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PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Texas

By

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1. Background; Sentencing System

a. Sentencing Framework

The Texas Board of Pardon Advisors was created in 1893 to assist the governor in exercising pardoning and release powers; its name was changed to the Texas Board of Pardons and Paroles in 1929.² Texas has long had an indeterminate sentencing system in which the legislature has granted judges and the paroling authority a very broad range of discretion, especially for first-degree felonies (five to ninety-nine years).³ Texas does not have a sentencing commission or sentencing guidelines.

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

Yes, the Texas Board of Pardons and Paroles.⁴

Website: <http://www.tdcj.state.tx.us/bpp/>

c. Which Agencies Are Responsible for the Supervision of Parole?

The Texas Department of Criminal Justice Parole Division is responsible for the supervision of parolees.⁵

Website: <http://tdcj.state.tx.us/divisions/parole/index.html>

d. Which Agency Has Authority Over Parole Revocation?

The Texas Board of Pardons and Paroles has authority over parole revocation.⁶

e. Texas Statistical Profile

Summary: Prison and parole population rates are higher in Texas compared to the states as a whole. However, parolees are less likely to be re-incarcerated compared to the states in aggregate. About a third of parole hearings lead to parole being granted. Texas currently practices discretionary release for the majority of offenders.

Chart 1. Prison and Parole Population per 100,000 Adult Residents, 2003-2014

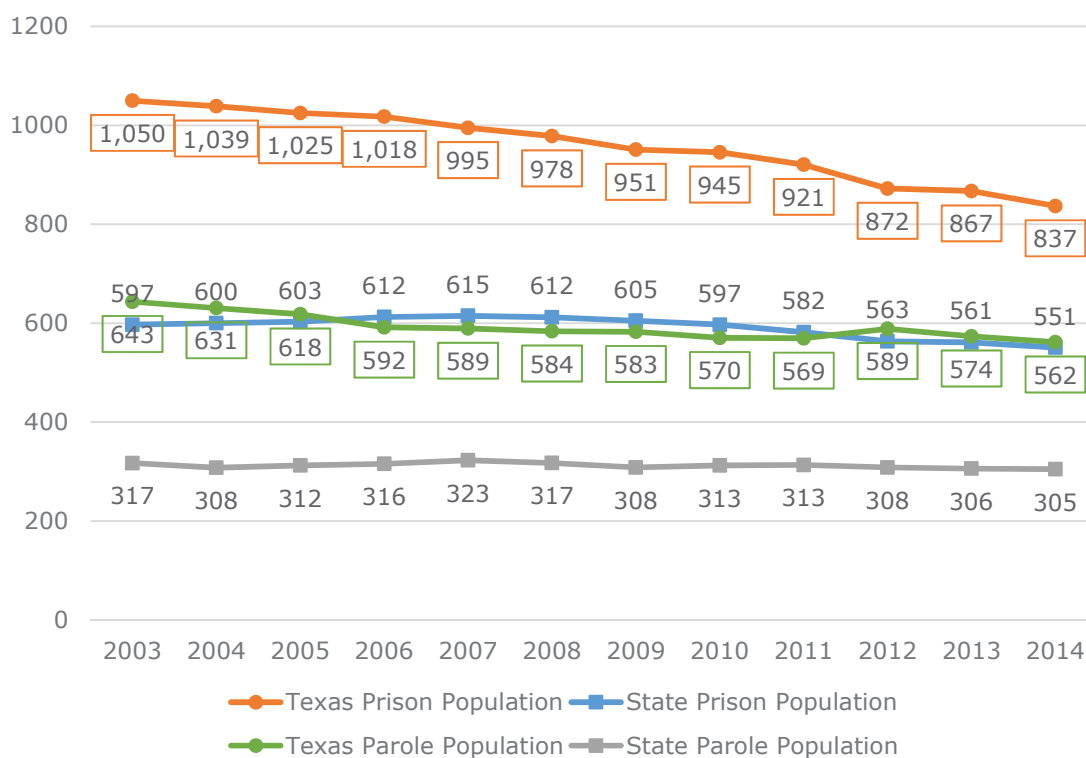


Chart 1 shows the population in prison and on parole per 100,000 adult residents at yearend for each year from 2003 to 2014. The data for this chart come from the *Probation and Parole in the United States* series and the *Prisoners* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown.

