

UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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

MASSACHUSETTS



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Massachusetts

By

Alexis Lee Watts, Edward E. Rhine, and Catherine McDonough

The authors thank Shawna Hawksley, Massachusetts Parole Board Research & Planning Specialist, and Laura Weierman, Massachusetts Executive Office of Public Safety and Security Assistant General Counsel, for comments on an earlier draft of this report.

© 2018. Regents of the University of Minnesota. All Rights Reserved.

Suggested citation: Alexis Lee Watts, Edward E. Rhine, and Catherine McDonough, Robina Inst. of Crim. Law & Crim. Just., *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Massachusetts* (2018).

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.....	6
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	7
c. Prisoners' Procedural Rights.....	7
d. Victims and Other Participants	7
e. Burden of Proof or Standards of Persuasion.....	7
f. Possible Outcomes at Parole Release Hearings; Form of Decisions	8
g. Administrative or Judicial Review of Parole Denial.....	8
h. Rescission of Parole Release Dates.....	8

4. Supervision Practices

a. Purposes of Supervision.....	9
b. Are All or Only Some Releasees Placed on Supervision?	9
c. Length of Supervision Term.....	9
d. Conditions of Supervision.....	9
e. Fees and Other Financial Sanctions	10

CONTENTS

5. Parole Revocation

a. Principles and Criteria of “When to Revoke”	10
b. Revocation Guidelines.....	11
c. Risk and Needs Assessment Tools	11
d. Preliminary and Final Revocation Procedures.....	11
e. Offenders’ Procedural Rights	12
f. Victims and Other Participants.....	12
g. Burden of Proof or Standards of Persuasion.....	12
h. Revocation and Other Sanctions	12
i. Issuing Parole Revocation Decisions.....	13
j. Administrative or Judicial Review of Parole Revocation Decisions.....	13
k. Re-Release Following Revocation	13

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction.....	13
b. Location in Government	13
c. Purpose (Vision/Principles/Rationale)	13
d. Appointment and Qualifications of Board Members.....	13
e. Tenure of Board Members, Ease of Removal.....	14
f. Training and Continuing Education	14
g. Workload	14
h. Reporting and Accountability of Parole Board	14

End Notes.....	15
----------------	----

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Alexis Lee Watts, Edward E. Rhine, and Catherine McDonough

1. Background; Sentencing System

a. Sentencing Framework

Massachusetts' original sentencing commission was formed in 1994, and proposed sentencing guidelines in 1996 that were never adopted by the legislature. Massachusetts re-activated its Sentencing Commission in 2014. Its mandate is to "consult with national scholars, gather data on current sentencing practices, and research best practices across a range of sentencing options." Massachusetts has an indeterminate felony sentencing system in which courts impose both a minimum sentence (which determines parole eligibility) and a maximum sentence.¹ The Commission accepts written comments and held a public hearing in October 2016 order to "formulate recommendations for sentencing policies and practices."²

Massachusetts was the first state in the country to develop a parole supervision system. The state passed a law authorizing parole in 1837. Under the original legislation, parole officers duties' "included assisting released prisoners in finding jobs and providing them with tools, clothing, and transportation at state expense."³ The current structure and function of the Board was enacted in 1955.

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

Yes, the Massachusetts Parole Board.⁴

<http://www.mass.gov/eopss/agencies/parole-board/>

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

Parolees are supervised by the Field Services Division of the Massachusetts Parole Board.⁵

<http://www.mass.gov/eopss/law-enforce-and-cj/parole/field-svcs-unit/>

d. Which Agency Has Authority Over Parole Revocation?

The Massachusetts Parole Board has authority over parole revocation.⁶

2. Parole Release and Other Prison-Release Mechanisms

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

General rules of release eligibility. Misdemeanants with an aggregated sentence of over 60 days and felons are eligible for parole. However, the method of determining release eligibility varies depending on whether an offender is sentenced to state prison (for a sentence of over two and a half years) or to a House of Correction (for a sentence of under two and a half years).

Minimum sentences are set by the court, with some limitations.⁷ State prison sentences must be at minimum one year in length.⁸ For those sentenced to life in prison but given the possibility of parole, judges may set a minimum sentence of between 15 and 25 years.⁹ The maximum term is also set by the court, but may not exceed the longest statutory punishment for the crime of conviction.¹⁰ Good conduct credits earned for work or education reduce both the minimum term, (for purposes of parole eligibility calculations), and the maximum term, (for purposes of reducing the total term to be served in prison). In general, good conduct credits may reduce a sentence by up to one-third, or 10 days per month.¹¹

State prison sentences. State prison offenders are not eligible for parole until they have served the minimum sentence for their offense, minus any earned credits.¹² An offender already serving a House of Correction sentence may receive a “forthwith” state prison sentence (a sentence that terminates/eliminates the House of Correction sentence when the state prison sentence begins). Parole eligibility is then calculated based on the state sentence only.¹³

House of Correction sentences. An offender confined to a House of Correction whose aggregated sentence is 60 days or more is eligible for parole after serving one-half of the total aggregated term or two years, whichever is shorter, unless the offender is serving a sentence with a mandatory minimum that exceeds two years. For offenders serving a mandatory minimum sentence of more than two years, parole eligibility occurs after the offender has served “the aggregate length of any mandatory minimum terms.”¹⁴

For concurrent sentences, parole eligibility is calculated for each component sentence, with the latest occurring date controlling.¹⁵ For consecutive sentences, the parole

eligibility date is calculated for each component sentence, based on “the running of each component sentence from-and-after each other in the order imposed.” These dates are then aggregated and the latest date controls.¹⁶

Habitual, violent, and sex offenders. Offenders classified as “habitual offenders”¹⁷ are only eligible for parole after serving one-half of the maximum term for their offense. The Parole Board must consider habitual offenders for parole 60 days before the offender has served two-thirds of the maximum sentence for their offense.¹⁸ However, habitual offenders convicted of certain sexual or violent crimes are not eligible for parole.¹⁹

Life sentences. Offenders serving a life sentence (with several exceptions) are eligible for parole after serving the minimum sentence for their offense.²⁰ Offenders serving a second degree life sentence are eligible for parole after 15 to 25 years, while offenders serving a first degree life sentence are *not* eligible for parole unless their sentence is commuted to a lesser sentence that carries a parole eligibility date or unless they committed the crime as a juvenile.²¹ For crimes committed on or after January 1, 1988, sentences ordered to run consecutively with a life sentence will not be aggregated with the life sentence for the purposes of determining parole eligibility.²²

Recurring eligibility after denial of release. All parole-eligible sentences have mandatory review schedules. Parole denials must be reviewed (1) once annually for offenders who are not habitual offenders, have not been civilly committed as sexually dangerous persons, and are not serving a life sentence; (2) every two years for habitual criminals; (3) three years after the initial parole hearing for civilly committed sexually dangerous offenders; and (4) at least once every five years for offenders serving a life sentence.²³

b. Good Time, Earned Time, and Other Discounts

While Massachusetts had a system of “statutory good time” credits, that statute was repealed in 1993.²⁴ Instead, offenders who are confined to a correctional institution but “working at a state hospital or state school” may earn credits for “satisfactory conduct” or meeting certain conditions.²⁵ Offenders are eligible to earn a maximum of five days per month of confinement for each program, to a monthly maximum of 10 days. To earn credits, the offender must both complete the program *and* “demonstrate [...] competency in the material, as determined by the commissioner.”

