

UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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PROFILES IN PAROLE RELEASE AND REVOCATION:

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Alabama

By

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In contrast to many of the parole profiles already posted, in-state experts did not review this document. We encourage readers to use this profile as an informative guide, but to exercise caution in relying solely on the description of the parole process in Alabama without checking additional sources. We also welcome corrections to the profile.

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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

2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System	4
b. Good Time, Earned Time, and Other Discounts.....	4
c. Principles and Criteria for Parole Release Decisions.....	5
d. Parole Release Guidelines.....	5
e. Risk and Needs Assessment Tools	5
f. Medical or Compassionate Release.....	5
g. Executive Clemency Power	6
h. Emergency Release for Prison Crowding	6

3. Parole Release Hearing Process

a. Format of Release Hearings.....	6
b. Information Before the Board: Factors the Board May Consider	6
c. Prisoners' Procedural Rights.....	6
d. Victims and Other Participants	6
e. Burden of Proof or Standards of Persuasion.....	6
f. Possible Outcomes at Parole Release Hearings; Form of Decisions	7
g. Administrative or Judicial Review of Parole Denial.....	7
h. Rescission of Parole Release Dates.....	7

4. Supervision Practices

a. Purposes of Supervision.....	7
b. Are All or Only Some Releasees Placed on Supervision?	7
c. Length of Supervision Term.....	8
d. Conditions of Supervision.....	8
e. Fees and Other Financial Sanctions	8

CONTENTS

5. Parole Revocation

a. Principles and Criteria of “When to Revoke”	9
b. Revocation Guidelines.....	9
c. Risk and Needs Assessment Tools	9
d. Preliminary and Final Revocation Procedures.....	10
e. Offenders’ Procedural Rights	10
f. Victims and Other Participants.....	10
g. Burden of Proof or Standards of Persuasion.....	10
h. Revocation and Other Sanctions	10
i. Issuing Parole Revocation Decisions.....	11
j. Administrative or Judicial Review of Parole Revocation Decisions.....	11
k. Re-Release Following Revocation	11

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction.....	11
b. Location in Government	11
c. Purpose (Vision/Principles/Rationale)	11
d. Appointment and Qualifications of Board Members.....	11
e. Tenure of Board Members, Ease of Removal.....	12
f. Training and Continuing Education	12
g. Workload	12
h. Reporting and Accountability of Parole Board	12

End Notes.....	13
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1. Background; Sentencing System

a. Sentencing Framework

Alabama established a sentencing commission in 2000, and has utilized advisory sentencing standards in felony cases since 2006.¹ In 2013, the Alabama Sentencing Standards grew to include presumptive standards for non-violent offenses.² Alabama has a “truth in sentencing” statute that does not take effect until 2020 and will require the court to pronounce a minimum term and an extended term (120% of the minimum term) and mandates post-release supervision.³ Currently, however, offenders are sentenced to a definite term of imprisonment and may be released on parole, if eligible.

Alabama has had some form of parole release since 1897, when the Governor was allowed to discharge an inmate from prison and suspend the remainder of the sentence. In 1939, the power to pardon and parole was placed in the hands of the legislature through a constitutional amendment, and the Board of Pardons and Paroles was formed.⁴

In 2015, Alabama responded to a prison population crisis by passing a prison reform act that requires actions such as the establishment of parole guidelines, the use of risk and needs assessment in parole and supervision, and the development of intermediate sanctions for parole violations. It also creates a mandatory release system for those who would otherwise end their sentences unsupervised.⁵

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

The Alabama Board of Pardons and Paroles may grant parole in jail or prison offenses.⁶ In addition, Alabama has municipal parole boards that may grant parole on municipal offenses.⁷

<http://www.pardons.state.al.us/Home.aspx>

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

The Alabama Board of Pardons and Paroles or a municipal parole board may be responsible for the supervision of released prisoners.⁸ At the county level, parolee supervision is conducted by the Division of Probation and Parole, which is part of the Board.⁹

d. Which Agency Has Authority Over Parole Revocation?

The Alabama Board of Pardons and Paroles or a municipal parole board.¹⁰

2. Parole Release and Other Prison-Release Mechanisms

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

General rules of release eligibility. The Board has the power to release anyone who is serving a sentence in a jail or prison and is otherwise eligible for parole.¹¹ It appears that most inmates are eligible for parole release after they have served 1/3 of their sentence or 10 years, whichever is less.¹² Certain Class B or C felons serving split sentences are not eligible for parole during the incarceration portion of the sentence.¹³

Felonies and misdemeanors are divided into several different classes; judges must sentence offenders to a term of years within the statutory range. The minimum sentence for Class A, B, and C felonies is higher for offenses involving use of a deadly weapon or a sex offense with a child.¹⁴

Class of Crime	Minimum sentence	Maximum sentence	Maximum fine
Class A Felony	10 years	99 years or life	\$60,000
Class B Felony	2 years	20 years	\$30,000
Class C Felony	1 year and 1 day	10 years	\$15,000
Class D Felony	1 year and 1 day	5 years	\$7,500
Class A Misdemeanor	-	1 year	\$6,000
Class B Misdemeanor	-	6 months	\$3,000
Class C Misdemeanor	-	3 months	\$500

Mandatory supervision. If the Board does not release an offender on parole, and the offender has not committed a sex offense involving a child, they must be released to supervision prior to their release date as follows:¹⁵

Length of Imposed Sentence	Earliest release date prior to expiration of sentence	Latest release date prior to expiration of sentence
5 years or less	5 months	3 months
5+ years to less than 10 years	9 months	6 months
10+ years	24 months	12 months

