

UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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

WEST VIRGINIA



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

West Virginia

By

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The authors would like to thank Benita F. Murphy, Chairperson of the West Virginia Parole Board, for comments on an earlier draft of this report.

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1. Background; Sentencing System

a. Sentencing Framework

West Virginia does not have a sentencing commission or sentencing guidelines. The West Virginia Parole Board was established in 1939 and has operated continuously since.¹

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

The West Virginia Parole Board has discretionary prison release authority.²

<https://paroleboard.wv.gov/Pages/default.aspx>

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

The West Virginia Division of Corrections, Parole Services is responsible for the supervision of released prisoners.³

<http://www.wvdoc.com/wvdoc/ParoleServicesResources/tabid/71/Default.aspx>

d. Which Agency Has Authority Over Parole Revocation?

The West Virginia Parole Board has authority over parole revocation.⁴

2. Parole Release and Other Prison-Release Mechanisms

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

The penalty for each crime in West Virginia is set by the statute that defines the crime.⁵ Thus, felonies are not divided into “levels” or “classes.” By default, sentences for more than one offense are served consecutively unless the court orders them to run concurrently.⁶ Recidivist offenders must serve an additional five-year sentence on top of any definite sentence, or twice the minimum term otherwise provided for in an indeterminate sentence.⁷ Where multiple convictions also result in recidivism penalties, the jury must select only one of the sentences to enhance.⁸

General rules of release eligibility. Incarcerated felons of a state correctional institution generally become eligible for parole when they have served the minimum term of an indeterminate sentence or one-quarter of the term of a definite sentence.⁹

Some inmates may qualify for an accelerated parole program if they meet certain criteria, apply, and are accepted into the program.¹⁰ The accelerated parole program allows for release eligibility up to three months prior to the original parole eligibility date, contingent on completion of a case management plan tailored to criminogenic needs.¹¹

In addition to meeting the time requirements for parole, inmates are not eligible for release if they are currently in restrictive housing for a disciplinary violation.¹²

Violent/firearms offenses. Any offender who committed or attempted to commit a felony involving a firearm is not eligible for parole until serving a minimum of three years of the sentence or the maximum sentence, whichever is less. However, if the crime is a robbery or attempted robbery, the minimum is five years or one-third of the definite term, whichever is greater.¹³

In addition, offenders serving certain sentences for crimes of violence against people, crimes involving the use of a firearm, or crimes with victims who are minor children are not eligible for accelerated parole.¹⁴

Life sentences. An offender sentenced to life with parole (also referred to as “life with mercy”) may not be paroled prior to serving ten years of the sentence. An offender sentenced to life who has two prior felony convictions or is convicted of first-degree murder may not be paroled prior to serving fifteen years of the sentence.¹⁵

Recurring eligibility after denial of release. If an inmate is denied parole, the Board must notify them of the month and year he or she may apply for reconsideration and review. The Board must reconsider each inmate who is still eligible for parole once per year. Life sentenced inmates must be reconsidered for parole no later than 3 years after a previous denial of parole.¹⁶

b. Good Time, Earned Time, and Other Discounts

By statute, offenders receive good time credit during incarceration, and their earliest discharge date is initially calculated with all good time credit intact. Credit is deducted from the maximum term of indeterminate sentences or from the fixed term of definite sentences. Good time is granted at a rate of one day per day incarcerated. Inmates may lose all or a portion of their good time credit as a sanction for serious violations. Good time credit is not available for inmates serving a life sentence.¹⁷

In addition, some offenders have good time deducted to allow for mandatory post-release supervision under electronic or GPS monitoring at the end of a sentence. For individuals convicted of a felony crime of violence against a person, of a felony offense where the victim was a child, or of a felony offense involving the use of a firearm, there is a one-year deduction from good time and one year of mandatory supervision.¹⁸ At the discretion of the sentencing court, any other offender may be subject to a deduction of good time of up to 180 days to allow for post-release supervision in the community prior to discharge of the

sentence, “if the court determines supervision is appropriate and in the best interest of justice, rehabilitations, and public safety.”¹⁹

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. If an inmate meets the objective requirements for parole eligibility, the parolee must satisfy the Board that if released on parole he or she will not constitute a danger to the community.²⁰

Statutory factors the board must consider. In order to be released on parole, an inmate must present a written parole release plan that sets forth proposed plans for place of residence, employment, and (if appropriate) education, counseling, or treatment. If the inmate has not submitted a home release plan, the Board can make a decision to parole but may not release the inmate until they approve the plan.²¹

More generally, the Board has a duty to enhance public safety by making informed parole decisions. It must utilize parole guidelines consistent with evidence-based practices (discussed in 2d below), and must exercise professional judgment to assess offenders’ discrete individual factors and readiness for transition into the community.²²

