

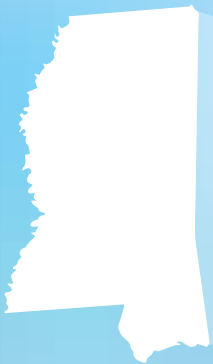
UNIVERSITY OF MINNESOTA

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

MISSISSIPPI



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Mississippi

By

Alexis Lee Watts, Julie Matucheski, Noah Finn, Kevin R. Reitz

In contrast to most 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 Mississippi without checking additional sources. We also welcome corrections to the profile.

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PROFILES IN PAROLE RELEASE AND REVOCATION:

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1. Background; Sentencing System

a. Sentencing Framework

Sentences imposed in Mississippi are for a “definite” term of years (in other words, judges impose a maximum sentence only, rather than a range with a minimum and a maximum). This state does not have sentencing guidelines or a sentencing commission. Mississippi began major reforms of its criminal justice system in 2013, after forming a Corrections and Criminal Justice Task Force through the Justice Reinvestment Initiative. The Task Force noted that Mississippi’s prison population had grown 17% over the past ten years, and that the state had the second-highest prison rate in the U.S. Their final report noted that there were several key factors contributing to prison growth, including that:

- Almost 3/4 of offenders entering prison in 2012 were sentenced for a non-violent offense;
- More offenders were entering prison for violations of supervision than for new crimes;
- Uncertainty about how long inmates would serve behind bars pushed up sentence lengths by 28% over the same ten-year period; and, finally
- Nearly one-in-three nonviolent offenders returned to prison within three years of release.¹

In 2014, the legislature passed House Bill 585, which made fairly sweeping changes to all areas of the justice system including parole; for example, allowing the parole release of some offenders without a hearing.² In April 2016, the Mississippi Court of Appeals ruled that these reforms make parole release a possibility for many non-violent drug offenders who were previously ineligible; this may allow release of up to 1,200 individuals.³

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

Yes, the Mississippi State Parole Board.⁴

<http://www.mdcc.ms.gov/Community-Corrections/Pages/Parole.aspx>

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

The Division of Community Corrections, located within the Department of Corrections, supervises parolees.⁵

<http://www.mdcc.ms.gov/Community-Corrections/Pages/default.aspx>

d. Which Agency Has Authority Over Parole Revocation?

The Mississippi State Parole Board.⁶

2. Parole Release and Other Prison-Release Mechanisms

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

General rules of release eligibility. Inmates who have been sentenced to a definite term of one year or over and who have completed at least 1/4 of their sentence may be eligible for parole consideration, with exceptions. Inmates with sentences longer than 30 years, including natural life sentences, may be eligible for parole after having served at least 10 years of the sentence.⁷

In late 2014, shortly after major criminal justice reforms were made by the legislature, a report on parole eligibility calculations was released by the Joint Legislative Committee on Performance Evaluation and Expenditure Review ("PEER"). The Committee found that some offenders did not receive timely parole hearings due to issues with a computerized offender tracking system that was not being utilized properly. However, it also "found no instance in the sample wherein MDOC policy or the legal rights of inmates were violated regarding the dates of discharge."⁸

Violent offenders. Inmates convicted of certain violent crimes prior to July 1, 2014 may be ineligible for parole.⁹ Inmates convicted of a "crime of violence" as now defined in statute after July 1, 2014 are ineligible for parole until they have served at least 1/2 of their sentence.¹⁰ In addition, inmates who are third-time felons and have been convicted of a crime of violence are subject to life imprisonment without parole.¹¹

Sex offenders. Sex offenders are not eligible for parole.¹²

Habitual offenders and nonviolent drug offenders. Inmates convicted as habitual criminals or drug traffickers are not eligible for parole, however they may petition the court for parole eligibility.¹³

Life sentences. Inmates serving life sentences may be eligible for parole after having served at least 10 years of their sentence.¹⁴ However, on or after July 1, 1994, any person who is sentenced to life without eligibility for parole or who has been sentenced to life in prison in lieu of the death sentence is ineligible.¹⁵

Recurring eligibility after denial of release. If the Board denies parole, the board may schedule a subsequent parole hearing and, if a new date is scheduled, the board shall identify the corrective action the inmate will need

to take in order to be granted parole. Any inmate not released at initial parole date shall have a parole hearing at least every year.¹⁶

b. Good Time, Earned Time, and Other Discounts

Certain inmates who comply with good conduct and performance requirements of the earned time allowance program are eligible to receive an earned time allowance of 4 1/2 days for each 30 days served, up to 15% of the total sentence.¹⁷ Inmates placed in trusty status by the Department of Corrections may receive an additional "trusty-time" allowance of 30 days reduction in sentence for each 30 days of participation in educational or instructional programs, satisfactory participation in work projects and satisfactory participation in any special incentive program.¹⁸

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. Parole release is presumptive in this state; inmates "shall" be eligible for release—without a hearing—if they meet certain factors discussed below.¹⁹ There is still some discretion in parole, however. For example, the Board can decide to hold a hearing for various reasons, including to determine whether or not an inmate has sufficiently complied with a parole case plan.²⁰

Where discretion still exists, "parole release shall, at a hearing, be ordered only for the best interest of society," and "only when arrangements have been made for his proper employment or for his maintenance and care, and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen."²¹

