

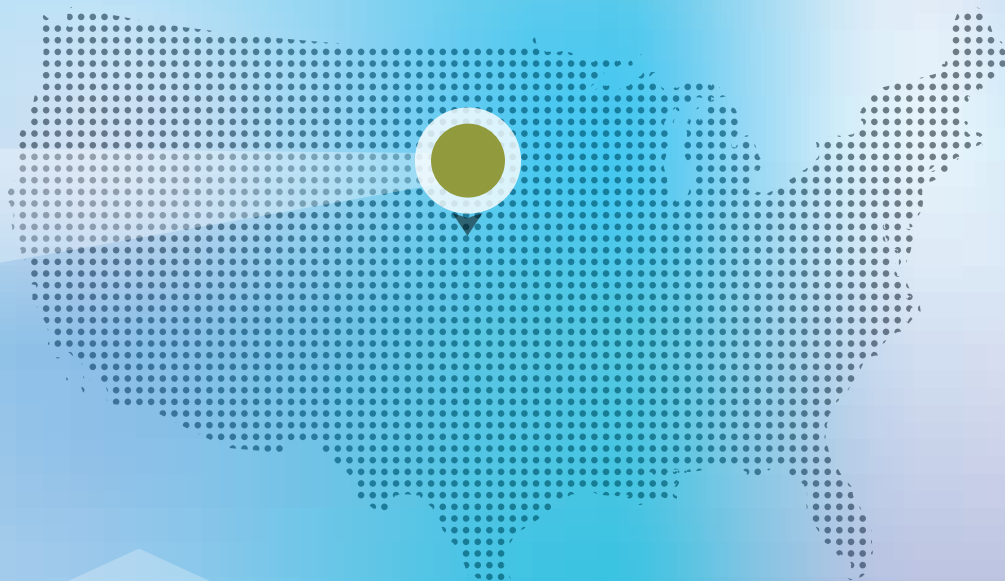
UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Nebraska

By

Alexis Lee Watts, Edward R. Rhine, Steven Graziano, Mike McBride

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1. Background; Sentencing System

a. Sentencing Framework

Nebraska employs both indeterminate sentencing (for offenders convicted of serious felonies)¹ and determinate sentencing (for offenders convicted of relatively less serious felonies and misdemeanors).² The state does not have a sentencing commission or sentencing guidelines. Parole in Nebraska was established in 1893 with the Governor possessing the sole power to parole.³ Nebraska's Board of Parole has been operating since 1968 as an independent constitutional agency.⁴

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

Yes, the Nebraska Board of Parole.⁵

<http://www.parole.nebraska.gov/>

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

Until 2015, the Nebraska Department of Correctional Services' Office of Parole Administration worked with the Board to assist with the efficient administration of parole services in the community.⁶ Recently enacted Legislative Bill 598 directed that the Office be transferred to the Board of Parole effective July 1, 2016.⁷ It is now referred to as the Board's "Division of Parole Supervision."

<http://www.corrections.nebraska.gov/parole.html>

d. Which Agency Has Authority Over Parole Revocation?

The Nebraska Board of Parole.⁸



2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

General rules of release eligibility. In general, offenders are eligible for parole upon completion of the minimum term less good time.⁹ If an offender has been sentenced to consecutive terms, the minimum term may be calculated by adding together all minimum terms.¹⁰ Parole may be granted only to individuals who have been committed to the Department of Corrections. Thus, all misdemeanants and felony offenders serving a term of imprisonment of under one year in the county jail do not qualify for parole release.¹¹

However, no good time reduction applies to those serving mandatory minimum sentences during the minimum term.¹² All Class I felonies have accompanying mandatory minimum sentences.¹³ When the court sentences an offender to a minimum term equal to the applicable mandatory minimum, the offender becomes eligible for parole only after serving the full mandatory minimum.¹⁴

Class	Minimum	Maximum
Class IA Felony	Life imprisonment	Life imprisonment
Class IB Felony	20 years	Life imprisonment
Class IC Felony	5 years (mandatory minimum)	50 years
Class ID Felony	3 years (mandatory minimum)	50 years
Class II Felony	1 year	50 years
Class IIA Felony	None	20 years
Class III Felony	None/9 months post-release supervision if imprisonment is imposed	4 years imprisonment and two years post-release supervision or \$25,000 fine, or both
Class IIIA Felony	None/9 months post-release supervision if imprisonment is imposed	3 years imprisonment and 18 months post-release supervision or \$10,000 fine, or both
Class IV Felony	None /9 months post-release supervision if imprisonment is imposed	2 years imprisonment and 12 months post-release supervision or \$10,000 fine, or both ¹⁵

Sex offenders. While the release of certain sex offenders requires several additional precautions, there is no difference in parole eligibility for sex offenders in general.¹⁶

Life sentences. Some offenders, particularly those who are convicted of class I-B felonies, may receive a sentence that has a 20-year minimum term and a life maximum term.¹⁷ However, a judge can also choose to set the minimum term at "life;" this in effect creates a life without parole sentence.¹⁸ In such a case, the Board of Pardons may commute this type of sentence to a term of years (in which case release eligibility occurs as described above).¹⁹

Recurring eligibility after denial of release. After an inmate is denied parole but the case is deferred for later consideration, the inmate must be permitted one hearing every year until a release date is set.²⁰ However, the Board can also deny release without granting any later consideration.²¹

b. Good Time, Earned Time, and Other Discounts

The Department of Corrections must reduce the term of a committed offender by a ratio of six months for each year of the offender's term for good behavior. This type of reduction can be forfeited or withheld due to misconduct. However, these reductions may also later be restored. After an inmate has completed a twelve-month period of incarceration with minimal disciplinary offenses, the Department can also award three additional days of credit per month. This type of reduction cannot be forfeited or withheld.²²