Violent and sex offenders. Any person convicted of an attempted or completed offense of murder, rape, robbery, or assault with a deadly weapon, the commission of which directly and proximately resulted in serious physical injury to another, and the commission of which follows conviction for another felony crime that resulted in physical injury of another within the past five years, is not eligible for parole.¹⁶ Individuals convicted of sex offenses involving children are not eligible for parole.¹⁷

Life sentences. The Board may not grant parole to offenders who have had their sentence to death commuted by the governor unless there is sufficient evidence of innocence.¹⁸ Offenders serving life sentences for second convictions on Class A felonies are not eligible for parole.¹⁹

Recurring eligibility after denial of release. If the Board denies parole, it must reconsider the case no more than two years later for cases involving a non-violent offense with sentences of 20 years or less and no more than 5 years later for all other cases.²⁰

b. Good Time, Earned Time, and Other Discounts

Offenders earn correctional incentive time based on their security classification. In the Alabama system, Class I prisoners are the most trustworthy, and Class IV prisoners are those not yet classified, or those who have disciplinary problems or refuse to work. It is also important to note that inmates must work their way up to Class III, Class II, and Class I statuses over specified periods of time.²¹

Class of Prisoner	Rate of Incentive Time Accrual
Class I	75 days for each 30 days served
Class II	40 days for each 30 days served
Class III	20 days for each 30 days served
Class IV	No good time available

Offenders sentenced to death or life in prison, Class A felons, and those serving sentences of over 15 years are not eligible for incentive time. Offenders convicted of certain sex offenses involving children are also ineligible. Offenders who have committed assaults which resulted in the loss of (or loss of use of) a victim's bodily organ or appendage may not be allowed a Class I status. In addition, offenders who have been convicted of sexual abuse of a minor may not be allowed a Class I status.²²

The Department of Corrections may forfeit correctional incentive time if a prisoner commits an offense or violates correctional rules. However, the Commissioner of the Department has the power to restore good time on a recommendation by the warden.²³ Deductions from the sentence affect the amount of time served on parole (in other words, the length of the total sentence) rather than parole eligibility.²⁴

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. “No prisoner shall be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the Board of Pardons and Paroles is of the opinion that the prisoner meets criteria and guidelines established by the board to determine a prisoner’s fitness for parole.”²⁵

Statutory factors the board must consider. The Board is required by statute to design guidelines which consider:

- (1) The prisoner’s risk to reoffend, based upon a validated risk and needs assessment;
- (2) Progress by the prisoner and the Department of Corrections to plan for reentry;
- (3) Input from the victim or victims, the family of the victim or victims, prosecutors, and law enforcement entities;
- (4) Participation in risk-reduction programs while incarcerated;
- (5) Institutional behavior of the prisoner while incarcerated; and
- (6) Severity of the underlying offense for which the prisoner was sentenced to incarceration.²⁶

d. Parole Release Guidelines

Parole release guidelines used for most offenders (other than sex offenders). Per statute, the Board is required to adopt parole release guidelines.²⁷ The current system of guidelines were fully implemented in August 2016 (Phase I). They provide an offender score based on the severity of the offense of conviction, risk assessment results (under the Ohio Risk Assessment System, discussed below) and institutional behavior. The Board also considers whether special conditions such as moral reconditioning therapy (cognitive-behavioral therapy for offenders) or substance abuse treatment will need to be imposed, in-

put from stakeholders, and information about the reentry process.²⁸ Under Phase II, the guidelines will be further developed to incorporate the results of offenders’ participation in appropriate correctional programming.

Parole release guidelines for sex offenders. It does not appear that there are separate guidelines for sex offenders.

e. Risk and Needs Assessment Tools

Statutory Mandate. The Board must utilize a validated risk and needs assessment to determine the likelihood of an offender to engage in future criminal activity upon release.²⁹

Risk instruments utilized. It appears that the Board utilizes the Ohio Risk Assessment System (ORAS).³⁰

Transparency. Though the adoption of parole release guidelines has introduced some measure of transparency to the Board’s decision-making, it is not clear if the use of ORAS has been validated on an in-state prison population.

Sex offenders. Though the Static 99, an actuarial tool for assessing sex offender risk, is deployed by Probation and Parole Services, it is not clear if the Board makes use of this tool or if it is scored during the inmate’s confinement prior to release consideration. As noted below, such assessments are conducted at the start of post-release supervision.

f. Medical or Compassionate Release

An inmate, or any concerned person, including, but not limited to, the inmate’s attorney, family, physician, or an employee or official of the department may initiate consideration for medical furlough by submitting an initial medical release application form to the Department of Corrections, along with supporting documentation.³¹ The Commissioner of Corrections must consider an inmate for medical furlough based on many factors enumerated by statute.³² The Commissioner must also provide victim notification. A furlough is normally granted for the remainder of an inmate’s sentence, but may be revoked if the inmate no longer meets release criteria or violates the conditions of release.³³

g. Executive Clemency Power

The Governor has the constitutional authority to grant reprieves and commutations to offenders sentenced to death. However, the legislature is granted the constitutional power to provide for and regulate other types of pardons or remissions.³⁴ The legislature has vested the power to grant pardons and other forms of clemency in the Board of Pardons and Paroles.³⁵

h. Emergency Release for Prison Crowding

It does not appear that emergency release due to prison overcrowding exists in Alabama.