Statutory factors the Board must consider. The Board must consider the following five factors, and if the factors are met, must release the parolee with no hearing:

- The inmate has met the requirements of the parole case plan;
- A victim of the offense has not requested the Board conduct a hearing;
- The inmate has not received a serious or major violation report within the last six months;
- The inmate has agreed to the conditions of supervision; and
- The inmate has a discharge plan approved by the Board.²²

The parole case plan is a particularly important statutory factor in parole release. The plan is written within 90 days of admission to custody, and should be completed by the inmate before the parole eligibility date. However, the Board can also release an inmate with an incomplete case plan who is not at fault for their failure to complete it and if “granting parole is not incompatible with public safety.”²³

The plan includes:

- Programming and treatment requirements based on the results of a risk and needs assessment;
- Any programming or treatment requirements contained in the sentencing order; and
- General behavior requirements in accordance with the rules and policies of the department.²⁴

If a hearing is conducted, the Board may consider more than thirty factors as per regulation.²⁵ However, it is unclear whether this regulation is fully up to date given the recent revisions to the parole law.

Special standard for sex offenders. Sex offenders are not eligible for parole by statute, and thus there are no standards developed for their release.²⁶

d. Parole Release Guidelines

Parole release guidelines. There is no guidelines system for parole release in Mississippi.

e. Risk and Needs Assessment Tools

Statutory Mandate. While there is no risk assessment prepared at the parole release phase, the statute requires a risk and needs assessment when developing a parole case plan.

Transparency. There is almost no information available on risk assessment in this state.

Risk instruments utilized. In a survey conducted by the Association of State Correctional Administrators (ASCA), the Department of Corrections’ management information systems director mentioned that the state utilized a risk assessment tool developed by the National Institute of Corrections.²⁷ The Board’s regulations also mention that they consider a risk assessment if a hearing is held.²⁸

f. Medical or Compassionate Release

The Department of Corrections and the medical director of the Department may approve medical release for eligible inmates. Eligible inmates must have served no less than 1 year of a sentence unless they are a bedridden nonviolent offender. Sex crime offenders are excluded from conditional medical release. Further, no medical release shall be granted unless:

- (a) the offender is suffering from a significant permanent physical medical condition with no possibility of recovery;
- (b) further incarceration will serve no rehabilitative purposes; and
- (c) the state would incur unreasonable expenses as a result of his or her continued incarceration.

An offender’s conditional medical release may be revoked and the offender returned and placed in actual custody of the department if the offender violates an order or condition of his or her conditional medical release, or if the offender is no longer bedridden.²⁹

g. Executive Clemency Power

The Governor has constitutional authority to grant reprieves and pardons in all criminal and penal cases excepting those of treason and impeachment.

h. Emergency Release for Prison Crowding

Mississippi has a “Prison Overcrowding Emergency Act.” An emergency occurs when the prison system reaches 95% capacity for at least 30 days, and Department of Corrections and the State Parole Board are already making full and appropriate use of their ordinary powers to expand operating capacity or reduce the prison population.³⁰ When the Governor receives a prison overcrowding report, he or she may determine that the agencies above are actually not making full and appropriate use of their powers; or that a state of emergency would raise public safety concerns. Alternatively, the Governor may determine that a prison system overcrowding state of emergency exists and specify an amount of advancement of parole eligibility dates from thirty to ninety days.³¹ Each week, the Governor must receive a new population certification from the Commissioner of Corrections and terminate the state of emergency if the crisis has resolved.³² If the crisis is still ongoing at the 60-day mark, a new evaluation will take place which may lead to additional advancement of parole eligibility dates.³³

3. Parole Release Hearing Process

a. Format of Release Hearings

As mentioned above, parole release may be granted without a hearing if an inmate has met their case plan, not had any serious violations within the last six months, has agreed to supervision, and has a Board-approved discharge plan. However, any concern about an inmate's parole case plan (i.e. failing to meet a requirement, or not enough information) may trigger a hearing. In addition, a victim or law enforcement official request for a hearing must be honored.

A quorum (the majority) of Board members must make parole decisions by a majority vote. However, the decision to parole an offender convicted of murder or of a sex-related crime requires the affirmative vote of three members.³⁴

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

Within one year from the date of a parole eligible criminal convict's admission to prison the board must "secure and consider all pertinent information regarding each offender . . . including the circumstances of his offense, his previous social history, his previous criminal record, including any records of law enforcement agencies or of a youth court regarding that offender's juvenile criminal history, his conduct, employment and attitude while in the custody of the [DOC], the case plan created to prepare the offender for parole, and the reports of such physical and mental examinations as have been made."³⁵

Before the Board conducts a hearing, an inmate's master file is reviewed and all pertinent information is recorded in a summary report that is distributed to each board member. The parole file is also available to the members. The parole file does not contain correctional records, but rather information pertaining to previous Board actions as well as all documents and correspondence received supporting or opposing parole.³⁶

c. Prisoner's Procedural Rights

The Board must provide written notice to each offender at least three months in advance of their parole eligibility date.³⁷ The Board has the option to interview offenders in person and the offender has the privilege to be represented by counsel at his or her own expense. In addition,

the inmate may provide any additional information either in writing or during the hearing. The Board may also question the inmate about any matter including past criminal activity which may be necessary to evaluate the inmate's potential for success or failure while on parole.³⁸