These sentence reductions are deducted from the maximum term for the purposes of determining a mandatory release date. However, the reductions are also deducted from the minimum term (unless it is a mandatory minimum, as described above) for the purposes of determining parole eligibility.²³

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. The Board must order release of a parole eligible inmate upon parole consideration, unless it makes a specific finding that release should be deferred for one or more of four reasons. Parole may be denied for an inmate if:

- "1) There is a substantial risk that he or she will not conform to the conditions of parole;
- 2) His or her release would depreciate the seriousness of his or her crime or promote disrespect for the law;
- 3) His or her release would have a substantially adverse effect on institutional discipline; or
- 4) His or her continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his or her capacity to lead a law-abiding life when released at a later date."²⁴

Statutory factors the board must consider. When considering parole, the Board must examine 15 specific factors outlined in statute. These include:

- The offender's personality, including his or her maturity, stability, and sense of responsibility and any apparent development in his or her personality which may promote or hinder his or her conformity to law;
- The adequacy of the offender's parole plan;
- The offender's ability and readiness to assume obligations and undertake responsibilities;
- The offender's intelligence and training;
- The offender's family status, and whether he or she has relatives who display an interest in him or her or whether he or she has other close and constructive associations in the community;
- The offender's employment history, his or her occupational skills, and the stability of his or her past employment;
- The type of residence, neighborhood, or community in which the offender plans to live;
- The offender's past use of narcotics or past habitual and excessive use of alcohol;
- The offender's mental or physical makeup, including any disability or handicap which may affect his or her conformity to law;
- The offender's prior criminal record, including the nature and circumstances, recency, and frequency of previous offenses;
- The offender's attitude toward law and authority;
- The offender's conduct in the facility, including particularly whether he or she has taken advantage of the opportunities for self-improvement, whether he or she has been punished for misconduct within six months prior to his or her hearing or reconsideration for parole release, whether any reductions of term have been forfeited, and whether such reductions have been restored at the time of the hearing or reconsideration;
- The offender's behavior and attitude during any previous experience of probation or parole and the recency of such experience;
- A risk and needs assessment; and
- Any other factors deemed relevant.²⁵

Special standard for sex offenders. There is no separate standard for the release of sex offenders.

d. Parole Release Guidelines

Parole release guidelines. The Board does not employ parole release guidelines. However, the Board is engaged with the Council of State Governments in the development of such guidelines as part of the State's Justice Reinvestment Initiative.²⁶

e. Risk and Needs Assessment Tools

Statutory Mandate. By statute, the Board is required to use a validated risk and needs assessment as part of a parole eligibility determination.²⁷

Risk instruments utilized. The Board is statutorily required to use a risk and needs assessment tool as of July 1, 2008. In 2016, the Nebraska Department of Correctional Services adopted the STRONG-R risk and needs assessment. This tool is being implemented across the Department and will be utilized for offenders coming before the Board, in addition to newly developed release guidelines. The STRONG-R will be fully implemented across the state by January 2017.²⁸

Transparency. It is relatively difficult to access information about any details of the parole risk assessment. The Department of Correctional Services mentions that it employs four types of inmate risk and needs assessments, and that one "provides information to the Parole Board for consideration prior to being placed on parole," but does not name the instrument or mention any criteria it utilizes in making risk determinations.²⁹

Sex offenders. The Board evaluates sex offender risk utilizing the Static 99, the Stable 2007, and the Acute 2007. It also utilizes a semi-annual community risk assessment.³⁰

f. Medical or Compassionate Release

The Board may release inmates on medical parole only if they are deemed by the Department of Corrections to be "terminally ill or permanently incapacitated."³¹ The Board may only grant release after a complete review of the inmate's record. This provision is not available to inmates serving a sentence of life or death. The Board must also select a medical placement for the inmate prior to his or her release. There are no provisions indicating review of this decision by another agency or department. Medical parole may be revoked for any violation of a term of release, or if the parolee regains his or her health.³²

g. Executive Clemency Power

Nebraska has a Board of Pardons consisting of the governor, the attorney general, and the secretary of state that can exercise its authority to remit fines and forfeitures and to grant respites, reprieves, pardons, and/or commutations in consultation with the Board of Paroles. Applications for clemency are decided by a majority vote of the Board of Pardons. The Board of Pardons also has the explicit statutory authority to reinstate drivers' licenses that have been revoked for driving while intoxicated.³³

h. Emergency Release for Prison Crowding

The Governor may declare an overcrowding emergency when the Director of Corrections certifies that the system is at 140% of its design capacity. At that time, the Board must consider or reconsider all inmates currently eligible for parole. They must release each inmate unless they find that it is more likely than not that the inmate will break the conditions of release, that there would be a "very substantial" impact on institutional discipline, or there is a "very substantial risk" that the inmate will commit an act of violence if released. They must continue releasing eligible offenders until the Director certifies that the system is back at operating capacity.³⁴

3. Parole Release Hearing Process

a. Format of Release Hearings

Within sixty days before an inmate's minimum sentence expires, an interview must be conducted by two members of the Board or a person designated by the Board.³⁵ If the interviewers do not believe the inmate will likely be granted parole, the inmate may request additional review by a majority of the Board. If the interviewers believe the inmate reasonably likely to be granted parole, the Board will schedule a public hearing before a majority (three) of the Board members. The Board Chair or Vice-Chair will preside. This type of majority review may not be conducted more than once annually. Parole release is granted by a majority vote of the Board.³⁶

A public hearing before the Board is informal, but a record of the hearing must be kept. An inmate is guaranteed certain procedural rights during the hearing, discussed further below.³⁷ "Anyone wishing to appear on behalf of, or in opposition to, an offender's release is welcome to attend."³⁸

