities are under the jurisdiction of the court, and may be granted parole by the sentencing judge (see section 7 of this report).<sup>6</sup>

Website: <http://www.pbpp.pa.gov>

#### c. Which Agencies Are Responsible for the Supervision of Released Prisoners?

The Board of Probation and Parole supervises individuals paroled by the Board through parole agents employed by the Board. County Probation and Parole Departments supervise individuals paroled by sentencing judges through county-level probation and parole officers employed by the Court.<sup>7</sup>

#### d. Which Agency Has Authority Over Parole Revocation?

The Board of Probation and Parole has authority over revocations for all parolees under the Board’s jurisdiction.<sup>8</sup> Courts of Common Pleas have authority over revocations for all parolees under the Court’s jurisdiction.

#### e. Pennsylvania Statistical Profile

**Summary:** Prison population rates are slightly lower in Pennsylvania compared to the states as a whole. However, parole population rates are much higher. In addition, parolees are about as likely to be re-incarcerated compared to the states as a whole. In recent years, a much higher percentage of prison admissions in Pennsylvania are conditional release violators compared to the states in aggregate. More than one-half of parole hearings lead to release being granted. Pennsylvania currently practices discretionary release for the majority of offenders, including violent offenders, sex offenders, property offenders, more than half of drug offenders, and less than half of public order offenders. Data comes from the Bureau of Justice Statistics (BJS) unless otherwise noted.

**Chart 1. Prison and Parole Population per 100,000 Adult Residents, 2003-2014**

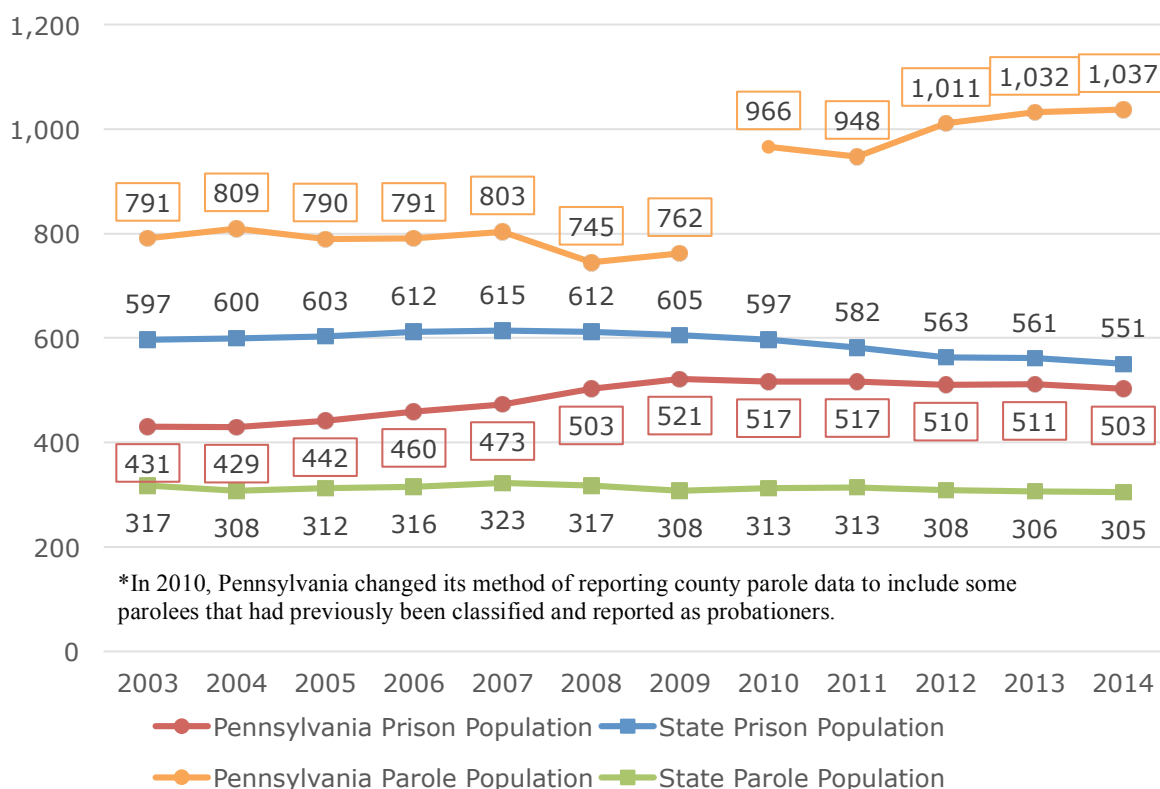


Chart 1 shows the population in prison and on parole per 100,000 adult residents at yearend for each year from 2003 to 2014. The data for this chart come from the *Probation and Parole in the United States* series and the *Prisoners* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown. In 2010, Pennsylvania changed its method of reporting county parole data to include some parolees that had previously been classified and reported as probationers.

The prison population rate in Pennsylvania is slightly lower than the aggregate state rate. The peak rate of 521 occurred in 2009; thereafter, the rate declined. In 2014, the prison population rate was 503 in Pennsylvania versus 551 for all 50 states. Pennsylvania had the 27th highest prison population rate of the states in 2014. In 2014, 84% of releases from prison were conditional releases.

The parole population rate in Pennsylvania has consistently been far higher than the aggregate state rate. Since 2010, when Pennsylvania changed their reporting methods, the rate has increased (to 1,037 in 2014) and is much higher than the aggregate rate of 305. Pennsylvania had the highest parole population rate of the states in 2014. In 2014, 94% of admissions to parole were due to a discretionary decision such as the decision of a parole board.

Pennsylvania had the 27th highest prison population rate of the states in 2014.

Pennsylvania had the highest parole population rate of the states in 2014.

**Chart 2. Conditional Release Violators as a Percentage of Prison Admissions, 2003-2014**

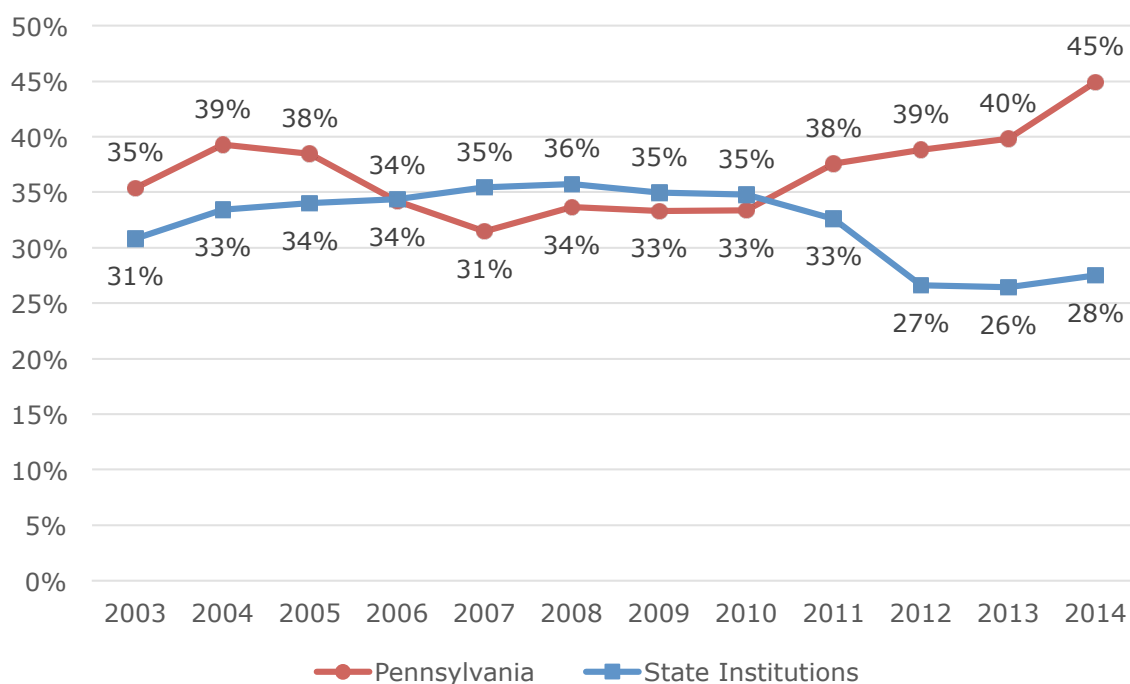


Chart 2 shows the percentage of prison admissions each year from 2003 to 2014 that were due to violations of parole or other conditional release. The data for this chart come from the *Prisoners* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown.

In the middle years of this series, 2006-2010, the percentage of prison admissions that were conditional release violators in Pennsylvania was similar to that of the aggregate states. However, while the states aggregately remained steady for several years before decreasing beginning in 2011, the percentage in Pennsylvania has shown a marked increase since then. In 2014, nearly half of prison admissions in Pennsylvania were due to violations of conditional release compared to just over one quarter of the admissions for states in aggregate. Pennsylvania had the 7th highest percentage of prison admissions due to violations of conditional releases of the states in 2014.

Pennsylvania had the 7th highest percentage of prison admissions due to violations of conditional releases of the states in 2014.