When the offender completes his/her program, the commissioner may grant the offender an additional 10 days. Some qualifying offenders may be transferred to prison camps during their sentence. These camps offer some degree of freedom, and offenders “who have shown by their conduct and disposition that they would be amenable to less rigorous discipline and would benefit from work in the open air, participate in reforestation, maintenance, and development of state forests.”²⁶ These prisoners may earn an additional two and a half days per month of credit for good conduct.²⁷

These credits both “reduce the term of imprisonment by reduction from the maximum term for which the prisoner may be held” and reduce the minimum term for the purposes of parole eligibility. For most prisoners, these credits can reduce a sentence by around one-third of the total time.²⁸ However, those sentenced to prison camps may earn a reduction of around two-fifths of their sentence.²⁹ Earned credits may be revoked if the offender is found to have filed a frivolous claim in bad faith in order to “abuse the justice system.”³⁰

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. Parole should only be granted if the Parole Board Members reviewing the case believe there is a “reasonable probability” that the offender “will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society.” Parole should not be granted merely as a reward for good conduct while incarcerated.³¹

Statutory factors the board must consider. The general statutory language for release decisions is augmented by the fact that the Board must consider whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs and demonstrated good behavior. The Board must also consider whether risk reduction programs involving collaboration with other criminal justice agencies would minimize the probability of the prisoner reoffending once released.³² A more comprehensive listing of factors the Board may consider is discussed in the following section and in section 3(b).

d. Parole Release Guidelines

Parole release guidelines. The Board does not appear to make use of any formal parole release guidelines. However, it has promulgated regulations and published a manual detailing its decision making process and setting out some significant factors in the parole release decision, including:

The presence of particular factors in the governing offense;

- Severity of the governing offense;
- Institutional behavior;
- Institutional programming;
- The offender’s security level;
- The strength of the offender’s transition plan; and
- Victim or community input.³³

e. Risk and Needs Assessment Tools

Statutory mandate. A 2012 act entitled “Act Relative to Sentencing and Improving Law Enforcement Tools,” also commonly referred to as the 2012 Crime Bill, introduced a statutory requirement to use a risk and needs assessment in making parole release decisions. The Board selected, and now utilizes, the Level of Service/Case Management Inventory (LS/CMI).³⁴

Main risk instrument. The Board utilizes the LS/CMI, an assessment that measures the risk and need factors of late adolescent and adult offenders. The LS/CMI incorporates the following scales:

1. Criminal History
2. Education/Employment
3. Family/Marital
4. Leisure/Recreation
5. Companions
6. Alcohol/Drug Problems
7. Antisocial Patterns
8. Procriminal Attitude Orientation
9. Barriers to Release
10. Case Management Plan
11. Progress Record
12. Discharge Summary
13. Specific Risk/Needs Factors
14. Prison Experience—Institutional Factors
15. Special Responsivity Consideration³⁵

Transparency. The Board's Annual Report details the use of the LS/CMI, including what percentage of offenders fall into each risk category.³⁶

Sex offenders. If the Board grants parole, the Sex Offender Registry Board determines sex offenders' classification, security risk level, and terms of release.

f. Medical or Compassionate Release

Early release from a State Prison is only available for inmates convicted of an offense committed before July 1, 1994 with sentences that carry a two-thirds parole eligibility, under which the inmate must serve two-thirds of the sentence before becoming eligible for parole. Such inmates must serve one-third of their sentence before becoming eligible for early release. House of Correction inmates are eligible for medical parole and other forms of early release, and may be released by a hearing panel up to 60 days before the inmate's parole eligibility date, or more than 60 days before by the Full Board.³⁷ The Board may also grant early release to inmates who qualify for exceptional achievement in a rehabilitative program, acceptance into a community rehabilitative program, or for any other reason that the Board determines is sufficiently compelling.³⁸

g. Executive Clemency Power

The Governor has the power to grant pardons and commutations with the advice and consent of the Massachusetts Governor's Executive Council. Eligibility requirements for a pardon include "good citizenship" and a specific, verified, and compelling need for that type of relief. The Massachusetts Parole Board (in particular, the Advisory Board of Pardons) reviews all petitions for clemency to ensure applicants meet the requirements and conducts investigations and hearings on the petitions. If the Board considers a petition meritorious, it then conducts a full hearing and makes a recommendation to the Governor.³⁹

h. Emergency Release for Prison Crowding

The Sheriff or administrator of a correctional facility may apply for a waiver to the Commissioner of the Executive Office of Public Safety to allow the facility to operate without complying with the regulations governing the management of the prison population. When a waiver is granted, the duration is at the discretion of the Commissioner.⁴⁰ However, there is no emergency release mechanism.

3. Parole Release Hearing Process

a. Format of Release Hearings

For offenders not serving a life sentence, the initial release hearing and any subsequent reviews are administrative in nature and are conducted by a hearing panel (not the full Board). Some parts of the hearing do not occur in the presence of the offender: the pre-hearing conference between the panel and the parole institutional staff; presentation of the parole staff member's report and the Department of Correction's report; panel deliberations occurring after the interview and receipt of any information or documents offered by the inmate; and consideration of any information the Parole Board deems confidential. The Board Chair may appoint any three members of the Board for the purpose of granting parole.⁴¹

For offenders serving a life sentence, an initial release and review hearing is conducted by the full Board.⁴² The entire Board must vote on any decision regarding parole release, and decisions are by majority vote. Additionally, parole hearings for offenders serving a life sentence are "public proceedings to the extent considerations of security and confidentiality allow."⁴³

Some hearings are audio taped, and may also be video recorded at the Parole Board's discretion.⁴⁴ The offender or any other interested party may request copies in writing. The Parole Board Chair or their designee presides and administers oaths to anyone who will provide testimony at the hearing. The inmate or his/her representative then makes a brief opening statement. The Parole Board Members may question the inmate on any relevant matter, and elicit any information regarding the inmate's status in the Department of Correction. The Board may consider any available evidence and/or testimony from individuals advocating for parole, and may question the victim/victim's family as to the impact of the crime, their recommendation as to granting parole, and any "available evidence and testimony unfavorable to the inmate upon any relevant subject." Public officials may then offer testimony. A closing statement by the inmate or his/her representative may be permitted. The Parole Board Members may, at their discretion, allow the submission of supplemental documentation from any party.⁴⁵

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

The Commissioner of the Department of Corrections must submit information and a recommendation to the Parole Board at least ninety days before an offender becomes eligible for parole.⁴⁶ Recommendations by any party to the Parole Board are not considered binding, and Board Members are free to exclude any “unreliable, irrelevant or repetitious” information.⁴⁷

Information considered by the Parole Board typically includes (but is not limited to) risk and needs assessments, police reports and summary of the offense(s), offender questionnaires, Massachusetts Board of Probation records, FBI/Triple I reports, institutional classification reports, disciplinary reports, personalized program plans (detailing institutional programming), evaluative information (e.g., psychological reports, medical reports), correspondence from the offender (e.g., support letters, program certificates), confidential material (e.g., victim statements), warrants ordering commitment to prison, and any Parole Board generated supporting documents.⁴⁸ Note that recommendations to the Parole Board are not in any way considered binding, and Board Members are free to exclude any “unreliable, irrelevant or repetitious” information. The Board may also schedule a mental health evaluation for the offender and consider the results in making its decision.⁴⁹

c. Prisoner’s Procedural Rights

Massachusetts law allows attorney representation⁵⁰ at parole release hearings only for inmates serving a life sentence. If the inmate suffers from a mental, psychiatric, medical, or physical condition or a language barrier that makes them not competent to offer testimony or understand the proceedings, the hearing panel may, at its discretion, allow a “qualified individual” to represent the inmate.⁵¹

d. Victims and Other Participants

Victims can register to receive notice of an offender’s eligibility for or release on parole. Massachusetts has created Victim Notification Registry (VNR) through which victims may receive notice of an offender’s parole eligibility or release status.⁵²

For non-victim access hearings, the Board must notify Criminal Offender Record Information (CORI) registered victims 30 days prior to a hearing, and make reasonable efforts to contact non-CORI-registered victims at their last known address. If the offender is to be released, the Board must attempt to notify the victim 14 days prior to the offender’s release and, in any event, will notify the victim of the offender’s date of release. The victim will also be provided with the name and office telephone number of the supervising parole officer.⁵³ “Victim Access Hearings,” which must be open to victims, are required for offenders convicted of murder or other crimes resulting in death, including manslaughter and vehicular homicide.⁵⁴ Victim hearings are also available for victims of violent crimes or sex offenses.⁵⁵

For certain offenders not serving a life sentence, victims or their families may testify in person or submit written testimony to the Parole Board⁵⁶ regarding the financial, social, psychological, and emotional harm done to or suffered by the victim.⁵⁷ For any offender serving a life sentence, the Parole Board is required to elicit and consider input from the victim or his/her family, including the impact of the crime and any recommendation as to parole.⁵⁸

Notification to government officials is only required for parole hearings concerning an offender serving a life sentence. In that case, the Parole Board is required to give notice of the initial parole hearing and any subsequent hearings to the following individuals: (1) the Attorney General, (2) the Office of the District Attorney for the district in which the offender was sentenced, (3) the Chief of Police of the municipality in which the crime was committed, and (4) the Executive Office of Public Safety. During the hearing(s), “public officials of the Commonwealth” may offer evidence or testimony to rebut or supplement any issues raised.⁵⁹