If an inmate has participated in an accelerated parole program, they may not be paroled solely due to having completed a rehabilitation treatment plan. However, meeting the eligibility requirements for the program (including submitting a detailed release plan) and completing rehabilitative programming creates a rebuttable presumption that parole is appropriate. This presumption may be rebutted if the Board finds that the inmate’s risk assessment score will create a reasonable risk to the safety of persons or property, if released. In addition, this program does not create a right to parole release.²³

d. Parole Release Guidelines

By regulation, the Board has adopted parole release guidelines that produce a score based on offense severity, risk assessment, program participation, and misconduct history.²⁴ This document is not available to the public.

e. Risk and Needs Assessment Tools

Statutory mandate. The Board must utilize a risk assessment to determine parole release.²⁵

Risk instruments utilized. The Parole Board utilizes the Level of Service/Case Management Inventory (LS/CMI).²⁶

Transparency. The LS/CMI was validated on the West Virginia offender population in 2015. The results were described in a report by the state's Office of Research and Strategic Planning.²⁷

Sex offenders. The Board is required to perform a risk assessment of inmates convicted of incest, felony sex offenses, or felony child abuse.²⁸ The Board currently utilizes the Static-99 for this purpose.²⁹

f. Medical or Compassionate Release

Both the commissioner of corrections and the governor have the power to grant medical and compassionate release. If the commissioner grants release, it must be with the governor's approval.³⁰

g. Executive Clemency Power

The governor has the power to grant pardons and reprieves after conviction, to remit fines and penalties, and to commute capital sentences.³¹

h. Emergency Release for Prison Crowding

Both the commissioner of corrections and the governor have the power to grant emergency release.³²

3. Parole Release Hearing Process

a. Format of Release Hearings

The Board must sit in panels of three members for the purpose of conducting parole interviews and making release determinations. Membership on each panel must be appointed on a rotating basis by the chairperson of the Board. Two members of each panel constitute a quorum for the transaction of official business.³³ The presence of an inmate/parolee is required at all proceedings, unless the inmate/parolee conduct impairs the security and order of the proceedings and removal becomes necessary.³⁴

The Board must grant each inmate who reaches parole eligibility a timely parole hearing without regard to the location in which he or she is housed.³⁵ Hearings are held each month at each institution for inmates that are eligible that month.³⁶ At the hearing, the Board conducts an interview with each parole eligible inmate. The inmate has an opportunity to respond to the facts contained in documents and reports, and to argue for parole release.

Members of the Board may also ask the inmate questions bearing on the factors considered in the grant or denial of parole. This interview may be conducted by teleconference.³⁷

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

The Board must have the inmate's complete current criminal record as well as written reports of the warden or superintendent of the correctional institution to which the inmate is sentenced. The institutional record describes the inmate's conduct while in custody, including infractions, improvements, or other changes in mental or moral condition, work records, and any physical, mental, psychological, or psychiatric examinations of the inmate.³⁸

c. Prisoners' Procedural Rights

Inmates have the right to timely and adequate notice of a parole hearing. They have the right to be present and to give oral or documentary evidence. In addition, they have the right to access the information in their record that is used to determine whether they receive parole. Records of parole interviews must be made to allow for judicial review. Finally, inmates denied parole are entitled to written statements from the Board providing reasons for the decision.³⁹ The parolee may rebut any disadvantageous evidence through oral testimony and documents, but is not entitled to have counsel, unless the government has counsel present.⁴⁰

However, West Virginia case law does not allow inmates access to all documents considered by the Board. In *Stanley v. Dale*, the state Supreme Court of Appeals held that an inmate could not view confidential evidence related to community sentiment about his release. The court reasoned that the inmate could not show that he was deprived of constitutional rights because they "could not say with any degree of certainty that the Parole Board would have granted parole to the relator in the absence of the consideration of community sentiment."⁴¹

d. Victims and Other Participants

Victim notification must occur prior to parole release in cases of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse or neglect resulting in injury, arson, or a sexual offense against a minor. The Board must notify victims at least 45 days prior to a parole hearing. The Board panel must inquire during the parole hearing as to whether victim(s) of the crime are present. If so, it must allow the victims to speak. Victims must also be notified of parole release.⁴²

Each institution has rules about whether visitors or victims (of crimes not listed above) can attend parole hearings. Those who wish to attend parole hearings can contact the Institutional Parole Officer or the Board's office assistant that handles that particular institution.⁴³

e. Burden of Proof or Standards of Persuasion

There is no single standard of persuasion in parole release hearings. It is a discretionary evaluation made by the Board.⁴⁴

