

UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

New Hampshire

By

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1. Background; Sentencing System

a. Sentencing Framework

New Hampshire does not have a sentencing commission or sentencing guidelines. Sentences in New Hampshire have a minimum and maximum term. By statute felony sentences also include a period of “disciplinary time,” a mandatory additional 150 day term of incarceration for each year of the minimum sentence that can be diminished through good conduct.¹

In 2010, New Hampshire passed a Justice Reinvestment Act, which made several reforms to their parole system. For a brief time period, the legislation created mandatory parole release at nine months prior to the expiration of sentence and limited the length of parole revocation for technical violations to 90 days. Legislation passed in 2011 then eliminated mandatory parole release and allowed longer terms of incarceration for technical violations in certain cases. However, certain features of the original Justice Reinvestment Act are still in place, including an intermediate sanctions program for minor parole violations.² The original act would have decreased the growth of the prison population significantly; under the 2011 revisions to the act, New Hampshire’s correctional population is growing at a modestly higher rate.³

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

Yes, the New Hampshire Adult Parole Board.⁴

<https://www.nh.gov/nhd/doc/divisions/parole/>

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

The Field Services Division of the New Hampshire Department of Corrections.⁵

<https://www.nh.gov/nhd/doc/divisions/fieldservices/index.html>

d. Which Agency Has Authority Over Parole Revocation?

The New Hampshire Adult 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. In New Hampshire, sentences have a minimum and a maximum term. However, if a sentence has a maximum of over one year (i.e. a felony sentence), the judge must also impose a “disciplinary period” of incarceration of 150 days per year of the minimum term that can then be reduced through credit for good conduct.⁷ For example, a three to eight year sentence would have a 450 day “disciplinary period” added on to the minimum term. If a sentence of imprisonment is imposed, the maximum term may not exceed:

- Life for second-degree murder,
- 15 years for a class A felony,
- Seven years for a class B felony, or
- One year for a class A misdemeanor.⁸

Some crimes carry mandatory minimum sentences. For example, a second or subsequent conviction for the felonious use of a firearm carries a mandatory minimum sentence of three years.⁹ A conviction under the state’s version of the Armed Career Criminal Act carries a minimum sentence of ten years.¹⁰

Prisoners may be released on parole at the expiration of the minimum terms of their sentences, plus the disciplinary period of incarceration that must be imposed during sentencing, and minus any credit for good conduct.¹¹ So, for example, if an individual is given a sentence of 10 to 25 years, they must serve their 10 year minimum *and, in addition*, 1,500 days (or about four years, one month, and 10 days) of a disciplinary period. However, through good time credit, the inmate can pare the 14 years plus that must be served before parole release eligibility back down to 10 years. Thus, the disciplinary period and good time are designed to offset each other.

Violent and sex offenders. Some violent or sex offenders may face mandatory minimum sentences.¹² There do not appear to be any other differences in eligibility for release.

Life sentences. The sentence for first-degree murder is life without parole.¹³ An offender sentenced to life imprisonment for another crime will be eligible for parole after serving a minimum of 18 years (plus the disciplinary period, minus good time) unless the court has specified a different minimum term.¹⁴

Recurring eligibility after denial of release. After the initial parole hearing, any future hearing is discretionary with the Board and may be contingent on the offender’s conduct. According to regulation, “if parole is denied at the initial hearing, the board shall advise the inmate, in writing via a copy of the minutes of the hearing, what the inmate shall be required to do to be granted another hearing.”¹⁵

b. Good Time, Earned Time, and Other Discounts

Inmates may earn credits for good conduct based on standards developed by the Commissioner of Corrections. Prisoners may accrue up to 12 and a half days of credit for each month served (or 150 days per year), which is subtracted from the additional disciplinary period (which is also 150 days per year). Escape will result in loss of all good conduct credit, and any serious misconduct or insubordination, or persistent refusal to conform to prison regulations may result in the loss of some or all good conduct credit. However, the commissioner can restore credit at their discretion.¹⁶

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. An offender may be released if there is “a reasonable probability that the prisoner will remain at liberty without violating the law and will conduct himself or herself as a good citizen.”¹⁷

Statutory factors the board must consider. The Board must consider the following criteria:

- (a) The inmate’s personality, maturity, sense of responsibility, and any developments in personality which might promote or hinder the conformity to the law;
- (b) The appropriateness and adequacy of his parole plan, as determined by the supervising officer during the investigation requested by the board prior to release, including:
 - (1) The inmate’s employment plan, employment history, occupational skills, and past employment stability;
 - (2) The type of residence, neighborhood, and community in which the inmate intends to live and work; and
 - (3) The availability of mental health or other rehabilitative services ordered by the board as conditions of parole;
- (c) The inmate’s history of use of illegal drugs, and habitual and/or excessive use of alcohol;

- (d) The inmate's criminal record, including the nature and circumstances of criminal activity, and the recency and frequency of previous offenses;
- (e) The seriousness of the confining offense or other committed offenses, including the degree of violence or lack of concern for victims involved;
- (f) The degree of remorse or empathy for victims and the attitude of the inmate toward his prior criminal conduct;
- (g) The inmate's history of conduct during previous paroles, probation, or other community supervision;
- (h) The inmate's conduct within the institution, including, but not limited to:
 - (1) The disciplinary record during incarceration; and
 - (2) Evidence of self-improvement through the various institutional programs and, specifically programs which addressed problems or issues that contributed to the inmate's prior criminal activity;
- (i) Evaluations and recommendations received by the board from the department of corrections, courts, and relevant social service, mental health, and criminal justice agencies; and
- (j) The inmate's attitude and conduct during the parole hearing.¹⁸