3. Parole Release Hearing Process

a. Format of Release Hearings

No later than twelve months prior to parole eligibility, an administrative hearing officer must investigate and review an inmate's preparedness for release to parole supervision by the board. An administrative hearing officer must also interview the inmate no later than 30 days prior to his or her parole eligibility date. This interview offers an opportunity for inmates to present their case for parole consideration to the Board.³⁶

Parole hearings are open to the public and may include both individuals who support release and those who do not, however the parolee is not present at the hearing phase.³⁷ Any individuals who testify must do so under oath.³⁸ A majority vote of the Board (i.e., the vote of two Board members) is required for parole release. However, for violent offenses, the Board cannot grant parole without a unanimous vote until the offender has served at least 10 years or 1/3 of his or her sentence, whichever is less.³⁹

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

The Board must obtain and file as much information as possible about each eligible prisoner. This information must include a complete statement of the sentenced crime, the circumstances of the crime, the nature of the sentence, the court in which the prisoner was sentenced, and the name of the judge and district attorney. It must also include copies of probation reports, as well as reports

pertaining to the prisoner's social, physical, mental and psychiatric condition and history. In addition, the Board must obtain a complete criminal record of the prisoner.⁴⁰

After this information is gathered, the Board may determine that more information is still needed and begin an investigation. If further investigation is required, it must be done while the case is still recent. The results of this information gathering must be filed in the office of the Board so as to be readily available when the parole of each prisoner is being considered. Without a complete investigation, the Parole Board cannot give a decision.⁴¹

c. Prisoners' Procedural Rights

Inmates do not participate directly in the parole hearing. However, under Board policy, an inmate must receive an interview from an institutional parole officer (IPO) prior to the hearing. This interview must afford the inmate an opportunity to make a statement regarding their current situation and proposed plans for life after prison. The IPO must provide a form to inmates so that they can submit information about their reentry plan, including their home and job plan.⁴² While the inmate cannot speak at the hearing, the Board may give those supporting release an opportunity to speak at the Board's discretion if they can offer information that might be helpful in reaching a decision.⁴³

It appears that inmates do not have a right to counsel during this process and that the Board is not required to provide them the information utilized in making the parole decision, including the results of the risk assessment.

d. Victims and Other Participants

Victims and their family members have a protected legal right to participate in release hearings, as well as provide input through written statements. The Board must also notify the incumbent Attorney General, the judge and the prosecutor from the case, and law enforcement entities in the location where the crime occurred allowing them an opportunity to provide input. Parole hearings are open to the public.⁴⁴

e. Burden of Proof or Standards of Persuasion

There is no specific standard of persuasion in parole release.

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

The Board may grant or deny parole release at the time of the hearing. If the Board denies parole without specifying when a case may be docketed in the future, it will be rescheduled within two years.⁴⁵ The Board must clearly articulate its reasons for approval or denial of each prisoner, based on its established guidelines, and must provide those reasons to the prisoner, the victim, the Department of Corrections, or any other interested party upon written request submitted to the Board.⁴⁶

g. Administrative or Judicial Review of Parole Denial

Inmates may appeal the denial of parole release through a writ of certiorari if the denial was based on false or insufficient information or was made capriciously.⁴⁷

h. Rescission of Parole Release Dates

If additional facts come to the attention of the Executive Director or his/her designee or any member of the Board, subsequent to execution of the certificate but prior to its taking effect, that could result in the grant being rescinded, such official may order, in writing, that the effective date of such certificate or the delivery of such certificate be stayed pending further review by each individual member of the Board who voted in the affirmative. A record of such information shall be entered into the file. If, after each individual member of the Board who voted in the affirmative has reviewed such information as provided above, the record still contains the requisite number of votes favoring the order, the stay shall be vacated, and the certificate shall be delivered and become effective. If an order to parole is withdrawn pursuant to this article, the case should normally be rescheduled for further consideration approximately twelve (12) months after the order is withdrawn, unless the Board orders otherwise.⁴⁸

4. Supervision Practices

Parole supervision rate. On Dec. 31, 2016, there were 227 parolees per 100,000 adult residents. This is lower than the national statewide average of 303 parolees per 100,000 adult residents.⁴⁹

a. Purposes of Supervision

The purposes of parole supervision are captured by the following passage in the Board's most recent annual report summarizing the basic duties of a Probation and Parole Officer. They include: "monitoring compliance with supervision conditions of parolees/probationers on assigned caseloads; imposing available sanctions in response to violations; seeing offenders during reporting periods; conducting home visits, employment verifications, and making other collateral contacts; drug screening offenders; collecting DNA samples as statutorily required; collecting and monitoring supervision fees as statutorily required; monitoring payment of court ordered fees/restitution; making referrals to treatment/programs; completing violation reports/delinquency reports; using arrest authority when necessary; preparing for revocation proceedings for parolees/probationers; among other things."⁵⁰

The Annual Report states that there is also an economic incentive for parole supervision. "Community supervision under the statewide purview of the Board of Pardons and Paroles—including court ordered probation, parole, LIFE Tech, and other programs—when viewed as alternatives to incarceration—remains the most viable, economically responsible way for the state to manage its scarce resources. Parole not only frees up beds in overcrowded state prisons at a significantly lower cost per day, but also encourages payment of court-ordered restitution and court costs, taxes by employed offenders, and reduction in welfare, food stamp, and Medicaid costs. Furthermore, parole makes Medicaid and other benefits an option after reapplication for offenders under supervision when such are terminated upon incarceration."⁵¹

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

Parolees begin their term of parole under supervision. However, by statute, the Board is authorized to develop a program of limited supervision that may include transfer of lower risk individuals to an administrative form of parole.⁵² The Board may relieve a prisoner on parole from making further reports.⁵³ It is not clear, however, whether this particular statutory provision has been implemented.

c. Length of Supervision Term

Maximum supervision terms. The Board must discharge parolees from parole when they reach the full maximum term for which they were sentenced.⁵⁴

Early termination. The Board may grant an early discharge from supervision to parolees not convicted of violent crimes, as defined by Alabama Code 12-25-32, thereby relieving the individual from further reporting “if the financial obligations owed to the court, including restitution, have been satisfied and the parolee has not been revoked during the instant supervision term. Non-violent parolees who meet these criteria are to be reviewed by the Board every two years. During FY 2017, the Board granted twenty-four early discharges from parole.”⁵⁵

Extension of supervision term. It does not appear that there is a legal mechanism for extension of the supervision term.