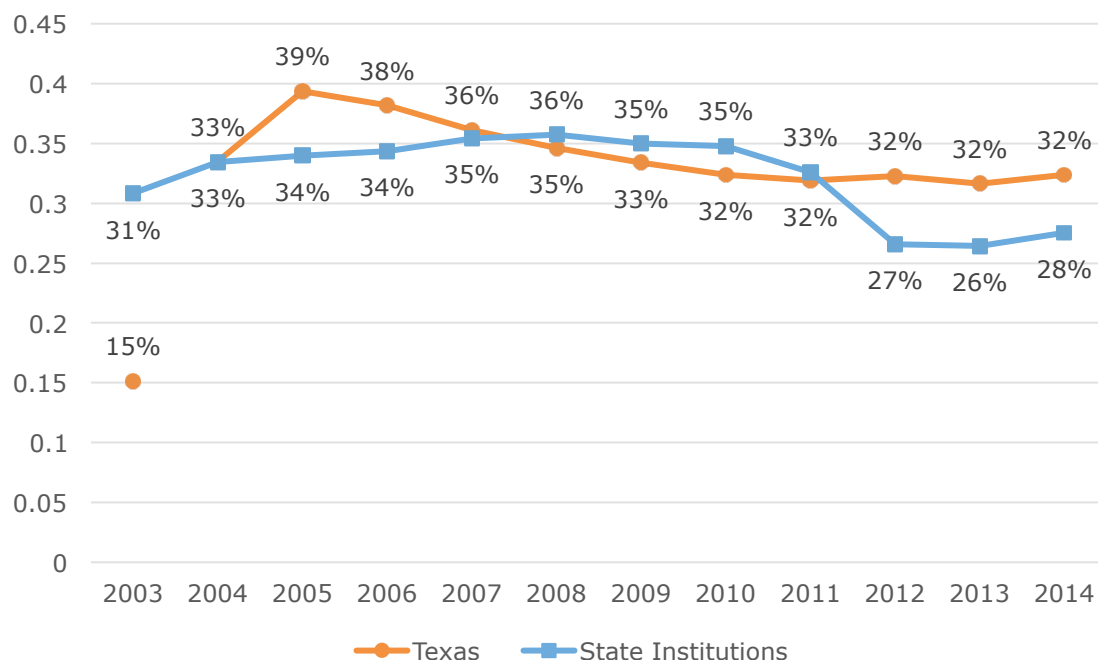
The prison population rate in Texas is much higher than the aggregate state rate. However, throughout the series, the rate has shown a steady decline. In 2014, the prison population rate was 837 in Texas versus 551 for all 50 states. Texas had the 6th highest prison population rate of the states in 2014. In 2014, 85% of releases from prison were conditional releases.

The parole population rate in Texas is also much higher than the aggregate state rate, and has slightly declined over time. In 2014, the parole population rate in Texas was 562 which is much higher than the aggregate rate of 305. Texas had the 5th highest parole population rate of the states in 2014. In 2014, 96% of admissions to parole were due to a discretionary decision such as the decision of a parole board.

Texas had the 6th highest prison population rate of the states in 2014.

Texas had the 5th highest parole population rate of the states in 2014.

Chart 2. Conditional Release Violators as a Percentage of Prison Admissions, 2003-2014



*In 2003, Texas reported a large number of admissions (20,411) categorized as "other admissions." Excluding these admissions for 2003, 21% of admissions to prison were conditional release violators.

Chart 2 shows the percentage of prison admissions each year from 2003 to 2014 that were due to violations of parole or other conditional release. The data for this chart come from the *Prisoners* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown.