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

In addition to the numerous factors listed above, the Board may consider several different sources of information in reaching a parole release decision:

- A report prepared by the institutional caseworkers relating to his or her personality, social history, and adjustment to authority, and including any recommendations which the staff of the facility may make;
- All official reports of his or her prior criminal record, including reports and records of earlier probation and parole experiences;
- The presentence investigation report;
- Recommendations regarding his or her parole made at the time of sentencing by the sentencing judge;
- The reports of any physical, mental, and psychiatric examinations of the offender;
- Any relevant information which may be submitted by the offender, his or her attorney, the victim of his or her crime, or other persons;
- Risk and needs assessment results; and
- Such other relevant information concerning the offender as may be reasonably available.³⁹

c. Prisoner's Procedural Rights

At the public parole hearing, the inmate may be represented by an advocate or by legal counsel, and must be permitted to consult with that person prior to the hearing. However, there is no right to an attorney provided by the state at the hearing. Inmates are permitted to present evidence in their own behalf, to call and cross-examine witnesses, and to submit written documentation to assist their case. They may also be furnished with "any information or records" that will be considered during the hearing; however, inmates do not have access to the results of risk assessments.⁴⁰ Victim impact statements are also kept confidential from the inmate.⁴¹

d. Victims and Other Participants

Victims must be notified of the tentative date of parole release and the earliest parole eligibility date of a relevant inmate. Victims have a right to be notified of all parole hearings, to be present, and to present a written or oral statement. Victims must also be notified of any Board decision.⁴²

There are no statutory or regulatory provisions requiring notification of the sentencing court or prosecuting attorney. Parole hearings are public and the Board publishes a list of upcoming hearings on their website, which is updated regularly.⁴³

e. Burdens of Proof or Standards of Persuasion for Release

While there does not appear to be a burden of proof for contested issues in parole release hearings, the Board must make a “specific finding” that one (or more) of the four criteria for denial of parole release is (are) present.⁴⁴

f. Possible Outcomes at Parole Release Hearings; Form of Decisions

If the Board chooses to release an inmate on parole, the decision must be effected within six months of the hearing, unless there are special reasons for fixing a later date of release. If the Board decides not to release the inmate, the decision must be made in writing, state the reasons for denial and recommendations on what the inmate can do to improve his or her chances of being released. The Board may defer a case for later reconsideration, and may order a reconsideration or a rehearing of a case at any time.⁴⁵ The Board may also deny parole.⁴⁶

g. Administrative or Judicial Review of Parole Denial

Apart from discretionary administrative review of a decision not to hear a parole release case, there does not appear to be an administrative review process.⁴⁷ In the past, (often unsuccessful) judicial review of Board release decisions has been triggered through a writ of mandamus⁴⁸ or writ of habeas corpus.⁴⁹ One state appeals court has held that relief through a petition in error (which the court does not distinguish from a writ) is not available for review of parole release, because “the Board of Parole’s duty to recognize parole eligibility is ministerial” and discretionary.⁵⁰

h. Rescission of Parole Release Dates

The granting of a parole date may be rescinded following an inmate’s interview with the Board. There are several reasons why a rescission may be ordered, including an inadequate parole plan, failure to complete required programming, the receipt of a newly lodged detainer from another jurisdiction, or the inmate no longer desires parole.⁵¹

4. Supervision Practices

Parole supervision rate.

On December 31, 2015, there were 1,043 individuals on parole in Nebraska. This means that there was a rate of 73 parolees per 100,000 residents at that time.⁵²

a. Purposes of Supervision

The Nebraska Parole Board website states that the purpose of parole “is to protect the rights of society and to provide assistance to the offender, under a period of supervision, to re-enter the mainstream of society as a productive, law-abiding citizen. Parole does not release the offender from the court sentence.”⁵³ Also, “[t]he [parole] officers’ goal is to assist each parolee in achieving a successful discharge from parole supervision and to become a responsible member of society.”⁵⁴

The stated mission of the Board’s Office of Parole Administration, renamed the Division of Parole Supervision and Services, is to continue its “research, understanding and implementing evidence-based approaches as it pertains to the release of clients who have appropriately been prepared for community supervision.” The Division also states that they are dedicated to maintaining public safety, reducing recidivism, and addressing the needs of the victims, while integrating clients into society through a balance of best practice supervision and treatment strategies.⁵⁵

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

Active supervision is not a mandatory requirement of parole. The Board may terminate the supervision of offenders if, in its opinion, they no longer require supervision or guidance, without discharging them from parole.⁵⁶

c. Length of Supervision Term

Maximum supervision terms. The general rule is that parolees are to be discharged from their sentence when the time served in prison under the custody of the Department of Corrections, and the time served on parole equal the maximum term of incarceration imposed less good time.⁵⁷ However, some sex offenders are subject to lifetime supervision.⁵⁸ These parolees’ cases are reviewed annually by the Office of Parole Administration’s Sex Offender Unit, which may recommend that some release conditions be removed.⁵⁹ The Board’s Division of Parole Supervision and Services now administers this task.⁶⁰

Early termination. The Board may discharge a parolee at any time if such discharge is compatible with the protection of the public and is in the best interest of the parolee.⁶¹

Extension of supervision term. The Board cannot extend the supervision term past the maximum term.