Incentives; “goal parole”: Other than the criteria mentioned above, it does not appear that there are any goal-related incentives pertaining to early discharge from parole supervision.

d. Conditions of Supervision

By statute, the conditions of supervision include requirements specifying that:

- (1) The parolee shall not leave the state without the consent of the board;
- (2) He or she shall contribute to the support of his or her dependents to the best of his or her ability;
- (3) He or she shall make reparation or restitution for his or her crime;
- (4) He or she shall abandon evil associates and ways;
- (5) He or she shall carry out the instructions of his or her parole officer and in general so comport himself or herself as such officer shall determine; and
- (6) He or she shall submit to behavioral treatment, substance abuse treatment, GPS monitoring, other treatment as deemed necessary by the board or the supervising parole officer, and/or a period or periods of confinement in a consenting jail facility. Periods of confinement imposed by the supervising parole officer shall not exceed six days per month during any three separate months during the period of parole. The six days per month confinement provided for in this subdivision shall only be imposed by the supervis-

ing parole officer as two-day or three-day consecutive periods at any single time. In no event shall the total periods of confinement imposed by the supervising parole officer provided for in this subdivision exceed 18 total days in a consenting jail facility. Confinement provided herein shall be subject to the limitations, provisions, and conditions provided [by statute], and the board’s authority to directly impose sanctions, periods of confinement, or revoke parole shall not otherwise be limited.⁵⁶

According to case law, the Board may impose additional conditions “as it deems proper, or as may reasonably be expected to relate to the valid ends of the parole system.” In addition, “[r]ehabilitation is certainly a valid end of the parole system.”⁵⁷

Sex offenders. The Board may and sometimes must require sex offenders to be subject to electronic monitoring as a condition of parole.⁵⁸ Sex offenders may also be restricted from certain housing arrangements, employment, or other activities as a condition of parole.⁵⁹ The Static 99, a risk assessment tool, is deployed by field services to assist in classifying and managing sex offenders in the community.

Modification of conditions. It is not clear whether the Board can modify parole conditions, nor if parole officers can do so.

Incentives; lighter conditions. It is not clear whether the Board or Probation and Parole, has created and adopted incentives for positive behavior on parole, though they are authorized by statute.

e. Fees and Other Financial Sanctions

Parole supervision fees. Any person subject to supervision by the Board who has an income must contribute \$40 per month towards the cost of their supervision or rehabilitation. A parolee may arrange with their employer to have this amount deducted from their pay. The Board may grant exemptions to the supervision fee for undue hardship on a case-by-case basis. Two months’ delinquency in payment constitutes grounds for revocation.⁶⁰

Payments for drug and alcohol testing and treatment. If parolees are convicted of an alcohol or drug related offense, they are required to participate in a drug or alcohol testing program at their own expense unless they are indigent. Failure to pay for treatment is a violation of parole.⁶¹

Restitution. When ordering restitution, judges must consider the financial resources of the defendant and victim and the ability of the defendant to pay in installments. Judges must also consider the anticipated rehabilitative effect of paying restitution.⁶² Payment of restitution is a condition of parole, and parole officers have a duty to supervise the payments.⁶³ Failure to pay restitution is grounds for revocation.⁶⁴

Child support. Parolees must contribute to the support of their dependents to the best of their ability as a condition of parole.⁶⁵

Other financial obligations. If a parolee resides in a community residential facility when released, the Board may charge a parolee a monthly fee for room and board not to exceed 25% of the parolee's adjusted gross monthly income. The Board may waive this charge due to financial hardship upon written recommendation by the director of the facility.⁶⁶

Incentives; reduction of economic sanctions. It is unclear if there are any incentives that permit economic sanctions to be reduced for compliance with the conditions of supervision.

5. Parole Revocation

Parole revocation proceedings. In 2016, 415 parolees returned to incarceration because of a new sentence, and 58 returned due to revocation.⁶⁷

Absconders. There is no data available on parole absconders in this state.⁶⁸

a. Principles and Criteria of "When to Revoke"

Policy considerations. In 2014 and 2015, Alabama participated in the Justice Reinvestment Initiative in partnership with the Council of State Government's Justice Center (CSG). As the Council states, "[i]n 2014, Alabama had the most crowded prison system in the nation. Roughly two-thirds of the nearly 80,000 persons convicted of felonies and under correctional control in Alabama were supervised in the state's overwhelmed probation and parole systems, where caseloads averaged close to 200 cases per officer."⁶⁹ In 2015, the state passed the Justice Reinvestment Act, which reformed aspects of parole supervision and revocation.⁷⁰