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

The Board may choose to grant parole with or without special conditions, grant deferred parole pending completion of a release plan, deny parole and schedule an additional interview, or defer the decision. The Board may also grant contingent parole; in other words, if an inmate has completed their rehabilitation treatment plan, the Board may grant parole based on the completion of an assigned task, or tasks, prior to release. If the inmate completes the task(s), they may be released without a further hearing.⁴⁵

The Board must provide a Decisional Communications Packet to the inmate which identifies all of the guidelines factors and countervailing factors supporting the parole release decision. The packet must contain the specific requirements for the offender if parole is denied, or conditions if parole is granted.⁴⁶

g. Administrative or Judicial Review of Parole Denial

Inmates may request reconsideration by the Board of any decision within 120 days of the date of the decision. The Board will only consider events that have occurred after the decision date or new information that was not available at the time of the hearing. The panel may grant a reconsideration, modify the upcoming interview date, conduct further hearings concerning the request, or request updated information from the Department of Corrections or Board staff. It may also deny the request for reconsideration.⁴⁷

Inmates may not seek direct judicial appeal, but may seek review through a writ of *habeas corpus* if they allege that the Board has violated their state constitutional rights. Inmates may file a similar suit in federal court if they allege that the Board has violated the U.S. Constitution.⁴⁸ The

West Virginia Supreme Court of Appeals has held that inmates who meet the objective criteria for parole eligibility (and therefore evaluated for release by the Board on the remaining, subjective criteria) have a reasonable expectation of parole. This means that inmates have a liberty interest in parole release decision-making and that this triggers basic due process protections.⁴⁹ However, a petitioner is not entitled to an automatic release on parole after judicial review. The decision to grant or deny parole remains a discretionary evaluation by the board based on a prisoner's record and its expertise.⁵⁰

h. Rescission of Parole Release Dates

The Board may rescind and issue a Notice of Temporary Rescission of parole in response to:

- A violation of Class I or Class II disciplinary rules before actual release;
- New information which contravenes the evidence the panel used to make its decision;
- The voiding of a foreign (i.e. another jurisdiction's) detainer to serve a sentence where release on parole was to that detainer; or
- Failure to meet conditions of release if granted contingent parole.⁵¹

The Board must hold a hearing within 45 days of the Notice to determine whether parole should be rescinded on any of the above grounds. At the hearing, the inmate may present witnesses, give testimony, and cross-examine adverse witnesses. They may also be represented by another inmate.⁵²

4. Supervision Practices

Parole supervision rate. In 2015, there were 213 parolees per 100,000 adult residents in West Virginia; this is lower than the 50-state average of 304 parolees per 100,000 adults.⁵³

a. Purposes of Supervision

The Parole Services mission statement is as follows:⁵⁴

"Parole Services is dedicated to enhancing public safety, remediating the behavior of criminal offenders to acceptable community standards, protecting the interests of the victims of crime and sustaining a secure environment for all people in the State of West Virginia through active supervision techniques and the effective use of evidence-based, re-entry programming and treatment practices."

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

All parolees are initially placed on supervision.⁵⁵

c. Length of Supervision Term

Maximum supervision terms. The period of parole is the maximum of the original sentence imposed less deductions for good conduct and work.⁵⁶ However, note that certain sex offenders must serve an additional term of supervised release of at least ten years and up to fifty years (or life, if designated a sexually violent predator).⁵⁷

Violent offenders are now required to have a year of good time added on to their sentence to ensure that they are supervised in the community for at least one year.⁵⁸ Sentencing courts can also order that 180 days be subtracted from any sentence so that it can be served on supervision in the community.⁵⁹

Early termination. A panel of the Board may grant release from supervision and early termination of parole after the parolee has served at least one year under supervision. The Board must determine that the ends of parole have been attained and that termination is in the best interest of the parolee and the state. However, if an individual has been paroled from a life sentence, the Board may not grant early termination before five years of supervision.⁶⁰

Extension of supervision term. It does not appear that the Board can extend the term of supervision beyond the term of the original sentence imposed.

Incentives; "goal parole." It does not appear that there is any incentive program available related to the term of parole.

d. Conditions of Supervision

Mandatory conditions of parole include that the parolee must:

- Report within 24 hours.
- Stay within a certain geographic area.
- Obtain permission before changing residence or employment.
- Obtain and maintain employment.
- Maintain acceptable, non-threatening behavior.
- Never possess firearms or weapons.
- Report any arrest within 24 hours.

