

UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROFILES IN PAROLE RELEASE AND REVOCATION:

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South Carolina

By

Alexis Lee Watts, Julie L. Matucheski, Cecelia Klingele, Edward E. Rhine

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 South Carolina without checking additional sources. We also welcome corrections to the profile.

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1. Background; Sentencing System

a. Sentencing Framework

South Carolina does not have sentencing guidelines or a sentencing commission. South Carolina has recently engaged in criminal justice reform: working with the Pew Center and other organizations, its legislature passed an Omnibus Crime Reduction Act in 2010. This act changed sentencing structures for many crimes, required training for the Board of Parole and Pardons and the use of risk and needs assessment tools, and reformed parole supervision.¹

The South Carolina Probation and Parole Board was established in 1941. It was renamed the Parole and Community Corrections Board in 1981 and was tasked with developing supervision strategies for people on parole release. It was then renamed the Board of Pardons and Pardons in 1988. In 1993, the Board's duties shifted to exclusively involve consideration of parole and pardons.²

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

The South Carolina Board of Pardons and Pardons has discretionary prison release authority.³

<http://www.dppps.sc.gov/Parole-Pardon-Hearings/Parole-Board>

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

The South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS) supervises releasees.⁴

<http://www.dppps.sc.gov/Offender-Supervision>

d. Which Agency Has Authority Over Parole Revocation?

The South Carolina Board of Pardons and Pardons has parole revocation authority.⁵

2. Parole Release and Other Prison-Release Mechanisms

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

Crimes in South Carolina are broken down into many different classes with specific penalties, though there are also many crimes that are exempt from the classification system.⁶

Classification of Crime	Authorized Sentence
Class A Felony	Not more than 30 years, no parole eligibility
Class B Felony	Not more than 25 years, no parole eligibility
Class C Felony	Not more than 20 years, no parole eligibility
Class D Felony	Not more than 15 years
Class E Felony	Not more than 10 years
Class F Felony	Not more than 5 years
Class A Misdemeanor	Not more than 3 years
Class B Misdemeanor	Not more than 2 years
Class C Misdemeanor	Not more than 1 year
Generic Misdemeanor	Not more than 1 year

General rules of release eligibility. The date of parole eligibility is tied to the type of offense committed. Parole can be granted to any offender serving a sentence in a state penitentiary, jail, or county public work detail. Generally, a person convicted of a non-violent crime is eligible for parole after satisfying 1/4 of the sentence.⁷ There is no parole eligibility, however, for those convicted of class A, B, or C felonies or felonies exempt from classification under the sentencing statute.⁸

Provisional parole. Provisional parole may be granted 90 days prior to the effective date of the parole. If a parolee is provisionally released, he or she must receive terms and conditions of provisional parole as well as terms and conditions of parole (which may or may not be the same). If provisional parole is completed in a satisfactory manner, the director must issue an order, which, if accepted by the prisoner, provides for release from custody to a period of parole.⁹

Violent and sex offenders. Those who commit violent crimes must serve at least 1/3 of their sentences or the mandatory minimum portion of the sentence, whichever is longer.¹⁰ “Violent crimes” are statutorily-defined and include crimes that result in death or harm to people, including many sexual crimes.¹¹ There is no parole eligibility for prisoners serving a second or subsequent conviction for a violent crime.¹² Certain drug trafficking or manufacturing offenses may also result in terms of imprisonment with no parole eligibility.¹³ Robbery with a deadly weapon has a mandatory minimum term of between ten and thirty years, with no parole eligibility for seven years.¹⁴ There are many other sexual and other violent crimes that have mandatory minimum sentences and/or special parole eligibility rules. A detailed list of these crimes is available in the Board’s Parole Manual.¹⁵

Offenders who are victims of domestic abuse. If the Board finds evidence that an inmate has a history of domestic abuse and has been convicted of an offense against a household member who was abusive, parole eligibility may be set at 1/4 of the prison term, as an exception to the general rules for violent offenders.¹⁶

Life sentences. Any person sentenced to life imprisonment or imprisonment for more than 40 years is eligible for parole after ten years.¹⁷ Those who have had their death sentences commuted to life in prison by the Governor are not eligible for parole.¹⁸

Recurring eligibility after denial of release. If parole is denied in a case involving a non-violent offender, the prisoner’s case must be reviewed every twelve months thereafter for the purpose of reconsidering parole.¹⁹ In general, offenders who have been convicted of a violent crime must have a subsequent hearing every two years.²⁰

b. Good Time, Earned Time, and Other Discounts

Prison inmates earn credits for good behavior at a rate of 20 days for each month served. Prison inmates convicted of “no parole” sentences (i.e. unclassified sentences or Class A, B, or C felonies) earn credits for good behavior at a rate of three days for each month served. However, those serving a term of life imprisonment or a mandatory minimum term of imprisonment for thirty years for murder are not eligible for this type of credit. Good behavior credit is deducted from the term of the sentence. Good conduct may be forfeited or withheld for offenses or violations of institutional rules.²¹

Prison inmates with parole eligibility may also earn work and educational credit at a rate of up to one day per every two days employed/enrolled, with a maximum annual credit of 180 days. Prison inmates with “no parole” sentences may earn work and educational credits at a rate of six days for each month served, with a maximum annual credit of 72 days. However, those serving a term of life imprisonment or a mandatory minimum term of imprisonment for 30 years for murder are not eligible for this type of credit. Education credit is not available to those convicted of violent crimes as defined by statute.²²

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. No prisoner may be paroled until it appears to the satisfaction of the Board that he or she has shown a disposition to reform; that in the future the prisoner will probably obey the law and lead a correct life; that by his or her conduct the prisoner has merited a lessening of the rigors of imprisonment; that the interest of society will not be impaired thereby, and that suitable employment has been secured.²³