It is unclear whether individuals eligible for parole can see their parole file or master file.

d. Victims and Other Participants

Victims who register for "SAVIN" may be notified of parole eligibility and release decisions as well as other information about offenders such as transfers and returns to custody.³⁹ Victims can also write the Board to request information about an offender.⁴⁰ Victims can participate in parole release hearings; in fact, victims can trigger a parole release hearing where there would otherwise be none.⁴¹ Also, by regulation, the Board "takes under consideration the victim's input as an important factor in making its decision as to whether or not to grant parole."⁴²

Law enforcement officials "from the community to which the inmate will return" can also "request a hearing to consider information relevant to public safety risks posed by the inmate if paroled at the initial parole eligibility date."⁴³

e. Burdens of Proof or Standards of Persuasion for Release

There does not appear to be an express burden of proof for parole release.

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

If a parole hearing is held, the board may determine the inmate has sufficiently complied with the case plan or that the incomplete case plan is not the fault of the inmate and that granting parole is not incompatible with public safety, the board may then parole the inmate with appropriate conditions. If the board determines that the inmate has sufficiently complied with the case plan but the discharge plan indicates that the inmate does not have appropriate housing immediately upon release, the board may parole the inmate to a transitional reentry center with the condition that the inmate spends no more than six (6) months in the center. If the board determines that the inmate has not substantively complied with the requirement(s) of the case plan it may deny parole.⁴⁴

When an inmate appears before the Board and his parole is denied, the Board shall prepare and mail to the inmate a written statement specifying the length of set-off and the reason(s) consistent with state statute for denial of parole. The set-off length will be determined by a majority vote of the Board.⁴⁵

g. Administrative or Judicial Review of Parole Denial

At this time, the state of parole is in flux in this state. Many 2016 cases have focused on the potential eligibility for parole of various types of offenders under 2014's S.B. 585. It appears that judicial review is triggered through Mississippi's post-conviction relief statute.⁴⁶ This type of relief is available for those who are unlawfully held in custody, are entitled to an out-of-time appeal, or are otherwise able to make a collateral attack on other grounds of alleged error under common law, writ, etc.⁴⁷

h. Rescission of Parole Release Dates

The Board can rescind parole without a hearing based, for example, on failure to complete a condition that is a prerequisite for parole release.⁴⁸

4. Supervision Practices

Parole supervision rate. As of December 31, 2016, there were 381 parolees per 100,000 adults in the state; this is higher than the 50-state average of 303 parolees per 100,000 adults.⁴⁹

a. Purposes of Supervision

The Community Corrections Division writes that it "exists to provide for public safety, promote opportunities for positive behavioral change in the offenders under supervision, secure provisions for community based assistance and services needed by the offenders, decrease criminal behavior and recidivism, and [that it] serves as an alternative to incarceration."⁵⁰

The Division's stated mission is "to provide and promote public safety through efficient and effective offender custody, care, control and treatment consistent with sound correctional principles and constitutional standards."⁵¹

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

All parolees are initially placed on supervision as a standard condition of parole.⁵²

c. Length of Supervision Term

Maximum supervision terms. A parolee is generally on parole until the end of his or her maximum term as imposed by the judge.⁵³

Early termination. Apart from the earned discharge program described below, it is unclear whether there are other means of early discharge from supervision or termination of the parole period.

Extension of supervision term. There is no mechanism to extend the supervision term beyond the end of a parolee's sentence.

Incentives; "goal parole." There is an "earned-discharge" program for parolees that allows offenders to reduce the period of supervision for complying with the conditions of parole. This allows offenders to earn a one-calendar month deduction from the sentence discharge date for each calendar month of compliance. No discharge credits accrue in any month in which a violation report has been submitted, nor between when a violation report is submitted and action is taken by the Board.⁵⁴

d. Conditions of Supervision

There are numerous standard conditions of parole. These include:

- Reporting to a field officer within 24 hours unless otherwise directed.
- Making regular reports to a field officer, and if that officer is not available for communication, contacting the Department of Corrections (DOC).
- Working diligently at a lawful occupation and supporting legal dependents to the best of a parolee's ability; obtaining permission from field officer before leaving a job.
- Obtaining permission from field officer before moving, and not absconding from supervision.
- Obtaining written permission from field officer before leaving the state.
- Not possessing illegal drugs; not drinking alcohol/intoxicating beverages or frequenting "places where they are the chief item of sale." Submitting to drug/alcohol testing.

- Not knowingly associating with former inmates, felons, or “any person of bad reputation.” Not visiting places of bad reputation where disorderly conduct is likely to occur or which are frequented by persons of ill repute (bars, lounges, night clubs, gambling houses, etc.).
- Not possessing any firearm or deadly weapon outlined in federal/state statutes.
- Not violating any city, county, State, or Federal laws. Notifying field officer within 48 hours if arrested or cited.
- Notifying field officer of termination of employment, change of residence, or any name change resulting from marriage or divorce.
- Complying with curfew between 12:00 am - 6:00 am unless required by work and with permission.
- Paying a monthly parole supervision fee, as well as any court-ordered penalties or restitution.
- Not returning to any DOC facility without joint permission from field officer and the administrator of the facility.
- Waiving extradition to the State of Mississippi from any state, territory, or country.
- Not entering into any agreement to act as an informer or special agent for law enforcement that will violate parole conditions.
- If released to a detainer which is then cleared/satisfied, notifying the DOC.⁵⁵

The Board is also free to impose other special requirements of parole, however there is little state-level case law that limits the conditions that may be imposed.⁵⁶

Modification of conditions. Modification of parole conditions may occur as the result of a technical violation of parole.⁵⁷ It is unclear whether there are other means of modifying parole conditions.