In addition, by regulation, the Board must deny parole if, in the judgment of a majority of the panel:

- (a) There exists reasonable probability that the individual will not conform to the conditions of parole and/or the laws of the state of New Hampshire;
- (b) Continued treatment, mental or psychological care, or vocational or other training within the institution would substantially improve the inmate's capacity to lead a law-abiding life upon release at a future date;
- (c) The existence of adverse public concern or notoriety would seriously hinder the inmate's transition to the community;
- (d) Existence or pendency of outstanding charges, detainers, or deportation hearing proceedings; and
- (e) Lack of a parole plan that meets [statutory criteria].¹⁹

Special standard for sex offenders. The Board requires a recommendation from the administrative review committee of the sex offender treatment team as a condition of release for all sex offenders. The team helps to determine in-custody or community treatment options as well as conditions of parole.²⁰

d. Parole Release Guidelines

There are no parole release guidelines in this state.

e. Risk and Needs Assessment Tools

While there is a statutory requirement for risk assessment after release,²¹ there is no requirement for risk assessment related to parole consideration. However, as noted above, the Board must consider "evaluations and recommendations received by the board from the department of corrections, courts, and relevant social service, mental health, and criminal justice agencies" that may include risk assessments.²²

f. Medical or Compassionate Release

Upon the recommendation of the commissioner of corrections and the administrative director of forensic and medical services, and after review of the information provided by a licensed physician, the Board may grant medical parole to an inmate residing in a state correctional facility, regardless of the time remaining on his or her sentence, provided all of the following conditions apply:

- (1) The inmate has a terminal, debilitating, incapacitating, or incurable medical condition or syndrome, as certified by a licensed physician, and, if requested by the Board, at least one additional physician licensed as per statute.
- (2) The cost of medical care, treatment, and resources for the inmate is determined to be excessive.
- (3) The Board has determined that there is a reasonable probability that the inmate will not violate the law while on medical parole and will conduct himself or herself as a good citizen.²³

A majority of the Board must vote to release an inmate on medical parole, and may condition parole on periodic medical examinations. If the administrative director determines that the offender is no longer eligible for medical parole, the parole must be revoked. Offenders sentenced to life in prison without parole or sentenced to death are not eligible for parole under this provision.²⁴

g. Executive Clemency Power

The governor may pardon offenders with the advice and consent of the Senate. This process currently involves a public hearing and approval of the Executive Council, which includes an elected official from each of five districts.²⁶

h. Emergency Release for Prison Crowding

There are no provision for emergency release related to prison crowding.

3. Parole Release Hearing Process

a. Format of Release Hearings

All inmates must receive a parole hearing within the 60-day period prior to their minimum parole dates.²⁷ Parole hearings are held before a panel of three members of the Board.²⁸ All hearings must be conducted by a member of the Board appointed by the chairman to serve as presiding officer.²⁹ Members of the hearing panel question the inmate regarding information in the inmate's prison record, and allow the inmate to respond to these questions, and to make a statement to the Board.³⁰ The Board may invite or permit the attendance of any other witnesses in support or opposition of parole.³¹

After the Board members, inmate, and witnesses have concluded their questions and/or comments, Board members must make a decision to grant or deny parole according to enumerated criteria.³² A majority vote is required; no individual member's vote will be disclosed without a court order.³³

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

As stated in the criteria listed in §2c on page 4, the Board must consider a great deal of information before granting release, and must therefore have access to records that indicate:

- The appropriateness and adequacy of the parole plan, a detailed document that describes the inmate's plans for employment, housing, and use of rehabilitative services;
- The inmate's criminal record;
- The inmate's history of conduct during previous paroles, probation, or other supervision;

- The inmate's institutional conduct; and
- Evaluations and recommendations received from the Department of Corrections and courts as well as social service, mental health, and criminal justice agencies.³⁴

c. Prisoners' Procedural Rights

Inmates must attend and participate in their parole release hearings.³⁵ They may provide testimony, and may also have family members, friends, professionals, employers, or other witnesses present to discuss the case with the Board, provided their names and relationship to the inmate are filed with the executive assistant.³⁶ There is no right to counsel at the hearing, and no statute or regulation addressing the role, if any, of private counsel in such hearings. The parole records of inmates are generally kept confidential and the release of any such information, including materials considered by the Board in parole release decisions, is at the discretion of the Board.³⁷

d. Victims and Other Participants

The Board must provide notice of a parole hearing to the Department of Corrections, or the Department of Justice for homicides, which must share the information via mail or electronic communication to the victim or their next of kin.³⁸ The victim (or a family member, if the victim is deceased) may speak at a parole hearing either personally or through counsel.³⁹

The Board must also provide notification of a parole release hearing to each chief of police and county attorney of the place where the offense occurred, where the offender resided prior to conviction, or where the person intends to reside after release along with copies of pertinent information.⁴⁰

The Board must give notice of a scheduled hearing to the public via the Department of Corrections website at least 15 and not more than 30 days prior to the hearing. Members of the public wishing to attend parole hearings must contact the Board in advance of the hearing to attend.⁴²

e. Burden of Proof or Standards of Persuasion

Readiness for release (or lack thereof) must be shown by a preponderance of the evidence.⁴³