- Complete a monthly written report.
- Report as instructed.
- Not use drugs or alcohol or enter drinking establishments.
- Abide by state or local laws.
- Abide by other written requirements.
- Pay \$40 supervision fee monthly.
- Allow contacts at home or employment without obstruction.
- Submit to search of person, residence or motor vehicle at any time by Parole Officers.⁶¹

In West Virginia, special conditions may be placed on parolees by parole officers. "These vary from officer to officer."⁶² A parole officer may order substance abuse treatment, but only if the offender has a high risk for re-offending and a need for such treatment. A parole officer may also order community correctional programming if it is responsive to a parolee's criminogenic needs.⁶³

Conditions of parole may not be physically or otherwise practically impossible to meet. In general, the Board [or the Division of Corrections] may not impose parole conditions in a matter that is unreasonable, arbitrary, or capricious.⁶⁴

Sex offenders. For sex offenders, standard conditions include registration with the state police within 3 days. Offenders who victimized children cannot live with anyone under 18.⁶⁵

Modification of conditions. The Division of Corrections may impose, subject to modification at any time, any other conditions which the division considers advisable.⁶⁶

Incentives; lighter conditions. There are no incentives related to lighter conditions of parole.

e. Fees and Other Financial Sanctions

Parole supervision fees. Parolees must pay a fee, based on ability to pay, of up to \$40 per month to defray the costs of supervision. The Department of Corrections must consider several factors when determining whether a parolee can pay the fee, including child care expenses.⁶⁷

Payments for drug and alcohol testing and treatment. Parolees are not normally required to pay for drug/alcohol testing or treatment.

Restitution. If restitution is ordered by the sentencing court, it must be made a condition of parole, unless the Board finds that restitution is wholly or partially impractical. The Board may revoke parole if a parolee fails to comply with a restitution order. Prior to revocation, however, the Board must consider the parolee's employment status, earning ability, financial resources, willfulness of the failure to pay, and any other special circumstances that may have a bearing on his or her ability to pay.⁶⁸

Child support. It does not appear that child support is a standard condition of parole. There is, however, no statutory language barring it as a special condition.

Other financial obligations. Parole conditions may include payment of court-imposed court costs and fines; however, the Board must make reasonable allowance for the parolee's economic situation when considering whether to revoke parole due to non-payment.⁶⁹

Incentives; reduction of economic sanctions. It does not appear that there are any incentives related to the reduction of economic sanctions.

5. Parole Revocation

Parole revocation proceedings. In 2015, there were 258 parolees returned to incarceration due to revocation and 50 returned to serve a new sentence.⁷⁰

Absconders. In 2015, there were 164 parolees who were reported as absconders.⁷¹

a. Principles and Criteria of "When to Revoke"

Policy considerations. The Council of State Governments' Justice Center worked with West Virginia to reform its responses to parole violations and make them more swift, certain, and cost-effective. In 2013, the state passed a bill that allowed for many technical violations to be punished through short periods of confinement or other lesser sanctions.⁷²

Legal predicates. Any violation of a condition of parole may result in the parolee's incarceration and potential parole revocation.⁷³

Statutorily enumerated factors. Different types of violations of parole trigger different potential decision-making processes. If a parolee absconds, commits a new crime

greater than a traffic violation or simple drug possession, or violates a condition of a special condition of parole designed to either protect the public or the victim, the Board may consider parole revocation. For all other types of violations, the Board may revoke parole only upon making specific findings that a departure from the typical, intermediate level of punishment authorized by statute is warranted.⁷⁴

b. Revocation Guidelines

The Division of Corrections utilizes a grid to determine incentives and intermediate punishments for parolees supervised in the field. The grid instructs field officers to refer the matter to the Board if there is a new crime or a public safety issue. Graduated sanctions are based on both the parolee's supervision level (which is related to their risk) and the type of non-compliance.⁷⁵

It does not appear that the Board utilizes similar guidelines at the revocation phase.

c. Risk and Needs Assessment Tools

It appears that the Division of Corrections utilizes the LS/CMI risk assessment and that this factors into decisions to report violations to the Board.⁷⁶ It is unclear whether or not the Board utilizes a separate risk assessment at revocation.

d. Preliminary and Final Revocation Procedures

Arrest or summons. A parole officer may arrest a parolee for a suspected violation with or without a warrant; or, the Commissioner of Corrections may issue a warrant for arrest. Parolees may be allowed to post bail to the sentencing court pending a parole hearing.⁷⁷

Preliminary hearing. A preliminary hearing is held by a Division of Corrections hearing examiner to determine whether there is reasonable cause for each parole violation charge.⁷⁸ This hearing must be held "as promptly as convenient after arrest."⁷⁹