Statutory factors the board must consider. The Board must “carefully consider” the record of the prisoner before, during, and after imprisonment. By statute, the Board must also develop criteria for parole release. These criteria must

reflect all aspects of the applicable statutory law and include a review of a prisoner's disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and to the general public.²⁴ The Board currently lists criteria for release, but stresses that these considerations "in no way bind" its parole decision-making:²⁵

- The risk that the offender poses to the community;
- The nature and seriousness of the offense, the circumstances surrounding that offense, and the prisoner's attitude toward it;
- The offender's prior criminal record and adjustment under any previous programs of supervision;
- The offender's attitude toward family members, the victim, and authority in general;
- The offender's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the prisoner to improve himself;
- The offender's employment history, including his job training and skills and his stability in the workplace;
- The offender's physical, mental, and emotional health;
- The offender's understanding of the causes of his past criminal conduct;
- The offender's efforts to solve his problems;
- The adequacy of the offender's overall parole plan, including his proposed residence and employment;
- The willingness of the community into which the offender will be paroled to receive that offender;
- The willingness of the offender's family to allow the offender, if he is paroled, to return to the family circle;
- The opinion of the sentencing judge, the solicitor, and local law enforcement on the offender's parole;
- The feelings of the victim or the victim's family, about the offender's release;
- Any other factors that the Board may consider relevant, including the recommendation of the parole examiner.

Special standard for long-term and sex offenders. Offenders who have served more than ten consecutive years in prison or are serving a term for a sexual offense must undergo a psychological examination before parole release.²⁶

d. Parole Release Guidelines

Parole release guidelines. There are no parole release guidelines in use by the Board.

e. Risk and Needs Assessment Tools

The DPPPS is required by statute to adopt a valid actuarial risk and needs assessment tool that is "consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions." The Department must also establish procedures for the use of the risk assessment to guide supervision practices including offender case planning and treatment to address criminal risk factors.²⁷

Risk instruments utilized. The risk assessment most frequently used by the Board is the COMPAS.²⁸ A validation study was completed two years after the state began using this tool at release.²⁹

Transparency. According to the Board, while the public has been given information about the type of risk assessments used, they are not given access to the results of individual assessments.³⁰

Sex offenders. This jurisdiction utilizes the Static-99 R for sex offender release decisions.³¹

f. Medical or Compassionate Release

Terminally ill, geriatric, or permanently disabled inmates³² may be paroled by the full Board. The inmate may not pose a threat to society or himself, and must be supervised by the Department of Probation, Parole, and Pardon Services. The Department must review the inmate's status annually to ensure that he remains eligible for parole. If no longer eligible, a parole violation process may ensue.³³

In addition, a prisoner may be released one year prior to the prescribed date of parole eligibility when, based on medical information, the Board determines that the prisoner's physical condition is so serious that he would not be reasonably expected to live for more than one year.³⁴

g. Executive Clemency Power

The Board considers all petitions for reprieves or commutations of death sentences and must make a recommendation to the Governor on each case; however, the Governor does not have to adopt the recommendations.³⁵ The Board directly makes decisions in all other types of clemency cases.³⁶ The Board must utilize statutory guidelines when issuing a pardon, and any order of pardon must be signed by at least 2/3 of the members.³⁷

h. Emergency Release for Prison Crowding

The Prison Overcrowding Act allows the Governor to declare a prison system overcrowding state of emergency. When this occurs, the Board may release qualified prisoners after performing risk assessments on them and considering victim impact. Low and medium risk offenders, especially those who have served a greater percentage of their sentence, will be released before high-risk offenders. To be qualified for release, an individual must:

- Be serving a sentence for a non-violent crime;
- Be incarcerated in an institution or facility of the Department of Corrections;
- Be eligible to be under the jurisdiction of DPPPS; and
- If serving a sentence of more than two years, have met his or her first parole eligibility date notwithstanding earned credits.³⁸

3. Parole Release Hearing Process

a. Format of Release Hearings

Before a hearing occurs, a parole examiner (an employee of DPPPS) interviews the eligible offender, investigates the case, and submits a recommendation for or against parole.

The Board may consider parole either acting as a three-member panel or meeting as a full board.³⁹ For non-violent offenders, the Board must grant parole by a majority of the members present or by a unanimous vote of a three-member panel. For violent offenders whose offenses occurred after January 1, 1986, the vote to grant parole must be by two-thirds of the members of the Board present. If a three-member panel fails to arrive at a unanimous vote, the case is referred to the full Board for a final decision.⁴⁰

The offender, or his attorney, is the first to present the case. Family members or other supporters may also appear on behalf of the offender. The Board or hearing panel may ask questions of the offender or witnesses. At this point, the offender is excused. During the next part of the hearing, those opposed to parole are given an opportunity to be heard. Finally, all witnesses are excused and the panel deliberates. After deliberations, a vote is cast.⁴¹

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

Prior to a hearing, "the Department, through its Division of Field Operations and Office of Board Support Services, prepares cases for the Board's review. Before every hearing of the Board or a panel of the Board, all members receive a list of offenders who will be appearing for a parole hearing, together with the respective parole file on each prisoner. Board Members will receive these files no less than two weeks before the actual date of the hearing."⁴² The files' contents include, but are not limited to:

- A description of the offense;
- The sentencing date, the "max out" date, the parole eligibility date, previous parole hearing dates, and names of co-defendants;
- The offender's criminal record;
- The offender's prison and disciplinary record;
- Risk classification reports;
- Medical history and psychological reports;
- Parole or probation supervision history;
- A proposed place of residence and employment;
- The parole examiner's recommendation;
- Law enforcement statements;
- Victim statements;
- Statements from the prosecutor;
- Sentencing judge's statements;
- The offender's social history; and
- The offender's employment experience.⁴³

c. Prisoner's Procedural Rights

According to the Board's parole manual, inmates have several legal rights during the parole process, including:

- "The right to be heard for parole if eligible and the right to waive such hearing;⁴⁴
- Fair written notice of the specific parole criteria, which are required to be established by the Board under South Carolina law and which must be made available to all prisoners at the time of their incarceration;
- Fair written notice of the date, time, and place of the parole hearing;
- The opportunity to be heard by a fair and impartial Board or panel;
- The opportunity to present evidence and to have up to three witnesses to speak on their behalf, and to have the Board or panel carefully consider the complete record before, during, and after imprisonment;

- At the offender's own expense, to have an attorney present at the hearing;
- When parole is denied, written notice of the Board's reasons for denying parole."⁴⁵
- The Board is also required to give adequate notice of a hearing, at least 30 days in advance, to an eligible offender.⁴⁶

d. Victims and Other Participants

South Carolina has a fairly extensive Victim's Bill of Rights as part of its State Constitution. A crime victim has the right to be informed of any parole action. A victim may also be present at any parole hearing.⁴⁷ As the Board states:

"Although victims and witnesses are members of the public and must be allowed to attend parole hearings, they are given priority under the South Carolina victims' and witnesses' bill of rights because of their special relation to the offense. The following procedures are designed specifically to accommodate their presence at parole hearings:

- Cases in which victims and witnesses are present should be heard first whenever possible;
- The Board may allow up to three victims and witnesses to be heard in any given parole or pardon case. The Chair has the discretion to allow additional victims and witnesses to be heard if in his/her judgment it is believed the case warrants it;
- Victims and witnesses will be given a reasonable amount of time by the Chair in which to be heard."⁴⁸

As noted above, hearings are open to the public. However, the Board can control attendance and has limited the actual number of people who can actually intend to include:

- "Administrative staff from the Department who are needed to support the Board or panel;
- An interpreter or translator for any offender or victim;
- Up to three supporters (family, employers, ministers, counselors, and so forth as allowed by the Department of Corrections);
- The offender's attorney;
- A representative from the arresting law enforcement agency;
- Victims and witnesses;
- News media;
- Other people, as determined by the Board."⁴⁹

The Board considers statements from judges, solicitors (i.e. prosecutors), and law enforcement when making a parole determination. In addition, it provides notice to the solicitor's office that prosecuted the case, the law enforcement agency that made the arrest, and the convicting/sentencing judge.⁵⁰

e. Burdens of Proof or Standards of Persuasion for Release

There is no apparent burden of proof for parole release.

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

Parole may be granted outright or based on the occurrence of some future event. "For example, parole may be granted on the condition that the offender is accepted into a particular treatment program, or on a condition that the offender obtain suitable employment or an approved residence."⁵¹

Alternatively, parole decisions may be postponed for up to one year to allow an offender to complete treatment, vocational training, or another "worthwhile endeavor."⁵²

g. Administrative or Judicial Review of Parole Denial

"Requests for reconsideration by the Board after a parole rejection are not accepted for routine parole denials. However, if within fifteen (15) days of the date of the notice of rejection letter, the inmate or the inmate's attorney submits a letter to the Director of Board Support Services requesting a reconsideration hearing, and provides information that the Board may have based its decision on erroneous information or can provide additional information that the Board did not have during the hearing, the Board may decide to grant a reconsideration hearing. The Director of the Office of Board Support Services will make a determination as to whether or not the information provided is sufficient to grant rehearing. If the Director of Board Support Services agrees, this information will be forwarded to the Board's Chair for a final determination. A letter will be sent to the inmate or the inmate's attorney notifying them of the decision. There is no appeal of the final decision."⁵³

Some decisions made by the Board may be reviewed by an administrative law judge under the state's Administrative Procedures Act. Inmates can then appeal the administrative law judge's decision to a circuit court. This process ensures that an inmate receives due process, which consists of notice, hearing, and judicial review.⁵⁴

In South Carolina, inmates do not have a right to parole; however, they do have a right to parole consideration. Thus “if a parole board deviates from, or renders its decision without consideration of the appropriate criteria, [...] it essentially abrogates an inmate’s right to parole eligibility and, thus, infringes on a state-created liberty interest” and this creates grounds for review.⁵⁵

h. Rescission of Parole Release Dates

After the Board or the panel has decided a parole case, the Board or panel may want to re-consider its decision based on subsequent misconduct, criminal charges, new information, or failure of the inmate to meet conditions of release. Reconsideration hearings, mentioned above, may be used to rescind parole where the new information about the inmate is negative.⁵⁶

Parole supervision rate. At the end of 2016, South Carolina had 112 parolees per 100,000 adults. This is much lower than the fifty-state average rate of 303 parolees per 100,000 adults.⁵⁷ In the same year, however, the prison population rate was 820 inmates per 100,000 adults, slightly higher than the fifty-state average of 780 per 100,000 adults.⁵⁸

4. Supervision Practices

a. Purposes of Supervision

According to the Board:

“The purpose of parole is universally recognized to be reformatory or rehabilitative. Parole is intended as a means of rehabilitating then restoring the offender to society as a law-abiding and productive member. Under the structured supervision that parole sets up, the parolee has the opportunity to participate in a wide array of health and human services programs designed to help him/her. As an early-release mechanism, parole also serves to alleviate the high costs to the state, and ultimately to the taxpayer, of keeping offenders in prison, not to mention the costs of building and operating new prisons. Further, parolees are required to pay supervision fees to help defray the cost of administering the parole system.”