Incentives; lighter conditions. It does not appear that there are parole incentives related to lighter conditions of parole supervision.

e. Fees and Other Financial Sanctions

Parole supervision fees. Parole supervision fees of \$55 per month are required. “The offender may be imprisoned until the payments are made if the offender is financially able to make the payments and the court in the county where the offender resides so finds, subject to the limitations hereinafter set out. The offender shall not be imprisoned if the offender is financially unable to make the payments and so states to the court in writing, under oath, and the court so finds.”⁵⁸

Payments for drug and alcohol testing and treatment. Parolees may be required to pay for positive drug or alcohol tests, i.e. tests where the results indicate the unauthorized presence of alcohol or a controlled substance. The test fee is \$10.⁵⁹

Restitution. Making restitution to victims is a standard condition of parole.⁶⁰ In determining whether to order restitution, a judge must consider the financial resources of the defendant and the burden that the payment of restitution will impose, with due regard to other obligations of the defendant; the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and the rehabilitative effect on the defendant of the payment of restitution and the method of payment.⁶¹ Intentional refusal to pay restitution may be cause for revocation of parole.⁶²

Child support. A parolee is required to support their dependents “to the best of their ability” as a standard condition of parole.⁶³

Other financial obligations. Parolees must pay any other court-ordered penalties associated with their case.⁶⁴

Incentives; reduction of economic sanctions. It is unclear whether there are any parole incentives related to reduced economic sanctions.

5. Parole Revocation

Parole revocation proceedings. In 2016, 1,621 parolees exited parole with a new sentence, and 392 more parolees returned to incarceration for “other” reasons. However, some or all of this data is estimated.⁶⁵

Absconders. In 2015, 2% of the overall field population (which includes both probation and parole) absconded.⁶⁶

a. Principles and Criteria of “When to Revoke”

Policy considerations. One of the main findings of the Corrections and Criminal Justice Task Force’s 2013 report was that a large number of individuals were re-entering prison based on technical violations of parole.⁶⁷ An effect of the 2014 legislation was to limit the period of imprisonment that could be served based on a technical parole violation, thus curbing the impact of parole violations on prison resources.⁶⁸

Legal predicates. Any violation of a condition of parole may result in revocation.⁶⁹ Revocation is automatic for any parolee who commits and is convicted of a felony.⁷⁰

b. Revocation Guidelines

There do not appear to be any parole revocation guidelines in use at the revocation phase.

c. Risk and Needs Assessment Tools

It does not appear that a risk and needs assessment is utilized in the parole revocation process.

d. Preliminary and Final Revocation Procedures

Arrest or summons. The Board may issue a warrant for the arrest of a parolee upon a showing of probable violation of parole. A field supervisor may arrest an offender without a warrant or may deputize any other person with power of arrest by issuing a written statement setting forth that the offender has, in the judgement of that field supervisor, violated the conditions of parole.⁷¹ If a parole revocation hearing has not been held within thirty days of the issuance of the warrant, the parole revocation charge will be dismissed absent good cause for the delay.⁷²

Preliminary hearing. A Hearing Officer must hold an informal preliminary hearing within 72 hours of arrest to determine that there is reasonable cause to believe the person has violated a condition of parole. This hearing may be conducted electronically.⁷³

Final hearing. The Board must hold a final hearing within 21 days of detention.⁷⁴ Both Hearing Officers (in preliminary hearings) and Board Members have the authority to administer oaths in discharging their duties. They may also summon witnesses and take other steps to ascertain the truth.⁷⁵

Note that an offender convicted of a felony committed while on parole, whether in Mississippi or in another state, shall immediately have his parole revoked upon presentment of a certified copy of the commitment order to the Board; thus the hearing process above does not apply to these individuals.⁷⁶

e. Offender's Procedural Rights

Parole violators have a right to a preliminary hearing before a Hearing Officer, but may waive this right and appear directly before the Board. Parole violators have a right to appeal to the Board in writing or in person to explain why parole should not be revoked. Parolees must be furnished with written notice of the allegation(s) that may form a basis for revocation. A parolee may speak on his or her own behalf, submit documents, produce witnesses, and cross-examine witnesses. Parolees have a right to appointed counsel on a case-by-case basis, if the issues in the case are complex or difficult.⁷⁷

f. Victims and Other Participants

There does not appear to be a requirement for victim notification or a victim role in parole revocation. Judges, prosecutors, and law enforcement officials not directly involved in the revocation case are not notified. All parole hearings are closed to the public.⁷⁸

g. Burdens of Proof or Standards of Persuasion for Revocation

The Board must find that an offender has more likely than not violated the terms and conditions of parole to revoke parole through some action of his or her own.⁷⁹

h. Revocation and Other Sanctions

The Board may, in its discretion, terminate parole or may continue parole and modify the terms and conditions of parole.⁸⁰ Note that "any prisoner who commits a felony while at large upon parole or earned-release supervision and who is convicted and sentenced therefor shall be required to serve such sentence after the original sentence has been completed."⁸¹