Incentives; “goal parole.” The Board awards parole “good time” to parolees for good conduct in conformity with the conditions of parole. This reduces a parole term by ten days per month, and is considered when calculating the date when the parolee’s discharge from parole is mandatory.⁶²

d. Conditions of Supervision

The general conditions of parole include:

- **Laws:** You shall obey all city, county, state, and federal laws, ordinances, and orders; and conduct yourself as a good citizen. All contacts with law enforcement shall be reported to your parole officer at the earliest opportunity.
- **Release:** Upon release from the institution, you are to go directly to the program approved by the Parole Board, and shall report to your assigned parole officer, or other persons designated by the Parole Administration [now referred to as the Division of Parole Supervision and Services] within twenty-four (24) hours of being granted a parole.
- **Travel:** You shall receive verbal permission from your assigned parole officer, or his/her immediate supervisor, before leaving your approved county of residence. You shall not leave the State of Nebraska without first obtaining written permission from the Board of Parole. (It is a felony for a parolee to leave the state without permission, and is punishable by up to five (5) years imprisonment.) Written permission to travel to a designated state does not grant permission to travel to any other state.
- **Residence:** You shall not change your approved place of residence without first obtaining permission from your assigned parole officer.⁶³

The Board may also impose the following more case-specific or special conditions:

- **Employment/education program:** You shall maintain an approved employment/education program, and shall not change this program without first obtaining permission from your assigned parole officer.

- **Reporting:** You shall submit a written report to your assigned parole officer during the first five working days of each month and report in person at such times and places as directed by [Division of] Parole staff.
- **Directives:** You shall obey all written or verbal directives of your parole officer and any other personnel of the [Division of] Parole.
- **Absconding:** You shall keep your parole officer advised of your whereabouts at all times, and failure to do so will be considered a violation of parole supervision. (If you abscond parole supervision, you will pay all expenses incurred in your return.)
- **Associates:** You shall not associate with persons known to be engaged in criminal activities, nor with persons known to have been convicted of a crime, without written permission from your parole officer.
- **Financial obligations:** You shall provide for the financial needs of your dependents, including any court ordered child support payments, restitution and/or fines. You shall confer with your parole officer before entering into any major credit transactions.
- **Search and seizure:** You shall permit your parole officer and/or personnel of [Division of] Parole to conduct routine searches of your person, residence, vehicle, or any property under your control, at such times as they deem necessary.
- **Weapons:** You shall not possess, own, carry, or have under your control any type of weapon.
- **Narcotics:** You shall not use, purchase, sell, nor possess any narcotic or dangerous drug, unless first prescribed by a licensed physician. You shall submit to narcotic or drug testing as required by any parole staff or law enforcement officer.
- **Intoxicants:** You shall not consume any alcoholic beverages nor be in any bars, taverns, or business establishments where the sale of alcoholic beverages is the primary business. You shall submit to a medically recognized test for blood alcohol content at the request of any parole staff or law enforcement officer.⁶⁴

The Board of Parole may in appropriate cases require a parolee, as a condition of his parole, either at the time of his release on parole or at any time while he remains under parole supervision, to reside in a community guidance center, boarding facility, halfway house, hospital, or other special residence facility for such period and under such supervision or treatment as the board may deem appropriate.⁶⁵ The Board may also require medical or psychological treatment, marriage counseling, driving restrictions, geographical restrictions, restrictions on applying for credit cards or opening checking accounts, and/or restrictions on acting as an undercover or special agent for law enforcement.⁶⁶

In addition to the above conditions, the parole administrator must complete a comprehensive “personalized program plan” specifying certain educational, mental health and vocational benchmarks toward which the parolee is to make progress.⁶⁷ Parole staff utilize risk and needs assessment tools to develop a plan that addresses criminal thinking, vocational and educational needs, peers and social support, and behavioral health needs.⁶⁸

The parolee must also satisfy any other conditions specially related to the cause of his or her offense and not unduly restrictive of his or her liberty or conscience.⁶⁹ Courts have held that discretionary conditions of supervision are valid if they are applied in a reasonable manner and contribute to the rehabilitation of a parolee.⁷⁰

Sex offenders. Many individuals convicted of sex crimes must complete an evaluation with a mental health professional that will determine their risk level and what supervision is required in the community. As mentioned earlier, sex offenders may be subject to lifetime parole.⁷¹

Modification of conditions. Parole officers have the authority to impose certain conditions as administrative sanctions where a technical or substance abuse violation has occurred. The parolee must acknowledge the violation and agree to the additional conditions in writing.⁷² The Board may also impose additional conditions of parole in response to a violation.⁷³ However, the Board can also modify the conditions of parole at its discretion.⁷⁴

Incentives; lighter conditions. Parolee’s level of risk is assessed every six months; this may result in a downward adjustment of the parolee’s supervision level and thus the requirements and restrictions placed on a parolee.⁷⁵

e. Fees and Other Financial Sanctions

Parole supervision fees. Parolees must pay a monthly parole programming fee of \$25 by the tenth day of each month they are paroled. “The board shall waive payment of the monthly parole programming fee in whole or in part if after a hearing a determination is made that such payment would constitute an undue hardship on the parolee due to limited income, employment or school status, or physical or mental handicap. Such waiver shall be in effect only during the period of time that the parolee is unable to pay his or her monthly parole programming fee.”⁷⁶

Payments for drug and alcohol testing and treatment. In general, parolees do not have to pay for drug or alcohol tests. However, a parolee must pay if they request a confirmation test from a separate laboratory (as is their right), if the initial drug or alcohol test comes back positive.⁷⁷

Restitution. Restitution may be a condition of parole, and the Board may revoke parole if a parolee fails to comply with a restitution order. However, in considering revocation the Board must take into account the parolee’s earning ability and financial resources, the willfulness of the failure to pay, and any special circumstances affecting the ability to pay. Parole may not be revoked unless non-compliance with the restitution order is attributable to an intentional refusal to obey the order or a failure to make a good faith effort to comply with the order.⁷⁸

Child support. Parolees must provide for the financial needs of their dependents, including any court ordered child support payments.⁷⁹

Other financial obligations. Parolees may be required to pay fines. In addition, there are several conditions of parole that limit a parolee’s ability to enter into banking or credit transactions without the approval of a parole officer.⁸⁰

Incentives; reduction of economic sanctions. It does not appear that there are any incentives related to the reduction or termination of economic sanctions.