The Board goes on to state that:

“Aside from the obvious economic benefit to the state of releasing offenders on parole and then requiring them to pay supervision fees, there is a certain element of moral instruction also at work. In being required to

shoulder at least a part of the economic burden that would otherwise fall entirely to the state, parolees are encouraged to assume moral responsibility for their actions. Requiring parolees to pay restitution to their victims, as a condition of supervision, goes even further in this most worthwhile direction.”⁵⁹

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

All parolees are initially placed on supervision.⁶⁰

c. Length of Supervision Term

Maximum supervision terms. Parolees must continue on parole until the expiration of the maximum term(s) specified in their sentences. No good time is deducted from this term.⁶¹

Early termination. Parolees may attempt to obtain a pardon after serving at least five years of parole. If a pardon is granted, parole ends at that time.

Extension of supervision term. The Board cannot extend the term of parole past the maximum term(s) specified in a sentence.

Incentives; “goal parole” There are no incentive programs related to the length of the supervision term.

d. Conditions of Supervision

By statute, the conditions of parole must include the requirement that the parolee permit the search and seizure, without a search warrant, with or without cause, of the parolee’s person, any vehicle the parolee owns or is driving, and any of the parolee’s possessions by any probation agent or any law enforcement officer. However, the legislature intended “to provide law enforcement with a means of reducing recidivism” and makes explicit that the statute “does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.”⁶² Parolees must agree to the following mandatory conditions (where “I” refers to the parolee):

- “I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services’ office on the day of my release or not later than 8:30 a.m. on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.

- I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
- I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor visit establishments whose primary business is the sale and drinking of alcoholic beverages. Furthermore, I shall submit to a urinalysis or a blood test when requested by an Agent of the Department, and I agree that any of these test results may be used as evidence in any hearing.
- I shall not possess or purchase any firearms, knives, or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
- I shall work diligently at a lawful occupation, furthermore, I shall notify my Agent if I become unemployed.
- I shall not violate any federal, state, or local laws, and shall contact my supervising agent if I am ever arrested or questioned by a law enforcement officer for any reason whatsoever.
- I shall pay supervision fees as determined by the department.
- I shall not leave the state without permission from my agent. Furthermore, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court, Board or by a warrant.
- I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
- I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agent.
- Unless I was convicted of or pled guilty or nolo contendere to a class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer."⁶³

The Board may also impose special conditions of parole. These conditions "must be reasonably related to the offender's crime, necessary to further some rehabilitative purpose, and not violate any state or federal law. Condi-

tions must not be punitive in nature. Within these limitations, the Board has fairly broad power to impose any special conditions that might reasonably serve to further the general purposes of supervision on parole."⁶⁴ The Board lists many common special conditions of parole in its parole manual.⁶⁵

Sex offenders. Electronic monitoring is required for offenders convicted of criminal sexual conduct with a minor. It is a monitoring option for other offenders convicted of sex offenses.⁶⁶ Some offenders may also face internet use restrictions or requirements.⁶⁷

Modification of conditions. In response to a violation of parole, the Board may order a continuation of the parole term but with additional supervision, or may add or remove conditions of parole.⁶⁸ However, modification may not take place without legal process (for example, a citation that requires the parolee to come before an administrative hearing officer).⁶⁹

Incentives; lighter conditions. There is no incentive related to lighter parole conditions.

e. Fees and Other Financial Sanctions

Parole supervision fees. Parolees must pay a supervision fee, calculated based on the parolee's ability to pay. The fee may not be less than twenty dollars per month or more than one hundred dollars per month. Payment must be a condition of parole, and a delinquency of two months or more in making payments "may operate as a revocation."⁷⁰

Parolees placed under intensive supervision are instead required to pay not less than ten dollars or more than thirty dollars per week in supervision fees, again based on the parolee's ability to pay. However, the Department may exempt a parolee from the payment of all or part of the fee if the payments "work a severe hardship on the individual." The Department may also substitute public service employment (i.e. community service) for supervision fees if that is in the best interest of the parolee and the state.⁷¹

If a parolee cannot pay statutory supervision fees (or, for that matter, restitution or fines) the Board may not revoke probation for that reason. "To revoke parole for any violation of the terms or conditions of supervision, the violation must be willful. The mere inability to pay supervision fees or restitution is not enough; the parolee must have had the ability to pay and willfully or intentionally refused to pay."⁷²

Payments for drug and alcohol testing and treatment. Parolees are required to submit to urinalysis or a blood test upon request, but it is unclear whether this is at the expense of the parolee.⁷³

Restitution. Restitution is a standard condition of parole.⁷⁴ However, judges in South Carolina must consider the financial resources of the defendant, the ability of the defendant to pay, and the anticipated rehabilitative effect of payment on the defendant in addition to considering factors that relate to the victim.⁷⁵

Child support. Payment of court-ordered child support is a standard condition of parole.⁷⁶

Other financial obligations. Parolees are required to pay fines as a standard condition of parole.⁷⁷ In addition, parolees who do not pay financial obligations in a timely manner will be placed under “quarterly administrative monitoring” and must pay an additional administrative monitoring fee of not more than ten dollars per month.⁷⁸

Incentives; reduction of economic sanctions. There are no incentives related to reduction of economic sanctions.