The percentage of prison admissions that were conditional release violators in Texas declined faster than the aggregate state rate from 2006 to 2011. However, while the aggregate state rate declined at this point, the rate in Texas remained unchanged. A very low rate is reported in 2003 and is not comparable to other years due to reporting differences. In 2003, a large number of "other admissions" were reported; when this category is excluded, 21% of admissions to prison in 2003 were conditional release violators in Texas. In 2014, nearly a third of prison admissions in Texas were due to violations of conditional release compared to just over one quarter of the admissions for states in aggregate. Texas had the 18th highest percentage of prison admissions that were due to violations of conditional releases of the states in 2014.

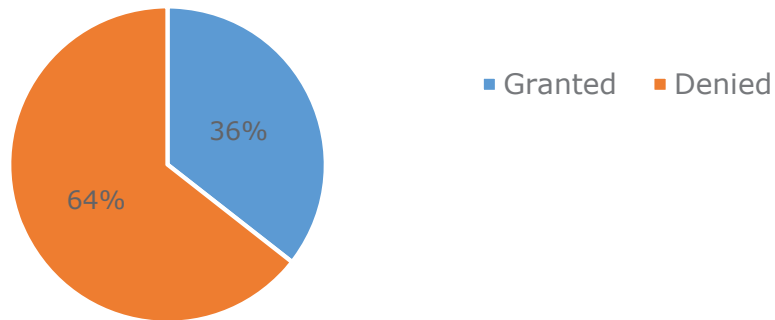
Chart 3a. Texas Grant Rate, 2014

Chart 3a shows the percentage of parole hearings in fiscal year 2014 that resulted in parole being granted or denied. The second chart shows this information for fiscal years 1999, 2004, 2009, and 2014. In fiscal year 2014, thirty-six percent of parole hearings resulted in parole being granted. The grant rate has increased over time, doubling from an earlier figure of just eighteen percent in fiscal year 1999.

Source: *Texas Board of Pardons and Paroles FY2014 Annual Statistical Report*, www.tdcj.state.tx.us/bpp/publications/FY2014%20BPP%20StatisticalReport.pdf.

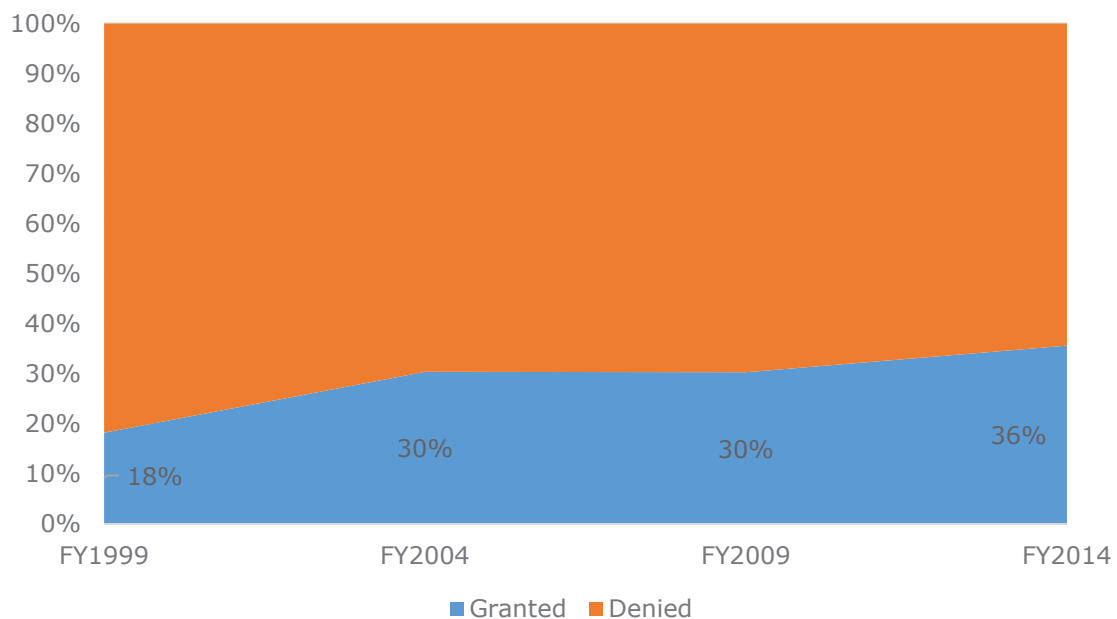
Chart 3b. Texas Grants by Year, 1999-2014