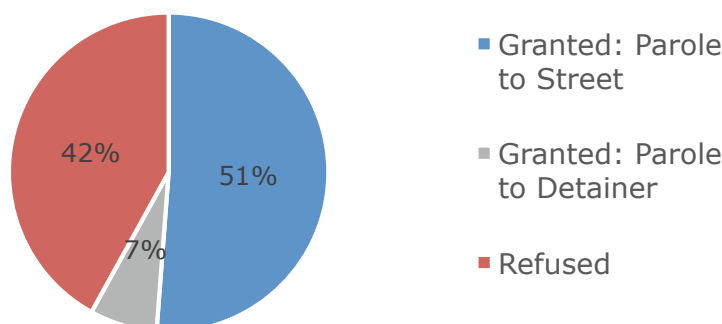
**Chart 3. Pennsylvania Grant Rate, 2015**

Chart 3 shows the percentage of parole hearings in fiscal year 2015 that resulted in a decision to grant parole and be released from incarceration (parole to street), to grant parole to serve another detainer (parole to detainer), and to refuse parole. Just over one-half of the hearings resulted in release from incarceration, while 42% led to a refusal of parole and seven percent were paroled to a detainer.

Source: *Monthly statistic reports for the Pennsylvania Board of Probation and Parole, September 2014-August 2015*, [www.pbpp.pa.gov/Information/reports/Pages/Monthly-Program.aspx](http://www.pbpp.pa.gov/Information/reports/Pages/Monthly-Program.aspx).

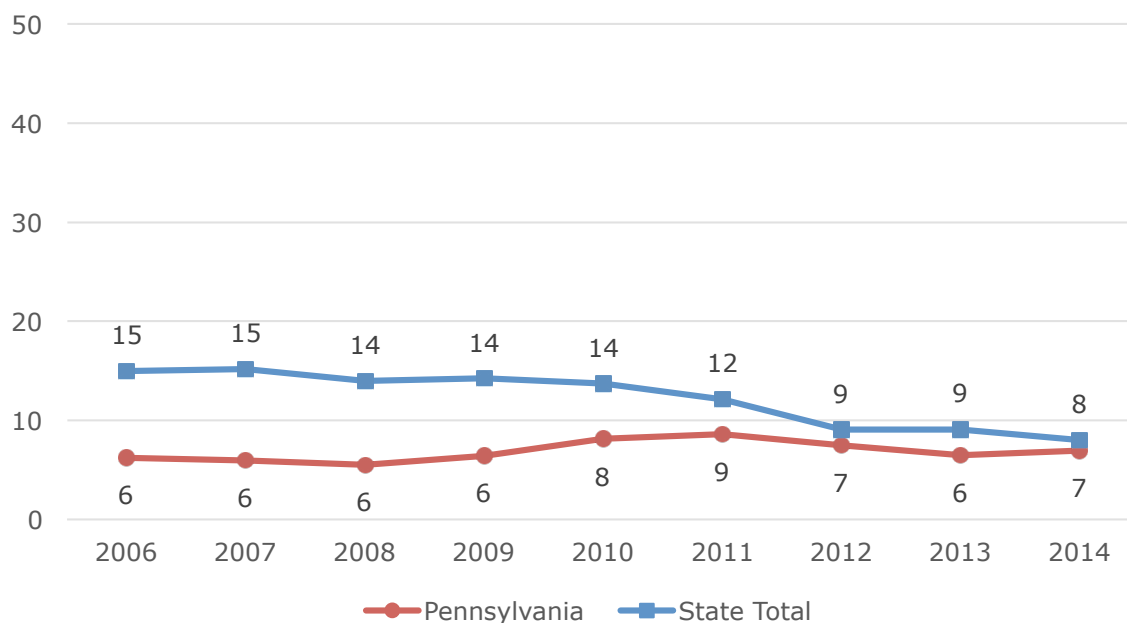
**Chart 4. Rate of Incarceration Per 100 Parolees at Risk, 2006-2014**

Chart 4 shows the rate of incarceration per 100 parolees who are at risk of reincarceration each year from 2006 to 2014. The data for this chart come from the *Probation and Parole in the United States* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown. The incarcerated population includes the reported number of parolees who exited parole to incarceration for any reason. The at-risk population is calculated as the number reported on parole at the beginning of the year, plus the reported number of entries to parole during the year.

The Pennsylvania rate of incarceration for parolees is similar when compared to the states in aggregate, though it was lower at the beginning of the series. In 2014, the rate stood at 7 per 100 parolees in Pennsylvania compared to 8 per 100 for the states in aggregate.

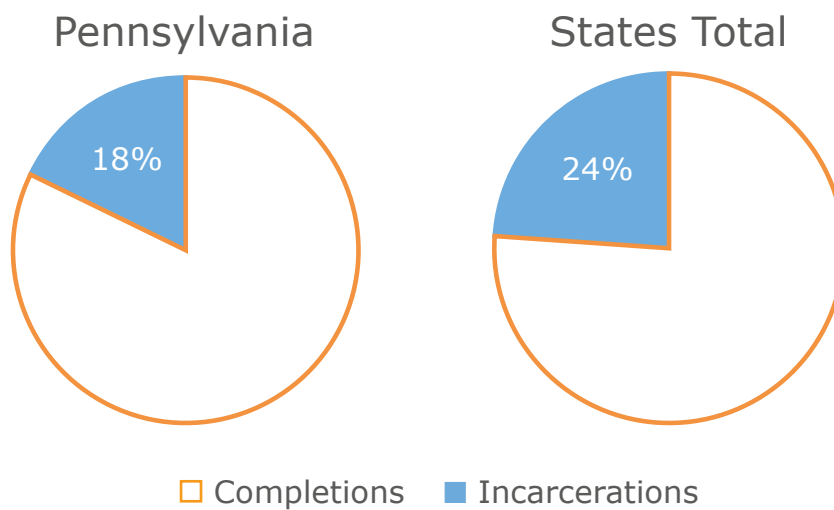
**Chart 5. Parole Exits, 2014**

Chart 5 shows the percentage of people who exit parole to incarceration. All other exits are included in "completions." The data for this chart come from the *Probation and Parole in the United States* series published by the Bureau of Justice Statistics (BJS).

In Pennsylvania, just less than one-fifth of the exits from parole are due to incarceration. This is lower than the aggregate state proportion of 24%.

## 2. Parole Release and Other Prison-Release Mechanisms

### a. Parole Release Eligibility Formulas: Degree of Indeterminacy in System

In Pennsylvania, several classes of felonies and misdemeanors may result in a jail or prison sentence ending in parole release.<sup>9</sup> Sentencing courts consider sentencing guidelines when setting the minimum term of confinement or when imposing a non-confinement sentence.<sup>10</sup> The guideline recommendation is determined by the gravity of the offense, the offender's prior record, possible sentencing enhancements, and other aggravating and mitigating factors.<sup>11</sup>

Class <sup>12</sup>	Possible Duration of Imprisonment
Felony- First Degree	10 + years
Felony- Second Degree	Maximum of 10 years
Felony- Third Degree	Maximum of 7 years
Misdemeanor-First Degree	Maximum of 5 years
Misdemeanor-Second Degree	Maximum of 2 years
Misdemeanor-Third Degree	Maximum of 1 years

*General rules of release eligibility.* When imposing a sentence of partial or total confinement, the court must impose a minimum and a maximum sentence. The court has discretion to set any maximum sentence within the statutory range, but the minimum term may not be greater than one-half the maximum selected by the court.<sup>13</sup> Minimum sentences can be shorter than one-half of the maximum term, in the court's discretion, and can be as short as one day. Inmates in state correctional facilities are eligible for parole release after the expiration of their minimum sentences.<sup>14</sup> In practice, inmates are automatically scheduled for their parole hearing before their minimum eligibility date.<sup>15</sup>

The Board may not grant parole to inmates condemned to death, or sentenced to life imprisonment.<sup>16</sup>

At the time of sentencing, the court is required to aggregate all consecutive sentences and to indicate the aggregate minimum term to be served, which is not to exceed one half of the maximum aggregate term.<sup>17</sup>

*Violent offenders.* Some violent offenders are subject to mandatory minimum sentences.<sup>18</sup> The Board is prohibited from releasing inmates convicted of a violent crime

before the inmates have received instruction from the Department of Corrections on the impact of crime on victims and the community.<sup>19</sup>

*Sex offenders.* Certain recidivist sex offenders may be subject to mandatory minimum sentences.<sup>20</sup> Prior to being eligible for release on parole, all sex offenders must undergo a program of counseling or therapy that is approved by the Department of Corrections.<sup>21</sup> The Board may also request an assessment from an independent agency, the Sexual Offender Assessment Board, before release.<sup>22</sup>

*Life sentences.* Inmates serving life sentences may secure release only through commutation.<sup>23</sup>

*Recurring eligibility after denial and exceptions.* If an inmate is denied parole, the Board is required to consider a renewed application for parole after one year.<sup>24</sup>

### b. Good Time, Earned Time, and Other Discounts

In 2008, Pennsylvania adopted the Recidivism Risk Reduction Incentive Program (RRRI), designed to reduce the prison population as well as decrease the likelihood of recidivism by those released.<sup>25</sup> Inmates the court determines are eligible for the program<sup>26</sup> are required to receive two minimum sentences: the standard minimum and the RRRI minimum. The RRRI minimum is 3/4 of the minimum sentence when the minimum sentence is three years or less, and 5/6 of the minimum sentence when the minimum sentence is greater than three years.<sup>27</sup> In order to participate inmates must complete designated programs (which may include drug or addiction treatment) that reduce the likelihood of recidivism.<sup>28</sup> RRRI participants benefit from the rebuttable presumption that they are eligible for parole at their earliest release date; thus, the Board must have good cause to deny parole in these cases.<sup>29</sup>