5. Parole Revocation

Parole revocation proceedings.

According to the Bureau of Justice Statistics, in 2015 there were 58 parolees who received a new sentence while on parole and another 301 parole revocations.⁸¹

Absconders.

On December 31, 2014 there were 32 reported absconders. On December 31, 2015 there were 42 reported absconders.⁸²

a. Principles and Criteria of “When to Revoke”

Policy considerations. Nebraska has instituted parole revocation guidelines for parole officer use, as well as revocation laws that allow the Board to consider, after a violation of parole is found, whether revocation is appropriate.⁸³

Legal predicates. If the Board finds that a parolee has engaged in criminal conduct, used drugs or alcohol, or refused to submit to a drug or alcohol test while on parole, the Board may order the revocation of parole. If the Board finds that a parolee has committed another type of technical parole violation, it may also revoke parole or impose an intermediate sanction.⁸⁴

Statutorily enumerated factors. The decision of whether or not to revoke parole shall be made after weighing mitigating and aggravating factors as to what best benefits society and the parolee.⁸⁵

b. Revocation Guidelines

Nebraska has designed limited guidelines that are intended for use by field parole officers who have the discretion to address certain types of parole violations without referring the case to the Board.⁸⁶ However, there are no guidelines for use at the revocation hearing level.

c. Risk and Needs Assessment Tools

It does not appear that a risk and needs assessment is utilized at the parole revocation phase. In a recent report, a consultant to the state legislature notes that parole officers use the *Parole Supervision Inventory* to assess parolee needs but that this is not a validated actuarial risk and needs assessment.⁸⁷

d. Preliminary and Final Revocation Procedures

Arrest or summons. Parole Officers are responsible for monitoring parolees' adherence to the conditions of their release.⁸⁸ When "in the opinion of the supervision officer, an individual is in violation of the conditions" of their release, the officer has a duty to inform the parole administrator.⁸⁹ If the parole officer has "reasonable cause" to believe that a violation of the conditions of release has occurred, or is about to occur, they may take administrative action for technical or substance abuse violations, or return the parolee to custody⁹⁰ and report the violation to the Board.⁹¹ If an officer believes that the parolee will not attempt to leave the jurisdiction and will not place lives or property in danger, the officer may report the violation and allow the Board to decide whether or not to issue an arrest warrant.⁹²

Preliminary hearing. After a violation is reported by a parole officer,⁹³ there is a preliminary hearing before an impartial hearing officer, and where necessary, a formal hearing before the board.⁹⁴ The preliminary hearing must occur within 14 days of a parole hold and as near as possible to where the violation allegedly occurred,⁹⁵ and notice must be given to the parolee.⁹⁶ The hearing officer interviews witnesses, makes rulings regarding evidence and objections, and prepares a report of his or her findings to the Board.⁹⁷ At the hearing, the parolee may

present evidence, call witnesses and cross-examine witnesses against him or her.⁹⁸ Within five days thereafter, the hearing officer will make a determination of whether probable cause exists to believe a violation has occurred and make a report to the Board.⁹⁹

Final hearing. In Nebraska, the final hearing is called a "Review of Parole Hearing." It must be held "within a reasonable amount of time" after a parolee is taken into custody; no later than 30 days after the receipt of the results of a preliminary hearing.¹⁰⁰ The purpose of this hearing is to determine whether a violation of parole occurred and to determine whether revocation of parole is appropriate based on the evidence.¹⁰¹

e. Offender's Procedural Rights

A parolee may have an attorney assist in the preliminary and final revocation processes.¹⁰² At the final hearing phase, if the parolee cannot speak effectively for him or herself and the Board feels it is warranted, counsel may be appointed to assist the parolee.¹⁰³ If counsel is denied at this phase, the grounds for refusal must be stated in the record.¹⁰⁴

During both the preliminary and final hearings, the parolee may call witnesses, confront his or her accusers (unless there is risk of harm to adverse witnesses), present evidence and relevant information, and request individuals with relevant information be present for cross examination. The parolee must be furnished with written notice of the alleged violations and the evidence to be presented against him or her.¹⁰⁵

f. Victims and Other Participants

Victims must be notified as described in § 3. Revocation hearings are open to the public, including past victims. There are no provisions that require notification of the court, the prosecution or law enforcement. As with release hearings, revocation hearing information is published on the Board's website, but there is no statutory authority mandating that it be posted.¹⁰⁶

g. Burdens of Proof or Standards of Persuasion for Revocation

The Board decision to revoke must be made after weighing mitigating and aggravating factors as to what best benefits society and the parolee; however, there is no more specific standard of persuasion available.¹⁰⁷

h. Revocation and Other Sanctions

Where the Board determines that a technical violation of parole has occurred, it may revoke parole, issue a warning, cause good time to be forfeited or withheld, or impose additional conditions of release. The Board may also impose a custodial sanction of up to thirty days in a correctional facility, though the cumulative imposition of custodial sanctions during the parole term may not exceed 60 days. If the parolee has committed a separate crime while on parole, the board may order revocation of parole; the new sentence is determined by the court.¹⁰⁸

The time from the date of the parolee's declared delinquency (or absconscion) until the date of arrest for the custody of the board shall not be counted as any portion of the time served.¹⁰⁹