Final revocation hearing. Revocation matters are decided by a panel of three Board members, two of whom must be present at the hearing. At the beginning of the hearing, the parolee must answer to the charges.⁸⁰ If the parolee pleads not guilty, the parole officer must prove the violation of parole. Both parties may present evidence and witnesses.⁸¹ The revocation hearing must be held no later

than the 30th day, excluding weekends and holidays, following the preliminary hearing, the return to the custody of the Division of Corrections from another state, or after a written waiver of the preliminary hearing is executed.⁸²

e. Offenders' Procedural Rights

The parolee and/or their counsel must be present at all revocation hearings. If a parolee cannot afford an attorney and desires appointed counsel, he or she must apply to the circuit court in the county in which the hearing will be held using an affidavit reflecting an inability to pay. If the parolee proves indigency, counsel *may* be appointed by the court.⁸³

f. Victims and Other Participants

A notice of a revocation proceeding is be provided to any individual entitled to notice as a victim.⁸⁴

g. Burden of Proof or Standards of Persuasion

The Board must find by a preponderance of the evidence that the parolee has violated the conditions of parole. The burden rests with the parole officer to prove the violation.⁸⁵

h. Revocation and Other Sanctions

At any time prior to a ruling on revocation proceedings, the Board can choose to hold the proceedings in abeyance and release the parolee on supervision for a certain amount of time. If the parolee is able to continue on parole, abiding by all terms and conditions, the revocation proceedings will be dismissed and the parolee shall remain on parole. If the parolee violates conditions of parole during the abeyance, the Board shall reconvene revocation proceedings; in addition, the Board may institute further violation proceedings.⁸⁶

The Board can, with the written consent of the parolee, decide to return the parolee to supervision if they find that the individual violated parole, but the conduct was not felonious. Return to supervision may include additional special conditions.⁸⁷

If the parolee has not absconded, has not committed a new crime, and has not violated a special condition that is designed to protect the victim or the public, the penalties for the violation are somewhat limited by statute. For

a first violation of parole, the Board must require the parolee to serve up to 60 days of confinement. For a second violation, the Board must require the parolee to serve up to 120 days of confinement. A more severe punishment is considered a departure requiring that the Board must state its reasoning in writing.

If the parolee has absconded, committed a new crime (other than minor traffic violations or simple drug possession), or has violated a key special condition of parole, the Board may consider revocation of parole and can order that the parolee serve the remainder or any portion of the originally imposed sentence. If convicted of certain crimes while on parole, the parolee will automatically face revocation without the prospect of re-release for the remainder of the imposed sentence.⁸⁸

i. Issuing Parole Revocation Decisions

If the Board revokes parole, it must issue a formal Order of Revocation announcing the decision. The Order must state the charges of the parole violation and the evidence relied upon for each of the charges where a finding of guilt was made. The Order must also state a new parole eligibility date.⁸⁹

j. Administrative or Judicial Review of Parole Revocation Decisions

As with decisions related to parole release, an inmate can apply for reconsideration of a revocation decision within 120 days of the decision (see 3g for further details).

Parolees have sought judicial review of revocation decisions through a writ of *habeas corpus* in certain cases. For example, in *State ex rel. Valentine v. Watkins*, the inmate successfully challenged revocation proceedings that were not held within a reasonable amount of time and did not conform to due process standards (e.g. holding a preliminary probable cause hearing and a final revocation hearing).⁹⁰

k. Re-Release Following Revocation

If parole is revoked, the Board will provide a new parole eligibility date in the Order of Revocation where appropriate.⁹¹ However, the Board can revoke parole for the remainder of an imposed sentence.

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board has statutory authority over parole release and revocation.⁹²

b. Location in Government

The Board is an independent executive branch agency.⁹³

c. Purpose (Vision/Principles/Rationale)

The Board's mission statement lists the Board's duties and adds that "the Board contributes to the protection of society by facilitating, as appropriate, the timely integration of offenders back into society as law-abiding citizens."⁹⁴

The Board's vision statement is:

The West Virginia Parole Board will be committed to a partnership with the citizens of West Virginia in promoting public safety, providing a continuum of services for offenders, coordinating victim services, and by equipping employees with access to adequate training based upon effective intervention. The Board will utilize a direct link with policies and procedures by incorporating agencies designed and mandated to fulfill the same fundamental principles to yield the greatest efficiency, management, and productivity with a minimum amount of duplication of effort.⁹⁵

Further, the Board writes:

"We believe:

- The highest priority of the West Virginia Parole Board must be the interest in public safety through the highest degree of performance standards by all staff at all times.
- Offenders must be treated firmly, fairly, and consistently.
- Parole Board decisions, as appropriate, must have demonstrated effects on offender management and reintegration.
- All persons must be treated with respect and dignity.
- Service-oriented actions, tasks, requests, and inquiries must be handled timely and accurately.
- Excellence and quality must be pursued in the provision of services.
- Teamwork and leadership must be encouraged.
- Managers, supervisors and staff must be supported and empowered as they carry out their individual duties."⁹⁶

d. Appointment and Qualifications of Board Members

There are nine members of the Board, appointed by the Governor with the advice and consent of the Senate. The Governor must appoint one member to serve as chairperson.⁹⁷

Qualifications. No more than five board members may belong to the same political party at a given time. Each congressional district must be represented; no more than four and no less than two members can reside in any one congressional district. In addition, no more than two board members may be from the same county.