Paroles hearings for inmates serving a life sentence are the only hearings open to the public. All other Board hearings are closed to the public.⁶⁰

e. Burdens of Proof or Standards of Persuasion

There is no evidentiary burden of proof or standard of persuasion for granting parole release. However, under a more general legal standard, the Board must find that there is a “reasonable probability” that the prisoner’s release is “not incompatible with the welfare of society,” and that “the prisoner will live and remain at liberty without violating the law.”⁶¹

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

For inmates who are not serving a life sentence, the offender is verbally informed of the hearing panel's decision and reasoning at the conclusion of the hearing. Outcomes of a hearing may include denial of parole, parole postponement for a specific period of time (with conditions to be met in the interim) or the granting of parole.⁶²

For those serving a life sentence, voting on release occurs at the next regularly scheduled executive session of the Board, and must include the Full Board. Decisions are made by a majority vote. Notification to the inmate is made in writing. The Board's decision is also a matter of public record.⁶³ If possible, victims are notified of parole release decisions at least 14 days prior to release from custody. If parole is granted, the victim will also be notified of the anticipated date of release, the parole conditions, and the name and phone number of the supervising parole officer.⁶⁴

g. Administrative or Judicial Review of Parole Denial

Decisions made by the Full Board or a panel of the Board may be appealed administratively. The inmate must appeal in writing within 30 days of receiving the Board's decision. If the inmate fails to cite one of the permissible grounds in his/her appeal, the petition will be returned with an explanation pertaining to correcting the appeal. The inmate then has a further 30 days to correct his/her appeal. Where a panel of Board Members made the parole denial decision, the same Board Members will vote on the appeal. If the hearing panel was made up of one or more hearing examiners, and the decision was subsequently made by one Board Member, the examiners and the Board Member will vote on the appeal, and, if unanimous, their decision will be considered the hearing panel's decision.⁶⁵ In 2013, the Board received 214 requests for appeal; it denied 206 of the requests.⁶⁶

Appeals must be based on the following grounds: (1) the decision is unsupported by the reasons or facts as stated by the panel; (2) the panel considered erroneous facts and the true facts would justify a different decision; (3) the panel did not follow the correct procedure and, if it had done so, a different decision would have been rendered; (4) significant information was not available to the panel when it made its decision; and/or (5) special conditions listed in the parole order are unfair and cannot be obeyed under the circumstances. A hearing for appeals is not required.⁶⁷

If this initial appeal is denied, the offender may further appeal to the Full Board⁶⁸ within 30 days of receiving notice of the decision. The Full Board may decide to deny the appeal, overturn the panel's decision and render a different decision, or overturn the panel's decision and schedule another parole hearing. Decisions of the Full Board are final, and grounds reviewed in an appeal may not form the basis for a petition for reconsideration. The inmate is notified of the appeal decision in writing.

An inmate may also submit a petition for reconsideration, either alongside a previously filed appeal or on its own, no sooner than 90 days after the inmate receives notice of the hearing panel's decision. Petitions for reconsideration must "state specific facts which justify reconsideration" and be based on the following grounds: (1) a material change in circumstances which requires a different decision; (2) tasks mandated by the parole hearing panel have been accomplished; (3) "especially mitigating circumstances" warrant a different decision; and/or (4) compelling reasons justify a more lenient decision. Petitions for reconsideration may not be based on grounds rejected during a previous reconsideration or appeal. The panel that decided the initial case will consider the petition for reconsideration.⁶⁹ An inmate may submit no more than one initial appeal to the hearing panel, one further appeal to the Full Board, and one petition for reconsideration during the 12 months following an adverse decision. The Board or panel may also reconsider a decision on its own initiative.⁷⁰

Inmates may also seek judicial relief for certain issues related to parole release. For example, in one case, an inmate successfully sought declaratory and injunctive relief against the Board due to a miscalculation of his parole eligibility date.⁷¹ In another case, an inmate unsuccessfully sought declaratory and injunctive relief based on a Board's regulation regarding consecutive sentencing.⁷²

h. Rescission of Parole Release Dates

Release on a parole date set by the Board is contingent on continued satisfactory conduct by the inmate and the absence of any new and significant adverse information not known to the parole hearing panel at the time the release decision was made. Inmates are afforded a hearing before the Board makes the decision to rescind parole. If the Board rescinds a parole date and refuses to grant another release date, subsequent parole release review hearings must be scheduled annually, with some exceptions.⁷³

4. Supervision Practices

Parole supervision rate. On December 31, 2015, there were 36 parolees per 100,000 adults in Massachusetts. This is much lower than the 50-state average of 350 parolees per 100,000 adults.⁷⁴

a. Purposes of Supervision

In the Board's opinion, "prison punishes the offender but does not always teach him or her how to deal successfully with society. Most inmates eventually return to society, and usually with fewer employment and social skills than they had when they entered prison. The first six months after an inmate's release is the most vulnerable period for both the offender and the community. The offender is often pressured to return to his or her old lifestyle, and may experience low self-esteem and disorientation. Offenders with substance abuse problems are particularly susceptible to this. The fear of returning to prison is not always strong enough to overcome these immediate pressures. A combination of monitored supervision and practical assistance in obtaining jobs, counseling, and support can place the offender in a supportive, rather than destructive, context and pave the way for his or her new law-abiding life."⁷⁵

According to the field services unit, the role of parole officers is to "enforce parole conditions as mandated by the parole board; monitor parolee behavior in the community; conduct offender assessments; visit parolees at their homes and in the community; conduct drug and alcohol testing; monitor parolees on GPS; intervene in crisis situations; and make referrals to social services including mental health, substance abuse, employment, education, and training."⁷⁶

b Are All or Only Some Releasees Placed on Supervision?

All parolees in Massachusetts are supervised by parole officers.⁷⁷

c. Length of Supervision Term

Maximum supervision terms. The term of parole is the length of time remaining on the offender's sentence at release.⁷⁸ However, some sex offenders were formerly required to serve a lifetime term of community parole supervision.⁷⁹ In 2014, the state's Supreme Judicial Court held that the imposition of community parole supervision for life was

unconstitutional because it violated the separation of powers between the legislature and the judiciary in that the statute imposed a sentence *in addition to* the sentence imposed by the judge.⁸⁰

Early termination. The Parole Board may, by majority vote, issue an offender a certificate of termination before the end of the offender's original sentence provided that the following criteria are met: the termination is in the public interest and the offender has successfully completed one year of parole (or the "special incarceration boot camp program," in addition to four successful months of parole).⁸¹

Extension of supervision term. There is no extension of the supervision term available under Massachusetts law.

Incentives; "goal parole" Other than early termination of parole, discussed in §4c, there are no additional incentives that shorten the term of parole.

d. Conditions of Supervision

The Parole Board imposes the conditions of supervision at the time parole is granted. All conditions are conveyed in writing to the offender, the state police, and the local police where the parolee will be residing at least 24 hours before release.⁸² The general conditions of parole require parolees to comply with the following:

- Parolees shall obey local, state, and federal laws and conduct [themselves] in the manner of a responsible citizen;
- Parolees shall notify a parole officer in writing within 24 hours of any changes in employment or residence, notify the parole officer before applying for a license to marry, and inform the parole officer within 24 hours if arrested;
- Parolees shall make earnest efforts to find and maintain legitimate employment, unless engaged in some other program approved by the parole officer;
- Parolees shall not engage in a continuous pattern of association with persons known to have a criminal record, or who are known to be engaged in a violation of law. This prohibition does not apply where such association is incidental to a parolee's place of residence or employment, or connected with the activities of a bona-fide political or social organization. However, the parole board retains authority to impose limits to these latter activities as a special condition of parole where such association is inconsistent with an approved parole plan;

- Parolees shall not leave the state of Massachusetts for periods in excess of 24 hours without first securing permission from a parole officer; and,
- Parolees shall not serve as an informant or special agent for any law enforcement agency.⁸³

Special conditions may be imposed by the Parole Board, and may add requirements pertaining to the parolee's home, work, travel, individuals they may not contact, counseling, medical condition, treatment supervision for drugs and alcohol, or any other condition reasonably related to the offender's crime or "personal condition."⁸⁴

Sex offenders. The determination of sex offender risk level and terms of parole release is made by the Sex Offender Registry Board.⁸⁵ Sex offenders are classified into Level 1, Level 2, and Level 3 security risks. Level 1 sex offenders must participate in treatment, develop a relapse prevention plan, take polygraph examinations, avoid contact with victims and their families, get permission for internet use, wear a GPS monitor, and abide by a number of other conditions. Level 2 offenders face additional conditions, including keeping a daily log of all activities, abiding by a curfew, and not having "sexual, intimate, or living arrangements with any individuals without the individual being informed of [their] Parole Status, sexual deviancy, and criminal history." Level 3 sex offenders must obey the above conditions and avoid certain defined geographical zones at all times.⁸⁶

Modification of conditions. By statute, the conditions of supervision may be revised, altered and amended by the Board at any time.⁸⁷

Incentives; lighter conditions. There is a system of informal incentives related to good behavior on the part of parolees.⁸⁸

e. Fees and Other Financial Sanctions

Parole supervision fees. The supervision fee in Massachusetts is currently \$80 per month, which includes a \$5 victim services fee. The fee may be reduced or waived based on indigence, but the parolee must bring an indigence claim to the supervising parole officer for review.⁸⁹ In addition, there may be other fees related to parole conditions. This may be observed under circumstances where sex offenders must pay the expenses of installing, maintaining, and operating a GPS monitoring device.⁹⁰

Payments for drug and alcohol testing and treatment. There does not appear to be any mandatory payment for drug or alcohol testing of parolees.