5. Parole Revocation

Parole revocation proceedings. In 2014, 19% of the new prison admissions in South Carolina were due to conditional release violations.⁷⁹

Absconders. As of June 2016, there were 178 parole absconders out of a total parole population of 2,762.⁸⁰

a. Principles and Criteria of “When to Revoke”

Policy considerations. As the Board states, “violations of parole do not always result in revocation. Revocation is generally reserved for the most serious violations, including but not limited to: new criminal convictions; absconding from supervision; and other violations that threaten the safety of the community. . . .As a matter of policy the Department prefers to continue cases on parole by modifying the conditions of supervision where appropriate and reasonably likely to lead to successful completion of supervision rather than resorting to revocation.”⁸¹

Legal predicates. For revocation to occur, a parolee must willfully fail to “do or refrain from doing any of the things set forth and required to be done” under the terms of parole.⁸²

Statutorily enumerated factors. There are no enumerated factors that must be considered at a revocation hearing.

b. Revocation Guidelines

There are no guidelines utilized in the parole revocation process.

c. Risk and Needs Assessment Tools

There is no risk/needs assessment used in the parole revocation process.

d. Preliminary and Final Revocation Procedures

Arrest or summons. An arrest can occur when the supervising parole agent learns that the parolee has violated some term or condition of parole. At this point a decision is made whether to issue a warrant for the parolee’s arrest or a citation. A citation would put the offender on a different route for sanctions or disposition. If the violation is serious enough, the supervising agent will be authorized to issue an arrest warrant, initiating the process that templates revocation.⁸³

The arrest warrant for a violation of parole must be based on probable cause to believe a willful violation has occurred, and it must be supported by an oath or affirmation stating with particularity the facts surrounding the violation.⁸⁴ Assuming the constitutional requirements for issuing a parole violation arrest warrant are satisfied, the warrant issued by the parole agent is valid. Although parole agents do not have general arrest powers, they do have, in the execution of their duties, not only the power to issue such warrants but also the power to arrest based on their warrants, and, to the extent necessary, the same right to execute their warrants as sheriffs. Upon arrest, the parolee is brought before a circuit judge, not a magistrate, of the circuit where the parolee was arrested, and is given a bond hearing. The parolee may then be released on bond, but only for good cause shown, pending the outcome of his final hearing before the Parole Board.⁸⁵ If the parolee is not released on bond, he is detained in a facility of the Department of Corrections, to await his preliminary hearing.

Preliminary hearing. A hearing officer⁸⁶ conducts preliminary hearings to determine probable cause on alleged violations committed by individuals under the supervision of the Department. “The hearing officer will determine the utilization of administrative sanctions where appropriate; identify problem behaviors and offer remedies whenever possible; and either determine those cases which are to be finally decided within the Department’s jurisdiction, or make recommendations on those cases which must be finally decided by the Board of Probation, Parole and Pardon Services, or by the Court.”⁸⁷

Parolees may also be considered for release on bond, for good cause shown, pending a final revocation hearing.⁸⁸

Final hearing. If, after an unfavorable decision at his preliminary hearing, the parolee desires a final revocation hearing, due process requires that he be given one, within a reasonable time after the parolee has been taken into custody, before any final decision is made. This hearing must lead to a final evaluation of any contested relevant facts, and it must consider whether the facts as determined warrant full revocation, or something less severe.⁸⁹ First, the case against a parolee is presented, including evidence of all violations alleged and the facts surrounding them. Next, the parolee and/or the parolee’s attorney may present evidence disputing the violation(s) or the willfulness of the violation(s), or showing evidence in mitigation of the violation.⁹⁰ Note that hearings with in-custody parolees are often held through videoconferencing.⁹¹

e. Offender’s Procedural Rights

The offender has a right to receive a fair and impartial hearing during all phases of the revocation process. The parolee must receive written notice of the alleged violations upon which revocation is sought and have the evidence against him or her disclosed. Parolees also have the opportunity to be heard and to present evidence. Parolees or their attorneys have the right to cross-examine witnesses unless there is good cause for not allowing confrontation.⁹²

A parolee may have the right to appointed counsel at a parole revocation hearing if requested, on the basis of a timely and colorable claim that no violation was committed, or there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.⁹³ Parolees always have the right to obtain an attorney for a revocation hearing at their own expense.⁹⁴

f. Victims and Other Participants

Victims and others involved in the initial case (police, judges, etc.) are not involved in the revocation hearing process.

g. Burdens of Proof or Standards of Persuasion for Revocation

A willful parole violation must be proved by a preponderance of the evidence.⁹⁵

h. Revocation and Other Sanctions

At the conclusion of a parole revocation hearing, the Board may revoke parole. The Board may also choose to continue parole either because the evidence is insufficient to show a parole violation, or because mitigating evidence supports continuation on parole despite a violation. If parole is revoked, an offender is given credit for time served while on parole.⁹⁶

In less serious cases of parole violation, modification of conditions by the Department’s Administrative Hearing Section may be an alternative to the revocation process. According to the Board, “[m]odifications of parole serve two purposes: they respond to the parolee’s individual rehabilitative needs as those needs change over time and allow for parole to continue in a way that reasonably ensures the safety of the community, while saving the state the cost of incarcerating the offender.”⁹⁷ Administrative Hearing Officers confronted with a violation may also:

- “Place the offender on Home Detention;
- Place the offender in a Halfway House;
- Order the offender to complete Public Service Employment;
- Order the offender to pay restitution (actual damages only) for violations committed while under supervision;
- Place the offender on a higher, or a lower level of supervision, including placement on intensive supervision;
- Restructure the offender’s payment schedule;
- Restructure the restitution payment schedule, with Board approval, on which the offender pays restitution;
- Recommend placement at a Restitution Center;
- Exempt or defer the offender’s supervision fees;
- Modify any other special conditions of parole as may be appropriate.”⁹⁸

i. Issuing Parole Revocation Decisions

Parole revocation decisions are issued immediately following the hearing (which is often held via video conference). The Board then issues a revocation or continuation order and faxes it to the institution where the offender is being held.⁹⁹

j. Administrative or Judicial Review of Parole Revocation Decisions

By statute, there is no appeal from parole revocation decisions.¹⁰⁰ Parole revocation decisions have been subject to judicial review through habeas corpus proceedings; however, it seems that jurisprudence on parole revocation is very limited and many of the published cases are from the middle of the 20th Century.¹⁰¹

k. Re-Release Following Revocation

If parole is revoked, the Board may re-parole an individual when deemed proper.¹⁰² Board policy allows inmates to be reconsidered for parole annually.¹⁰³