According to the Board, "[t]he Act required development of a "supervision response Matrix" to identify appropriate sanctions or responses to violations, factoring in the risk level of the probation/parole violator. The Matrix guides an officer in determining whether a "dip or dunk" may be appropriate for a particular violation, as well as a lesser response. The Matrix also provides incentives to encourage offender compliance with supervision terms. With technical assistance provided by CSG, the agency created a supervision response Matrix for use in field offices across the state. The tool was completed in January 2016 and incorporated in the new officer manual released in February 2016." As a result, "[a] 25% decrease in parole revocations for technical violations was observed during FY 2016."⁷¹

Legal predicates. Any violation of a condition of parole may result in its revocation.⁷² However, "[a] determination of whether a parole board can revoke a parole requires a balancing of the public interest against the interest of the prisoner in receiving the benefits of the parole granted to him."⁷³ The balancing of these interests "must not be guided by public clamor or media interest."⁷⁴

Statutorily enumerated factors. The parole court may not recommend revocation and the Board shall not revoke the parole of a non-violent offender for a technical violation, unless the offender has already been subject to three shorter, 45-day periods of incarceration (called "dunks") for previous technical violations.⁷⁵

b. Revocation Guidelines

It appears that parole officers and the Board must follow the newly adopted Supervision Response Matrix. A technical violation may be addressed at the field supervision level, if appropriate, or may result in a referral to the Board.⁷⁶

c. Risk and Needs Assessment Tools

The risk level of the parolee is part of the Supervision Response Matrix. The Board utilizes the ORAS risk assessment to determine risk and needs of individuals on supervision.⁷⁷

d. Preliminary and Final Revocation Procedures

Arrest or summons. A parolee may be arrested if any Board member, or assigned parole officer, has reasonable cause to believe that a parolee “has lapsed, or is about to lapse, into criminal ways or company or has violated the conditions of his parole in an important respect.”⁷⁸ A parole officer may also issue an “authorization to arrest” writ (i.e., a warrant) and cause the parolee to be held in the local county jail if there is reason to believe the public would be endangered or that the parolee would abscond if left at liberty.⁷⁹

Preliminary hearing. A Board member, parole revocation hearing officer, or designated parole officer must preside over a parole court hearing within 20 business days of an arrest for a parole violation.⁸⁰ For the purposes of determining whether probable cause exists, the hearing officer may consider any relevant information, including hearsay.⁸¹ At this hearing, the officer “may determine whether probable cause exists to detain the parolee, and continue the hearing until a later date for determination of guilt.” If the hearing officer does not find reasonable cause to detain the parolee pending a further hearing, they must notify the Board and release the parolee until the next hearing.⁸²

However, the Board prefers to have a single fact-finding hearing that encompasses finding probable cause, making a determination of guilt, and then reaching a disposition in the case.⁸³

Final hearing. As noted above, the preliminary hearing (finding reasonable cause for detention) and the final hearing are normally conducted as one proceeding. In both parts of the hearing process, the investigating/charging parole officer must present the case against an alleged parole violator. The parole officer may also testify if they are a competent witness to the violation. For a determination of guilt, the hearing officer may consider evidence admissible under the Alabama or Federal Rules of Evidence; they may also consider any other evidence that is reliable and probative, but may not determine guilt based solely on hearsay.⁸⁴ The hearing officer may also accept a knowing, intelligent guilty plea to parole violation charges.⁸⁵

Finally, the Hearing Officer may also determine that a parolee is guilty of violating a law but that the offense was less than, or other than that named in the delinquency report, if the report provided fair notice to the parolee of the wrongful conduct at issue.⁸⁶

e. Offenders’ Procedural Rights

The Department of Corrections must release a parole violator from custody if the Board does not hear the violation case within 20 days. The charging parole officer must give the parolee a copy of the report containing the charges either prior to or contemporaneously with a notice of the date, time, and place of parole court.⁸⁷

The Board must allow offenders an opportunity to appear in person or via counsel at a parole hearing. The hearing officer must allow the parolee to present witnesses at the hearing, and to explain the charges made against him or her.⁸⁸ The hearing officer is expected to allow the parolee great leeway in presenting mitigating information. Any objections to the evidence presented by a parolee must go to the weight of the evidence and not to its admissibility. The hearing officer may also allow the parolee to cross-examine opposing witnesses at their discretion, but may disallow any question that is not pertinent or seems abusive or harassing.⁸⁹

f. Victims and Other Participants

It does not appear that any statute gives victims, judicial officers, or prosecutors input in revocation proceedings.

g. Burden of Proof or Standards of Persuasion

Upon finding sufficient evidence to support a parole violation, the parole court may recommend to the board revocation or reinstatement of parole, and the board may revoke or reinstate parole.⁹⁰

h. Revocation and Other Sanctions

After considering the parole court report, “the Board shall decide whether to continue parole, reinstate parole, impose an up to 45 day period of confinement (“dunk”), or revoke parole.” The Board can only consider revocation for charges proven to the reasonable satisfaction of the Parole Court. The Board may also remand any charge for further hearing.⁹¹