Restitution. While restitution may be ordered in any case where there is economic loss to the victim, it is not a general condition of parole.⁹¹ However, the institution superintendent or sheriff may deduct any money the offender earns or receives while incarcerated to pay restitution.⁹²

Child support. The offender must be required to pay child support that is due under a support order, but the terms of that support may not be altered, amended, or revoked unless the parole order itself is revoked. This is an additional mandatory condition of parole for those to whom it applies.⁹³

Other financial obligations. There do not appear to be any additional mandatory financial conditions of parole.

5. Parole Revocation

Parole revocation proceedings. In 2015, the Bureau of Justice Statistics reports that 78 parolees returned to incarceration through a new sentence and 401 via parole revocation. However, the report notes that this data may be estimated.⁹⁴

Absconders. It is difficult to ascertain the exact number of parole absconders in Massachusetts, however, in 2013 the Board reported that there were 88 parole revocations because parolee's whereabouts were unknown.⁹⁵ Note that a preliminary parole revocation hearing can be conducted in absentia where there is reliable evidence that a parolee has absconded from supervision.⁹⁶

a. Principles and Criteria of "When to Revoke"

Policy considerations. Massachusetts adopted parole revocation guidelines because in the past, around 70% of all returns to custody were due to technical violations. After receiving a Byrne Grant in 2004, the Board developed and implemented a graduated sanctions policy that went into effect in 2006. This approach is intended to match offender actions with appropriate treatment, interventions, or sanctions.⁹⁷

In its discussion of graduated sanctions, the Board notes that “different circumstances render different results. If an offender intentionally and willfully evades his or her parole officer, fails to participate in appropriate counseling, and has been deemed high risk, then a positive screen for drugs may result in a return to custody. In this instance, concern for public welfare mandates that the community not be exposed to any unnecessary risks posed by an offender who is either unwilling or unable to live a crime free lifestyle.”⁹⁸

Legal predicates. Parole may be revoked for any violation of the terms or conditions of the parole permit, or violation of the laws of Massachusetts.⁹⁹ Additionally, parole may be revoked if the Board finds that the permit was issued, in whole or in part, due to false information provided by the offender. Parole may be revoked any time before the offender’s sentence ends.¹⁰⁰ The Board, however, first considers any less severe sanctions or alternatives to confinement.¹⁰¹

b. Revocation Guidelines

As discussed in §5a, the Board developed a policy for graduated sanctions as a method for enhancing offender case management. The use of sanctions is intended to foster greater consistency, transparency, fairness, and efficiency at all stages of the parole violation process. The guidelines call for imposing graduated sanctions matched to the severity of the violation with the parolee’s risk level in making specific determinations relative to the appropriate treatment, intervention, and/or sanction. According to the Board, “if a low to medium risk offender has failed to attend substance abuse classes, yet continues to be employed and maintain a healthy lifestyle, this may result in a warning ticket, a meeting with a parole officer, or the imposition of an intervention by a substance abuse counselor at one of the regional field offices.”¹⁰²

Often, interventions using the parole revocation guidelines take place in the field, completed by parole officers or supervisors. In 2013, for example, only 1% of the actions taken using the guidelines were initiated by Board members.¹⁰³

c. Risk and Needs Assessment Tools

The Parole Field Services Division utilizes the LS/CMI, described in greater detail in §2c, to determine parolees’ risk levels in order to make decisions about whether graduated sanctions should be imposed or whether, alternatively, the revocation process should be triggered.¹⁰⁴

d. Preliminary and Final Revocation Procedures

Arrest or summons. The field parole officer, after review by a parole supervisor or other superior officer, may submit a parole violation report to the Members of the Parole Board when a parolee is alleged to have violated one or more conditions of parole.¹⁰⁵ If a parole officer has reasonable belief that a parolee has lapsed or is about to lapse into criminal ways; has associated or is about to associate with criminal company; or that the parolee has violated the conditions of his parole, the parole officer, with the consent of a parole supervisor or other superior officer, may also issue a warrant for the temporary custody of the parolee.¹⁰⁶ As an alternative to arrest, a summons may also be issued at least 48 hours prior to the hearing.¹⁰⁷

Preliminary hearing. The preliminary revocation hearing is conducted by a hearing examiner. The hearing examiners determine that the offender received “adequate and timely written notice” of the hearing, and then advise the offender that they may postpone the hearing in order to obtain representation or witnesses. The offender is free to request the appearance of anyone “who has information upon which revocation may be based.” Next, the hearing examiner reviews the violation charges and evidence¹⁰⁸ with the offender. The cross-examination of witnesses is permitted, unless prohibited for good cause. Finally, hearing examiners inform the offender that they will make a recommendation to the Parole Board Member(s) and the Board will notify the offender in writing of its decision. Hearing examiners may also reveal their recommendation to the offender if they believe it is appropriate to do so.¹⁰⁹

Hearing examiners must submit a summary of the preliminary revocation hearing that includes the substance of the offender’s responses and the documents or evidence for and against revocation. The recommendation itself must contain (a) an evaluation of whether reasonable grounds exist to support each allegation, and (b) whether probable cause exists to hold the offender in custody pending the final revocation hearing.¹¹⁰

Conviction for a criminal offense, a finding by the court of sufficient facts to enter a guilty finding, a probable cause finding after a criminal hearing, a grand jury indictment, or a finding of a preliminary or final violation of probation constitute valid substitutes for a preliminary parole revocation hearing.¹¹¹

Final hearing. If the Board decides that grounds exist to proceed with the final revocation hearing, all violation charges considered at the preliminary hearing, including any charges for which the examiner did not find probable cause, will be considered at the final hearing. Any new charges arising after the preliminary hearing will also be addressed.¹¹² The final revocation hearing serves the following purposes: (1) to determine whether a violation occurred, (2) if a violation occurred, whether revocation is appropriate, and (3) if parole is revoked, whether the offender should still be released into the community.¹¹³ Final revocation hearings are audiotaped.

The hearing panel may at any time during the hearing ask the offender to leave the hearing room so that the panel can convene privately. The offender and his/her representative may also request a recess for conference.¹¹⁴ At the final revocation forum, the hearing panel will review the charges with the offender, and ask the offender to admit or deny each charge. The panel will then ask the offender for information regarding each alleged violation. Subsequently, the offender and the state present witnesses who may be cross-examined, unless good cause exists to deny confrontation. As it deliberates, the panel reviews all relevant information regarding the offender's "suitability to be returned to parole supervision."¹¹⁵

e. Offenders' Procedural Rights

In a final revocation hearing, parolees have a right to appear, to present witnesses and evidence, and to cross examine witnesses (except for good cause shown).¹¹⁶ Offenders may be represented by counsel at revocation hearings.¹¹⁷ "Under some circumstances, due process may require the appointment of counsel for an indigent defendant in a [...] parole revocation hearing."¹¹⁸ Massachusetts law makes no special provision for appointment of counsel at revocation hearings, though the state follows the Constitutional requirements set out in *Gagnon v. Scarpelli*.¹¹⁹

Prior to a final revocation hearing, a parolee may make a written request to an Institutional Parole Officer for the disclosure of documents that will be used in the parole hearing, as well as the attendance of individuals who gave information upon which revocation may be based. The Board may subpoena adverse witnesses if "good cause exists therefor," or may deny the parolee's request in writing.¹²⁰