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board has statutory authority to consider cases for pardon, parole, and any other form of clemency under the law.¹⁰⁴ The Board also has jurisdiction over parole revocation.¹⁰⁵

b. Location in Government

The Board is an independent agency; however, it is closely associated with the South Carolina Department of Probation, Parole, and Pardon Services.¹⁰⁶

c. Purpose (Vision/Principles/Rationale)

The Board states that: “[t]he South Carolina Board of Pardons and Paroles, as part of the criminal justice system, makes independent, quality conditional release and pardon decisions and clemency recommendations. The Board contributes to the protection of society by facilitating, as appropriate, the timely integration of offenders as law-abiding citizens.”¹⁰⁷

The Board adds that:

“In making quality decisions regarding conditional releases and pardons, as well as recommendations in clemency cases, the Board’s primary objective is the long-term protection of society. The Board firmly believes that law-abiding behavior can best be achieved by timely and supervised conditional release and effective administration of sentences. In making its decisions, the Board is autonomous and independent, however, it is accountable for its actions, not only by virtue of its internal framework, but to the Governor of this state and ultimately, to all South Carolinians.”¹⁰⁸

d. Appointment and Qualifications of Board Members

There are seven Board members, appointed by the governor with the advice and consent of the Senate. If a vacancy occurs during a recess of the Senate, the Governor may fill the vacancy by appointment for the unexpired term pending the consent of the Senate, provided the appointment is received for confirmation on the first day of the Senate’s next meeting following the vacancy. A chairman must be elected annually by a majority of the membership of the board. The chairman may serve consecutive terms.¹⁰⁹

Qualifications. Each of the seven members must be appointed from each of the congressional districts. At least one appointee must have had at least five years of work or volunteer experience in one or more of the following fields: parole, probation, corrections, criminal justice, law, law enforcement, psychology, psychiatry, sociology, or social work.¹¹⁰

e. Tenure of Board Members, Ease of Removal

Board members serve six-year terms. If a board member who is being reappointed is not confirmed within sixty days of receipt of the appointment by the Senate, the appointment is considered rejected.¹¹¹ The Governor may remove a member of the Board for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity.¹¹²

f. Training and Continuing Education

Training for newly appointed members. “Within 90 days of a new Board member’s confirmation, the Board member must complete a comprehensive training course of at least sixteen (16) hours encompassing components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association. This training will include, but is not limited to, the following topics: (a) the elements of the decision making process through the use of evidence-based practices for determining offender risk, needs and motivations to change, including the actuarial risk/needs assessment tool used by the Department, (b) security classifications as established by the Department of Corrections, (c) programming and disciplinary processes, (d) the Department’s supervision, case planning, and violation process, (e) the dynamics of criminal victimization, and (f) collaboration with corrections related stakeholders, both public and private, to increase offender success and public safety.”¹¹³

Continuing education. Each Board member is required to complete at least eight (8) hours of training annually encompassing components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association. This training will include but is not limited to the following topics: (a) a review and analysis of the effectiveness of the risk/needs assessment tool used by the Department, (b) a review of the Department’s progress toward public safety goals, (c) the use of data in decision making, and (d) information regarding promising and evidence-based practices related to corrections and crime victim dynamics.¹¹⁴

g. Workload

In the 2014-2015 year, there were 3,464 parole hearings and the parole grant rate increased from 19% to 29%.¹¹⁵

h. Reporting and Accountability of Parole Board

While the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS) is required to submit annual accountability reports to the Governor and General Assembly, there is no separate report for the Board.¹¹⁶

The public has a right to inspect or copy any public record of a public body. This includes meeting minutes for the preceding six months, “reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed,”¹¹⁷ and documents identifying persons confined in prison for the preceding three months.¹¹⁸ Information exempt from disclosure includes, for example, records of law enforcement and public safety agencies if they would endanger any person or compromise police activity.¹¹⁹ The parole statute notes that “[a]ny part or all of a prisoner’s in-prison disciplinary records and, with the prisoner’s consent, records involving all awards, honors, earned work credits and educational credits, are subject to the Freedom of Information Act. . . .”¹²⁰