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

At the conclusion of the hearing, Board members must make a decision to grant or deny parole according to the parole criteria.⁴⁴ A decision to deny parole will list conditions that must be met prior to another parole hearing, such as a change in custody status or program completion.⁴⁵

g. Administrative or Judicial Review of Parole Denial

Until recently, the Board maintained an internal, administrative review process for parole denial. Under this system, inmates could apply for a Board review of a decision to deny parole. This is no longer the case under Board administrative rules approved in 2017.⁴⁶ To access judicial review of parole denial, a prisoner may file a writ of habeas corpus.⁴⁷

h. Rescission of Parole Release Dates

The Board must hold a reconsideration hearing for any inmate previously approved for parole who commits a disciplinary infraction prior to release. At the reconsideration hearing, the Board must determine the effect of the disciplinary incident on the inmate's release. The standard "setback" of parole release is 60 days for a minor infraction and 90 days for a major one.⁴⁸ The Board may also delay release longer than 90 days, or decide to rescind release entirely.⁴⁹

4. Supervision Practices

Parole supervision rate. On Dec. 31, 2015, there were 2,451 individuals on parole in New Hampshire, for a rate of 229 parolees per 100,000 adult residents.⁵⁰

a. Purposes of Supervision

The stated mission of the Department of Corrections is "to provide a safe, secure, and humane correctional system through effective supervision and appropriate treatment of offenders, and a continuum of services that promote successful re-entry into society for the safety of our citizens and in support of crime victims."⁵¹

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

Any person placed on parole must initially be subject to active supervision.⁵²

c. Length of Supervision Term

Maximum supervision terms. Parolees may remain on parole for the unexpired portion of their sentences.⁵³ A person sentenced for an aggravated felonious sexual assault may be subject to court-imposed lifetime supervision.⁵⁴

Early termination. After 18 months of active supervision, a parolee must be placed on "administrative" supervision unless the parolee is designated high risk, has violated the conditions of parole during that time, or is serving parole for a Tier II or Tier III offense.⁵⁵

By statute, the authority that placed a person on probation or parole may terminate the probation or parole at any time.⁵⁶ The Department of Corrections initiates the process, but the Board has final approval over early termination. According to Department of Correction policy, parolees should be considered for early termination of parole when:

1. All sentencing requirements have been met including a good faith effort toward satisfying all financial obligations. The petition must indicate that the case be continued for collection only purposes if a balance remains;
2. The offender has complied with all conditions of release;
3. The offender's adjustment under supervision has been satisfactory;
4. A criminal record check has been conducted; or
5. Supervision fees have been paid in full or any uncollectable arrearage is submitted for waiver as part of the termination request.
6. The offender's supervision level and reporting requirements should be compatible with the request. Early termination candidates should be on minimum or administrative supervision status.⁵⁷

The Board may suspend parole supervision if a paroled prisoner enters the military during the period that he or she serves and is subject to military law.⁵⁸

Finally, a sex offender subject to lifetime supervision may petition for release from that sentence if: (1) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and (2) The person is not likely to pose a threat to the safety of others if released from supervision.⁵⁹

Extension of supervision term. It does not appear that the Board has the power to extend a supervision term beyond the maximum imposed sentence.

Incentives; “goal parole.” In addition to the early termination criteria described on page 7, parolees may also earn good time while on release. Any person who is on parole from the state prison may be granted a reduction of maximum term of their sentence equal to one-third of the period of time during which the parolee is at liberty, provided that in making such a decision, the Board must consider the conduct of the parolee while under supervision, the seriousness of the offense, the amount of restitution owed, and any information provided by the victim.⁶⁰

d. Conditions of Supervision

There are several standard conditions of supervision, including:

- (1) Reporting to the parole officer at such times and places as the officer shall direct, complying with the parole officer’s instructions and responding truthfully to all inquiries from the parole officer;
- (2) Complying with all lawful orders of the court and the board, and all instructions of the parole officer, including all court orders for the payment of fines, restitution, attorney fees, and child support, and the parole supervision fee mandated by statute.
- (3) Obtaining the parole officer’s permission before changing residence or employment or traveling out of state;
- (4) Notifying the parole officer immediately of any arrest, summons or questioning by a law enforcement officer;
- (5) Diligently seeking and maintaining lawful employment, notifying employer of parolee status, and supporting dependents to the best of ability;
- (6) Not receiving, possessing, controlling, or transporting any real or simulated weapon, explosive, or firearm;
- (7) Being of good conduct and obeying all laws;
- (8) Submitting to breath, blood or urinalysis testing for the presence of illegal or prohibited substances, or providing such other sample for testing as shall be directed by the parole officer;
- (9) Permitting the parole officer to visit parolee’s residence at any time for the purpose of examination and inspection in the enforcement of the conditions of parole and submit to searches of his person, property, and possessions as requested by the parole officer;
- (10) Not associating with criminal companions or such other individuals as shall be ordered by the court or parole board;
- (11) Prohibited contacts shall include:
 - a. Victims;
 - b. Other parolees or probationers;
 - c. Other persons known to the board or to the parole officer as having criminal records.
- (12) Not illegally using, selling, possessing, distributing, transporting, or being in the presence of controlled drugs, notifying the parole officer of any prescribed medications, and not using alcoholic beverages to excess; and
- (13) Waiving extradition to the state of New Hampshire from any state in the United States or any other place and return to New Hampshire if directed by the parole officer, and being responsible for any and all costs, including all travel, in connection with any extradition request or proceeding.⁶¹