Some violations of parole may be remedied through administrative sanctions imposed by a parole officer. These sanctions may include counseling or a reprimand, increased supervision contacts, increased substance abuse testing, referral for substance abuse or mental health services, a curfew, or travel restrictions.¹¹⁰

i. Issuing Parole Revocation Decisions

Parole revocation decisions are issued verbally to the client at the Review of Parole Hearing and are followed up with a letter detailing the decision and reasons for the decision.¹¹¹

j. Administrative or Judicial Review of Parole Revocation Decisions

While there is no explicit statutory mechanism for appeal of parole revocation decisions, defendants have sought review in courts through petitions in error (for technical defects in the process),¹¹² and through writs of habeas corpus.¹¹³

k. Re-Release Following Revocation

A parolee whose parole has been revoked shall be considered by the Board for reparole at any time in the same manner as any other committed offender eligible for parole, with one exception. No offender whose parole has been revoked as a result of a conviction of a felony committed while on parole shall receive another parole on the original sentence.¹¹⁴

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board has authority over parole release under the Nebraska State Constitution.¹¹⁵ It also has statutory authority to fix the conditions of parole, revoke parole, and discharge individuals from parole.¹¹⁶

b. Location in Government

The Board is an independent agency that is situated within the Board of Pardons for administrative purposes.¹¹⁷

c. Purpose (Vision/Principles/Rationale)

In addition to the Board's mission, available in § 4a of this report, the Board and the Division note as part of a vision statement that they are "committed to serving and protecting the public. The Board will strive to make informed and appropriate parole decisions by giving due consideration to and utilizing the resources of the Division, including innovative case management, for the successful re-entry of clients back into the community to become productive and responsible citizens."¹¹⁸

d. Appointment and Qualifications of Board Members

The Board consists of five full-time members of "good character and judicious temperament" appointed by the Governor and confirmed by the legislature. One of the members is designated as chair by the Governor. By statute, the chair must supervise the administration and operation of the Board as well as carry out specific statutory duties.¹¹⁹

Qualifications. Of the five members, one must be a member of an ethnic minority, one must be female, and one from a professional background in corrections.¹²⁰ While in office, the members are prohibited from engaging in any other form of employment, and cannot be a representative or officer of any political party.¹²¹

e. Tenure of Board Members, Ease of Removal

Board members serve six year terms, and can be re-appointed.¹²² They may only be removed by the Board of Pardons after a hearing, and a finding of “disability, neglect of duty, or malfeasance in office.”¹²³

f. Training and Continuing Education

No training or continued education is required for Nebraska board members.¹²⁴

g. Workload

In Fiscal Year 2015-2016, there were 4,736 parole reviews conducted by the Board resulting in 2,713 deferrals, 593 deferrals to mandatory discharge, and 1,342 set cases. There were a total of 1,461 parole releases. There were also 409 revocation hearings, resulting in 366 revocations.¹²⁵

h. Reporting and Accountability of Parole Board

Legislation enacted in 2015 requires that “[b]y February 1 [each year] the board and the department shall submit a report to the Legislature, the Supreme Court, and the Governor that describes the percentage of offenders sentenced to the custody of the department who complete their entire sentence and are released with no supervision.”¹²⁶ The report is expected to include documentation pertaining to “characteristics of the individuals released without supervision, including the highest felony class of conviction, offense type of conviction, most recent risk assessment, status of the individualized release or reentry plan, and reasons for the release without supervision. The report also shall provide recommendations from the department and board for changes to policy and practice to meet the goal of achieving a reduction in the number of inmates under the custody of the department who serve their entire sentence in a correctional facility and are released without supervision. The report to the Legislature shall be submitted electronically.”¹²⁷

The Board must make a complete record of any hearing proceedings.¹²⁸ Under Nebraska’s Free Flow of Information Act, records of state administrative proceedings should be made available to the public “unless the context otherwise requires.”¹²⁹