The Board's power to revoke parole is limited for technical violations. By statute, the Board must impose a period of imprisonment to be served in a technical violation center not to exceed 90 days for a first technical parole violation or 120 days for a second technical parole violation. For a third technical parole violation, the Board may impose either a 180-day period of incarceration in a technical violation center or they may impose up to the remainder of the sentence. For a fourth or subsequent technical parole violation, the Board may impose up to the remainder of the sentence.⁸²

i. Issuing Parole Revocation Decisions

The Board has broad discretion to revoke parole with no apparent requirement to provide supportive evidence on which they relied in making the revocation determination.⁸³ The board must provide semiannual reports to the Oversight Task Force that includes the number and average length of suspended sentences imposed by the Board in response to violations.⁸⁴

j. Administrative or Judicial Review of Parole Revocation Decisions

If parole is unlawfully revoked, a post-conviction motion for relief is available under the Mississippi Uniform Post-Conviction Relief Act.⁸⁵ If a petitioner shows that he or she is entitled to relief by a preponderance of the evidence, a trial court will enter an appropriate order with respect to the parole revocation under attack, as well as any supplementary orders as to discharge, etc.⁸⁶

k. Re-Release Following Revocation

An offender may be re-released following parole revocation; for technical violators, there is a limit to the length of incarceration that can follow a technical violation.⁸⁷

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board is established by statute and has jurisdiction over parole release and revocation, but explicitly has no authority or responsibility for supervision of offenders.⁸⁸ The Board must find that “more likely than not” a parole violation occurred.⁸⁹ Unusually, Mississippi law has a statutory provision that allows for assumption of parole release and revocation duties by the Department of Corrections in the event that the Board is abolished.⁹⁰

b. Location in Government

The Board is an independent agency located within the Department of Corrections for administrative purposes.⁹¹

c. Purpose (Vision/Principles/Rationale)

Per published materials the Board’s mission statement is as follows:

“We believe in human dignity and shall demonstrate this belief to the community, victims and offenders through our actions. Our leadership practices are based on principles that will create an environment to guide, influence and facilitate change.

The Mississippi Parole Board is an important part of the criminal justice system. It is dedicated to the process of promoting public safety. It is our goal for the offender to experience a successful transition from confinement to responsible conduct within the community through supervised conditional release.

The mission of the Mississippi Parole Board is accomplished by:

Informing the offender that the Parole Board considers that parole is a privilege, which may be granted after an offender has served a portion of a court-imposed sentence under supervision in Mississippi Department of Corrections custody. All cases are considered on an individual basis and the Board will treat all offenders in a fair and honest manner.

Considering the statement of the victim, which may contribute to the Board’s parole decision making process by providing information that might otherwise not be apparent.

Identifying those eligible offenders for whom there is sufficient indication that they are ready to reenter the mainstream of society as productive, law-abiding citizens.

Communicating to the offender that parole may be granted providing that the offender meets certain requirements and is willing to abide by all conditions of parole, all laws, ordinances, and orders of the city, county, state and federal government.

Encouraging offenders to participate in recommended educational, rehabilitation and vocational programs which will assist them in their adjustment/acceptance back into society. The Parole Board will encourage the Mississippi Department of Corrections to provide the needed programming in all correctional facilities.”⁹²

d. Appointment and Qualifications of Board Members

There are five parole board members appointed by the governor with the advice and consent of the Senate. The governor also appoints a chairman of the Board.⁹³

Qualifications? Board members must possess at least a bachelor's degree or a high school diploma and four years of work experience. All Board members must be full-time employees and not engage in any other business or profession or hold any other public office.⁹⁴

e. Tenure of Board Members, Ease of Removal

The term length of Board members appears to be at the Governor's discretion.

f. Training and Continuing Education

Each member of the Board must complete annual training developed based on guidance from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association. Each first-time appointee of the Board must, within sixty days of appointment, or as soon as practical, complete training for first-time Parole Board members developed in consideration of information from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.⁹⁵

g. Workload

As of December 31, 2016, there were 8,424 individuals on parole in Mississippi, including roughly 6,597 individuals released to parole that year.⁹⁶ Of those individuals, roughly 4,770 were released through the discretionary parole process, though it is unclear how many releases required hearings.⁹⁷

h. Reporting and Accountability of Parole Board

The Board must collect data on:

- The number of offenders supervised on parole;
- The number of offenders released on parole;
- The number of parole hearings held;
- The parole grant rate for parolees released with and without a hearing;
- The average length of time offenders spend on parole;
- The number and percentage of parolees revoked for a technical violation and returned for a term of imprisonment in a technical violation center;
- The number and percentage of parolees revoked for a technical violation and returned for a term of imprisonment in another type of Department of Corrections' facility;
- The number and percentage of parolees who are convicted of a new offense and returned for a term of imprisonment on their current crime as well as the new crime;
- The number of parolees held on a violation in county jail awaiting a revocation hearing; and
- The average length of stay in a county jail for parolees awaiting a revocation hearing.

This data must be reported annually to the Corrections and Criminal Justice Oversight Task Force. It may also be made available to the Joint Committee on Performance Evaluation and Expenditure Review when requested.⁹⁸ It does not appear to be published online or otherwise made available to a wider audience.