In addition, the following special conditions may be imposed by the Board or by the parole officer:⁶²

- Participate regularly in Alcoholics Anonymous or other self-help group to the satisfaction of the PPO;
- Secure written permission from PPO prior to purchasing &/or operating a motor vehicle;
- Participate & satisfactorily complete other program(s) as required;
- Enroll & participate in mental health counseling on a regular basis to the satisfaction of the PPO;
- Not be in the unsupervised company of (female/male) minors at any time;
- Not leave the county without permission of the PPO;
- Refrain totally from the use of alcoholic beverages;
- Submit to breath, blood or urinalysis testing for abuse substances at the direction of the PPO;
- Comply with the provisions of house arrest;
- Other (e.g. no contact with victim).⁶³

Apart from the list above, the Board may impose other special conditions that address treatment, supervision, and public safety needs presented by each offender. By Board regulation, criteria to determine these conditions include:

- (1) Treatment recommended by the department of corrections or other competent providers;
- (2) The nature of the inmate’s confining offense;
- (3) The length of incarceration;
- (4) Past performance during community supervision;
- (5) Concerns of the victim; and
- (5) Any other factors that enhance the transition of the parolee to the community, or diminish the parolee’s threat to society.⁶⁴

Sex offenders. Apart from standard sex offender registration requirements, there do not appear to be additional mandatory conditions for sex offenders released on parole. The Board incorporates recommendations from the sex offender treatment team as parole conditions.⁶⁵

Modification of conditions. Upon request of the parole officer or the parolee, a three-member panel of the parole board may modify conditions of release without a hearing.⁶⁶

Incentives; lighter conditions. In general, parolees are subject to active supervision for the first 18 months of parole. If they are not designated high risk, have not been convicted of a Tier II or Tier III sex offense, and have not violated the conditions of parole, they will be eligible for administrative supervision after 18 months.⁶⁷ A parolee who meets the criteria for administrative supervision is required to report at least annually.⁶⁸

e. Fees and Other Financial Sanctions

Parole supervision fees. By statute, the Board must impose a supervision fee of at least \$40 per month as a condition of release. Supervision fees may be waived in whole or in part by the court, board or commissioner, and may be any greater amount as established by the court or board.⁶⁹ Supervision fees are also required for those on administrative parole.⁷⁰

Payments for drug and alcohol testing and treatment. The Board may assess fees for services provided by the Department of Corrections, which include drug and alcohol testing fees.⁷¹

Restitution. The court may order restitution in any amount determined by the court. If restitution is not ordered, the court must state reasons for its decision not to order it. Restitution can be ordered regardless of the offender's ability to pay and regardless of the availability of other compensation. The court must add an additional 17% administration fee (for example, an additional \$170 per \$1,000) if a defendant must make restitution payments.⁷² Payment of court-ordered restitution is a standard condition of parole.⁷³

Child support. Payment of court-ordered child support is a standard condition of parole.⁷⁴

Other financial obligations. As a condition of parole, parolees are required to pay court-ordered fines, attorney fees, and any fees associated with extradition.⁷⁵ Parolees requesting to transfer supervision to another state must submit an application fee of at least \$100 that can be waived based on economic circumstances.⁷⁶

Incentives; reduction of economic sanctions. There are no incentives that reduce the economic sanctions of parole.

5. Parole Revocation

Parole revocation proceedings. In 2015, 774 parolees had their parole release revoked.⁷⁷

Absconders. There is no data available on the number of individuals who absconded from parole in the most recent year available.

a. Principles and Criteria of "When to Revoke"

Policy considerations. New Hampshire's parole revocation system changed significantly under the 2010 Justice Reinvestment Act. The Act introduced a 90-day incarceration limit for parole revocations due to technical violations, which was later modified in favor of a more flexible term. The Act also set up a system of intermediate sanctions, and required that those serving short sentences for sanctions or revocation are not made part of the jail's general population.⁷⁸

Legal predicates. Parole may be revoked if the Board finds that the parolee has violated the conditions of parole, violated the law, or associated with criminal companions.⁷⁹

Statutorily enumerated factors. While there are no statutory factors (other than those listed for parole release), the Board's administrative rules detail nine factors for revocation decision making:

- (1) Recommendation of the arresting parole officer;
- (2) Recommendation from community or institutional treatment professionals;
- (3) The length of time on parole prior to the violation;
- (4) Overall performance on parole prior to the violation;
- (5) The number and nature of any intermediate sanctions attempted by the parole officer prior to arrest;
- (6) The existence of any pending criminal charges or outstanding arrest warrants against the parolee;
- (7) The length of time remaining on the parolee's prison sentence;
- (8) The parolee's performance during any prior periods of community supervision; and
- (9) Any other factors that indicate the probability of success or failure during a subsequent parole.⁸⁰

b. Revocation Guidelines

While the Board does not appear to utilize a guidelines system at the revocation hearings level, parole officers employed by the Department of Corrections do use a set system of graduated sanctions when determining whether or not to refer a violation to the Board. The sanctions correspond to the severity of the infraction and the offender's level of risk. The Department of Corrections policy document that outlines this process is part of the addendum to this report.⁸¹