END NOTES

- ¹ Neb. Rev. Stat. § 29-2204.
- ² Neb. Rev. Stat. §§ 28-106, 29-2204.02.
- ³ Neb. Dep't Corr. Svcs., *Adult Parole Administration*, <http://www.corrections.nebraska.gov/parole.html> (last visited May 3, 2016).
- ⁴ Neb. Bd. Parole, *State of Nebraska Board of Parole*, <http://www.parole.nebraska.gov/index.html> (last visited May 3, 2016).
- ⁵ Neb. Const. art. IV, § 13.
- ⁶ Neb. Rev. Stat. § 83-171. Until July 1, 2016, the Department of Correctional Services had the sole responsibility to supervise released prisoners.
- ⁷ See Neb. Rev. Stat. § 83-933.
- ⁸ Neb. Rev. Stat. § 83-1,120.
- ⁹ 270 Neb. Admin. Code ch. 4 § 002.
- ¹⁰ Neb. Rev. Stat. § 83-1,110.
- ¹¹ Neb. Rev. Stat. §§ 28-105(2)(b), 83-192(1)(a).
- ¹² Neb. Rev. Stat. § 83-1,110.
- ¹³ Neb. Rev. Stat. § 28-105.
- ¹⁴ *State v. Russell*, 863 N.W. 2d 813, 818 (Neb. 2015).
- ¹⁵ § 28-105.
- ¹⁶ Neb. Rev. Stat. § 83-174.03.
- ¹⁷ Neb. Rev. Stat. § 28-105.
- ¹⁸ *State v. Moore*, 759 N.W.2d 698 (Neb. 2009).
- ¹⁹ *Poindexter v. Houston*, 750 N.W.2d 688 at 693 (Neb. 2008) citing *State v. Marrs*, 723 N.W. 2d 499 ("The Board of Pardons has the unfettered discretion to grant or deny a commutation of a lawfully imposed sentence for any reason or for no reason at all.").
- ²⁰ If the board defers the case for later reconsideration, the committed offender shall be afforded a parole review at least once a year until a release date is fixed. The board may order a reconsideration or a rehearing of the case at any time. Neb. Rev. Stat. § 83-1,111(4).
- ²¹ See, e.g., *Van Ackeren v. Neb. Bd. of Parole*, 558 N.W.2d 48 at 51 (Neb. 1997).
- ²² Neb. Rev. Stat. § 83-1,107.
- ²³ Neb. Rev. Stat. § 83-1,110.
- ²⁴ Neb. Rev. Stat. § 83-1,114.
- ²⁵ *Id.*
- ²⁶ See, e.g., Council of State Gov'ts, *Nebraska*, <https://csgjustice-center.org/jr/ne/> (last visited Oct. 21, 2016).
- ²⁷ Neb. Rev. Stat. §§ 83-1,114, 83-192(e).
- ²⁸ Correspondence with Trudy A. Clark, Admin. Assistant, Neb. Bd. of Parole (Sept. 20, 2016).
- ²⁹ Neb. Dep't Corr. Svcs., *Re-Entry Program*, <http://www.corrections.nebraska.gov/reentry.html> (last visited May 4, 2016).
- ³⁰ Correspondence with Trudy A. Clark, *supra* note 28.
- ³¹ Neb. Rev. Stat. § 83-1,110.02.
- ³² Neb. Rev. Stat. § 83-1,110.03.
- ³³ Neb. Const. Art. IV, § 13; Neb. Rev. Stat. §§ 83-1,127 *et seq.*
- ³⁴ Neb. Rev. Stat. § 83-962. The statute has very recently been revised so that beginning July 1, 2020, a correctional system overcrowding will automatically exist (without a declaration from the Governor) when the director of the Department of Corrections certifies that the Department's inmate population is over 140% of design capacity.
- ³⁵ There are no specific statutory qualifications for people designated by the Board to conduct hearings.
- ³⁶ Neb. Rev. Stat. § 83-1,111.
- ³⁷ *Id.*
- ³⁸ Neb. Bd. of Parole, *Frequently Asked Questions*, <http://www.parole.nebraska.gov/faq.html> (last visited May 5, 2016).
- ³⁹ Neb. Rev. Stat. § 83-1,115.
- ⁴⁰ Neb. Rev. Stat. §§ 83-1,111, 83-1,112; Correspondence with Trudy A. Clark, *supra* note 28.
- ⁴¹ Correspondence with Trudy A. Clark, *supra* note 28.
- ⁴² 270 Neb. Admin. Code Ch. 5, §§ 001, 004.
- ⁴³ See Neb. Dep't of Corr. Svcs., *Monthly Public Hearing Schedule*, <http://www.parole.nebraska.gov/schedule.html> (last visited May 5, 2016).
- ⁴⁴ Neb. Rev. Stat. § 83-1,114.
- ⁴⁵ Neb. Rev. Stat. § 83-1,111.
- ⁴⁶ See, e.g., *Van Ackeren v. Neb. Bd. of Parole*, 558 N.W.2d 48 at 51 (Neb. 1997).
- ⁴⁷ Neb. Rev. Stat. § 83-1,111.
- ⁴⁸ Neb. Rev. Stat. § 25-2156 *et seq.*; See, e.g., *Pratt v. Neb. Bd. of Parole*, 567 N.W.2d 183 (Neb. 1997).
- ⁴⁹ Neb. Rev. Stat. § 25-2801; See, e.g., *Caton v. State*, 869 N.W.2d 911 (Neb. 2015); *Poindexter v. Houston*, 750 N.W. 2d 688 (Neb. 2008).
- ⁵⁰ *Moore v. Nebraska Bd. of Parole*, 697 N.W. 2d 427, 434 (Neb. Ct. App. 2004).
- ⁵¹ Correspondence with Trudy A. Clark, *supra* note 28.
- ⁵² Danielle Kaebler & Thomas P. Bonzcar, Bureau of Justice Statistics, *Probation and Parole in the United States, 2015* at 20 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁵³ Neb. Bd. of Parole, *FAQ: What is the Purpose of Parole?*, <http://www.parole.nebraska.gov/faq.html> (last visited June 1, 2016).
- ⁵⁴ Neb. Dep't of Corr. Services, *Adult Parole Administration*, <http://www.corrections.nebraska.gov/parole.html> (last visited June 1, 2016).
- ⁵⁵ Correspondence with Trudy A. Clark, *supra* note 28.
- ⁵⁶ Neb. Rev. Stat. § 83-1,118.
- ⁵⁷ *Id.*
- ⁵⁸ Neb. Rev. Stat. § 83-1,103.02.
- ⁵⁹ Neb. Rev. Stat. § 83-1,103.03.
- ⁶⁰ See Neb. Bd. of Parole, *Parole Admin./Supervision & Svcs., About*, <https://parole.nebraska.gov/paroleadmin/about> (last visited Oct. 21, 2016).
- ⁶¹ Neb. Rev. Stat. § 83-1,118.
- ⁶² Neb. Rev. Stat. § 83-1,108.
- ⁶³ 270 Neb. Admin. Code ch. 8, § 002.
- ⁶⁴ *Id.*; Neb. Rev. Stat. § 83-1,116.
- ⁶⁵ Neb. Rev. Stat. § 83-1,117.
- ⁶⁶ 270 Neb. Admin. Code ch. 8, § 002.
- ⁶⁷ Neb. Rev. Stat. § 83-1,107.
- ⁶⁸ Correspondence with Trudy A. Clark, *supra* note 28.
- ⁶⁹ Neb. Rev. Stat. Ann. § 83-1,116.
- ⁷⁰ *State v. Davis*, 577 N.W.2d 763, 770 (Neb. Ct. App. 1998) citing *State v. Morgan*, 295 N.W.2d 285 (Neb. 1980).
- ⁷¹ Neb. Rev. Stat. § 83-174.03.
- ⁷² Neb. Rev. Stat. § 83-1,119.
- ⁷³ Neb. Rev. Stat. § 83-1,122.
- ⁷⁴ See, e.g., Neb. Rev. Stat. §§ 83-1,116 – 117.
- ⁷⁵ Neb. Rev. Stat. § 83-1,100.02.
- ⁷⁶ Neb. Rev. Stat. § 83-1,107.01.
- ⁷⁷ Neb. Dep't of Corr. Serv., Admin. Reg. 410.21 (2014), <http://www.corrections.nebraska.gov/pdf/ar/parole/AR%20410.21.pdf>.
- ⁷⁸ Neb. Rev. Stat. § 29-2284.
- ⁷⁹ 270 Neb. Admin. Code ch. 8, 002.
- ⁸⁰ *Id.*
- ⁸¹ Kaebler & Bonzcar, *supra* note 53 at 24 (Appendix Table 6).
- ⁸² Correspondence with Trudy A. Clark, *supra* note 28.
- ⁸³ Neb. Rev. Stat. § 83-1,122; Neb. Dep't of Corr. Svcs., *Parole Violation Matrix Responses* (2014), http://www.interstatecompact.org/Portals/0/library/statefiles/NE/NE_Par_Violation_Matrix.pdf.
- ⁸⁴ 270 Neb. Admin. Code Ch. 11, § 011.
- ⁸⁵ 270 Neb. Admin. Code Ch. 11, § 006.
- ⁸⁶ Neb. Bd. of Parole, *Parole Violation Matrix Responses* (2014), http://www.interstatecompact.org/Portals/0/library/statefiles/NE/NE_Par_Violation_Matrix.pdf.