### c. Principles and Criteria for Parole Release Decisions

*General statutory standard for release decisions.* As a general principle, the Board grants parole when "[t]he best interests of the inmate justify or require that the inmate be paroled," and "[i]t does not appear that the interests of the Commonwealth will be injured by the inmate's parole."<sup>30</sup> The Board must consider and respond to timely applications for parole within six months of the application date, but is not required to grant parole release.<sup>31</sup>

*Statutory factors the board must consider.* The Board must consider several statutory factors in parole release. These include: the nature and circumstances of the offense committed, recommendations made by the trial judge and prosecuting attorney, the character and background of the inmate, participation in victim impact education (if applicable), victim testimony, sentencing hearing testimony, conduct while incarcerated, physical, mental, and behavioral condition and history, history of family violence, and the inmate's complete criminal record.<sup>32</sup>

*Special standards for sex offenders.* The Board may consider participation in sex offender treatment, acknowledgement of past sexual history, and acceptance of responsibility for past sexual misconduct as part of their evaluation of parole-readiness.<sup>33</sup> The Board is mandated to protect the community and, even when parole has been granted, may delay or deny release of sex offenders until they can be properly housed in a manner that addresses community ordinances and public safety goals.<sup>34</sup>

#### d. Parole Release Guidelines

*Parole release guidelines.* Currently, the Board uses a 12-page Parole Decisional Instrument most recently amended and adopted by the Board in 2012.<sup>35</sup> However, in 2008, the Pennsylvania legislature instructed the Pennsylvania Commission on Sentencing to adopt new parole guidelines that "shall be considered" by the Board when exercising its powers to parole and reparole.<sup>36</sup> Like the current Decisional Instrument, the new guidelines will be advisory, and "shall not remove the discretionary parole authority of the board." The guidelines, which have yet to be developed and released, are to reflect the following statutory elements:

- Give primary consideration to the protection of the public and to victim safety;
- Help the Board consider victim input;
- Be designed to encourage inmates and parolees to conduct themselves in accordance with conditions and rules set forth by the department or other prison facilities;
- Provide for prioritization of incarceration, rehabilitation, and other criminal justice resources for offenders posing the greatest risk to public safety; and
- Use validated risk assessment tools, be evidence based and take into account available research relating to the risk of recidivism, minimizing the threat posed to public safety and factors maximizing the success of reentry.

The current Decisional Instrument states that it is designed only to assist the Board in the exercise of its discretion," and does not restrict the board's discretion to deny parole. The instrument includes 4 weighted and 15 unweighted factors. Weighted factors are assessed by a point system.<sup>37</sup>

The Decisional Factors are:

#### Weighted Factors

1. Violence Indicator (Prisoners are ranked into one of four OVRT ("Offender Violence Risk Topography") Categories. Violence indicators include: (1) Instant offense; (2) Prior criminal history/violence; (3) Age of criminal onset; (4) Use of weapons; and (5) Other static risks)
2. Program Completion
3. Institutional Behavior
4. Risk Assessment (LSIR/Static 99)

#### Unweighted Factors

5. Recommendation of Department of Corrections or County Warden
6. Period of Adjustment in Pre-release (Community Corrections Residency)
7. Prior Supervision History
8. Evaluations/Assessments
9. Interview Responses (whether prisoner has demonstrated motivation for success)
10. Offender Perception of Offense (whether prisoner has accepted responsibility for the offense, has stated remorse, or has minimized or denied the nature and circumstances of the offense)
11. Detainers
12. Placement in a Treatment Program in the Community
13. Approved Transfer of Parole Supervision to Another State
14. Negative Interest in Parole
15. Development or Failure to Develop a Release Plan
16. Other Factors Deemed Pertinent
17. Judicial Input
18. Prosecuting Attorney Input
19. Victim Input (this information is confidential)

### e. Risk and Needs Assessment Tools

*Statutory mandate.* The Parole Board is permitted to develop internal decisional instruments but is not mandated to use risk assessments.<sup>38</sup>

*Risk instruments utilized.* One of the factors in the Parole Decisional Instrument is a risk/needs assessment that relates to the likelihood of reoffending. Currently, there are two risk assessments that may be included in the Instrument: the Level of Service Inventory-Revised (LSI-R), and the Static-99 (which is primarily geared towards risk assessment of sex offenders).<sup>39</sup>

*Transparency.* The Board has published a PDF booklet entitled “Parole Decision Making 101,” which discusses the risk instruments and how they are used in Pennsylvania.<sup>40</sup> The Decisional Instrument is available online but states that it should not be duplicated.<sup>41</sup>

*Sex offenders.* The Parole Board uses the Static-99, a tool specifically designed to assess the risk of reoffending among sex offenders, as part of the Parole Decisional Instrument.<sup>42</sup>

### f. Medical or Compassionate Release

Petitions for compassionate release are filed with the court through a petition initiated by the Department of Corrections, without involvement from the Board of Probation and Parole.<sup>43</sup>

### g. Executive Clemency Power

In all criminal cases other than impeachment, the Governor has the power to grant reprieves, commutations of sentences, and pardons.<sup>44</sup> However, no pardon or commutation may be granted without a written recommendation from the Board of Pardons.<sup>45</sup>

### h. Emergency Release for Prison Crowding

Though Pennsylvania has struggled with prison overpopulation, there is no emergency release mechanism in the state.

## 3. Parole Release Hearing Process

### a. Format of Release Hearings

Panels of two individuals, either two Board members or one Board member and one Board hearing examiner, generally make parole release decisions.<sup>46</sup> If an inmate is eligible for the Recidivism Risk Reduction Incentive Program (described above), the decision may be made by one hearing examiner.<sup>47</sup> However, parole for sex offenses and third-degree murder require a majority vote of the full board.<sup>48</sup>

Before release, all inmates must have a parole interview, which may be held in person or by video conference.<sup>49</sup> Within one month after the interview, the Board must make a decision to grant or deny parole. The decision is not made with the inmate present. Hearings are conducted at the discretion of the board.<sup>50</sup>

### b. Information Before the Board; Factors the Board May Consider

Approximately eight months prior to completion of an inmate’s minimum sentence, the Board and its agents begin to prepare a parole case file. Around five months prior to that completion date, the offender meets with an “institutional parole agent” to develop a reentry plan and prepare for a parole interview. Around one month later, the Board or hearing examiners review the file and conduct a parole interview. The interview with the offender is used to inform the decision maker whether the offender’s risk of re-offending has been reduced. According to Board materials, the interview is intended to assess quantifiable, actuarial information, assess qualitative information, review criminal history, examine the offender risk/needs assessment, determine the benefit derived from programming, assess behavioral changes and risk reduction, assess reentry preparation, and identify continuing treatment needs.<sup>51</sup>

The Board also considers the proposed parole plan, any sex offender, medical, or mental health reports, notes of testimony from sentencing hearings, the offender’s complete criminal record, and the recommendations of prison wardens and superintendents, sentencing judges, and prosecuting attorneys. The Board is required to consider victim input and the other statutory factors listed above.<sup>52</sup>

Inmates eligible for parole may not review prison, court, or parole board files to “discover and either rebut or explain away unfavorable information prior to the parole release decision being made.”<sup>53</sup>

### c. Prisoners' Procedural Rights

Few due process rights available to offenders at sentencing are available to inmates during the parole release procedure.<sup>54</sup> An offender may retain private counsel, but appointment of counsel is not required.<sup>55</sup>

An inmate has the right to submit an application to the proper entity when eligible, usually upon completion of the minimum sentence, and to have that application reviewed in a fair manner. Pennsylvania law also requires a decision-maker to meet with the applicant in the six months prior to a parole decision.<sup>56</sup> However, when there is no formal parole hearing, inmates do not have a right to appear before the Board.