The graduated sanctions system is not utilized when "multiple or severe violations" have occurred. There are some cases in which community-based intervention is not permitted by the Board.⁸² The sanctions are also not an option when the behavior is "part of an established pattern that is reflected in the history of the offender and is associated with a significant and imminent threat to public safety," or when the behavior "represents repeated non-compliance with supervision conditions and community-based intervention." When a parolee agrees to participate in an intermediate sanctions program, he waives the right to a preliminary probable cause hearing or a final determination by the Board that a violation merits punishment.⁸³

c. Risk and Needs Assessment Tools

New Hampshire's Department of Corrections utilizes Ohio Risk Easement System as a risk and needs assessment tool, both to determine level of supervision and to select sanctions for parole violations.⁸⁴

d. Preliminary and Final Revocation Procedures

Arrest or summons. A parole officer may arrest a parolee if the parolee has violated parole conditions, has committed a crime, or is a danger to public safety. A parole officer may also arrest a parolee and initiate revocation proceedings if there is probable cause to believe that the parolee will commit a crime or will abscond. When a parolee violates the conditions of parole but does not meet the criteria for immediate arrest, a parole officer with knowledge of the circumstances of the parole violation must report the facts surrounding the violation to any member of the Board who may issue a warrant for the arrest of the parolee.⁸⁵ As noted above, not all violations of parole will result in arrest.

Preliminary hearing. A preliminary hearing must be held within 72 hours of arrest (excluding weekends and holidays). The preliminary hearing must review the "facts and circumstances surrounding the detention of any probationer or parolee" and conform with the "due process requirements of federal law."⁸⁶ Preliminary hearings are conducted by a hearing officer.⁸⁷ The purpose of the hearing is to determine probable cause that a violation has occurred.⁸⁸ There is no consideration of release pending a final revocation hearing.⁸⁹

Final hearing. If probable cause is found in the preliminary hearing, a final parole revocation hearing must be held within 45 days. At this hearing, the Board has the power to subpoena witnesses, take testimony under oath, and compel production of evidence.⁹⁰

e. Offenders' Procedural Rights

During the preliminary and final hearing process, offenders have the right to:

- Receive a written notice of all alleged parole violations, which shall be given to the parolee via a copy of the arrest warrant signed by a member of the board.
- Appear before the board and address the board at a revocation hearing;
- Call witnesses on their behalf;
- Confront and cross-examine all adverse witnesses, and review all evidence against the parolee;
- Obtain counsel and the right to have counsel appointed if they cannot afford to retain counsel; and
- Receive a written copy of the board's decision, which shall include the decision of the board, and evidence relied upon to reach that decision.⁹¹

f. Victims and Other Participants

Victims may be notified of a revocation hearing if they have requested such a notification. No other officials are notified.⁹²

g. Burden of Proof or Standards of Persuasion

A parole violation must be found by a preponderance of the evidence.⁹³

h. Revocation and Other Sanctions

If parole is revoked, the parolee will be recommitted to the custody of the commissioner of corrections. Any person who is recommitted must serve 90 days in prison or the remainder of the sentence, whichever is shorter. The Board may extend the period beyond 90 days if:

- (a) The prisoner has previously been found guilty of a parole violation on his or her current sentence or another sentence for which he or she was concurrently serving a term of parole; or
- (b) The prisoner was on parole for a sexual offense as defined by statute or an offense against a child as defined by statute and the prisoner has displayed a combination of dynamic risk factors, including but not limited to, homelessness, loss of support, substance abuse, or non-compliance with treatment, as determined by the department of corrections sexual offender treatment program staff; or
- (c) The prisoner was on parole for a violent crime as defined by statute; or
- (d) The nature of the conduct underlying the parole violation constitutes a criminal act or is otherwise so serious as to warrant an extended period of recommitment; or
- (e) The conduct underlying the parole violation is related to his or her offense or offending pattern.⁹⁴

In addition, a prisoner may be brought before the Board again at any time during the 90-day period to determine if a longer term is warranted if:

- (1) The prisoner did not meaningfully participate in the evidence-based programming during the 90-day recommitment period; or
- (2) The prisoner received one or more major disciplinary violations during the 90-day recommitment period.⁹⁵

If a parolee has violated a condition of parole and has agreed to participate in a diversion program, the consequences of a violation will depend on the offender's risk and past behavior. Sanctions include:

- Verbal Warning
- Written Warning
- Increased Contact
- Community Service
- Electronic Monitoring
- Review Hearing
- Seven-day intermediate sanction program
- Increased Supervision Level
- Request for Added Conditions
- Request for Curfew
- Program Referral
- Increased urine tests
- Treatment Referral⁹⁶

Finally, mandatory revocation must occur if a parolee is convicted of a felony or absconds from supervision for more than 60 days.⁹⁷

i. Issuing Parole Revocation Decisions

The Executive Assistant to the Board must send a copy of the revocation hearing minutes to the parolee within five working days of the hearing. According to regulation, "if the Board votes to give the parolee another opportunity for parole, the Board shall specify the criteria for that hearing."⁹⁸ These criteria can include completion of a drug program or other programming, and future release is sometimes postponed until such a program can be completed.⁹⁹

j. Administrative or Judicial Review of Parole Revocation Decisions

Some cases related to parole revocation have received judicial review through writ of habeas corpus.¹⁰⁰

k. Re-Release Following Revocation

Under current Board rules, there is a recommitment period followed by re-release as described in §5b of this report.¹⁰¹