Parolees may waive a preliminary revocation hearing; this will result in the issuance of a parole violation warrant and a final revocation hearing will be scheduled.¹²¹ A parolee can also waive a final revocation hearing, but this will result in parole revocation.¹²²

f. Victims and Other Participants

Victims of the offender's crime of conviction are notified of parole revocation proceedings and the hearing panel's decision. If revocation does not occur, the victim will be notified by phone of the offender's release, the conditions of their release, and the name and office telephone number of the supervising parole officer. If revocation occurs but the offender is re-paroled, the victim will be notified, if possible, at least 14 days prior to release.¹²³ Victims may submit information to the Board regarding revocation, but cannot attend revocation hearings.¹²⁴

Massachusetts law does not provide for law enforcement officials to be notified of or provide input for revocation proceedings.¹²⁵ Parole revocation hearings are not open to the public.¹²⁶

g. Burdens of Proof or Standards of Persuasion

The hearing panel must find that a violation occurred by a preponderance of the evidence. Pending criminal charges against the offender create a "strong presumption" against re-parole. Where criminal charges are resolved with a finding of not guilty, the Parole Board Members may revoke parole, if upon reviewing the facts, it determines that the preponderance of the evidence indicates that the parolee has violated a condition of parole.¹²⁷

h. Revocation and Other Sanctions

If the hearing panel does not find that a violation occurred, the offender will be re-paroled within 24 hours, unless a delay is required to find an approved home or notify a victim. The Board may also modify the parole conditions. If the hearing panel *does* find that a violation occurred parole will be revoked.¹²⁸ The Board may set a re-parole date (which may be subject to the offender fulfilling certain conditions) or deny re-parole, which means that an offender will be reconsidered for parole in the future on the schedule mentioned in §2a of this report. Outside of the context of revocation hearings, the Field Services officers make use of graduated sanctions as a "supervision tool" "to inform and augment the decisions associated with the parole violation process."¹²⁹

i. Issuing Parole Revocation Decisions

The offender and his/her representative will be excused while the panel makes its decision; this is not recorded. The panel will immediately inform the offender and his/her representative orally of its decision, including (1) whether, as to each charge, a violation occurred; (2) whether parole should be revoked or the matter continued for further information or review; and (3) whether “reparole is warranted.” The offender is then advised of his/her appeal and reconsideration rights. Finally, the presenting member will prepare a vote tally sheet containing the final vote of each panel member and the reasons for the decision.¹³⁰

While the offender is informed of the hearing panel’s decision at the conclusion of the final revocation hearing, within 21 days of its decision, the Parole Board must send the offender written notice of its decision and a summary of its reasons. If the Board has decided to continue parole, the Board must also inform the offender of any special conditions of release.¹³¹

j. Administrative or Judicial Review of Parole Revocation Decisions

As with parole release decisions, parolees may file administrative appeals within 30 days of a Board decision.¹³² The process is described in detail in §3(g) of this report. Administrative rulings may face certiorari review for arbitrary and capricious decision making. “On certiorari review, the superior court’s role is to examine the record and to correct substantial errors of law apparent on the record adversely affecting material rights.”¹³³

Parolees may also seek declaratory relief (and not habeas corpus relief) to challenge parole revocation. Massachusetts courts have held that habeas corpus is not appropriate because parole is a variation on imprisonment and not an unrestrained release from confinement.¹³⁴

k. Re-Release Following Revocation

Once parole is revoked, hearings on parole re-release occur on the same schedule they would have had the offender remained incarcerated.¹³⁵ However their eligibility for parole is calculated based on the entire term of the sentence imposed.¹³⁶ Again, the Board may also vote to deny repare, thus requiring the offender to go through the hearing process again before being re-released.¹³⁷

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Massachusetts Parole Board is created by statute and has jurisdiction over parole release, parole rescission, the terms and conditions of parole, and parole revocation.¹³⁸

b. Location in Government

The Board is located within the Executive Office of Public Safety and Security. It is not subject to the jurisdiction of the Office. However, the secretary of the Office is the chairman of the panel that nominates board members and the Board’s policies and procedures are monitored and governed by the secretary and the governor.¹³⁹

c. Purpose (Vision/Principles/Rationale)

The Board describes its mission and values on its website: “The Massachusetts Parole Board, as an integral component of the criminal justice system, promotes public safety through the responsible reintegration of offenders into the community through supervised conditional release, so that a successful transition from confinement to parole discharge provides a basis for continued responsible conduct.”¹⁴⁰

d. Appointment and Qualifications of Board Members

The Board consists of seven members, at least one of whom must have experience in forensic psychology. Its members are appointed by the Governor with the advice and consent of the Executive Council. In the event of a vacancy on the Board, the Governor may appoint a panel to make nominations.¹⁴¹ The panel then has sixty days to submit no fewer than six and no more than nine (or twelve to fill two simultaneous vacancies) nominees “who are qualified by knowledge, education or experience in the administration of criminal justice or in the behavioral sciences.”¹⁴²

Qualifications. Each nominee must have a four-year bachelor’s degree and at least five years of training and experience in parole, probation, corrections, law, law enforcement, psychology, psychiatry, sociology, and/or social work.¹⁴³ At least one nominee must be a professional with at least five years of experience and training in adolescent development and psychology, and must be selected from nominees proposed by the Massachusetts Chapter of the

American Academy of Pediatrics, Inc., the New England Council of Child and Adolescent Psychiatry, Inc., the Massachusetts Psychological Association, Inc., and the Massachusetts Psychiatry Society, Inc. Additionally, the list of nominees for each vacancy must include, where feasible, one or more of the following: an attorney admitted to practice in Massachusetts, a psychiatrist who is a member in good standing of the American Psychiatric Association, a victim witness advocate, a psychologist certified by the Massachusetts Board of Certification in Psychology, Inc., and/or a member of the Massachusetts parole staff. Because Board Members serve full-time, they are not allowed to hold any other "salaried public office or engage in any activity which is in violation of any law or which interferes or conflicts with [their] services."¹⁴⁴

e. Tenure of Board Members, Ease of Removal

Members serve five year terms. Massachusetts regulations provide that the Board may operate as a "Full Board" with fewer than seven members.¹⁴⁵ The Governor designates a Chair of the Board, who serves as both the executive and administrative head of the Board. The Chair serves at the will of the governor and has responsibility for directing assignments of Board Members, as well as appointing and removing parole agents and other members of the parole staff. The governor may also designate an acting chairman from among the Board Members in the event of the temporary absence or disability of the Chair.¹⁴⁶

Members of the Board may be removed for cause by the Governor with the advice and consent of the Executive Council. In the case of removal, the Board Member has the right to notice and "the opportunity for a public hearing before the council."¹⁴⁷

f. Training and Continuing Education

One of the recent initiatives of the Board is to provide "improved staff training."¹⁴⁸ The 2013 Annual Report mentions that the Board is "committed to enhancing the job performance and professional development of [the] staff by maximizing communication, access to education, training and technology, and information sharing."¹⁴⁹ However, figures are not available to detail how much and what type of training is designed specifically for Board members.

g. Workload

In 2014, there were 5,680 release hearings which resulted in 3,427 releases, a 60% overall paroling rate. In addition, there were 198 rescission hearings and 304 revocation hearings.¹⁵⁰

h. Reporting and Accountability of Parole Board

The Board must make an annual report to the commissioner of the Department of Corrections each year.¹⁵¹ The Board's most recent report covers data from 2014.¹⁵² In general, parole hearings are closed to the public. Life sentence parole hearings, however, are open to the public and the parole decisions available on the Board website contain a detailed analysis of the circumstances of the crime, the offender's institutional record, and information provided by witnesses supporting and opposing parole.¹⁵³ All parole decisions are public record; however, the contents of a parole file and the details of what occurred during the hearing are not public (except during life sentence hearings, which are open to the public).¹⁵⁴