### d. Victims and Other Participants

Pennsylvania crime victims or their family members "must be given the opportunity to present a statement for the parole report to be considered at the parole hearing, or to testify before the parole board and express their opinions concerning the release of the inmate."<sup>57</sup> In 2013, the Pennsylvania Crime Victims Act was amended to clarify that the victim or a representative are entitled to meet with Board members during the review of the parole application.<sup>58</sup> Victim statements are confidential, and are not released to the offender.<sup>59</sup>

At least ten days before an inmate is granted parole, the Board must give written notice of the contemplated parole to the District Attorney of the sentencing county.<sup>60</sup> If a hearing is held, the Board must provide ten days' advance notice in writing to the District Attorney and to the sentencing court. At any time, a sentencing judge may make an advisory recommendation to the Board concerning the length of time a person should serve before their parole release.<sup>61</sup> Input from the prosecutor and the sentencing judge must be considered by the Board in making the parole decision.<sup>62</sup>

The Board is not required to inform the public of parole release decisions; however, the general public and media may request public Board records under Pennsylvania's "Right to Know Act."<sup>63</sup>

### e. Burden of Proof or Standard of Persuasion for Release

There is no statutory standard of proof for parole review, and the Board is not required to weigh factors in any particular way when considering parole release.<sup>64</sup> However, to some extent, inmates are required to prove

that they are suitable for parole; for example, they are strongly encouraged to submit an approved parole plan to the Board before being eligible for release.<sup>65</sup>

### f. Possible Outcomes at Parole Release Hearings; Forms of Decisions

The Board issues a document called a "Board Action" (or "green sheet") that notifies the inmate of the parole decision and the reasons behind it. If denied parole, the Board Action will state what programming the inmate may need to complete or other actions the inmate may need to take in order to improve his or her chances for parole at the next interview.<sup>66</sup>

### g. Administrative or Judicial Review of Parole Denial

There is no right to parole in Pennsylvania. Prisoners do not have a protected liberty interest in their parole, and may not appeal the denial of parole.<sup>67</sup>

### h. Rescission of Parole Release Dates

Until a prisoner has been released on parole, the Board may rescind parole without prior notice or a due process hearing.<sup>68</sup> Nevertheless, there are restrictions on rescission hearings mentioned in case law.<sup>69</sup> The Board may rescind parole based on new facts or due to a clerical error.<sup>70</sup> However, the Board may not rescind parole based on facts known at the time parole was granted.<sup>71</sup>

## 4. Supervision Practices

*Parole supervision rate.* Per capita, Pennsylvania maintains far more persons on parole supervision than most other states. In 2014, the state's total parole population on any given day was 104,629 (counting both those supervised by the Board and those supervised at the county level); its parole supervision rate was 1,037 per 100,000 adult residents. This was the highest rate among all 50 states, and more than three times the national average. The parole supervision rate for all states combined in 2014 was 305 per 100,000 adult residents.<sup>72</sup>

*Incarceration rate.* While Pennsylvania's parole supervision rate is high when compared with other states, its imprisonment rate is below average. In 2014, there were 503 individuals in prison per 100,000 adult residents; the state's prisons held 50,694 inmates. The imprisonment rate across all states combined in 2014 was 551 per 100,000 adults.<sup>73</sup>

The ratio of parolees on supervision to prisoners in 2014 was 206 percent in Pennsylvania. For all states combined in 2014, the equivalent ratio was 56 percent.

### a. Purposes of Supervision

According to the Board's official publications, parole supervision should balance "supervision, enforcement, and problem solving" and assist parolees with a variety of resources and programs. The stated goal of supervision is to increase the likelihood that a parolee will succeed and reduce the chance that they will commit another crime or jeopardize public safety.<sup>74</sup>

### b. Are All or Only Some Releasees Placed on Supervision?

All parolees are initially placed on supervision. The level of initial supervision is based on a risk and needs assessment, and the parolee's supervision plan is reviewed at least every six months.<sup>75</sup> Five levels of supervision exist: administrative (lowest risk), minimum, medium, maximum, and enhanced (highest risk).<sup>76</sup>

Some parolees who have not violated the conditions of their current parole agreement and have not been subject to extensive sanctions (i.e., by a parole agent) must be placed on "administrative parole" one year after release until their maximum sentence date.<sup>77</sup> Parolees must meet several criteria to be eligible for this type of parole, including having no history of violent behavior.<sup>78</sup> Administrative parolees must make supervision contact at least once a year, provide updated contact information, continue to pay restitution, and comply with any other requirements imposed.<sup>79</sup>

### c. Length of Supervision Term

*Maximum supervision term.* Parole lasts from the time of release until the maximum sentence ordered by the sentencing court expires, or until the parolee is legally discharged.<sup>80</sup>

*Early termination from supervision.* Pennsylvania allows for greatly reduced supervision during the parole period, but does not allow early termination from parole.<sup>81</sup>

*Extension of supervision term.* If a parolee is recommitted to prison after a violation of parole, the Board has discretion to award credit for time served on parole. If re-paroled, the term of parole includes the unserved balance of the sentence less any credit awarded for time

served on parole, effectively extending the supervision term.<sup>82</sup> However, there is no other mechanism by which to extend a parole term.

### d. Conditions of Supervision

The Board may adopt general parole conditions applicable to all offenders coming under its jurisdiction,<sup>83</sup> and it may impose special conditions upon individual parolees as it deems necessary. The Board has also given parole agents the power to impose additional special conditions.<sup>84</sup> The Board is "vested with broad powers to fashion appropriate conditions of parole where they are intended to effectuate [an offender's] rehabilitation and reintegration into society as a law-abiding citizen."<sup>85</sup> Conditions are held valid if they are reasonably related to rehabilitation and not unduly restrictive of liberty or incompatible with the parolee's freedom of conscience.<sup>86</sup>

When parole is granted, the parolee must read (or be read) the conditions of parole, affirm that s/he fully understands the conditions and agrees to follow them, and affirm that he or she also understands the penalties for violating the conditions.<sup>87</sup>

The general conditions, which are mandatory for all parolees, include:

- Reporting to a parole office specified by the Board within 48 hours;
- Obtaining written permission before leaving a parole district;
- Living in a residence approved by the Board and moving with written permission;
- Reporting to supervisory staff as directed;
- Following written instructions of the Board and supervisory staff;
- Notifying the staff within 72 hours of an arrest, summons, or citation for an offense punishable by imprisonment or of any change in status (e.g., in employment);
- Complying with all criminal statutes, traffic laws, and liquor laws;
- Abstaining from use, sale, and possession of drugs, possession of firearms, and assaultive behavior.
- Paying fines, costs, and restitution imposed by the sentencing court.<sup>88</sup>

*Sex offenders.* In addition to sex offender registration, parolees may be required to limit their participation in activities or employment that provide access to children, internet use, patronage of certain establishments (such as strip clubs), or possession and use of pornography.<sup>89</sup>

*Violent offenders.* Commuted life sentences are initially paroled to a specialized Community Corrections Center (CCC) to receive additional programming before being released to a home plan under high supervision.<sup>90</sup> Other violent offenders may also be paroled to specialized CCCs in some cases.<sup>91</sup>

*Modification of conditions.* The Board can add, modify, or remove conditions of parole.<sup>92</sup> A parolee may ask for a change in the conditions of parole. If denied by the parole agent, the parolee may appeal to the agent's supervisor. If the supervisor denies the request, the decision may be appealed to higher authorities within the Parole District and Region.<sup>93</sup>

### e. Fees and Other Financial Sanctions

*Parole supervision fees.* As a condition of supervision, the Board generally imposes a monthly fee of at least \$25 on parolees. However, the Board may make a finding that the parolee is unable to pay based on unemployment, status as a student, an employment handicap, age, need to support dependents, or other extenuating circumstances. If a parolee is unable to pay, the supervision fee may be reduced, waived, or deferred.<sup>94</sup>

*Payment for drug and alcohol testing.* Parolees are responsible for the cost of the random drug and alcohol testing conducted as a condition of parole.<sup>95</sup>

*Restitution.* Payment of restitution is a mandatory condition of parole.<sup>96</sup>

*Child support.* Payment of child support is not a mandatory condition of parole, but it may be imposed as a special condition.

*Other financial obligations.* Parolees are responsible for payment of court fines and costs as a condition of parole.<sup>97</sup> As with all financial obligations, in determining whether to revoke parole based on non-payment, the Board must consider the parolee's individual economic situation.<sup>98</sup>

*Incentives.* There are no incentives related to payment of financial sanctions.

## 5. Parole Revocation

*Parole revocation proceedings.* In February 2016 alone, there were 731 recommitments for either technical or criminal parole violations. 255 parolees were also detained in parole violation centers. "Other decisions" were made in 952 additional cases.<sup>99</sup>



Source: Mariel E. Alper, Robina Institute, *By the Numbers: Parole Release and Revocation Across 50 States at 203* (2016).

*Absconders.* There were 806 individuals on parole who absconded in 2014.<sup>100</sup> In the larger supervised population (both probation and parole) the rate of absconders was approximately 5% in December 2015.<sup>101</sup>

### a. Principles and Criteria of "When to Revoke"

*Policy considerations.* According to the Board's official statement of policy, "most offenders can be safely and effectively managed in the community where they are connected with family and resources. However, parolees who are a serious threat to themselves or others, or who have protracted an escalating violations or have a new criminal arrest, are returned to prison. That said, not all violations amount to serious threats that require return to prison." Official publications claim that the Board is committed to managing violations in a manner that enhances public safety, and this calls for a wide range of responses to violative behavior.<sup>102</sup> Thus, under its written policies, the Board is supposed to revoke parole only when necessary due to a new criminal charge or a series of severe technical violations.