Mississippi statute guarantees access to an agency's public records.⁹⁹ Some exceptions are made for investigative reports of law enforcement agencies, personal identification information of law enforcement officers, criminal investigators, judges, district attorneys or victims, and victim impact statements and/or letters of support.¹⁰⁰ By Board policy, all information received by the Board in the performance of its duty and which is not public record elsewhere is classified as confidential. Confidential information includes, but is not limited to, investigative and supervisory reports and recommendations, both positive and negative, compiled by both the Department of Corrections and the Parole Board.¹⁰¹

END NOTES

- ¹ Miss. Corr. & Criminal Justice Task Force, *Final Report* (Dec. 2013), http://www.legislature.ms.gov/Documents/MSTaskForce_FinalReport.pdf.
- ² 2014 Miss. Laws Ch. 457; see also Miss. Corr. & Criminal Justice Task Force, *Practitioner Guide to HB585*, https://www.coxwelllaw.com/files/ms_practitioner_guide.pdf.
- ³ *Sinko v. State*, 192 So.3d 1069 (Miss. Ct. App. 2016) (rehearing denied Jun. 14, 2016); See also Mississippi Today, *Board Braces for Flood of Parole Requests* (June 14, 2016), <https://mississippitoday.org/2016/06/14/board-braces-for-flood-of-parole-requests/>.
- ⁴ Miss. Code Ann. § 47-7-5(3) (2018).
- ⁵ Miss. Code Ann. § 47-5-2(b) (2018).
- ⁶ Miss. Code Ann. § 47-7-5(3) (2018).
- ⁷ Miss. Code Ann. § 47-7-3(1) (2018).
- ⁸ Joint Legislative Comm. on Performance Evaluation & Expenditure Review, *Report #586: A Review of Selected Parole, Restitution, and Timely Release Issues of the Department of Corrections and State Parole Board* at 20 (2014), <http://www.peer.state.ms.us/reports/rpt586.pdf>.
- ⁹ Miss. Code Ann. § 47-7-3(1)(f) (2018). Violent crimes included homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or depicting child engaging in sexual conduct or felonious child abuse or child neglect, delinquency or abuse, or operation under the influence of alcohol or other impairing substance, causing death, mutilation, disfigurement. See Miss. Code Ann. § 97-3-2 (2018). In addition, that those convicted of robbery, attempted robbery, carjacking through the display of a firearm, or drive-by shooting before July 1, 2014 are ineligible for parole under Miss. Code Ann. §§ 47-7-3(1)(c) (2018).
- ¹⁰ Crimes of violence now include aggravated DUI, DUI child endangerment, murder/attempted murder, aggravated assault, killing an unborn child, kidnapping, human trafficking, poisoning, rape, robbery, sexual battery, drive-by shooting or bombing, carjacking, felonious neglect, abuse, or battery of a child, burglary of a dwelling, use of explosives or weapons of mass destruction, exploitation of a child, gratification of lust, shooting into a dwelling, or statutory rape (however, this crime's classification can be rebutted on a hearing by a judge). The judge may also place a crime that is unlisted within the statute in this category if the facts show that the defendant "used force or made a credible attempt or threat of force against another person as part of the criminal act." See Miss. Code Ann. § 97-3-2 (2018).
- ¹¹ Miss. Code Ann. § 99-19-83 (2018).
- ¹² Miss. Code Ann. § 47-7-3(1)(b) (2018).
- ¹³ Miss. Code Ann. § 99-19-81(2018) et seq. (habitual offender laws); Miss. Code Ann. § 41-29-139 (2018) (drug trafficking); Miss. Code Ann. § 47-7-3(g)(iii) (2018) ("Any offender who has not committed a crime of violence under Section 97-3-2 and has served twenty-five percent (25%) or more of his sentence may be paroled by the parole board if, after the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge authorizes the offender to be eligible for parole consideration.")
- ¹⁴ Miss. Code Ann. § 47-7-3(1) (2018).
- ¹⁵ Miss. Code Ann. § 47-7-3(1)(d)-(e) (2018).
- ¹⁶ Miss. Code Ann. § 47-7-18(6) (2018).