Importantly, “[n]othing in these rules [limits] the Board’s authority to impose a lesser 2-3 day jail-based sanction”⁹² Alternatively, “when a parolee violates his or her parole terms and conditions, his or her parole officer may require the parolee to submit to behavioral treatment, substance abuse treatment, GPS monitoring, such other treatment as determined by the board or supervising officer, or a period of confinement in a consenting jail facility”⁹³ There is also the possibility that “[t]he Hearing Officer . . . [could] determine that a parolee is guilty of violating a law, but that the offense was less than that named in the delinquency report.”⁹⁴

i. Issuing Parole Revocation Decisions

Any order either committing a parolee to a 45-day term (“dunking”) or fully revoking parole must state the reasons for revocation and shall refer to the evidence relied on in determining that revocation is appropriate.⁹⁵ The Revocation Unit must notify the Department of Corrections of the decision within 5 business days.⁹⁶

j. Administrative or Judicial Review of Parole Revocation Decisions

A petition for a writ of certiorari filed in the circuit court is the proper method to challenge a ruling of the Alabama Board of Pardons and Paroles.⁹⁷ “Judicial review of administrative acts and decisions is limited in scope; ordinarily the courts will pass only on the questions of whether the administrative agency has acted within its constitutional or statutory powers, whether its order or determination is supported by substantial evidence, and whether its action is reasonable and not arbitrary.”⁹⁸

k. Re-Release Following Revocation

Following revocation for a new offense the Board will schedule the inmate’s next parole consideration date based on the set-off date established by the Board for the revoked case, if the revoked case remains the controlling case (the longest running case).⁹⁹ If the new offense becomes the controlling case (and is parole eligible), the Board will schedule the inmate’s next parole consideration date based on that case as discussed in § 2 of this report.¹⁰⁰ If revocation was based on a technical violation, the inmate’s next parole consideration date will be scheduled based on the Board’s set-off date established for the inmate’s revoked case.¹⁰¹

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board was created by statute and is “charged with the duty of determining . . . what prisoners serving sentences in the jails and prisons of the State of Alabama may be released on parole and when and under what conditions.”¹⁰²

b. Location in Government

The Board is an independent executive branch agency.¹⁰³ It is considered a quasi-judicial body under Alabama case law.¹⁰⁴

c. Purpose (Vision/Principles/Rationale)

The Alabama Board of Pardons and Parole Mission Statement reads:

“It is the mission of this agency to promote and enhance public safety through cooperation and collaboration with the Legislature, the Courts, the Department of Corrections, other criminal justice agencies, victims, and the community by providing investigation, supervision, and surveillance services in a holistic approach to rehabilitating adult offenders.”¹⁰⁵

d. Appointment and Qualifications of Board Members

There are three Board members appointed by the Governor with the advice and consent of the senate. The Governor appoints one of these members to be the chairperson. The choice is from a list of five qualified people nominated by the Chief Justice of the Supreme Court, the presiding judge of the Court of Criminal Appeals, the Lieutenant Governor, the Speaker of the House, and the President Pro Tempore of the Senate.¹⁰⁶

Qualifications? There are no statutory qualifications apart from the nomination protocol described above.

e. Tenure of Board Members, Ease of Removal

Board members serve a staggered term of six years. Each member of the Board takes the constitutional oath of office and is subject to impeachment. If the Governor determines that any member is incapacitated by physical or mental disability or illness, a court must declare the office vacant and a successor must be appointed.¹⁰⁷

f. Training and Continuing Education

There is no statutory requirement for training or continuing education while serving on the Board.

g. Workload

In the 2015-2016 fiscal year, the Board considered 6,458 parolees for release and granted 3,108 paroles. There were 9,852 individuals supervised on parole. There were 77 individuals revoked for technical parole violations, 234 revoked for new offenses, and 202 revoked for a combination of both.¹⁰⁸

h. Reporting and Accountability of Parole Board

Between October 1 and December 31 of each year, the Board must make a full report of its activities and functions during the preceding year.¹⁰⁹ Copies are to be filed "with the Governor, the office of the Secretary of State, [and] the office of the Department of Archives and History. One copy is to be retained in the permanent records of the board."¹¹⁰

The Board grants paroles in open, public meetings.¹¹¹ Under Alabama case law, the exception to the state's Open Records Act for law-enforcement investigative reports and related material is narrowly construed. If the Department of Corrections (which holds many of the documents considered during the parole process) refuses disclosure of any materials, it bears the burden of proving that the records sought are within the exception to the Open Records Act.¹¹²