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board is authorized by statute to grant, revoke, and terminate parole and to create conditions governing parole release.¹⁰²

b. Location in Government

The Board is an independent agency administratively located within the Department of Corrections.¹⁰³

c. Purpose (Vision/Principles/Rationale)

New Hampshire Revised Statute §651-A:1 states: “[I]t is the intent of the legislature that the state parole system provide a means of supervising and rehabilitating offenders without continued incarceration and a means by which prisoners can be aided in the transition from prison to society. It is also the intent of the legislature that the policies, procedures and actions of the adult parole board and the department of corrections relative to the administration of this system emphasize the need to protect the public from criminal acts by parolees.”¹⁰⁴

d. Appointment and Qualifications of Board Members

The Board consists of nine members appointed by the Governor and approved by the Executive Council.¹⁰⁵ The governor must designate one member as chairman, and the chairman must designate one other member to serve as chairman in his absence.¹⁰⁶

Qualifications? There are no statutory qualifications related to serving on the Board.

e. Tenure of Board Members, Ease of Removal

Board members serve staggered five-year terms, and may serve no more than two consecutive terms.¹⁰⁷ The Governor may remove Board members for cause upon address of both the House and Senate and with the consent of the Executive Council.¹⁰⁸

f. Training and Continuing Education

There are no statutory or regulatory requirements related to Board training.

g. Workload

The Board does not publish data on its workload in a form available to the general public.

h. Reporting and Accountability of Parole Board

The Board keeps records on all parolees subject to its supervision and verbatim recordings of all hearings. The recordings must be destroyed after one year.¹⁰⁹ Parole records are exempted from the provisions of the state’s right-to-know law.¹¹⁰ Information available upon specific written request includes:

- The dates of sentence and commitment, parole eligibility date, mandatory release date, or termination of sentence; and
- Whether an inmate is being considered for parole, has been paroled or not, and, if the inmate has been paroled, the effective date set by the board.¹¹¹