*Legal predicates.* Parole revocation is, to some degree, an exercise of administrative discretion.<sup>103</sup> However, due to 2012 legal reforms, there is now much less discretion in many technical parole violation cases. For example, parole violators who have committed certain types of technical violations may be punished by being sent to Secure Parole Violator Centers but cannot be

reincarcerated in a state correctional facility or county jail. Generally, revocation can be triggered by arrest for a new crime or by disobeying parole conditions.<sup>104</sup>

*Statutorily enumerated factors.* Statutory law often dictates the consequences for technical parole violations, and the Board is often required to utilize intermediate sanctions in those cases.<sup>105</sup>

## b. Revocation Guidelines

Statutes govern some of the consequences for technical parole violations.<sup>106</sup> The Board also uses a violation sanctioning grid (VSG) that incorporates important factors such as risk level and “criminogenic needs” (e.g. employment, family status, substance abuse issues).<sup>107</sup> The VSG provides a graduated system of parole sanctions depending on the severity and number of previous infractions a parolee has committed. Sanctions range from a written warning to placement in a substance abuse program. If these sanctions fail, parolees may be returned to prison depending on their type of violation.<sup>108</sup>

## c. Risk and Needs Assessment Tools

The violation sanctioning grid incorporates the offender’s current LSI-R and/or Static-99 score.<sup>109</sup>

## d. Preliminary and Final Revocation Procedures

*Arrest or summons.* If an agent has a reason to believe that a parolee has violated conditions of parole, the agent may apply to his or her district supervisor for the issuance of an arrest warrant.<sup>110</sup> An arrest warrant may also be issued if an alleged parole violator is not in custody and a parole agent determines during the revocation hearing process that they are a risk to the community or themselves.<sup>111</sup> If the parolee is already in custody, the warrant serves as a detainer until a preliminary parole hearing can be held.

*Preliminary hearings.* Technical parole violators face a preliminary hearing to determine whether or not there is probable cause to believe they have committed the violations charged.<sup>112</sup> This hearing must be held within 14 days of detention on the Board’s warrant.<sup>113</sup>

Parole violators who face new criminal charges may be detained on a Board warrant pending disposition of the criminal charge.<sup>114</sup> Detention hearings are held within 30 days of detention on the Board’s warrant, and are very similar to the preliminary hearing for technical parole violators.<sup>115</sup>

*Final revocation hearings.* A violation hearing, must be held within 120 days of the preliminary hearing.<sup>116</sup> In the case of technical violations, the hearing panel determines whether or not the violator should be recommitted. When a parolee has been convicted of a new crime, the hearing panel also determines the length of time for which the parolee should be reconfined.<sup>117</sup> Where a new crime does not result in conviction, parole may still be revoked if the criminal behavior can be proven by a preponderance of the evidence; a new crime may also result in a technical violation.<sup>118</sup>

## e. Offenders’ Procedural Rights

At all board hearings relating to revocation, offenders have the right to see the evidence being used to support the violations with which they are charged.<sup>119</sup> They also have the right to speak, have voluntary witnesses appear on their behalf, and present affidavits and other evidence. They have the right to cross-examine adverse witnesses. They have a right to request a continuance for good cause. Parolees also have the right to be represented by counsel. When an offender cannot afford counsel, one will be appointed.<sup>120</sup>

## f. Victims and Other Participants in Revocation Process

There is no statutory language that specifically gives victims, judicial officers, or prosecutors input in revocation proceedings, though the Right-to-Know Act requires the Board to disclose public documents related to revocation proceedings.

## g. Burden of Proof or Standards of Persuasion

At preliminary and detention hearings, the standard of proof is probable cause.<sup>121</sup> At revocation and violations hearings, the Commonwealth must prove any violation by a preponderance of the evidence.<sup>122</sup>

## h. Revocation and Other Sanctions

The Board has adopted presumptive ranges of time (“parole backtime”) that parole violators should serve.<sup>123</sup> These ranges “are intended to structure the discretion of the Board while allowing for individual circumstances in terms of mitigation and aggravation to be considered in the final decision.”<sup>124</sup> The presumptive ranges directly relate to the severity of the violation(s) or the crime(s) of conviction.<sup>125</sup> In the future, the Board will also be required to consider advisory recommitment ranges developed by the Commission on Sentencing.<sup>126</sup>

Technical parole violators face options that are outlined in a 2012 statute.<sup>127</sup> A technical violator may be sanctioned through placement in a secure parole violator center for incarceration and treatment lasting between 60 and 120 days.<sup>128</sup> The centers work with parole violators to address the issues surrounding their violations and offer training in many life skills areas. Technical parole violators whose violations are sexual in nature, involve assaultive behavior or weapons, or pose an identifiable threat to public safety and absconders who cannot be safely managed in a community corrections center, will be recommitted to jail or prison for six months to a year.<sup>129</sup>

Convicted parole violators are parolees who have been convicted of another crime while on parole. Convicted parole violators are automatically sent to prison and may be subject to total parole revocation.<sup>130</sup> If a parolee is convicted of a crime of violence, a crime requiring federal sex offender registration, or is subject to a federal removal order, the parolee automatically loses all of the “street” time spent on parole and must serve that time back in prison.<sup>131</sup> The Board of Probation and Parole has discretion over whether to award time spent on the street in all other cases.<sup>132</sup>

Revocation of parole in a case under the jurisdiction of the county courts is up to the sentencing judge, and the judge must simply state his or her reasoning for the sentence imposed based on the finding of a violation.<sup>133</sup>

### **i. Issuing Parole Revocation Decisions**

As with parole release, the board may make decisions on revocation in two-person panels.<sup>134</sup> If there is disagreement on a revocation decision between the members of the panel, the matter is to be decided by three board members appointed by the chairperson or the chairperson’s designee; at least two of these members must not have been on the disagreeing panel, if at all practicable.<sup>135</sup> The board will send notice of its determination either to the offender or to the counsel who represented the offender at the hearing.<sup>136</sup>

### **j. Administrative or Judicial Review of Parole Revocation Decisions**

An offender who seeks judicial review of a parole revocation order must first file an administrative appeal with the Parole Board. Any “interested party” may file an administrative appeal of a Parole Board parole revocation decision.<sup>137</sup> Such appeals must be filed within 30 days of the mailing date of the parole revocation order being

appealed. On appeal, the revocation decision is reviewed by three board members appointed by the chairperson or the chairperson’s designee.<sup>138</sup> If practicable, at least two of the board members reviewing the decision must not have been on the panel whose decision is being appealed. The three board members deciding the appeal may affirm, reverse or remand the decision of the panel or may order the matter be heard *de novo*.

### **k. Re-Release Following Revocation**

If parole has been revoked, the Board may re-parole an inmate when, in its opinion, “the best interests of the inmate justify or require the inmate’s release on parole and it does not appear that the interests of the Commonwealth will be injured thereby.”<sup>139</sup> The Board informs an inmate of when they are first eligible for re-parole.<sup>140</sup> Technical violators are eligible for automatic re-parole after six months, nine months, or one year; convicted violators will remain incarcerated until the Board determines they are ready to re-enter the community.<sup>141</sup>

## **6. Parole Board; Institutional Attributes**

### **a. Source of Authority and Jurisdiction**

The Pennsylvania Board of Probation and Parole was established by statute to address parole release, supervision, and revocation.<sup>142</sup>

### **b. Location in Government**

The PBPP is an independent administrative board, though its members are appointed by the governor, with the advice and consent of the senate. Pending legislation would merge the PBPP and the Department of Corrections. As currently drafted, the Board would retain independent discretionary parole decision-making, but parole agents and supervision would be shifted to DOC.<sup>143</sup>

### **c. Purpose (Vision/Principles/Rationale)**

The PBPP has described its mission as follows: “The Pennsylvania Board of Probation and Parole is committed to protecting the safety of the public, addressing the needs of crime victims, improving county adult probation and parole services and assisting in the fair administration of justice by ensuring the custody, control and treatment of offenders under the jurisdiction of the Board.”<sup>144</sup>

#### d. Appointment and Qualifications of Board Members

Board members are appointed by the Governor, with the advice and consent of a majority of the Senate.<sup>145</sup> The Governor may also appoint a Board Chairperson.<sup>146</sup>

*Qualifications.* Board members shall have a Bachelor's Degree and at least six years of professional experience in parole, probation, social work, or related areas; this must include one year of supervisory or administrative experience.<sup>147</sup>

#### e. Tenure and Number of Board Members, Ease of Removal

The Board consists of nine members, appointed for terms of six years.<sup>148</sup> There is no statutory limit on the number of terms a Board member can serve. A board member can be removed, for cause, before the expiration of the term, by the Governor with the advice and consent of two-thirds of the members of the Senate.<sup>149</sup>

#### f. Training and Continuing Education

There is no statutory requirement for continued training while serving on the Board.

#### g. Workload

On average, the Board considers about 1,805 applications for parole or reparole each month. During the month of February 2016, parole was granted in 1,061 cases and refused in 721 cases. 731 individuals were recommitted as a result of criminal or technical parole violations, and 255 individuals were detained in Parole Violation Centers. The total number of decisions made by the Board during the month was 3,821.<sup>150</sup>

#### h. Reporting and Accountability

The Board creates monthly reports through their Statistical Reporting and Evidence-Based Accountability Office.<sup>151</sup> Many state agencies also contribute to an Annual Governor's Report on State Performance, available online through the 2013-2014 fiscal year.<sup>152</sup> The report includes objectives for the Board, strategies to attain those objectives, and measurement tools.

In addition, parole District Directors (who are parole supervision staff) must create citizen advisory committees of at least seven members that represent the counties

as well as the ethnic and minority groups within the district.<sup>153</sup> The function of these committees is to advise the Board of community issues regarding probation and parole, inform citizens about probation and parole, assist district staff, review Board policies and programs, explore innovative administrative and programmatic ideas, and develop new resources.<sup>154</sup>

Records, reports and other written documents and information, evaluations, opinions, and voice recordings in the Board's custody or possession that touch on matters concerning a parolee are private, confidential, and privileged; except that a brief statement of reasons for actions by the Board granting or refusing parole are open to public inspection in the offices of the Board.