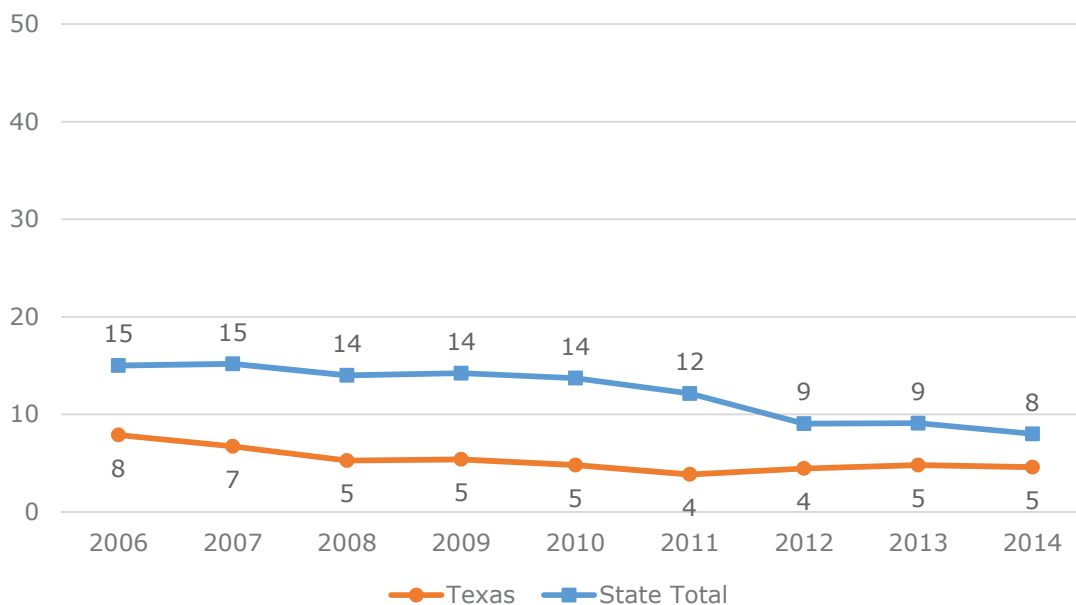
Chart 4. Rate of Incarceration Per 100 Parolees at Risk, 2006-2014

Chart 4 shows the rate of incarceration per 100 parolees who are at risk of reincarceration each year from 2006 to 2014. The data for this chart come from the *Probation and Parole in the United States* series published by the Bureau of Justice Statistics (BJS). A series for the individual state and an aggregate series for all 50 states is shown. The incarcerated population includes the reported number of parolees who exited parole to incarceration for any reason. The at-risk population is calculated as the number reported on parole at the beginning of the year, plus the reported number of entries to parole during the year.

The rate of incarceration for parolees is lower in Texas compared to the states in aggregate and has been so throughout the series. In 2014, the rate for Texas stood at 5 per 100 parolees compared to 8 per 100 for the states in aggregate.