END NOTES

- ¹ See, e.g., *Com. v. Brown*, 730 N.E. 2d 297 (Mass. 2000).
- ² Mass. Sentencing Comm'n, *Massachusetts Sentencing Commission Invites Comment*, <http://www.mass.gov/courts/court-info/trial-court/sent-commission/sc-invitation-to-comment.html> (last visited Nov. 30, 2016).
- ³ Mass. Parole Bd., *2013 Annual Statistics Report* at 6 (2014), <http://www.mass.gov/eopss/docs/pb/2013annualstatisticalreport.pdf> [hereinafter 2013 Annual Report].
- ⁴ Mass. Gen. Laws ch. 127, § 130.
- ⁵ Mass. Exec. Office Pub. Safety & Sec., *Field Services Division Overview*, <http://www.mass.gov/eopss/law-enforce-and-cj/parole/field-svcs-unit/field-services-unit-overview.html> (last visited Apr. 12, 2016).
- ⁶ Mass. Gen. Laws ch. 127, § 148.
- ⁷ Mass. Gen. Laws ch. 279, § 24.
- ⁸ Mass. Gen. Laws ch. 279, § 26. This includes state prison sentences where an alternative sentence to the House of Correction is permitted. Mass. Gen. Laws ch. 279 § 24.
- ⁹ One exception to this is for individuals who commit first-degree murder between ages 14 and 18; their minimum sentence is between 20 and 30 years. See Mass. Gen. Laws ch. 279 § 24.
- ¹⁰ *Id.*
- ¹¹ Mass. Gen. Laws ch. 127, § 129D.
- ¹² Mass. Gen. Laws ch. 127, § 133.
- ¹³ Mass. Gen. Laws ch. 279, § 27.
- ¹⁴ 120 Mass. Code Regs. 200.02. Note that an offender confined to a House of Correction may receive a split sentence (i.e. a period of incarceration and a period of probation); if so, their parole eligibility is still calculated in the same manner. This means that an offender's actual sentence structure could consist of a term of incarceration, followed by a term of parole release and a term of probation served concurrently.
- ¹⁵ 120 Mass. Code Regs. 200.04.
- ¹⁶ 120 Mass. Code Regs. 200.08. There are three exceptions to this rule: first, a consecutive sentence for a crime committed while on parole cannot be aggregated with the governing sentence for purposes of determining parole eligibility; second, a split sentence may not be aggregated with any other sentence to determine parole eligibility if the parole eligibility date of the split sentence exceeds the committed portion of that sentence; third, a sentence "From-and-after" is a term of art in Massachusetts that refers to the fact that in a consecutive sentencing scenario, the next sentence [begins] from-and-after [the end of] the previous sentence. Mass. Gen. Laws ch. 279, § 8A.
- ¹⁷ A habitual offender is an offender convicted of a felony who has been previously twice convicted and confined to a facility for not less than three years, and who has not been pardoned on the grounds of innocence. Mass. Gen. Laws ch. 279, § 25.
- ¹⁸ *Id.*
- ¹⁹ *Id.* Habitual offenses that create ineligibility for parole include murder, manslaughter, mayhem, various assault and battery crimes, various rape crimes, various felonies committed with a firearm, poisoning, kidnapping, etc.
- ²⁰ Exceptions include inmates who are confined to the state hospital, who committed first degree murder at or after the age of 18, and/or who are serving multiple life sentences for separate incidents where the second crime occurred after the first conviction. Mass. Gen. Laws ch. 127, § 133A.
- ²¹ 120 Mass. Code Regs. 200.02. An offender confined to a House of Correction whose aggregated sentence is 60 days or more is eligible for parole after serving 1/2 of the total aggregated term or two years, whichever is shorter, unless the offender is serving a sentence with a mandatory minimum that exceeds two years. For offenders serving a mandatory minimum sentence of more than two years, parole eligibility occurs after the offender has served "the aggregate length of any mandatory minimum terms." 120 Mass. Code Regs. 200.02. For offenders serving a House of Correction or Reformatory sentence who receive a "forthwith" State Prison sentence, parole eligibility is calculated based on the state sentence only. 120 Mass. Code Regs. 200.09.
- ²² 120 Mass. Code Regs. 200.08.
- ²³ Mass. Gen. Laws ch. 127, § 133; 120 Mass. Code Regs. 301.01.
- ²⁴ Joseph R. Nolan & Laurie J. Sartorio, 32 Mass. Prac., Criminal Law § 90 (3d ed.) (database updated Oct. 2015). Any offender who committed a crime after June 30, 1994 is not eligible to earn "good time" credits.
- ²⁵ Mass. Gen. Laws ch. 127, § 129D. Eligible achievements include earning a GED, completing "any other educational sequence or vocational training program," "satisfactory performance" at work (either within the institution or on a work-release program), or "satisfactory performance [...] in any other program or activity which the superintendent of the institution [...] deem[s] valuable to [the offender's] rehabilitation."
- ²⁶ Mass. Gen. Laws ch. 127, §§ 83A, 83B.
- ²⁷ Mass. Gen. Laws ch. 127, § 129C.
- ²⁸ Mass. Gen. Laws ch. 127, § 129D.
- ²⁹ Mass. Gen. Laws ch. 127, §§ 129C, 129D.
- ³⁰ Mass. Gen. Laws ch. 127, § 129D.
- ³¹ Mass. Gen. Laws ch. 127, § 130.
- ³² *Id.* Note, also, that if the offender is required to pay the Victim and Witness Assistance Fund and has not done so, the offender will not be released on parole until the fee is paid, unless the offender can show "compelling reasons" for failing to pay. Mass. Gen. Laws ch. 127, § 130.
- ³³ Mass. Parole Bd., *Parole Decision Making: The Policy of the Massachusetts Parole Board* at 19 (Mar. 2012) <http://www.mass.gov/eopss/docs/pb/paroledecision.pdf> [hereinafter *Parole Decision Making*]. See also 120 Mass. Code Regs. 300.01 — 301.09.
- ³⁴ 2013 Annual Report, *supra* note 3 at 22; See also Mass. Parole Bd., 2014 Annual Statistical Report (2015), <http://www.mass.gov/eopss/docs/pb/2014annualstatisticalreport.pdf> at 13 [Hereinafter 2014 Annual Report].
- ³⁵ Multi-Health Systems Inc., *LS/CMII*, <http://www.mhs.com/product.aspx?gr=saf&id=overview&prod=ls-cmi#scales> (last visited May 3, 2016).
- ³⁶ 2014 Annual Report, *supra* note 34 at 13. In 2014, 1% of institutional assessments fell into the "very low" risk category, 6% into "low" risk, 33% into "medium" risk, 47% into "high" risk, and 13% into "very high" risk.
- ³⁷ 120 Mass. Code Regs. 200.10. Outside of early release, inmates may be transferred to hospitals or medical facilities to receive treatment not available in the correctional institution. Time spent in the hospital or medical facility counts towards the parole eligibility date. Mass. Gen. Laws ch. 127, §§ 117A, 119.
- ³⁸ 120 Mass. Code Regs. 200.10.
- ³⁹ Mass. Parole Bd., *Executive Clemency Overview*, <http://www.mass.gov/eopss/law-enforce-and-cj/parole/exec-clemency-unit/executive-clemency-overview.html> (last visited May 3, 2016); Mass. Gen. Laws ch. 127, §§ 152-169.
- ⁴⁰ 103 Mass. Code Regs. 901.05. An application for a waiver must meet the following conditions: "(a) non-compliance with the standard does not adversely affect the life, health and safety of staff or inmates or the constitutional operation of the facility; and (b) overall facility programming compensates for conditions resulting in non-compliance with the standard." The application must also specify what regulatory provisions the facility wants waived, the reasons why the facility cannot currently comply with the regulations, and steps the facility will take to achieve the purpose of the waived regulation(s) through alternate means. Waivers must be reviewed by the Commissioner annually to determine if conditions still justify the waiver. 103 Mass. Code Regs. 901.04.
- ⁴¹ Mass. Gen. Laws ch. 127, § 134; 120 Mass. Code Regs. 301.05.
- ⁴² Mass. Gen. Laws ch. 127, § 133A; 120 Mass. Code Regs. 301.06. If the offender's life sentence has been commuted to a term of years by the Governor, the initial release hearing is conducted by a panel of the Parole Board, but further hearings are conducted by the Full Board.
- ⁴³ *Id.*
- ⁴⁴ According to current Board practice, non-life sentence initial and review hearings are not recorded; non-life revocation and rescission hearings are audio recorded, and all life sentence initial and review hearings are A/V recorded. Correspondence with Laura Weierman, Mass. Exec. Office of Pub. Safety and Sec. Assistant Gen. Counsel (Nov. 16, 2016).