Source: 37 Pa. Code § 612.

## 7. County-Level Parole in Pennsylvania

Pennsylvania Courts of Common Pleas are responsible for granting and revoking parole of inmates serving sentences in county facilities.<sup>155</sup>

*Parole eligibility requirements.* The courts must abide by the parole eligibility rules when granting parole. Offenders who are sentenced to partial or total confinement in a county facility are eligible for parole by the court upon completion of the minimum term. Offenders may be paroled from a county facility prior to completion of the minimum term only if they are made eligible for a county reentry program at the time of sentencing.<sup>156</sup>

*The parole release decision.* In addition, as with Parole Board decisions, victims have the right to have input on court parole release. An inmate may appeal an adverse parole decision to the Pennsylvania Superior Court.

*Supervision.* Parolees released by the courts are generally supervised by County Adult Probation and Parole officers. However, the court may request Board supervision of a county parole case.<sup>157</sup>

*Parole revocation proceedings.* Offenders who receive parole from county courts are entitled to "a hearing held as speedily as possible at which the defendant is present and represented by counsel."<sup>158</sup>

## END NOTES

- <sup>1</sup> The authors thank Mark H. Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing, John Tuttle, Former Acting Chair, Pennsylvania Board of Probation and Parole, and Cathy McVey, Former Chair, Pennsylvania Board of Probation and Parole, for comments on an earlier draft of the report.
- <sup>2</sup> See, e.g., 42 Pa. Cons. Stat. §§ 9714-9715. Note that a number of mandatory minimum sentencing provisions in Pennsylvania have been invalidated following *Alleynes v. U.S.*, 133 S. Ct. 2151 (2013) (holding that any fact that increases a mandatory minimum sentence for a crime is an element of the crime that must be submitted to a jury). See, e.g., *Com. v. Hopkins*, 117 A.3d 247 (Pa. 2015) (holding that under *Alleynes*, statute requiring mandatory minimum for controlled substance crimes in proximity to a school was unconstitutional because a jury was not required to find beyond a reasonable doubt the facts that increased the mandatory minimum.).
- <sup>3</sup> Richard S. Frase, Just Sentencing: Principles and Procedures for a Workable System 124 (2014).
- <sup>4</sup> *Id.* at 165 (“Although sentence appeals are permitted, the standard of review is so deferential that this state’s guidelines are better described as advisory than as legally binding.”); 42 Pa. C.S. § 2154(a).
- <sup>5</sup> 61 Pa. Cons. Stat. § 6132(a).
- <sup>6</sup> 61 Pa. Cons. Stat. § 6134.1.
- <sup>7</sup> 61 Pa. Cons. Stat. § 6132(a)(2). 65 out of 67 Pennsylvania counties operate adult probation and parole departments with Grant-In-Aid from the Board. See Pa. Bd. Prob. & Parole, *County Adult Probation and Parole*, <http://www.pbpp.pa.gov/Information/reports/Pages/County-Adult-Probation-and-Parole.aspx#.VTXnKiFVgoI> (last visited March 21, 2016).
- <sup>8</sup> 61 Pa. Cons. Stat. § 6132(a)(1).
- <sup>9</sup> 18 Pa. Cons. Stat. § 106.
- <sup>10</sup> 42 Pa. Cons. Stat. § 2154 (b).
- <sup>11</sup> *Id.*; See also 204 P.A. Code § 303.1 *et seq.*
- <sup>12</sup> 18 Pa. Cons. Stat. § 106.
- <sup>13</sup> 42 Pa. Cons. Stat. § 9756(b)(2); 61 Pa. Cons. Stat. § 6137(a)(3).
- <sup>14</sup> See, e.g., *Com. v. Ulbrick*, 341 A.2d (Pa. Super. 1975).
- <sup>15</sup> Correspondence with Cathy McVey, Former Chair, Pa. Bd. of Prob. And Parole (Mar. 29, 2016). The Board may consider parole for individuals who have not applied, but it is not required to do so by statute. 12 West’s Pa. Prac., *Law of Probation & Parole* § 8:3 (3d ed.) (database updated Sept. 2015) citing *Kelly v. Pennsylvania Board of Probation and Parole*, 686 A.2d 883 (Pa. Commw. Ct. 1996); *Giddings v. Tartler*, 567 A.2d 566 (Pa. Commw. Ct. 1989); *Weyand v. Pennsylvania Board of Probation and Parole*, 503 A.2d 80 (Pa. Commw. Ct. 1986).
- <sup>16</sup> 61 Pa. Cons. Stat. § 6137(a)(1).
- <sup>17</sup> 42 Pa. Cons. Stat. § 9757.
- <sup>18</sup> See, e.g., 42 Pa. Cons. Stat. § 9714. Any individual convicted of a second violent crime is subject to a minimum mandatory term of at least ten years of total confinement. Any individual convicted of a third or subsequent violent crime is subject to a minimum mandatory term of at least 25 years of total confinement, and is also subject to a potential life without parole sentence. However, note that several Pennsylvania statutes have been recently invalidated due to the decision in *Alleynes v. U.S.*, 133 S. Ct. 2151 (2013), which requires that facts that increase mandatory minimum sentences be found by a jury. See, e.g., *Com. v. Ferguson*, 107 A.3d 206 (Pa. Super. 2015); *Com. v. Newman*, 99 A. 3d 86 (Pa. Super. 2014); *Com. v. Wolfe*, 106 A.3d 800 (Pa. Super. 2014).
- <sup>19</sup> 61 Pa. Cons. Stat. § 6137.
- <sup>20</sup> 42 Pa. Cons. Stat. § 9718.2. Second-time sex offenders receive a mandatory minimum sentence of 25 years of total confinement. For a third or subsequent offense, the sentence is life imprisonment. *Id.* Note that prosecutors may waive the mandatory application of this provision. Correspondence with Mark H. Bergstrom, Exec. Dir., Pa. Comm. on Sentencing (Mar. 22, 2016).
- <sup>21</sup> 42 Pa. Cons. Stat. § 9718.1(b).
- <sup>22</sup> 42 Pa. Cons. Stat. § 9799.24.
- <sup>23</sup> See, e.g. Pa. Bd. of Pardons, *Commutation*, <http://www.bop.pa.gov/application-process/Clemency/Pages/Commutation.aspx#.VsyPrCgrKBZ> (last visited Mar. 21, 2016).
- <sup>24</sup> 61 Pa. Cons. Stat. § 6139.
- <sup>25</sup> 61 Pa. Cons. Stat. § 4503.
- <sup>26</sup> Eligible inmates are offenders who have not been convicted of (and are not awaiting trial or sentencing for) a personal injury crime, certain sex crime, a crime with a weapons enhancement, or a crime establishing them as a drug kingpin. See 61 Pa. Cons. Stat. § 4503. Certain drug trafficking convictions may also disqualify an inmate from this program. *Id.* Prosecutors have an opportunity to oppose RRRI sentencing; they may also ask the court to waive the eligibility requirements to allow an otherwise ineligible offender to participate in RRRI. 61 Pa. Cons. Stat. § 4505(b).
- <sup>27</sup> 61 Pa. Cons. Stat. § 4505(c)(2).
- <sup>28</sup> 61 Pa. Cons. Stat. § 4504. The Department of Corrections may designate a program as a “recidivism risk reduction incentive program” based on appropriate scientific research on recidivism reduction.
- <sup>29</sup> See 37 Pa. Code § 96.1. RRRI inmates are paroled unless the Board determines that parole would present an unreasonable risk to public safety or that other specified conditions have not been satisfied.
- <sup>30</sup> 61 Pa. Cons. Stat. § 6137(a)(1)(i)–(ii).
- <sup>31</sup> 61 Pa. Cons. Stat. 6139; see also Pa. Bd. Prob. & Parole, *Parole Handbook: Your Guide to Parole Success in Prison and in the Community at 2* (2015), <http://www.pbpp.pa.gov/Information/Documents/Publications/Final%20Parole%20Handbook%20MARCH%202015.pdf> [hereinafter *Parole Handbook*].
- <sup>32</sup> 61 Pa. Cons. Stat. § 6135.
- <sup>33</sup> *Wilson v. Pennsylvania Bd. of Probation and Parole*, 942 A.2d 270 (Penn. 2010).
- <sup>34</sup> See, e.g., *Barge v. Penn. Bd. of Probation & Parole*, 39 A.3d 530, 536 (Pa. Commw. Ct. 2012).
- <sup>35</sup> Pa. Bd. Prob. & Parole, *Parole Decisional Instrument*, <http://www.pbpp.pa.gov/Understanding%20Parole/Documents/PDI%20361%2009-2014.pdf> (last visited Mar. 21, 2016) [hereinafter *Parole Decisional Instrument*].
- <sup>36</sup> See 42 Pa. Cons. Stat. § 2154.5; 61 Pa. Cons. Stat. § 6134.1(b).
- <sup>37</sup> *Id.* at 2. For example, a high-risk score on the LSI-R is weighted as a +2, while a low-risk score is a +0. Placement in the highest “Offender Violence Risk Topography Category” is a +4. A cumulative score of 1 to 6 yields a “parole suggestion,” while a higher score “suggests parole refusal.”
- <sup>38</sup> 61 Pa. Cons. Stat. § 6137.
- <sup>39</sup> *Id.*; Correspondence with Mark H. Bergstrom, Exec. Dir., Pa. Comm. on Sentencing (Mar. 22, 2016).
- <sup>40</sup> Pa. Bd. Prob. & Parole, *Parole Decision-Making 101* (2010), <http://pacrimstats.info/PCCDReports/RelatedPublications/Publications/Publications/Pennsylvania%20Board%20of%20Probation%20and%20Parole/PBPP%20Parole%20101.pdf>.
- <sup>41</sup> *Parole Decisional Instrument*, *supra* note 35.
- <sup>42</sup> Pa. Bd. Prob. & Parole, *The Parole Interview*, <http://www.pbpp.pa.gov/Understanding%20Parole/PDM/Pages/Interview.aspx#.Vg39KvViko> (last visited Mar. 21, 2016).
- <sup>43</sup> 42 Pa. Cons. Stat. § 9777. The Board also works in conjunction with the Department of Corrections to accommodate early parole interviews and release decisions for inmates who may require compassionate release. Correspondence with John Tuttle, Former Acting Chair, Pa. Bd. Prob. & Parole (March 24, 2016).
- <sup>44</sup> Pa. Const. Art. 4 § 9.