END NOTES

- ¹ See N.H. Rev. Stat. Ann. § 651-A:22 (discussing disciplinary time). Cf. N.H. Rev. Stat. Ann. §§ 651:2(II-e) (mentioning maximum and minimum sentences).
- ² See, e.g., Nat'l Conference of State Legislatures, *Justice Reinvestment/New Hampshire* (2017), <http://www.ncsl.org/research/civil-and-criminal-justice/justice-reinvestment-in-new-hampshire.aspx>; N.H. Justice Reinvestment Act, 2010 N.H. S.B. 500.
- ³ Council of State Gov'ts, *New Hampshire*, <https://csgjustice-center.org/jr/nh/> (last visited Dec. 14, 2017); see also N.H. Dep't of Corr., *Prisoner Population Since 1812* (2017), <https://www.nh.gov/nhdcc/population.html>.
- ⁴ N.H. Rev. Stat. Ann. § 651-A:4.
- ⁵ N.H. Rev. Stat. Ann. §§ 504-A:9, 504-A:12.
- ⁶ N.H. Rev. Stat. Ann. § 651-A:17.
- ⁷ N.H. Rev. Stat. Ann. §§ 651:2(II-e), 651-A:22.
- ⁸ N.H. Rev. Stat. Ann. § 651:2(II). There are exceptions: for example, a manslaughter conviction may result in a term of up to 30 years under N.H. Rev. Stat. Ann. § 630:2, a conviction for a felony involving a firearm may result in a term of up to 20 years under N.H. Rev. Stat. Ann. § 651:2 (II-g), a conviction under the state's Armed Career Criminal act may result in a term of up to 40 years under N.H. Rev. Stat. Ann. § 159:3-a (II).
- ⁹ N.H. Rev. Stat. Ann. § 651-2(II-b).
- ¹⁰ N.H. Rev. Stat. Ann. § 159:3-a(II).
- ¹¹ N.H. Rev. Stat. Ann. § 651-A:6(I)(a).
- ¹² N.H. Rev. Stat. Ann. §§ 651:2(II-e), 651-A:22.
- ¹³ N.H. Rev. Stat. Ann. § 630:1-a (III).
- ¹⁴ N.H. Rev. Stat. Ann. § 651-A:7.
- ¹⁵ N.H. Code Admin. R. Ann. PAR 203.2.
- ¹⁶ N.H. Rev. Stat. Ann. § 651-A:22.
- ¹⁷ N.H. Rev. Stat. Ann. § 651-A:6(I)(a).
- ¹⁸ N.H. Code Admin. R. Ann. PAR 301.03.
- ¹⁹ N.H. Code Admin. R. Ann. PAR 302.01.
- ²⁰ Correspondence with Donna Sytek, New Hampshire Parole Board Chair (Dec. 13, 2017).
- ²¹ N.H. Rev. Stat. Ann. § 504-A:15.
- ²² N.H. Code Admin. R. Ann. PAR 301.03.
- ²³ N.H. Rev. Stat. Ann. § 651-A:10-a(I); see also N.H. Code Admin. R. Ann. PAR 303.02 ("Eligibility for Medical Parole. The board must consider for medical parole any prisoner who meets the criteria set forth in RSA 651-A:10-a I (a) and (b). A medical parole hearing must be convened once the board receives a formal request for such from the Department of Corrections Administrative Director of Medical and Forensic Services.").
- ²⁴ N.H. Rev. Stat. Ann. § 651-A:10; see also N.H. Code Admin. R. Ann. PAR 303.
- ²⁵ N.H. Const. Pt. 2, art. LII.
- ²⁶ Correspondence with Donna Sytek, New Hampshire Parole Board Chair (May 18, 2017); see also N.H. Executive Council, <https://www.nh.gov/council/index.htm> (last visited Dec. 14, 2017).
- ²⁷ N.H. Code Admin. R. Ann. PAR 203.02.
- ²⁸ N.H. Rev. Stat. Ann. § 651-A:3(II).
- ²⁹ N.H. Code Admin. R. Ann. PAR 204.01.
- ³⁰ N.H. Code Admin. R. Ann. PAR 203.06.
- ³¹ N.H. Code Admin. R. Ann. PAR 203.07(b).
- ³² N.H. Code Admin. R. Ann. PAR 203.08.
- ³³ Correspondence with Donna Sytek, *supra* note 26.
- ³⁴ N.H. Code Admin. R. Ann. PAR 301.03.
- ³⁵ N.H. Code Admin. R. Ann. PAR 203.06 ("Members of the hearing panel must commence the hearing by questioning the inmate regarding information in the inmate's prison record. The inmate must then have the opportunity to respond to these questions, and to make a statement to the APB.").
- ³⁶ N.H. Code Admin. R. Ann. PAR 203.07(a).
- ³⁷ See N.H. Code Admin. R. Ann. PAR 104.02 ("In order to protect parolees from injurious publicity parole records must be kept confidential. Those records are exempted from the provisions of the New Hampshire Right-to-Know Law by RSA 91-A:5, II."); see also N.H. Code Admin. R. Ann. PAR 104.05 ("All requests for information concerning the board's procedures or proceedings, and all submissions or other requests, must be directed to: Executive Assistant Adult Parole Board PO Box 14 Concord, NH 03302-0014(603) 271-2569").
- ³⁸ N.H. Rev. Stat. Ann. §§ 651-A:11(II), 651-A:11-a; Correspondence with Donna Sytek, *supra* note 26.
- ³⁹ N.H. Code Admin. R. Ann. PAR 203.7(c); see also N.H. Rev. Stat. Ann. § 651-A:11-a ("The victim of any person seeking parole, or the victim's next of kin if the victim has died, must have the right to appear at the parole hearing of such person, personally or by counsel, and to reasonably express his views concerning the offense and the person responsible.").
- ⁴⁰ N.H. Rev. Stat. Ann. § 651-A:11(II).
- ⁴¹ N.H. Rev. Stat. Ann. § 651-A:11(I).
- ⁴² N.H. Dep't of Corr., *Parole Board*, <https://www.nh.gov/nhdcc/divisions/parole/> (last visited Dec. 14, 2017).
- ⁴³ N.H. Code Admin. R. Ann. PAR 210.02.
- ⁴⁴ N.H. Code Admin. R. Ann. PAR 203.08.
- ⁴⁵ Correspondence with Donna Sytek, *supra* note 26.
- ⁴⁶ *Id.*
- ⁴⁷ *Baker v. Cunningham*, 128 N.H. 374, 376, 513 A.2d 956, 957 (1986).
- ⁴⁸ N.H. Code Admin. R. Ann. PAR 203.09.
- ⁴⁹ Correspondence with Donna Sytek, *supra* note 26.
- ⁵⁰ Danielle Kaeble & Thomas P. Bonczar, Bureau of Justice Statistics, *Probation and Parole in the United States, 2015* at 20 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁵¹ N.H. Dep't of Corr., 2015 *Annual Report* at 35, <https://www.nh.gov/nhdcc/divisions/publicinformation/documents/annual-report-2015.pdf>.
- ⁵² N.H. Rev. Stat. Ann. § 504-A:15 (IV).
- ⁵³ N.H. Rev. Stat. Ann. § 651-A:6(II).
- ⁵⁴ N.H. Rev. Stat. Ann. § 632-A:10-a(V)(b).
- ⁵⁵ N.H. Rev. Stat. Ann. § 504-A:15 (IV). Tier II and III offenses are felony sex offenses involving children which require registration under the sex offender statute.
- ⁵⁶ N.H. Rev. Stat. Ann. § 504-A:3. Note that the statute outlining the criteria for early termination due to good conduct was repealed in 2015; thus, these See N.H. Rev. Stat. Ann. § 651-A:14.
- ⁵⁷ N.H. Dep't of Corr., NHDC Policy and Procedure Directive, Early Termination from Probation/Parole Supervision, Statement Number 5.64, available at <https://www.nh.gov/nhdcc/policies/5-64>.
- ⁵⁸ N.H. Rev. Stat. Ann. § 651-A:13.
- ⁵⁹ N.H. Rev. Stat. Ann. § 632-A:10-a(V)(b).
- ⁶⁰ N.H. Rev. Stat. Ann. § 651-A:12 ("The parolee may be granted a discharge at the expiration of his or her maximum sentence less deductions provided for in this chapter.").
- ⁶¹ N.H. Code Admin. R. Ann. PAR 401.02.
- ⁶² Parole officers are limited in their ability to impose conditions, but can require parolees to attend drug or mental health treatment, or, as is discussed in §5(h) of this report, impose intermediate sanctions for certain violations up to 7 days of incarceration. Correspondence with Donna Sytek, *supra* note 20.
- ⁶³ N.H. Dep't of Corr., Conditions of Probation- Parole, https://www.nh.gov/nhdcc/divisions/victim/pandp_offender.html.
- ⁶⁴ N.H. Code Admin. R. Ann. PAR 401.03.
- ⁶⁵ Correspondence with Donna Sytek, *supra* note 20.
- ⁶⁶ Correspondence with Donna Sytek, *supra* note 26.
- ⁶⁷ N.H. Rev. Stat. Ann. § 504-A:15(III).
- ⁶⁸ Correspondence with Donna Sytek, *supra* note 26.
- ⁶⁹ N.H. Rev. Stat. Ann. § 504-A:13.
- ⁷⁰ Correspondence with Donna Sytek, *supra* note 26.
- ⁷¹ N.H. Rev. Stat. Ann. § 504-A:13(III).
- ⁷² N.H. Rev. Stat. Ann. § 651:63(v).
- ⁷³ N.H. Code Admin. R. Ann. PAR 401.02(b)(2).
- ⁷⁴ *Id.*