- ¹⁷ Miss. Code Ann. § 47-5-138 (2018). Inmates who are under age 21 may continue to earn time beyond the 15% limit. *Id.* Inmates sentenced to life in prison, convicted as habitual offenders, convicted of sex crimes, convicted of burglary/attempted burglary/carjacking through the display of a deadly weapon, or who have forfeited earned time allowance by order of the commissioner are not eligible for the earned time allowance. Miss. Code Ann. § 47-5-139 (2018). Note also that violent offenders who are not eligible for parole are eligible for earned time (and trusty time) but cannot be released before 50% of their sentence is complete. See Miss. Code Ann. 47-7-3.2 (2018).
- ¹⁸ Miss. Code Ann. § 47-5-138.1 (2018). Inmates sentenced to life imprisonment, convicted as habitual offenders, convicted of sex crimes, convicted of burglary/attempted burglary/carjacking through the display of a deadly weapon, convicted of a drive-by shooting, or convicted of trafficking in controlled substances under Miss. Code Ann. § 41-29-139 (2018) are not eligible for trusty status.
- ¹⁹ Miss. Code Ann. § 47-7-18(1) (2018).
- ²⁰ Miss. Code Ann. § 47-7-18(6) (2018).
- ²¹ Miss. Code Ann. § 47-7-17 (2018).
- ²² Miss. Code Ann. § 47-7-18(1) (2018). At least 90 days prior to an offender's earliest release date, the commissioner must conduct a pre-release assessment and complete a written discharge plan based on the results. This plan must be sent to the Board at least 30 days before parole eligibility for approval. The Board may suggest changes to the plan that it "deems necessary to ensure a successful transition." See Miss. Code Ann. § 47-7-33.1 (2018).
- ²³ Miss. Code Ann. § 47-7-18(6) (2018).
- ²⁴ Miss. Code Ann. § 47-7-3.1(2)(c) (2018).
- ²⁵ See Miss. Admin. Code 29-201: 2.4 (2018) ("In making its decision to parole, the Board considers the following: A. Has served sufficient portion of sentence; B. Good prison record; C. Good risk assessment; D. Recommendation by prison authority; E. Recommendation by law enforcement official; F. Successfully completed set-off; G. Needs supervision prior to discharge; H. Community Support; I. Has employment or adequate provisions for maintenance and care; J. The Board believes he/she is able and willing to fulfill the obligation of a law-abiding citizen; K. Serious nature of offense; L. Number of offenses committed; M. Police and/or juvenile record; N. Prior felony convictions; O. Additional charges pending/detainer; P. Prior misdemeanor or convictions; Q. Probation unsatisfactory/violated; R. Parole unsatisfactory/violated; S. Other conditional release unsatisfactory/violated; T. History of violence; U. History of drug or alcohol abuse; V. Psychological and/or psychiatric history; W. Crimes committed while incarcerated; X. Escape; Y. Institutional disciplinary reports; Z. Recent/pending disciplinary action; AA. Unsatisfactory work rating; BB. Failure to participate in or complete rehabilitative programs; CC. Poor risk assessment; DD. Poor prognosis according to psychological/psychiatric evaluation; EE. Community opposition; FF. Failure to comply with Board's instruction; GG. Further investigation required; HH. Insufficient time served; II. Inadequate arrangements for employment and/or residence; JJ. We are of the opinion that the social, mental or educational resources are lacking which are necessary to function successfully on parole; and KK. The Board believes the ability or willingness to fulfill the obligations of a law-abiding citizen is lacking.")
- ²⁶ Miss. Code Ann. § 47-7-3(1)(b) (2018).
- ²⁷ Assoc. of State Corr. Adm'rs Use of Risk Assessment Tools for Parole Boards (Oct. 2014), <http://www.asca.net/system/assets/attachments/7803/Risk%20Assessment%20tools%20for%20Parole%20Boards%20Sheet1.pdf?1419372316>. It appears that this resource is no longer available online.
- ²⁸ Miss. Admin. Code 29-201:2.4 (2018) (letter "CC" of the many items listed).
- ²⁹ See Miss. Code Ann. § 47-7-4 (2018).
- ³⁰ Miss. Code Ann. § 47-5-705 (2018). When this occurs, the Commissioner of Corrections must notify the Governor and the State Parole Board. Miss. Code Ann. § 47-5-707 (2018). The Parole Board must meet to determine that it has been fully, appropriately exercising its powers which tend to reduce the prison system population. Miss. Code Ann. § 47-5-709 (2018).
- ³¹ Miss. Code Ann. § 47-5-711 (2018).
- ³² Miss. Code Ann. § 47-5-715 (2018).
- ³³ Miss. Code Ann. § 47-5-717 (2018).
- ³⁴ Miss. Code Ann. § 47-7-13 (2018); Miss. Admin. Code 29-201: 2.4 (2018).