Any board member initially appointed after July 1, 2012 must have a degree from an accredited college or university or at least five years of experience in corrections, law enforcement, sociology, law, education, psychology, social work, medicine, or a combination thereof and must be "otherwise competent" to perform official duties.⁹⁸

e. Tenure of Board Members, Ease of Removal

Members serve overlapping terms of six years and may be reappointed. They must devote their full time and attention to Board duties.⁹⁹ Any person appointed by the governor may be removed at will.¹⁰⁰

f. Training and Continuing Education

According to regulations, the Board is "committed to discharging its responsibilities using contemporary, evidence-based practices and strategies. It is committed to ongoing professional development and incorporating new evidence-based practices in decision-making and in its interactions with offenders. Equally, it recognizes and supports ongoing professional development of Parole Board staff."¹⁰¹

g. Workload

In 2015-2016, there were 4,875 parole interviews which resulted in 1,972 total grants. There were also 286 individuals granted further consideration due to missing documentation or other concerns, and 621 parole hearings deferred due to lack of an approved home plan. There were also 16 paroles rescinded due to institutional conduct issues. A total of 1,477 parolees were considered for early discharge from parole. It was granted in 80% of the cases (a further 9% were discharged by

expiration of the sentence). There were 476 parole revocation decisions made. In 43% of these cases, parolees had their release revoked based on technical violations. A further 20% had their release revoked due to a new felony.¹⁰²

h. Reporting and Accountability of Parole Board

Our contacts in West Virginia noted that “[t]he Parole Board issues an Annual Report, which provides an area of information about its workings. Information excluded includes voting records.”¹⁰³ However, the more recent reports are not readily available online.¹⁰⁴