END NOTES

- ⁷⁵ *Id.*
- ⁷⁶ N.H. Rev. Stat. Ann. § 504-A:13(IV).
- ⁷⁷ Kaebler & Bonzcar, *supra* note 50 at 24 (Appendix Table 6).
- ⁷⁸ See, e.g. Council of State Gov'ts, *supra* note 3.
- ⁷⁹ N.H. Rev. Stat. Ann. § 651-A:17.
- ⁸⁰ N.H. Code Admin. R. Ann. PAR 501.01(b).
- ⁸¹ N.H. Dep't of Corr., NHDC Policy and Procedure Directive, Adult Probation/Parole Violations, Statement Number 5.51, <https://www.nh.gov/nhdcc/policies/documents/5-51.pdf> [Hereinafter *Adult Probation/Parole Violations*].
- ⁸² By statute, certain violations must be reported to the Board, including arrest for a felony offense, conviction for any felony, misdemeanor, or other offense (however, this only applies to serious traffic offenses), or absconding from supervision for more than 30 days. N.H. Rev. Stat. Ann. § 651-A:16(I).
- ⁸³ *Adult Probation/Parole Violations*, *supra* note 81.
- ⁸⁴ *Id.*; The Pew Center on the States, *Risk Assessment 101: Science Reveals New Tools to Manage Offenders* at 6 (Sept. 2011), <http://leg.mt.gov/content/Committees/Interim/2015-2016/Sentencing/Committee-Topics/Study-Resources/pew-risk-assessment-brief.pdf>.
- ⁸⁵ N.H. Rev. Stat. Ann. § 504-A:4 (I)-(II).
- ⁸⁶ N.H. Rev. Stat. Ann. § 504-A:6. Note that N.H. Code Admin. R. Ann. PAR 501.3 requires a preliminary hearing "as promptly as possible."
- ⁸⁷ N.H. Code Admin. R. Ann. PAR 501.04.
- ⁸⁸ N.H. Code Admin. R. Ann. PAR 501.05.
- ⁸⁹ Correspondence with Donna Sytek, *supra* note 26.
- ⁹⁰ N.H. Rev. Stat. Ann. § 651-A:17.
- ⁹¹ N.H. Code Admin. R. Ann. PAR 501.05; See also N.H. Rev. Stat. Ann. § 651-A:17; Correspondence with Donna Sytek, *supra* note 26.
- ⁹² Correspondence with Donna Sytek, *supra* note 26.
- ⁹³ N.H. Code Admin. R. Ann. PAR 210.02.
- ⁹⁴ N.H. Rev. Stat. Ann. § 651-A:19 (III).
- ⁹⁵ N.H. Rev. Stat. Ann. § 651-A:19 (IV).
- ⁹⁶ *Adult Probation/Parole Violations*, *supra* note 81.
- ⁹⁷ N.H. Code Admin. R. Ann. PAR 501.01.
- ⁹⁸ N.H. Code Admin. R. Ann. PAR 501.06. This regulation does not further clarify what criteria for the hearing must be specified.
- ⁹⁹ Correspondence with Donna Sytek, *supra* note 20.
- ¹⁰⁰ See, e.g., *Barnet v. Warden, N.H. State Prison for Women*, 986 A.2d 579 (N.H. 2009); *Debonis v. Warden*, 903 A.2d 993 (N.H. 2006).
- ¹⁰¹ Correspondence with Donna Sytek, *supra* note 26.
- ¹⁰² N.H. Code Admin. R. Ann. PAR 103.2.
- ¹⁰³ Adult Parole Board, *supra* note 4.
- ¹⁰⁴ N.H. Rev. Stat. Ann. § 651-A:1.
- ¹⁰⁵ The executive council is an elected group of five who advise the Governor. See N.H. Const. pt. 2, art. 60.
- ¹⁰⁶ N.H. Rev. Stat. Ann. § 651-A:3 (I).
- ¹⁰⁷ *Adult Parole Board*, *supra* note 4.
- ¹⁰⁸ See N.H. Const. Pt. 2, art. 73 ("The governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature, provided nevertheless that the cause for removal must be stated fully and substantially in the address and must not be a cause which is a sufficient ground for impeachment, and provided further that no officer must be so removed unless he must have had an opportunity to be heard in his defense by a joint committee of both houses of the legislature.").
- ¹⁰⁹ N.H. Code Admin. R. Ann. PAR 104.01.
- ¹¹⁰ N.H. Code Admin. R. Ann. PAR 104.02.
- ¹¹¹ N.H. Code Admin. R. Ann. PAR 104.03.