END NOTES

- ¹ Justice Policy Inst., *Due South: South Carolina: Justice System Overhaul* (May 2011) http://www.justicepolicy.org/uploads/justicepolicy/documents/due_south_-_south_carolina.pdf.
- ² S.C. Dep't Prob., Parole & Pardon Svcs., *Our History*, <http://www.dppps.sc.gov/About-PPP/Our-History> (last visited Jul. 19, 2018). See, e.g., S.C. Code Ann. § 24-21-30 (2018).
- ³ S.C. Code Ann. § 24-21-32(B), (D) (2018).
- ⁴ S.C. Code Ann. § 24-21-680 (2018).
- ⁵ S.C. Code Ann. §§ 16-1-20, 24-13-100 (2018). See S.C. Code Ann. § 16-1-10 (2018) (Non-classified offenses are numerous and include murder, incest, using weapons of mass destruction, drug trafficking, and many other relatively serious crimes but also crimes like "larceny of a bicycle valued more than \$2,000" and "violation of childcare facilities requirements.").
- ⁶ See S.C. Code Ann. § 24-21-610 (2018).
- ⁷ S.C. Code Ann. §§ 16-1-10, 24-13-100 (2018).
- ⁸ S.C. Code Ann. § 24-21-645(A), (B), (D) (2018).
- ⁹ S.C. Code Ann. § 24-21-610 (2018).
- ¹⁰ See S.C. Code Ann. § 16-1-60 (2018).
- ¹¹ S.C. Code Ann. § 24-21-640 (2018).
- ¹² See S.C. Code Ann. § 44-53-370(e) (2018).
- ¹³ S.C. Code Ann. § 16-11-330(A) (2018).
- ¹⁴ S.C. Bd. Paroles & Pardons, *Policy and Procedure* at 24-25 (Jun. 2017) [hereinafter *Policy Manual*], <https://www.dppps.sc.gov/content/download/120663/2749351/file/Parole+Board+Manual+June+7+2017.pdf>.
- ¹⁵ S.C. Code Ann. § 16-25-90 (2018).
- ¹⁶ S.C. Code Ann. § 24-21-610(1) (2018).
- ¹⁷ S.C. Code Ann. § 16-3-20(A) (2018) (noting also that murder carries a mandatory minimum term of thirty years without eligibility for any type of "good time" credits or early release).
- ¹⁸ S.C. Code Ann. § 24-21-620 (2018).
- ¹⁹ S.C. Code Ann. § 24-21-650 (2018).
- ²⁰ S.C. Code Ann. § 24-13-210(A)-(D) (2018) (stating that inmates serving sentences in local detention facilities or county public work programs may earn good behavior credit at a rate of one day for every two days served).
- ²¹ S.C. Code Ann. § 24-13-230(A), (B), (F)(2) (2018).
- ²² S.C. Code Ann. § 24-21-640 (2018).
- ²³ *Id.*
- ²⁴ Policy Manual, *supra* note 15 at 26-27.
- ²⁵ *Id.* at 27; S.C. Code Ann. § 24-21-610 (2018).
- ²⁶ S.C. Code Ann. § 24-21-10(F)(1)-(2) (2018).
- ²⁷ S.C. Dept. Prob., Parole & Pardon Svcs., *Fiscal Year 2014-15 Accountability Report* at A-4 (Sept. 2015), <https://www.dppps.sc.gov/content/download/68711/1586587/file/2015%20Accountability%20Report.pdf> ("Increased compliance completion of Correctional Offender Management Profiling from 69% to 85% for Alternative Sanctions (COMPAS) risk/needs assessments.").
- ²⁸ Correspondence with Jonathan V. Howell and Henry S. Eldridge, Chair, South Carolina Parole Board.
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ S.C. Code Ann. § 24-21-715(A) (2018) ("'Terminally ill' means an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will likely produce death within two years, and that is so debilitating that the inmate does not pose a public safety risk. 'Geriatric' means an inmate who is seventy years of age or older and suffers from chronic infirmity, illness, or disease related to aging, which has progressed so the inmate is incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk. 'Permanently incapacitated' means an inmate who no longer poses a public safety risk because of a medical condition that is not terminal but that renders him permanently and irreversibly incapacitated as determined by a licensed physician and which requires immediate and long term residential care.").
- ³² *Id.* (B)-(E).
- ³³ S.C. Code Ann. § 24-21-610 (2018).
- ³⁴ S.C. Code Ann. § 24-21-910 (2018).
- ³⁵ S.C. Code Ann. § 24-21-920 (2018).
- ³⁶ S.C. Code Ann. §§ 24-21-930; 24-21-950 (2018).
- ³⁷ S.C. Code Ann. Regs. 130-10(A)-(D) (specifying violent crimes for the purpose of this regulation as murder, armed robbery, first- or second-degree criminal sexual conduct, assault and battery with intent to kill, kidnapping, first- or second- degree burglary, first-degree arson, certain drug trafficking offenses, voluntary manslaughter, violation of the Habitual Offender Act, or accessory before the fact to any of the above offenses; individuals who are part of the Extended Work Release Program, youthful offenders, or those incarcerated for contempt of court are also ineligible).
- ³⁸ S.C. Code Ann. § 24-21-620 (2018).
- ³⁹ S.C. Code Ann. § 24-21-30(A)-(B) (2018); Policy Manual, *supra* note 15 at 28-29.
- ⁴⁰ Policy Manual, *supra* note 15 at 21-22.
- ⁴¹ *Id.* at 21.
- ⁴² *Id.*
- ⁴³ *Id.* at 20; see also *id.* at 22 (stating that an offender may request that the hearing be postponed due to illness or punitive segregation within the institution).
- ⁴⁴ *Id.* at 20.
- ⁴⁵ *Id.*
- ⁴⁶ S.C. Const. art. I, § 24(A)(10).
- ⁴⁷ Policy Manual, *supra* note 15 at 23.
- ⁴⁸ *Id.*
- ⁴⁹ *Id.* at 20-21.
- ⁵⁰ *Id.* at 28.
- ⁵¹ *Id.* at 31.
- ⁵² *Id.* at 41.
- ⁵³ *Al-Shabazz v. State*, 527 S.E.2d 742, 750 (S.C. 2000).
- ⁵⁴ *Cooper v. S.C. Dep't of Prob., Parole, & Pardon Svcs.*, 661 S.E. 2d 106, 111 (S.C. 2008).
- ⁵⁵ Policy Manual, *supra* note 15 at 41.
- ⁵⁶ Danielle Kaeble, Bureau of Justice Statistics, Probation and Parole in the United States, 2016 at 18 (Appendix Table 5) (Apr. 2018), <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.
- ⁵⁷ Danielle Kaeble, Bureau of Justice Statistics, Correctional Populations in the United States, 2016 at 11 (Appendix Table 1) (Apr. 2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>.
- ⁵⁸ Policy Manual, *supra* note 15 at 5-6.
- ⁵⁹ See *id.* at 32-33.
- ⁶⁰ S.C. Code Ann. § 24-21-670 (2018).
- ⁶¹ S.C. Code Ann. § 24-21-645(B)-(C) (2018) (note that (B) does not apply to people who have been adjudicated guilty of class C or unclassified misdemeanors).
- ⁶² Policy Manual, *supra* note 15 at 32-33.
- ⁶³ *Id.* at 33.
- ⁶⁴ *Id.* at 33-34.
- ⁶⁵ S.C. Code Ann. § 23-3-540(A)-(G) (2018).
- ⁶⁶ See S.C. Code Ann. § 23-3-555 (2018).
- ⁶⁷ Policy Manual, *supra* note 15 at 38.
- ⁶⁸ 26 S.C. Jur. Probation, Parole, & Pardon § 23 (database updated Jun. 2018).
- ⁶⁹ S.C. Code Ann. § 24-21-80 (2018).
- ⁷⁰ *Id.*
- ⁷¹ 26 S.C. Jur. Probation, Parole, & Pardon § 23 (database updated Jun. 2018) (citing *Nichols v. State*, 417 S.E. 2d 860, 862 (S.C. 1992)).
- ⁷² Policy Manual, *supra* note 15 at 33-34.
- ⁷³ *Id.* at 32.
- ⁷⁴ S.C. Code Ann. § 17-25-322(B) (2018).
- ⁷⁵ Policy Manual, *supra* note 15 at 32.
- ⁷⁶ *Id.*
- ⁷⁷ S.C. Code Ann. § 24-21-100 (2018).
- ⁷⁸ Mariel E. Alper, Robina Institute, *By the Numbers: Parole Release and Revocation Across 50 States*, at 203 (2016).
- ⁷⁹ Correspondence with Jonathan V. Howell (Jun. 12, 2017).