END NOTES

- ¹ W. Va. Parole Bd., *Chairperson's Message*, <https://paroleboard.wv.gov/Pages/ChairmansMessage.aspx> (last visited Jan. 1, 2018).
- ² W. Va. Code § 62-12-13 (2018).
- ³ See, e.g., W. Va. Code § 62-12-15 (2018).
- ⁴ W. Va. Code § 62-12-19 (2018).
- ⁵ See, e.g., W. Va. Code § 61-3-13 (2018) ("Grand and petit larceny distinguished; penalties").
- ⁶ W. Va. Code § 61-11-21 (2018).
- ⁷ W. Va. Code § 61-11-18(a) (2018).
- ⁸ *State v. Lewis*, 776 S.E.2d 591, 605 (W. Va. 2015).
- ⁹ W. Va. Code § 62-12-13(b)(1)(A) (2018).
- ¹⁰ *Id.* at (b)(1)(B) (2018).
- ¹¹ W. Va. Div. Of Corr. Pol. Directive 454.07 (Nov. 2013), http://www.wvdoc.com/wvdoc/Portals/0/documents/454.07_2015-04-01.pdf.
- ¹² W. Va. Code § 62-12-13(b)(2) (2018).
- ¹³ W. Va. Code § 62-12-12 (2018).
- ¹⁴ W. Va. Code § 62-12-13(b)(1)(B) (2018).
- ¹⁵ W. Va. Code § 62-12-13(c) (2018).
- ¹⁶ W. Va. Code § 62-12-13(e) (2018).
- ¹⁷ W. Va. Code § 28-5-27 (2018).
- ¹⁸ W. Va. Code § 28-5-27(l) (2018).
- ¹⁹ W. Va. Code § 28-5-27(m) (2018).
- ²⁰ W. Va. Code § 62-12-13 (b)(4) (2018).
- ²¹ W. Va. Code § 62-12-13 (b)(3) (2018).
- ²² W. Va. Code R. § 92-2-3.1.b.2 (2018).
- ²³ W. Va. Code § 62-12-13(h)(2) (2018).
- ²⁴ W. Va. Code R. § 92-1-6.1.a (2018).
- ²⁵ *Id.*
- ²⁶ Correspondence with Benita F. Murphy, Chairperson, W. Va. Parole Bd. (Mar. 22, 2018).
- ²⁷ Douglas H. Spence & Stephen M. Haas, W. Va. Dep't of Military Affairs and Pub. Safety, Div. of Justice and Community Svcs., Office of Research and Strategic Planning, *Research Brief: The Predictive Utility of Risk and Needs Assessment* (Jun. 2015), https://djcs.wv.gov/ORSP/SAC/Documents/JCEBP%20Research%20Brief%201_final.pdf.
- ²⁸ W. Va. Code § 62-12-27 (2018).
- ²⁹ Correspondence with Benita F. Murphy, *supra* note 26.
- ³⁰ W. Va. Code § 5-1-16 (2018) (discusses governor's power to grant commutations, reprieves, paroles, and pardons); W. Va. Code § 25-1-13 (2018) (granting power to commissioner to establish furlough programs). The commissioner's ability to grant medical release is based on an internal departmental policy directive (Policy Directive 151.05, "Compassionate Furlough Release Program Based Upon Medical, Geriatric, Elderly or Other Circumstances").
- ³¹ W. Va. Const. art. VII, § 1; W. Va. Code § 5-1-16 (2018).
- ³² W. Va. Code § 5-1-16 (2018) (discusses governor's power to grant commutations, reprieves, paroles, and pardons); W. Va. Code § 25-1-13 (2018) (granting power to commissioner to establish furlough programs). The commissioner's ability to grant release is based on an internal departmental policy directive (Policy Directive 151.03, "Expedited Reentry Furlough").
- ³³ W. Va. Code § 62-12-12a(a) (2018); W. Va. Code R. § 92-2-3.2.c (2018) ("No inmate shall be granted parole without the consent of at least two Members of the Panel.").
- ³⁴ W. Va. Code R. § 92-2-3.3.a (2018).
- ³⁵ W. Va. Code § 62-12-13(f) (2018).
- ³⁶ W. Va. Parole Bd., FAQ, <http://paroleboard.wv.gov/Pages/FAQ.aspx#1> (last visited Jan. 1, 2018).
- ³⁷ W. Va. Code § 62-12-13(m) (2018); W. Va. Code R. § 92-1-5.10.a (2018).
- ³⁸ W. Va. Code § 62-12-13(l)(1) (2018).
- ³⁹ W. Va. Code § 62-12-13(m) (2018); See also *Tasker v. Mohn*, 267 S.E.2d 183 (W. Va. 1980).
- ⁴⁰ Correspondence with Benita F. Murphy, *supra* note 26.
- ⁴¹ *Stanley v. Dale*, 298 S.E.2d 225, 228 (W. Va. 1982).
- ⁴² W. Va. Code § 62-12-23 (2018).
- ⁴³ Parole FAQ, *supra* note 36.
- ⁴⁴ Correspondence with Benita F. Murphy, *supra* note 26.
- ⁴⁵ W. Va. Code § 62-12-13(j) (2018).
- ⁴⁶ W. Va. Code R. § 92-1-8.2 (2018).
- ⁴⁷ W. Va. Code R. § 92-1-11 (2018).
- ⁴⁸ W. Va. Code R. § 92-1-12.2 (2018).
- ⁴⁹ *Tasker v. Mohn*, 267 S.E.2d 183, 188-89 (W. Va. 1980).
- ⁵⁰ Correspondence with Benita F. Murphy, *supra* note 26.