## END NOTES

- <sup>45</sup> *Id.* The Board of Pardons is composed of the Lieutenant Governor as chairman, the Attorney General, and three members appointed by the Governor to include a crime victim, a corrections expert, and a doctor of medicine, psychiatrist, or psychologist. To commute or pardon a sentence of death or life imprisonment, a unanimous vote of this Board is required.
- <sup>46</sup> 61 Pa. Cons. Stat. § 6113.
- <sup>47</sup> Parole Handbook, *supra* note 31 at 9.
- <sup>48</sup> *Id.* at 2.
- <sup>49</sup> *Id.*
- <sup>50</sup> 61 Pa. Cons. Stat. § 6139(4).
- <sup>51</sup> *Understanding Pennsylvania Parole*, The Green Sheet (Pa. Bd. Prob. & Parole) Jan. 2013, at 4.
- <sup>52</sup> 61 Pa. Cons. Stat. § 6135.
- <sup>53</sup> 61 Pa. Cons. Stat. § 6139(4).
- <sup>54</sup> 12 West's Pa. Prac., Law of Prob. & Parole § 2:4 (3d ed.) (database updated Sept. 2015).
- <sup>55</sup> *Id.*
- <sup>56</sup> 61 Pa. Cons. Stat. § 6139.
- <sup>57</sup> *Id.* Procedurally, in order to submit a statement, a "victim or family member must notify the board of his or her intention to do so and provide and keep current an appropriate mailing address with the board." To present testimony, the victim or family member must notify the board within 30 days from the date of the notice of the hearing of his/her intent to present testimony at the parole hearing. The time period may be waived by the board for good cause.
- <sup>58</sup> Carolyn Davis, *Crime Victims Now Have Right to Address Parole Board*, Philadelphia Inquirer, June 19th, 2013 (stating that "[t]he legislation was inspired by [the] ... near-release of Rafael Robb, a former University of Pennsylvania professor who was sentenced in 2008 to a five- to 10-year prison term for voluntary manslaughter in the 2006 killing of his 49-year-old wife, Ellen Gregory Robb, at their Upper Merion home.").
- <sup>59</sup> 61 Pa. Cons. Stat. § 6140(h)(8). Additionally, such statements are confidential and statutorily protected from being subpoenaed or subject to discovery and are inadmissible as evidence in any administrative or judicial proceeding. Victim input statements are not considered to be "public records" that are subject to disclosure under the Right-to-Know-Act."
- <sup>60</sup> 61 Pa. Cons. Stat. § 6139(c).
- <sup>61</sup> 61 Pa. Cons. Stat. § 6134(b)(1), (2).
- <sup>62</sup> Parole Handbook, *supra* note 31.
- <sup>63</sup> See 65 P.S. § 67.305(a). As the Board is a government agency, their records are presumed to be public under the Act and thus subject to availability to the general public if requested. The Board Action (or "green sheet") is the public record that documents the decision of the Board to grant or deny parole.
- <sup>64</sup> *McGinley v. Penn. Bd. of Probation and Parole*, 90 A. 3d 83 (Pa. Commw. Ct. 2014); 61 Pa. Cons. Stat. § 6137 (a)(1).
- <sup>65</sup> 37 Pa. Code § 63.1.
- <sup>66</sup> 61 Pa. Cons. Stat. § 6139 (a)(5); Parole Handbook, *supra* note 35 at 13.
- <sup>67</sup> See *Rogers v. Pa. Bd. of Prob. & Parole*, 724 A.2d 319 (Pa. 1999) (stating that the Board decision about whether to grant or deny parole not an adjudication subject to judicial review); see also *Reider v. Pa. Bd. of Prob. & Parole*, 514 A.2d 967 (Pa. Commw. Ct. 1986).
- <sup>68</sup> See, e.g. *Franklin v. Com., Penn. Bd. of Probation and Parole*, 476 A.2d 1026 (Pa. Commw. Ct. 1984).
- <sup>69</sup> See, e.g. *Lord v. Com., Penn. Bd. of Probation and Parole*, 580 A.2d 463 (Pa. Commw. Ct. 1990).
- <sup>70</sup> 12 West's Pa. Prac., Law of Probation & Parole § 8:23 (3d ed.).
- <sup>71</sup> *Id.* citing *Frassetto v. Perrill*, 955 F.2d 176 (2d Cir. 1992).
- <sup>72</sup> Danielle Kaeble et al., U.S. Dep't. of Justice Bureau of Justice Statistics, *Probation and Parole in the United States*, 2014 at 18 (2015).
- <sup>73</sup> E. Ann Carson, U.S. Dep't. of Justice Bureau of Justice Statistics, *Prisoners in 2014* at 8 (2015).
- <sup>74</sup> Pa. Bd. Prob. & Parole, *Supervision*, <http://www.pbpp.pa.gov/Understanding%20Parole/PDM/Pages/Supervision.aspx#.VsylygrkBY> (last visited Mar. 21, 2016).
- <sup>75</sup> Pa. Bd. of Prob. & Parole, *Parole Case Example*, <http://www.pbpp.pa.gov/Understanding%20Parole/johnny/Pages/default.aspx#.VwwkZqcrKBZ> (last visited Mar. 30, 2016).
- <sup>76</sup> Pa. Bd. of Prob. & Parole, *Parole Dictionary: Levels of Supervision*, <http://www.pbpp.pa.gov/Understanding%20Parole/PD/Pages/---M-Definitions.aspx#.VwwdfKcrkBY> (last visited Mar. 30, 2016).
- <sup>77</sup> 61 Pa. Cons. Stat. § 6137(c). Eligibility for administrative parole also requires that there be no substantial information that indicates dangerousness or that placement on administrative parole would compromise public safety.
- <sup>78</sup> 61 Pa. Cons. Stat. § 4503. A prisoner is ineligible if they have a history of present or past violent behavior, have been sentenced to a crime with a deadly weapons enhancement, have committed or attempted a personal injury crime other than 3rd-degree misdemeanor simple assault, have been convicted of certain sex crimes such as incest, have been sentenced for certain drug crimes involving weapons, or have been found guilty of drug trafficking. A prisoner is also ineligible if they are pending trial on any charges that would render them ineligible.
- <sup>79</sup> 61 Pa. Cons. Stat. § 6137(c).
- <sup>80</sup> 37 Pa. Code § 63.2. The issue of "legal discharge" is relevant to cases in which an offender is convicted of a parole violation and thus taken back into custody. The Board can essentially lengthen the original sentence by not counting any time spent on parole as time served. See 61 Pa. Cons. Stat. § 6138(a)(2).
- <sup>81</sup> Interstate Comm'n for Adult Offender Supervision, *Early Offender Discharge Survey* (2007), [http://www.interstatecompact.org/portals/0/library/surveys/early\\_discharge\\_010807.pdf](http://www.interstatecompact.org/portals/0/library/surveys/early_discharge_010807.pdf).
- <sup>82</sup> 61 Pa. Cons. Stat. § 6138; *Gair v. Penn. Board of Probation and Parole*, 948 A.2d 884 (Pa. Commw. Ct. 2008).
- <sup>83</sup> 61 Pa. Cons. Stat. § 6141.
- <sup>84</sup> 37 Pa. Code § 63.5. See also *Wilson v. Marrow*, 917 A.2d 357 (Pa. Commw. Ct. 2007) (Parolee contested condition imposed by Parole Agent requiring him to attend the Adappt House program (a drug treatment program). The court affirmed that parolees are required to abide by all conditions subsequently imposed by parole agents.).
- <sup>85</sup> *Hubler v. Pa. Bd. Prob. & Parole*, 971 A.2d 535 (Pa. Commw. Ct. 2009).
- <sup>86</sup> 42 Pa. Cons. Stat. § 9753(c)(13); See, e.g., *Com. v. Dewey*, 57 A.3d 1267 (Pa. Super. Ct. 2012).
- <sup>87</sup> 37 Pa. Code § 65.6. This language is contained in a parole agreement. See 37 Pa. Code § 65.7.
- <sup>88</sup> 37 Pa. Code § 63.4.
- <sup>89</sup> Pa. R. Wash. Cty. Crim. P. L-714 (these are some of the specific conditions that can be set in Washington County, PA as an example of county-level sex offender conditions).
- <sup>90</sup> 61 Pa. Cons. Stat. § 6137; Parole Handbook, *supra* note 35 at 17-18.
- <sup>91</sup> Correspondence with John Tuttle, Former Acting Chair, Pa. Bd. Prob. & Parole (Mar. 24, 2016).
- <sup>92</sup> 37 Pa. Code §§ 67.2, 63.5.
- <sup>93</sup> See Parole Handbook, *supra* note 31 at 10. If a parolee wishes to modify a mandatory condition of parole placed upon the parolee by the Board, the appeal request must go to Board for removal.
- <sup>94</sup> 18 Pa. Cons. Stat. § 11.1102.
- <sup>95</sup> 61 Pa. Cons. Stat. § 6137(e)(2).
- <sup>96</sup> 18 Pa. Cons. Stat. § 11.1102.
- <sup>97</sup> *Id.*
- <sup>98</sup> *Lawson v. Com., Pennsylvania Bd. of Probation and Parole*, 524 A.2d 1053 (Pa. Commw. Ct. 1987).