END NOTES

- ⁴⁵ Mass. Gen. Laws ch. 127.
- ⁴⁶ Mass. Gen. Laws ch. 127, § 136. The report from the commissioner may include a report from the warden or superintendent of each facility in which the offender has been confined concerning the offender's conduct, including details of all infractions of prison rules and any punishments handed down; the extent to which the offender has responded to "efforts made in prison to improve his mental and moral condition," including a statement about the offender's attitude toward society, the sentencing judge, the district attorney who convicted him, the police officer who arrested him, and the crime he/she committed; the prisoner's industrial record, his/her occupation, and a recommendation as to work he/she is best fitted for following release; and reports of any physical, mental, or psychiatric examinations made within two months of the parole eligibility date.
- ⁴⁷ 120 Mass. Code Regs. 300.05.
- ⁴⁸ Correspondence with Shawna Andersen, Research & Planning Specialist, Mass. Parole Bd. (Jan. 22, 2015). By statute, information to be considered may include reports and recommendations from parole staff, official reports of the offender's prior criminal record, including any reports or records from previous probation and/or parole periods, any pending cases, presentence or investigative reports, official reports of the nature and circumstances of the offense (including police reports, grand jury minutes, decisions of the Appeals Court or Supreme Judicial Court, and transcripts of the trial or sentence hearing), victim statements about harm or loss, reports of physical, medical, mental, or psychiatric examinations of the offender, any information the offender wishes to provide, including letters of support and parole release plans, and information from the custodial authority. 120 Mass. Code Regs. 300.5.
- ⁴⁹ 120 Mass. Code Regs. 300.5.
- ⁵⁰ "Attorney" representation may include actual counsel or law students under an attorney's supervision, but representation by another inmate is never permitted. 120 Mass. Code Regs. 300.08.
- ⁵¹ *Id.*
- ⁵² See 803 Mass. Code Regs. 9.01 *et seq.*; Exec. Office of Safety & Sec., *Criminal Offender Record Information (CORI)*, <http://www.mass.gov/eopss/crime-prev-personal-sfty/bkgd-check/cori/> (last visited May 3, 2016).
- ⁵³ 120 Mass. Code Regs. 400. The Board will also notify the victim in the event of the offender's death. 120 Mass. Code Regs. 400.02.
- ⁵⁴ 120 Mass. Code Regs. 401.01. If the victim has obtained CORI certification the Board must notify the victims of the hearing 60 days in advance. If the victim has *not* obtained CORI certification, the Board must make reasonable efforts to notify the victim at their last known address.
- ⁵⁵ Mass. Gen. Laws ch. 127, § 133E.
- ⁵⁶ Mass. Gen. Laws ch. 127, §§ 133C, 133E.
- ⁵⁷ 120 Mass. Code Regs. 401.
- ⁵⁸ 120 Mass. Code Regs. 301.06; 120 Mass. Code Regs. 400 *et seq.*
- ⁵⁹ Mass. Gen. Laws ch. 127 § 133A.
- ⁶⁰ Mass. Parole Bd., *Frequently Asked Questions*, <http://www.mass.gov/eopss/agencies/parole-board/frequently-asked-questions.html> (last visited Apr. 29, 2016).
- ⁶¹ Mass. Gen. Laws ch. 127, § 130.
- ⁶² Parole Decision Making, *supra* note 33 at 9; *See also* 120 Mass. Code Regs. 301.01.
- ⁶³ Mass. Gen. Laws ch. 127, § 133A.
- ⁶⁴ 120 Mass. Code Regs. 400.02(4).
- ⁶⁵ 120 Mass. Code Regs. 304.02.
- ⁶⁶ 2013 Annual Report, *supra* note 3 at 28.
- ⁶⁷ 120 Mass. Code Regs. 304.02.
- ⁶⁸ This second appeal must also be made within 30 days of receiving the Panel's decision. If the initial decision was made by the Full Board (as in the case of an offender serving a life sentence) this subsequent appeal to the Full Board is precluded. *Id.*
- ⁶⁹ 120 Mass. Code Regs. 304.03 (2014).
- ⁷⁰ 120 Mass. Code Regs. 304.01 (2014).
- ⁷¹ *Crooker v. Chairman of the Mass. Parole Bd.*, 645 N.E. 2d 698 (Mass. Ct. App. 1995).
- ⁷² *Barriere v. Hubbard*, 710 N.E.2d 1044 (Mass. Ct. App. 1999).
- ⁷³ 120 Mass. Code Regs. 301.01. Review for habitual criminals must occur every two years; review for individuals serving life sentences with parole eligibility must occur every five years. Finally, review in cases involving civilly committed sexually dangerous persons who are also serving concurrent correctional sentences must occur every three years.
- ⁷⁴ Danielle Kaeble & Thomas P. Bonzcar, Bureau of Justice Statistics, Probation and Parole in the United States, 2015 at 21 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁷⁵ Mass. Parole Bd., *Frequently Asked Questions*, <http://www.mass.gov/eopss/agencies/parole-board/frequently-asked-questions.html> (last visited Apr. 29, 2016).
- ⁷⁶ 2014 Annual Report, *supra* note 34 at 23.
- ⁷⁷ 120 Mass. Code Regs. 300.07. In Massachusetts, there is no such thing as unsupervised or administrative parole; however, there is parole with reduced supervision. Correspondence with Shawna Hawksley and Laura Weierman, Mass. Parole Bd., Nov. 16, 2016.
- ⁷⁸ 120 Mass. Code Regs. 100.00 ("For sentences committed on or after July 1, 1994, the parole discharge date is reached by adding the maximum term of the sentence to the sentence effective date and then deducting all earned good time and prison camp deductions while incarcerated from the maximum term of incarceration."); *See, e.g., Com v. Brown*, 730 N.E.2d 297 (Mass. 2000).
- ⁷⁹ Mass. Gen. Laws ch. 127 § 133D. Lifetime parole supervision is authorized for many different crimes, listed under Mass. Gen. Laws ch. 265 § 45. These include attempted or completed crimes of indecent assault and battery, various types of rape, kidnapping of a child under 16, drugging persons for sexual intercourse, or unnatural or lascivious acts with a child.
- ⁸⁰ *Commonwealth v. Cole*, 10 N.E.3d 1081, 1091-92 (Mass. 2014). This case has since been cited in *State v. Dull*, a Kansas case that invalidated lifetime postrelease supervision for juveniles convicted of sex offenses. 351 P.3d 641 (Kan. 2015).
- ⁸¹ Mass. Gen. Laws ch. 127, § 130A. The Board must also send a copy of the certificate of termination to the commissioner of correction and the sentencing judge.
- ⁸² 120 Mass. Code Regs. 300.07; Mass. Gen. Laws ch. 127, § 131A.
- ⁸³ 120 Mass. Code Regs. 300.07. According to state sources, this regulation will be changed significantly in the near future and parole conditions (which are similar to those listed here) will be available in the parolee supervision manual. Correspondence with Shawna Hawksley, Research & Planning Specialist, Mass. Parole Bd. (Nov. 16, 2016).
- ⁸⁴ 120 Mass. Code Regs. 300.07.
- ⁸⁵ Mass. Gen. Laws ch. 6, § 178K.
- ⁸⁶ Mass. Bd. of Parole, *Intensive Parole for Sex Offenders*, <http://www.mass.gov/eopss/law-enforce-and-cj/parole/field-svcs-unit/intensive-parole-for-sex-offenders.html> (last visited May 3, 2016).
- ⁸⁷ Mass. Gen. Laws ch. 127, §§ 133A, 133B.
- ⁸⁸ Correspondence with Shawna Hawksley, *supra* note 83.
- ⁸⁹ *See* Mass. Parole Bd., *Parolee Supervision Manual* (2013). Parolees must use documents such as tax forms, credit reports, proof of employment, bank documents, etc. to prove that they are indigent. The Board was authorized to impose fees under Mass. Acts 2003 ch. 26, § 368 and under the general statutory authority given in Mass. Gen. Laws ch. 27, § 5.
- ⁹⁰ Mass. Gen. Laws ch. 265, § 47.
- ⁹¹ *See* Richard W. Bishop & Thomas B. Merritt, 17B Mass. Practice Series § 53.155 (5th ed.) (database updated May 2015).
- ⁹² Mass. Gen. Laws ch. 258B, § 8; Correspondence with Shawna Andersen, Research & Planning Specialist, Mass. Parole Bd. (Jan. 22, 2015).
- ⁹³ Mass. Gen. Laws ch. 127, § 130.
- ⁹⁴ Kaeble & Bonzcar, *supra* note 74 at 24 (Appendix Table 6).
- ⁹⁵ 2013 Annual Report, *supra* note 3 at 73.
- ⁹⁶ 120 Mass. Code Regs. 303.10, 303.15.
- ⁹⁷ Mass. Parole Bd., *Graduated Sanctions Overview*, <http://www.mass.gov/eopss/law-enforce-and-cj/parole/field-svcs-unit/graduated-sanctions-overview.html> (last visited May 3, 2016).