END NOTES

- ⁸¹ Policy Manual, *supra* note 15 at 39.
- ⁸² S.C. Code Ann. § 24-21-680 (2018); *see also* Policy Manual, *supra* note 15 at 36.
- ⁸³ S.C. Code Ann. § 24-21-680 (2018) (“Upon failure of any prisoner released on parole under the provisions of this chapter to do or refrain from doing any of the things set forth and required to be done by and under the terms of his parole, the parole agent must issue a warrant or citation charging the violation of parole, and a final determination must be made by the board as to whether the prisoner’s parole should be revoked and whether he should be required to serve any part of the remaining unserved sentence.”); *see also* 26 S.C. Jur. Probation, Parole, & Pardon § 22 (database updated Jun. 2018).
- ⁸⁴ 26 S.C. Jur. Probation, Parole, & Pardon § 22 (database updated Jun. 2018).
- ⁸⁵ S.C. Code Ann. § 24-21-680 (2018).
- ⁸⁶ S.C. Code Ann. Regs. 130-50 (“The hearing officer will be an employee of the Department with a Master’s Degree and five (5) years of probation, parole, law enforcement or related experience; or a Bachelor’s Degree and seven (7) years of probation, parole, law enforcement, or related experience.”).
- ⁸⁷ S.C. Code Regs. 130-50.
- ⁸⁸ S.C. Code Ann. § 24-21-680 (2018).
- ⁸⁹ Policy Manual, *supra* note 15 at 36.
- ⁹⁰ *Id.* at 37.
- ⁹¹ *Id.* at 17.
- ⁹² *Id.* at 20, 36.
- ⁹³ *Duckson v. State*, 586 S.E.2d 576, 579–80 (S.C. 2003) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 790–91 (1973)).
- ⁹⁴ Policy Manual, *supra* note 15 at 36.
- ⁹⁵ *Id.* at 37.
- ⁹⁶ *Id.* at 38.
- ⁹⁷ *Id.* at 40.
- ⁹⁸ *Id.*
- ⁹⁹ *Id.* at 38 (“At the conclusion of the hearing, the Board or the panel should issue and sign its Order of Continuation. The Order itself should accurately reflect the action taken at the hearing, and should include any further conditions of supervision that were imposed by the Board or the panel. The parolee should be given a copy of this Order.”).
- ¹⁰⁰ S.C. Code Ann. § 24-21-680 (2018).
- ¹⁰¹ *See, e.g., Russell v. Cooper*, 211 S.E. 2d 655 (S.C. 1975); *Crooks v. Sanders*, 115 S.E. 760 (S.C. 1922).
- ¹⁰² S.C. Code Ann. § 24-21-680.
- ¹⁰³ 26 S.C. Jur. Probation, Parole & Pardon § 22 (database updated Jun. 2018).
- ¹⁰⁴ S.C. Code Ann. § 24-21-10; 24-21-13(B) (2018).
- ¹⁰⁵ S.C. Code Ann. § 24-21-680 (2018).
- ¹⁰⁶ *See* S.C. Code Ann. § 24-21-10; *see also* Policy Manual, *supra* note 15 at 5.
- ¹⁰⁷ Policy Manual, *supra* note 15 at 8.
- ¹⁰⁸ *Id.*
- ¹⁰⁹ S.C. Code Ann. § 24-21-10(B) (2018).
- ¹¹⁰ *Id.*
- ¹¹¹ *Id.*; S.C. Code Ann. § 24-21-10(C) (2018).
- ¹¹² S.C. Code Ann. § 1-3-240(C) (2018).
- ¹¹³ S.C. Code Regs. 130-30(A).
- ¹¹⁴ *Id.* (B).
- ¹¹⁵ S.C. Dep’t. Prob. Parole & Pardon Svcs., *Fiscal Year 2014-2015 Accountability Report* at A-5 (2015), http://dc.statelibrary.sc.gov/bitstream/handle/10827/20397/PPP_Annual_Accountability_Report%20_2014-2015.pdf?sequence=1&isAllowed=y.
- ¹¹⁶ *See id.*
- ¹¹⁷ S.C. Code Ann. § 30-4-50(A)(8) (2018).
- ¹¹⁸ S.C. Code Ann. § 30-4-30(D) (2018).
- ¹¹⁹ S.C. Code Ann. § 30-4-40(a)(3) (2018).
- ¹²⁰ S.C. Code Ann. § 24-21-640 (2018).