END NOTES

- ⁸⁷ William D. Burrell, *Nebraska Parole Transition Implementation Plan* (Jun. 1, 2016), http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Parole_Board/585_20160603-101354.pdf.
- ⁸⁸ Neb. Rev. Stat. § 83-1,103.01.
- ⁸⁹ *Id.*
- ⁹⁰ Neb. Rev. Stat. § 83-1,119.
- ⁹¹ Neb. Rev. Stat. § 83-1,102.
- ⁹² 270 Neb. Admin. Code Ch. 9, § 001.
- ⁹³ 270 Neb. Admin. Code Ch. 10, § 005.
- ⁹⁴ 270 Neb. Admin. Code Ch. 10, § 001.
- ⁹⁵ 270 Neb. Admin. Code Ch. 10, § 002.
- ⁹⁶ 270 Neb. Admin. Code Ch. 10, § 006.
- ⁹⁷ 270 Neb. Admin. Code Ch. 10, § 003.
- ⁹⁸ 270 Neb. Admin. Code Ch. 10, § 008.
- ⁹⁹ 270 Neb. Admin. Code Ch. 10, § 009.
- ¹⁰⁰ 270 Neb. Admin. Code Ch. 11, § 005. One exception to this is when a parolee is in the custody of another jurisdiction; then the final hearing will occur when the parolee is returned to the Department. Correspondence with Trudy A. Clark, *supra* note 28.
- ¹⁰¹ 270 Neb. Admin. Code Ch. 11, § 011.
- ¹⁰² 270 Neb. Admin. Code Ch. 10, § 007.
- ¹⁰³ 270 Neb. Admin. Code Ch. 11, § 003.
- ¹⁰⁴ Neb. Rev. Stat. § 83-1,120.
- ¹⁰⁵ 270 Neb. Admin. Code Ch. 11, § 010 270; 270 Neb. Admin. Code Ch. 10, § 008.
- ¹⁰⁶ Neb. Bd. of Parole, *Parole Hearings Schedule*, <http://www.p parole.nebraska.gov/schedule.html> (last visited Jun. 1, 2016).
- ¹⁰⁷ 270 Neb. Admin. Code Ch. 11, § 006.
- ¹⁰⁸ Neb. Rev. Stat. § 83-1,122.
- ¹⁰⁹ Neb. Rev. Stat. § 83-1,123.
- ¹¹⁰ Neb. Rev. Stat. § 83-1,119.
- ¹¹¹ Correspondence with Trudy A. Clark, *supra* note 28.
- ¹¹² See, e.g., *Clark v. Cornwell*, 388 N.W.2d 848 (Neb. 1986).
- ¹¹³ See, e.g., *Piercy v. Parratt*, 273 N.W.2d 689 (Neb. 1979); *Hrbek v. Shortridge*, 394 N.W.2d 285 (Neb. 1986).
- ¹¹⁴ 270 Neb. Admin. Code Ch. 11, § 014.
- ¹¹⁵ Neb. Const. art. IV, § 13.
- ¹¹⁶ Neb. Rev. Stat. § 83-192.
- ¹¹⁷ Neb. Rev. Stat. § 83-188.
- ¹¹⁸ Correspondence with Trudy A. Clark, *supra* note 28.
- ¹¹⁹ Neb. Rev. Stat. § 83-189.
- ¹²⁰ *Id.*
- ¹²¹ Neb. Rev. Stat. § 83-191.
- ¹²² Neb. Rev. Stat. § 83-190.
- ¹²³ Neb. Rev. Stat. § 83-191.
- ¹²⁴ Correspondence with Trudy A. Clark, *supra* note 28.
- ¹²⁵ Neb. Bd. of Parole, *Statistics*, see §7a of this report.
- ¹²⁶ Neb. Rev. Stat. § 83-1100.03.
- ¹²⁷ *Id.*
- ¹²⁸ Neb. Rev. Stat. § 83-1,111.
- ¹²⁹ Neb. Rev. Stat. § 20-145.