END NOTES

- ⁹⁸ *Id.*
- ⁹⁹ Mass. Gen. Laws ch. 127, §133A; 120 Mass. Code Regs. 303.01 *et seq.*
- ¹⁰⁰ Mass. Gen. Laws ch. 127, § 148.
- ¹⁰¹ 120 Mass. Code Regs. 303.01.
- ¹⁰² 2014 Annual Report, *supra* note 34 at 33.
- ¹⁰³ 2013 Annual Report, *supra* note 3 at 66.
- ¹⁰⁴ *Id.* at 63. In addition, the division utilizes this risk assessment to assign supervision levels to parolees. Correspondence with Shawna Hawksley, *supra* note 83.
- ¹⁰⁵ 120 Mass. Code Regs 303.02.
- ¹⁰⁶ 120 Mass. Code Regs 303.04. This type of warrant allows for a maximum period of 15 days in custody.
- ¹⁰⁷ 120 Mass. Code Regs 303.03.
- ¹⁰⁸ The examiner will also either allow the offender to “examine documentary evidence,” or read or summarize the evidence aloud. The examiner may withhold and summarize any “evaluative and intelligence information.” 120 Mass. Code Regs. 303.12.
- ¹⁰⁹ *Id.*
- ¹¹⁰ 120 Mass. Code Regs. 303.13. If the examiner finds that no probable cause exists to hold the offender in custody, a Parole Board Member is required to review the recommendation as soon as possible. If the Board Member agrees with the examiner, the offender will be released and placed back on parole. If the examiner finds that probable cause *does* exist, the reviewing Board Member will render a decision and notify the offender. If the reviewing Board Member does not concur with the examiner’s recommendation, the case is referred to another Board Member. If the second Board Member disagrees with the first, the case is referred to a third Board Member. The decision of the two agreeing Board Members will control. *Id.*
- ¹¹¹ 120 Mass. Code Regs. 303.10.
- ¹¹² Even if the Board finds reasonable grounds to support a violation, the Board may reinstate supervision or release pending further revocation proceedings if the Board determines incarceration is not warranted by “the alleged frequency or seriousness of such violations,” that the offender is “not likely to fail to appear” for further hearings, and that the offender does not pose a danger to himself or the community. *Id.*
- ¹¹³ If the underlying sentence is a life sentence, a panel of Parole Board Members may conduct the final revocation hearing, but the case must be referred to the full Board for a final vote. If the underlying sentence is a State Prison or Reformatory sentence, a panel of Parole Board Members conducts the final hearing and that panel may make the final decision on revocation. If the underlying sentence is a House of Correction sentence, a panel of hearing examiners will conduct the final revocation hearing. 120 Mass. Code Regs. 303.17.
- ¹¹⁴ 120 Mass. Code Regs. 303.24.
- ¹¹⁵ This includes information about the offender’s institutional conduct since being returned to prison as an alleged parole violator, criminal history, and “home situation”; any physical, medical, mental, or psychiatric examinations; pending criminal cases or domestic restraining orders; parole staff reports; and any other information provided by the custodial authority. *Id.*
- ¹¹⁶ See, e.g., *Stefanik v. State Bd. of Parole*, 363 N.E.2d 1099 (Mass. 1977) (confirming that due process requires the elements of a final revocation hearing set out in *Morrissey v. Brewer*, 408 U.S. 471 (1972)).
- ¹¹⁷ Representatives also must certify to the office of the state secretary that he/she has the written consent of the offender, and that he/she will receive compensation only in the form of fees for legal services. The fees must be detailed in the statement and, if the fees or reward following representation differ, the representative must submit a revised statement. These statements are available to the public. Mass. Gen. Laws ch. 127, § 167.
- ¹¹⁸ Edward M. Swartz, Trial Handbook for Mass. Lawyers § 1.8 (3d. ed.) (database updated Dec. 2015), citing *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).
- ¹¹⁹ *Gagnon*, 411 U.S. at 790 (“Presumptively, it may be said that counsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes

such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.”).

- ¹²⁰ 120 Mass. Code Regs. 303.22.
- ¹²¹ 120 Mass. Code Regs. 303.09.
- ¹²² 120 Mass. Code Regs. 303.21.
- ¹²³ 120 Mass. Code Regs. 400.03.
- ¹²⁴ Correspondence with Laura Weierman, *supra* note 44.
- ¹²⁵ Mass. Gen. Laws ch. 127, § 131A.
- ¹²⁶ Correspondence with Laura Weierman, *supra* note 44.
- ¹²⁷ 120 Mass. Code Regs. 303.25.
- ¹²⁸ 120 Mass. Code Regs. 303.25. Note that revocation does not always result in incarceration. There is no time frame in the regulation for the length of custody after parole is revoked.
- ¹²⁹ Correspondence with Shawna Andersen, *supra* note 92.
- ¹³⁰ *Id.* For offenders serving a life sentence, the full Board must vote, thus no decision is made immediately following the hearing. Instead, the Board members who presided over the hearing report back to the full Board, who votes on revocation at a later date. See 120 Mass. Code Regs. 303.17(2).
- ¹³¹ 120 Mass. Code Regs. 303.26.
- ¹³² 120 Mass. Code Regs. 304.02.
- ¹³³ *Doucette v. Mass. Parole Bd.* 18 N.E.3d 1096 (Mass. Ct. App. 2014).
- ¹³⁴ *Mass. Parole Bd. v. Brusgulis*, 532 N.E. 2d 45 (Mass. 1989).
- ¹³⁵ 120 Mass. Code Regs. 303.01.
- ¹³⁶ 120 Mass. Code Regs. 200.03.
- ¹³⁷ *Id.*
- ¹³⁸ Mass. Gen. Laws ch. 27, § 5.
- ¹³⁹ Mass. Gen. Laws ch. 27, § 4.
- ¹⁴⁰ Mass. Parole Bd., *Welcome to the Parole Board*, <http://www.mass.gov/eopss/agencies/parole-board/> (last visited May 3, 2016).
- ¹⁴¹ If the governor chooses not to appoint a panel, he/she must appoint a Member to the Board who meets all the qualifications described in this section. Mass. Gen. Laws ch. 27, § 4.
- ¹⁴² The panel includes the administrative judge for the superior court department, the president of the state parole officers association, one person from a list of three nominees submitted by the Massachusetts District Attorneys Association, one person from a list of three nominees submitted by the committee for public counsel services, one person from a list of three nominees submitted by the Prisoners’ Legal Services and one member from local law enforcement, the chairman of the advisory committee on correction, the president of the Massachusetts Bar Association (or a designee), and the secretary of the Executive Office of Public Safety (who serves as chairman of the panel). *Id.*
- ¹⁴³ The panel may also submit (upon unanimous vote) a nominee who “substantially” meets these qualifications provided that nominee has “demonstrated exceptional qualifications and aptitude for carrying out the duties required.” *Id.*
- ¹⁴⁴ *Id.*
- ¹⁴⁵ 120 Mass. Code Regs. 101.01.
- ¹⁴⁶ Mass. Gen. Laws 27 § 4.
- ¹⁴⁷ *Id.*
- ¹⁴⁸ Mass. Parole Bd., *Welcome to the Parole Board*, <http://www.mass.gov/eopss/agencies/parole-board/welcome-to-the-parole-board.html> (last visited May 3, 2016).
- ¹⁴⁹ 2013 Annual Report, *supra* note 3, at 5.
- ¹⁵⁰ 2014 Annual Report, *supra* note 34 at 9-10.
- ¹⁵¹ Mass. Gen. Laws 27 § 5.
- ¹⁵² 2014 Annual Report, *supra* note 34.
- ¹⁵³ Mass. Parole Bd., *Massachusetts Parole Board* (Home Page), <http://www.mass.gov/eopss/agencies/parole-board/> (last visited May 3, 2016).
- ¹⁵⁴ Mass. Gen. Laws 127 § 130; Correspondence with Laura Weierman, *supra* note 44.