END NOTES

- ¹ Ala. Code § 12-25-1 (2018) (“There is created within the judicial branch as an agency of the Supreme Court the Alabama Sentencing Commission, hereinafter called the ‘commission.’”).
- ² 2012 Ala. Acts 473, § 2b.
- ³ Ala. Code §§ 12-25-36 (2018).
- ⁴ Ala. Bd. Pardons & Paroles, *History of the Agency*, <http://www.pardons.state.al.us/History.aspx> (last visited Jun. 30, 2018).
- ⁵ 2015 Ala. Acts 185, § 3; Ala. Bd. Pardons & Paroles, *Annual Report FY 2015* at 4-6 (2015), http://www.pardons.state.al.us/Annual_Reports/2014-2015_Annual_Report.pdf; see also Council of State Gov’ts, *Alabama*, <https://csgjusticecenter.org/jr/al/> (last visited Jun. 30, 2018).
- ⁶ Ala. Code § 15-22-24 (2018); Ala. Bd. of Pardons & Paroles, www.pardons.state.al.us/Home.aspx.
- ⁷ Ala. Code § 15-22-72 (2018).
- ⁸ Ala. Code §§ 15-22-24, 15-22-72 (2018).
- ⁹ See, e.g., Ala. Bd. Pardons & Paroles, *About Us: Organization – Field Offices*, <http://www.pardons.state.al.us/Offices.aspx> (last visited July 17, 2018).
- ¹⁰ Ala. Code §§ 15-22-24, 15-22-72, 15-22-76 (2018).
- ¹¹ Ala. Code § 15-22-24(a) (2018).
- ¹² Ala. Bd. Pardons & Paroles, *Rules, Regulations and Procedures*, art. 1, §§ 3, 4 (2016), <http://www.pardons.state.al.us/Rules.aspx> [hereinafter Ala. Bd. Rules]. It is difficult to interpret the statutory language in Alabama’s parole release law because there is no specific bar on earlier parole, except in the case of violent offenders. However, it appears that Board regulations limit parole release eligibility. See, e.g., Ala. Code § 15-22-28(e) (2018).
- ¹³ Ala. Code §§ 15-18-8(a)(2), 15-22-36(e)(1) (2018).
- ¹⁴ Ala. Code §§ 13A-5-6, 13A-5-7, 13A-5-11, 13A-5-12 (2018).
- ¹⁵ Ala. Code § 15-22-26.2 (2018).
- ¹⁶ Ala. Code § 15-22-27.1 (2018).
- ¹⁷ Ala. Code § 15-22-27.3 (2018).
- ¹⁸ Ala. Code § 15-22-27 (2018).
- ¹⁹ Ala. Code § 15-22-27.2 (2018).
- ²⁰ Ala. Code § 15-22-37 (2018); Ala. Bd. Rules, *supra* note 12, art. 6, § 13.
- ²¹ Ala. Code § 14-9-41 (2018). An inmate who is in Class IV must be in the classification for at least 30 days before being eligible for Class III. An inmate who is in Class III must be in the classification for at least three months before being eligible for Class II. An inmate who is in Class II must be in the classification for at least six months before being eligible for Class I.
- ²² Ala. Code § 14-9-41(e) (2018).
- ²³ Ala. Code § 14-9-41(f) (2018).
- ²⁴ Ala. Code § 14-9-42 (2018).
- ²⁵ Ala. Code § 15-22-26(a) (2018).
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ Ala. Bd. Pardons & Paroles, *Parole Guidelines Released for Public Comment 12-17-15* (effective Jan. 30, 2016), http://pardons.state.al.us/PDFs/PHASE_I_PAROLE_GUIDELINES_12-17-15_for_Public_Comment.pdf [hereinafter “Guidelines”].
- ²⁹ Ala. Code § 15-22-26(a)(1) (2018); see also Ala. Code § 12-25-32 (11) (2018) (definition of “Validated Risk and Needs Assessment”).
- ³⁰ *Guidelines*, *supra* note 28.
- ³¹ Ala. Code § 14-14-5(a) (2018).
- ³² Ala. Code § 14-14-5(e) (2018). Factors include risk for violence, criminal history, institutional behavior, age of the inmate (currently and at the time of the offense), severity of the illness, disease, or infirmities, all available medical and mental health records, release plans, which include alternatives to caring for terminally ill or permanently incapacitated inmates in traditional prison settings.
- ³³ Ala. Code §§ 14-14-4(g), (h); 14-14-5(f), (g) (2018).
- ³⁴ Ala. Const. art. V, § 12.
- ³⁵ Ala. Code § 15-22-36 (2018).
- ³⁶ Ala. Code § 15-22-26.1 (2018).
- ³⁷ State of Alabama, Office of the Attorney General, <https://ago.alabama.gov/VictimAssistance> (last visited Jun. 30, 2018).
- ³⁸ Ala. Bd. Rules, *supra* note 12, art. 6 § 4.
- ³⁹ Ala. Code §§ 15-22-28(d), (e); (2018) Ala. Bd. Rules, *supra* note 11, art. 1, § 3.
- ⁴⁰ Ala. Code § 15-22-25(a) (2018).
- ⁴¹ Ala. Code § 15-22-25 (2018).
- ⁴² Ala. Bd. Rules, *supra* note 12, art. 3, § 3.
- ⁴³ Ala. Bd. Rules, *supra* note 12, art. 6, § 5.
- ⁴⁴ Ala. Code §§ 15-22-23(b), 15-22-26 (2018).
- ⁴⁵ Ala. Bd. Rules, *supra* note 12, art. 3, § 6.
- ⁴⁶ Ala. Code § 15-22-26(c) (2018).
- ⁴⁷ *Graves v. Ala. Bd. of Pardons and Paroles*, 845 So. 2d 1, 1-2 (Ala. Ct. Crim. App. 2002).
- ⁴⁸ Ala. Bd. Rules, *supra* note 12, art. 7, §§ 5-7.
- ⁴⁹ Danielle Kaebler, Bureau of Justice Statistics, Probation and Parole in the United States, 2016 at 18 (Appendix Table 5) (Apr. 2018), <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.
- ⁵⁰ Ala. Bd. Pardons & Parole, *Annual Report FY 2017* 9 (2017), http://www.pardons.state.al.us/Annual_Reports/2016-2017_Annual_Report.pdf.
- ⁵¹ Ala. Bd. Pardons & Paroles, *Annual Report FY 2016*, at 13 (2016), http://www.pardons.state.al.us/Annual_Reports/2015-2016_Annual_Report.pdf [hereinafter Annual Report FY 2016].
- ⁵² Ala. Code § 15-22-37(b)(1) (2018).
- ⁵³ Ala. Code § 15-22-33 (2018).
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*: Annual Report FY 2017, *supra* note 50.
- ⁵⁶ Ala. Code § 15-22-29(b) (2018).
- ⁵⁷ *Beavers v. State*, 666 So. 2d 868, 872 (Ala. Crim. App. 1995).
- ⁵⁸ Ala. Code § 15-20A-20(a)-(d) (2018).
- ⁵⁹ See, e.g., Ala. Code §§ 15-20A-11, 15-20A-13, 15-20A-15, 15-20A-17, etc (2018).
- ⁶⁰ Ala. Code § 15-22-2(a)(1), (2) (2018).
- ⁶¹ Ala. Code § 12-23-7 (2018).
- ⁶² Ala. Code § 15-18-68(a) (2018).
- ⁶³ Ala. Code § 15-18-74 (2018).
- ⁶⁴ Ala. Code § 15-18-71 (2018).
- ⁶⁵ Ala. Code § 15-22-29(b)(2) (2018).
- ⁶⁶ Ala. Code § 15-22-30(a) (2018).
- ⁶⁷ Kaebler, *supra* note 49, at 22 (Appendix Table 7).
- ⁶⁸ *Id.*
- ⁶⁹ Council of State Governments, *Alabama*, <https://csgjusticecenter.org/jr/al/> (last visited Jun. 30, 2018).
- ⁷⁰ Annual Report FY 2016, *supra* note 51, at 4.
- ⁷¹ *Id.* at 6. Note that references to a “dip” or a “dunk” are describing short term incarceration penalties for parole violations.
- ⁷² Ala. Code § 15-22-32(a), (b) (2018).
- ⁷³ *Ex parte Ellard*, 474 So. 2d 758, 762 (Ala. 1985).
- ⁷⁴ *Id.*
- ⁷⁵ Ala. Code § 15-22-32(b)(1) (2018).
- ⁷⁶ Ala. Bd. Rules, *supra* note 12, art. 11, § 1.
- ⁷⁷ Annual Report FY 2016, *supra* note 51, at 4, 6.
- ⁷⁸ Ala. Code § 15-22-31(a), (b) (2018).
- ⁷⁹ Ala. Bd. Rules, *supra* note 12, art. 11, § 8.
- ⁸⁰ Ala. Code § 15-22-32(a) (2018).
- ⁸¹ Ala. Bd. Rules, *supra* note 12, art. 12, § 9.
- ⁸² *Id.* § 2.
- ⁸³ *Id.*
- ⁸⁴ *Id.* §§ 8, 9. This principle was recently tested in *Morris v. Ala. Bd. Pardons & Paroles*, 176 So. 3d 872 (Ala. Ct. Crim. App. 2015).
- ⁸⁵ Ala. Bd. Rules, *supra* note 12, art. 12, § 4.
- ⁸⁶ *Id.* § 12.
- ⁸⁷ *Id.* §§ 2, 3.
- ⁸⁸ Ala. Code § 15-22-32(a) (2018).
- ⁸⁹ Ala. Bd. Rules, *supra* note 12, art. 12, § 8, 10.
- ⁹⁰ Ala. Code § 15-22-32(b) (2018).
- ⁹¹ Ala. Bd. Rules, *supra* note 12, art. 14, § 2.
- ⁹² *Id.*
- ⁹³ Ala. Code § 15-22-32(e) (2018).
- ⁹⁴ Ala. Bd. Rules, *supra* note 12, art. 12, § 12.
- ⁹⁵ Ala. Bd. Rules, *supra* note 12, art. 14, § 3.
- ⁹⁶ *Id.* § 7.