## END NOTES

- <sup>99</sup> Pa. Bd. Prob. & Parole, *Monthly Statistics Report* 6 (Feb. 2016), <http://www.pbpp.pa.gov/Information/Documents/Monthly%20Program%20Reports/FY%2015%2016/FEB%202016%20MSR.pdf>. There were 101 additional cases where the outcome was “refer to prior action.”
- <sup>100</sup> Danielle Kaeble et al., U.S. Dep’t. of Justice Bureau of Justice Statistics, *Probation and Parole in the United States*, 2014 at 20 (2015).
- <sup>101</sup> Pa. Bd. Prob. & Parole, *Monthly Statistics Report* 4 (Dec. 2015), <http://www.pbpp.pa.gov/Information/Documents/Monthly%20Program%20Reports/FY%2015%2016/12%2015%20MSR.pdf>.
- <sup>102</sup> *Id.*
- <sup>103</sup> See, e.g., *Davis v. Bd. of Prob. And Parole*, 841 A.2d 148 (Pa. Commw. Ct. 2004).
- <sup>104</sup> 61 Pa. Cons. Stat. § 6138.
- <sup>105</sup> Pa. Bd. Prob. & Parole, *Understanding the Technical Parole Violation Process in Pa.* (2014), <http://www.pbpp.pa.gov/Information/Documents/Publications/TPV%20Process%20December%202014.pdf>.
- <sup>106</sup> *Id.*
- <sup>107</sup> Pa. Bd. Prob. & Parole, Sample Violations Sanctioning Grid, <http://www.pbpp.pa.gov/Understanding%20Parole/Documents/PBPP-347%20VSG.pdf> (last visited Mar. 21, 2016).
- <sup>108</sup> Pa. Bd. Prob. & Parole, *Violations*, <http://www.pbpp.pa.gov/Understanding%20Parole/PDM/Pages/Violations.aspx#Vblc2vlViko> (last visited Mar. 21, 2016).
- <sup>109</sup> Sample Violations Grid, *supra* note 107.
- <sup>110</sup> 37 Pa. Code § 71.1.
- <sup>111</sup> 37 Pa. Code § 71.3(8). This process may result in a detention of up to 30 days.
- <sup>112</sup> 37 Pa. Code § 71.2(1).
- <sup>113</sup> *Id.*
- <sup>114</sup> 37 Pa. Code § 71.3(1) This detention can only be triggered after a preliminary hearing at which the court determines that there is a *prima facie* case against the parolee, after the parolee waives a criminal preliminary hearing and is held for court, after the parolee is convicted of a crime, or after an examiner conducts a detention hearing.
- <sup>115</sup> *Id.*
- <sup>116</sup> *Id.*
- <sup>117</sup> 37 Pa. Code § 71.4(2)-(6).
- <sup>118</sup> *Com. v. Griggs*, 461 A.2d 221 (Pa. Super. 1983).
- <sup>119</sup> 37 Pa. Code § 71.1-71.4.
- <sup>120</sup> *Id.* There is no penalty for requesting counsel.
- <sup>121</sup> 37 Pa. Code § 71.2(8).
- <sup>122</sup> 37 Pa. Code § 71.2(19), see also *Com. v. Sims*, 770 A.2d 346 (Pa. Super. 2001).
- <sup>123</sup> See 37 Pa. Code §§ 75.1, 75.3.
- <sup>124</sup> 37 Pa. Code §§ 75.3(b)-(c).
- <sup>125</sup> 37 Pa. Code §§ 75.1, 75.3. In both criminal and technical violations, “[t]he Board may deviate from the presumptive range or determine that recommitment should not occur provided sufficient written justification is given.
- <sup>126</sup> 42 Pa. Cons. Stat. § 2154.5.
- <sup>127</sup> *Understanding the Technical Parole Violation Process*, *supra* note 109. Maximum term of custody in a Parole Violation Center is six months.
- <sup>128</sup> *Id.*
- <sup>129</sup> *Id.* A first technical violation of this nature results in a six-month recommitment. A second violation results in a nine-month recommitment. A third or subsequent violation results in a year-long recommitment.
- <sup>130</sup> Parole Handbook, *supra* note 35 at 25.
- <sup>131</sup> 61 Pa. Cons. Stat. § 6138.
- <sup>132</sup> *Id.*
- <sup>133</sup> Pa. R. Crim. P. 708.
- <sup>134</sup> 61 Pa. Cons. Stat. § 6113.
- <sup>135</sup> *Id.*
- <sup>136</sup> See 37 Pa. Code § 71.2.
- <sup>137</sup> 61 Pa. Cons. Stat. § 6113(d). Parole Board regulations define an “interested party” as either the parolee or the parolee’s attorney. See 37 Pa. Code § 61.1.
- <sup>138</sup> See 61 Pa. Cons. Stat. § 6113(d)(1).
- <sup>139</sup> 61 Pa. Cons. Stat. § 6138.
- <sup>140</sup> Parole Handbook, *supra* note 31 at 23.
- <sup>141</sup> *Id.* at 22.
- <sup>142</sup> 61 Pa. Cons. Stat. § 6111.
- <sup>143</sup> *Id.*; correspondence with Mark H. Bergstrom, Exec. Dir., Pa. Comm. on Sentencing (Mar. 22, 2016); S.B. 859, 199th Gen. Assemb., Reg. Sess. (Pa. 2015).
- <sup>144</sup> See, e.g. Parole Handbook, *supra* note 31 at 1.
- <sup>145</sup> 61 Pa. Cons. Stat. § 6111(b).
- <sup>146</sup> The statute states, “[t]he Governor shall, from time to time, as the occasion may arise, designate one of the members of the board to be its chairperson.” 61 Pa. Cons. Stat. § 6112(a) (2014). Operationally, the Governor appoints a chairperson. In terms of responsibility, the board chairperson directs the operations, management and administration of the board...” *Id.* The chairperson also presides over all meetings of the board and is responsible for organizing, staffing, controlling, directing and administering the work of the staff. *Id.*
- <sup>147</sup> 61 Pa. Cons. Stat. § 6111. Any equivalent combination of experience and training shall also be acceptable.
- <sup>148</sup> *Id.* There are currently several Board vacancies. Correspondence with Mark H. Bergstrom, Exec. Dir., Pa. Comm. on Sentencing (Mar. 22, 2016).
- <sup>149</sup> 61 Pa. Cons. Stat. § 6115. If the Senate is in recess, “the Governor may suspend a member of the board for cause, and before suspension, the Governor shall furnish to the member a statement in writing of the reasons for the proposed suspension of the member.” *Id.* “The suspension shall operate and be effective only until the adjournment of the next session of the Senate following the suspension.” *Id.*
- <sup>150</sup> See Pa. Bd. Prob. & Parole *Monthly Program Report* (Feb. 2016), <http://www.pbpp.pa.gov/Information/Documents/Monthly%20Program%20Reports/FY%2015%2016/FEB%202016%20MSR.pdf>.
- <sup>151</sup> *Id.*
- <sup>152</sup> Pa. Governor’s Budget Office, 2013-2014 *Report on State Performance*, <https://www.performanceplan.state.pa.us/Dashboard2013-14/Performance%20Manager%20Dashboard.html> (last visited Mar. 21, 2016).
- <sup>153</sup> 37 Pa. Code § 77.1.
- <sup>154</sup> 37 Pa. Code § 77.2.
- <sup>155</sup> 61 Pa. Cons. Stat. § 6134.1.
- <sup>156</sup> 42 Pa. Cons. Stat. § 9756. A reentry plan is a release plan that may include drug and alcohol treatment, behavioral health treatment, job training, skills training, education, life skills, or any other condition deemed relevant by the court.
- <sup>157</sup> 61 Pa. Cons. Stat. § 6132(a)(2)(i). Though the Board may supervise parolees under the court’s jurisdiction, only the court may impose conditions of supervision or revoke parole. Correspondence with Mark H. Bergstrom, Exec. Dir., Pa. Comm. on Sentencing (Mar. 22, 2016).
- <sup>158</sup> Pa. R. Crim. P. 708.