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- ³⁵ Miss. Code Ann. § 47-7-17 (2018).
- ³⁶ Miss. Admin. Code 29-201:2.4.
- ³⁷ Miss. Code Ann. § 47-7-17 (2018).
- ³⁸ Miss. Admin. Code 29-201:2.4 (2018).
- ³⁹ See Miss. Dep't of Corr., *SAVIN Notifications*, <http://www.mdcc.ms.gov/Victim-Services/Pages/Notifications.aspx#types> (last visited July. 13, 2018).
- ⁴⁰ Miss. Admin. Code 29-201:3.4 (2018).
- ⁴¹ Miss. Code Ann. 47-7-18 (4) (2018).
- ⁴² Miss. Admin. Code 29-201:3.3 (2018).
- ⁴³ Miss. Code Ann. 47-7-18 (5) (2018). The official must submit an explanation documenting concerns for the Board to consider.
- ⁴⁴ Miss. Code Ann. § 47-7-18(6) (2018).
- ⁴⁵ Miss. Admin. Code 29-201:2.4 (2018).
- ⁴⁶ See, e.g. *Sinko v. State*, 192 So.3d 1069 (Miss. Ct. App. 2016); *Morgan v. State* 193 So.3d 703 (Miss. Ct. App. 2016).
- ⁴⁷ Miss. Code Ann. § 99-39-5 (2018).
- ⁴⁸ *White v. Miss. State Parole Bd.*, 844 So.2d 480 (Miss. Ct. App. 2002).
- ⁴⁹ Danielle Kaebble, Bureau of Justice Statistics, Probation and Parole in the United States, 2016 at 18 (Appx. Table 5) (2018), <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.
- ⁵⁰ Miss. Cmty. Corr. Div., *Statement of Purpose*, <http://www.mdcc.ms.gov/Community-Corrections/Pages/default.aspx> (last visited Mar. 31, 2016).
- ⁵¹ *Id.* at *Mission*.
- ⁵² Miss. Admin. Code 29-201:2.5 (2018).
- ⁵³ Miss. Admin. Code 29-201:2.1 (2018).
- ⁵⁴ Miss. Code Ann. 47-7-40 (2018). It is unclear whether these credits are returned to the parolee if no violation is found.
- ⁵⁵ Miss. Admin. Code 29-201:2.5 (2018).
- ⁵⁶ *Id.*
- ⁵⁷ Miss. Code Ann. § 47-7-27(6) (2018).
- ⁵⁸ Miss. Code Ann. § 47-7-49(2) (2018).
- ⁵⁹ Miss. Code Ann. § 47-5-605 (2018).
- ⁶⁰ Miss. Code Ann. § 99-37-15 (2018); Miss. Admin. Code 29-201:2.5 (2018).
- ⁶¹ Miss. Code Ann. § 99-37-3(2) (2018).
- ⁶² Miss. Code Ann. § 99-37-15 (2018).
- ⁶³ Miss. Admin. Code 29-201:2.5 (2018).
- ⁶⁴ *Id.*
- ⁶⁵ Kaebble, *supra* note 49 at 22 (Appx. Table 7).
- ⁶⁶ Miss. Dep't of Corr. *Annual Report 2015*, <http://www.mdcc.ms.gov/Admin-Finance/Pages/Annual-Report-2015.aspx>. It appears that much information has now been redacted from the online version of this report.
- ⁶⁷ Miss. Corr. & Criminal Justice Task Force, *Final Report* at 9 (2013), http://www.legislature.ms.gov/Documents/MSTaskForce_FinalReport.pdf.
- ⁶⁸ See Miss. Code Ann. § 47-27-7(6) (2018); 2014 Miss. Laws Ch. 457.
- ⁶⁹ Miss. Code Ann. 47-7-27(1) (2018).
- ⁷⁰ Miss. Admin. Code 29-201:2.3 (2018).
- ⁷¹ Miss. Code Ann. 47-7-27 (2) (2018).
- ⁷² Miss. Code Ann. 47-7-27(7) (2018).
- ⁷³ Miss. Code Ann. 47-7-27(4) (2018).
- ⁷⁴ Miss. Code Ann. 47-7-27(6) (2018).
- ⁷⁵ Miss. Admin. Code 29-201:2.3 (2018).
- ⁷⁶ Miss. Code Ann. 47-7-27(5) (2018).
- ⁷⁷ See, e.g., *Livingston v. State*, 800 So.2d 532 (Miss. Ct. App. 2001) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973)). Assuming the law in Mississippi generally follows *Gagnon*, parolees likely have a right to privately retained counsel.
- ⁷⁸ Miss. Admin. Code 29-201:3.5 (2018).
- ⁷⁹ See, e.g. *Elkins v. State*, 116 So.3d 185 (Miss. Ct. App. 2013).
- ⁸⁰ Miss. Code Ann. § 47-7-27(6)(a) (2018).
- ⁸¹ Miss. Code Ann. § 47-7-29 (2018).
- ⁸² Miss. Code Ann. § 47-7-27(6)(c) (2018).
- ⁸³ Miss. Code Ann. § 47-7-27(6)(a) (2018).
- ⁸⁴ Miss. Code Ann. § 47-7-27(9) (2018).
- ⁸⁵ Miss. Code Ann. § 99-39-5 (2018); *Beasley v. State*, 795 So.2d 539 (Miss. 2001) (direct appeal of a probation revocation order is not available; claim must be made under Mississippi Uniform Post-Conviction Collateral Relief Act).
- ⁸⁶ Miss. Code Ann. § 99-39-23 (2018).
- ⁸⁷ Miss. Code Ann. § 47-7-27(6) (2018).
- ⁸⁸ Miss. Code Ann. § 47-7-5(3), (6) (2018).
- ⁸⁹ *Elkins v. State*, 116 So.3d 185 (Miss. Ct. App. 2013).
- ⁹⁰ Miss. Code Ann. § 47-7-53 (2018).
- ⁹¹ Miss. Code Ann. § 47-7-13 (2018); Miss. Admin. Code 29-201:1.5 (2018).
- ⁹² Miss. Parole Bd., *Policies and Procedures* (2012), <http://www.sos.ms.gov/ACCode/00000356c.pdf>.
- ⁹³ Miss. Code Ann. § 47-7-5(1) (2018).
- ⁹⁴ Miss. Code Ann. § 47-7-5(2) (2018). There is no further description of what "work experience" qualifies for board membership.
- ⁹⁵ *Id.*
- ⁹⁶ Kaebble, *supra* note 49 at 18 (Appx. Table 5).
- ⁹⁷ *Id.* at 20 (Appx. Table 6).
- ⁹⁸ Miss. Code Ann. § 47-7-6 (2018).
- ⁹⁹ Miss. Code Ann. § 25-61-5 (2018).
- ¹⁰⁰ Miss. Code Ann. § 25-61-12 (2018).
- ¹⁰¹ Miss. Admin. Code 29-201:2.4 (2018).