- ⁵¹ W. Va. Code R. § 92-2-4.1 (2018).
- ⁵² W. Va. Code R. § 92-2-4.2 (2018).
- ⁵³ Danielle Kaebler & Thomas P. Bonzcar, Bureau of Just. Stat., *Probation and Parole in the United States*, 2015 20-21 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁵⁴ W. Va. Div. of Corr., Parole Services Mission and Duty, <http://www.wvdoc.com/wvdoc/ParoleServicesResources/ParoleServicesMissionandDuty/tabid/72/Default.aspx> (last visited Jan. 1, 2018).
- ⁵⁵ W. Va. Code § 62-12-17(a) (2018).
- ⁵⁶ W. Va. Code § 62-12-18 (2018).
- ⁵⁷ W. Va. Code § 62-12-26(a) (2018).
- ⁵⁸ W. Va. Code § 28-5-27(l) (2018).
- ⁵⁹ W. Va. Code § 28-5-27(m) (2018).
- ⁶⁰ W. Va. Code § 62-12-18 (2018) (note that the statute lists several types of crimes from which discharge from parole prior to the end of the imposed sentence is not available).
- ⁶¹ W. Va. Div. of Corr., *Standard Conditions of Parole*, <http://www.wvdoc.com/wvdoc/ParoleServicesResources/StandardConditionsofParole/tabid/143/Default.aspx> (last visited Jan. 1, 2018).
- ⁶² *Id.*
- ⁶³ W. Va. Code §§ 62-12-17 (e), (f) (2018).
- ⁶⁴ *State ex rel. Eads v. Duncil*, 474 S.E.2d 534, 544 (W. Va. 1996).
- ⁶⁵ *Standard Conditions of Parole*, *supra* note 61.
- ⁶⁶ Correspondence with Benita F. Murphy, *supra* note 26.
- ⁶⁷ W. Va. Code §§ 62-12-17(a)(5), (c) (2018).
- ⁶⁸ W. Va. Code § 61-11A-4 (2018).
- ⁶⁹ See, e.g., *State v. Haught*, 371 S.E.2d 54 (W. Va. 1988).
- ⁷⁰ Kaebler and Bonzcar, *supra* note 53 at 25 (Appendix Table 6).
- ⁷¹ *Id.*
- ⁷² S.B. 371, Reg. Sess., 2013-2014 (W. Va. 2013).
- ⁷³ W. Va. Code § 62-12-19 (2018).
- ⁷⁴ W. Va. Code § 62-12-19(a)(2)(B) (2018).
- ⁷⁵ See W. Va. Div. of Corr., *Probation/Parole Violation & Graduated Sanction Policy*, <https://www.interstatecompact.org/sites/interstatecompact.org/files/pdf/states/WV/WV-Violation-Policy.pdf> (last visited Jan. 1, 2018).
- ⁷⁶ *Id.*
- ⁷⁷ W. Va. Code § 62-12-19(a) (2018).
- ⁷⁸ See, e.g., W. Va. Code R. § 92-2-7.1.b (2018).
- ⁷⁹ *State v. Dawson*, 282 S.E.2d 284 (W. Va. 1981).
- ⁸⁰ W. Va. Code R. §§ 92-2-9.1, 9.2 (2018).
- ⁸¹ W. Va. Code R. § 92-2-9.7.c (2018).
- ⁸² Correspondence with Benita F. Murphy, *supra* note 26.
- ⁸³ W. Va. Code § 62-12-22 (2018).
- ⁸⁴ Correspondence with Benita F. Murphy, *supra* note 26.
- ⁸⁵ W. Va. Code R. § 92-2-9.9.j (2018).
- ⁸⁶ W. Va. Code R. § 92-2-12.1.d (2018).
- ⁸⁷ W. Va. Code § 62-12-19(b) (2018); W. Va. Code R. § 92-2-12.1.d (2018).
- ⁸⁸ W. Va. Code §§ 62-12-19(a)(2)(A), (c) (2018).
- ⁸⁹ W. Va. Code R. §§ 92-2-13.1, 13.2.d, 13.2.f (2018).
- ⁹⁰ *State ex rel. Valentine v. Watkins*, 537 S.E. 2d 647 (W. Va. 2000).
- ⁹¹ W. Va. Code R. § 92-2-13.2.f (2018).
- ⁹² W. Va. Code §§ 62-12-12, 13 (2018); W. Va. Code R. § 92-2-6 (2018).
- ⁹³ See, e.g., W. Va. Parole Bd., *General Information*, <https://paroleboard.wv.gov/aboutus/Pages/Brendatestpage.aspx> (last visited Jan. 1, 2018).
- ⁹⁴ W. Va. Parole Bd., *58th Annual Report, July 1, 2011- June 30, 2012* 3 (Oct. 2012), http://www.legis.state.wv.us/legisdocs/reports/agency/P02_FY_2012_1762.pdf; See also Rules of the W. Va. Parole Bd. 1 (2006), <https://paroleboard.wv.gov/SiteCollectionDocuments/West%20Virginia%20Parole%20Board%20Procedural%20Rules.pdf>.

END NOTES

⁹⁵ *Id.* at 4.

⁹⁶ *Id.* at 5.

⁹⁷ W. Va. Code §§ 62-12-12(a), (c) (2018).

⁹⁸ W. Va. Code § 62-12-12 (2018).

⁹⁹ *Id.*

¹⁰⁰ W. Va. Code § 6-6-4 (2018).

¹⁰¹ W. Va. Code R. § 92-1-3.1.a (2018).

¹⁰² W. Va. Parole Bd., *Annual Report 2015-2016* 25 – 28.

¹⁰³ Correspondence with Benita F. Murphy, *supra* note 26.

¹⁰⁴ See, e.g., W. Va. Legislature, *West Virginia State Agency Reports*, http://www.wvlegislature.gov/Reports/Agency_Reports/agencylist_all.cfm (last visited May 31, 2018).