END NOTES

⁹⁷ *Johnson v. State*, 729 So. 2d 897, 898 (Ala. Crim. App. 1997) (citing *Samuels v. Alabama Board of Pardons & Paroles*, 687 So. 2d 1287 (Ala. Cr. App. 1996)).

⁹⁸ *Id.*

⁹⁹ Ala. Bd. Rules, *supra* note 12, art. 14, § 9.

¹⁰⁰ Ala. Bd. Rules, *supra* note 12, art. 1, § 4: "Initial parole consideration dates shall be calculated based on the date at which a majority of the Board may act, taking into account the total term of the inmate's sentences. If an inmate is serving one or more sentences, the designee shall calculate one third or ten years of each sentence with any applicable jail credits as indicated by the Department of Corrections. The controlling sentence shall be the longest running sentence as determined by the Department of Corrections."

¹⁰¹ Ala. Bd. Rules, *supra* note 12, art. 14, § 9.

¹⁰² Ala. Code §§ 15-22-20, 15-22-24(a) (2018).

¹⁰³ Ala. Bd. of Pardons & Paroles, *Organization*, <http://www.pardons.state.al.us/Org.aspx> (last visited Jun. 30, 2018).

¹⁰⁴ *Sullivan v. Smith*, 925 So. 2d 972, 975 (Ala. Civ. App. 2005) ("Moreover, in *Pate v. Alabama Bd. of Pardons & Paroles*, 409 F. Supp. 478, 479 (M.D. Ala. 1976), *aff'd*, 548 F.2d 354 (5th Cir. 1977), ... the federal district court found that the Board, "when performing [its] official duties, [is] engaged in 'quasi-judicial' activities." The court went on to state that "[t]he function of the Parole Board is more nearly akin to that of a judge in imposing sentence and granting or denying probation than it is to that of an executive administrator." *Id.* In *Sellers v. Thompson*, 452 So.2d 460 (Ala. 1984), the Alabama Supreme Court adopted the reasoning of *Pate*).

¹⁰⁵ Ala. Bd. of Pardons & Paroles, *Mission Statement*, <http://www.pardons.state.al.us/About.aspx> (last visited Jun. 30, 2018).

¹⁰⁶ Ala. Code § 15-22-20 (2018).

¹⁰⁷ *Id.*

¹⁰⁸ Annual Report FY 2016, *supra* note 51, at 12.

¹⁰⁹ Ala. Code § 15-22-24(b) (2018).

¹¹⁰ *Id.*

¹¹¹ Ala. Code § 15-22-23(b)(1) (2018).

¹¹² See *Allen v. Barksdale*, 32 So. 3d 1264, 1273 (Ala. 2009).