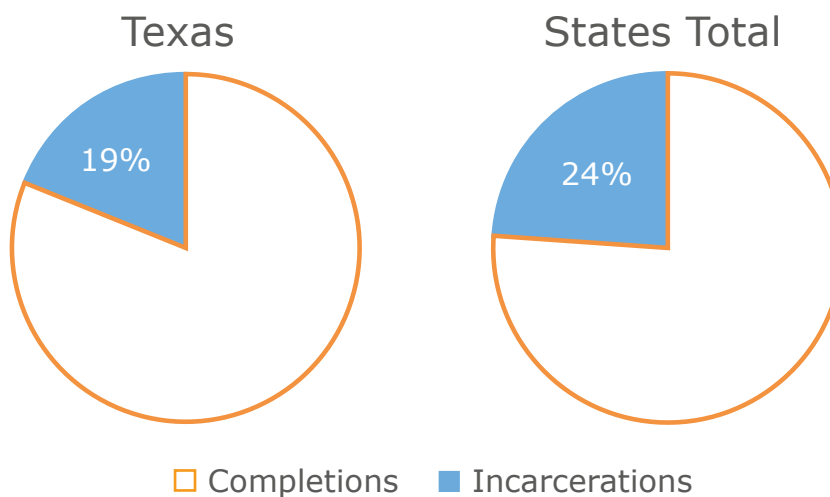
Chart 5. Parole Exits, 2014

Chart 5 shows the percentage of people who exit parole to incarceration. All other exits are included in "completions". The data for this chart come from the *Probation and Parole in the United States* series published by the Bureau of Justice Statistics (BJS).

In Texas, about one-fifth of the exits from parole are due to incarceration. This is slightly lower than the aggregate state proportion of 24%.

2. Parole Release and Other Prison-Release Mechanisms

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

Texas felonies are divided into several different classes.⁷ Judges must sentence defendants to a specific term of years within the statutory range for the crime committed.⁸ Habitual felons may face harsher penalties, some mandatory.⁹ The Texas Attorney General has created a handbook that describes the various sentencing options within the penal code.¹⁰

Class of Felony	Statutory Punishment Range	Statutory Fine Range
First Degree ¹¹	5 to 99 years	Up to \$10,000
Second Degree ¹²	2 to 20 years	Up to \$10,000
Third Degree ¹³	2 to 10 years	Up to \$10,000
State Jail Felony ¹⁴	180 days to 2 years	Up to \$10,000

General rules of release eligibility. In Texas, most inmates are eligible for release on parole when their time served plus good conduct time equals one-fourth of the sentence imposed or 15 years, whichever is less.¹⁵ Inmates who are convicted of consecutive felony sentences may not be released until they are eligible for parole on the last sentence imposed.¹⁶ Inmates who have never been convicted of certain sexual or violent crimes may be given a presumptive parole date at or after their initial parole eligibility date.¹⁷

Texas inmates may also be eligible for mandatory supervision release, and the Board *shall* release them, “when the actual calendar time the inmate has served plus any accrued good conduct time equals the term to which the inmate was sentenced.”¹⁸ However, the Board may deny mandatory supervision release to inmates if board members believe that “good conduct time is not an accurate reflection of the inmate’s potential for rehabilitation,” and that therefore “the inmate’s release would endanger public safety.”¹⁹

Violent offenders. Inmates convicted of human trafficking, certain crimes involving a deadly weapon, or certain organized or gang-related crimes are ineligible for parole until they have served 30 calendar years or one-half of their sentences, whichever is less. These offenders must serve a minimum of two years in prison.²⁰

Sex offenders. Many inmates convicted of sex offenses are ineligible for parole until they have served 30 calendar years or one-half of their sentences, whichever is less.²¹ As with some violent offenders, these offenders must serve a minimum of two years in prison. Many of the same crimes bar eligibility for release under mandatory supervision.²²

Life sentences. Inmates who are sentenced to life in prison for various sex crimes as habitual felony offenders are ineligible for parole for 35 calendar years. Inmates who are sentenced to life in prison for capital felonies are ineligible for parole for 40 calendar years. Inmates serving a life sentence for continuous sexual abuse of young children or certain aggravated sexual assault crimes involving children are not eligible for parole. Inmates who have been sentenced to death or life without parole are not eligible for parole.²³

Recurring eligibility after denial and exceptions. With some exceptions,²⁴ if parole is denied at initial eligibility, the next eligibility hearing will generally be set “as soon as practicable after the first anniversary of the denial.”²⁵ However, Texas inmates may be denied parole at the hearing and ordered to “serve-all” if their release date is less than a year away.²⁶ Offenders convicted of certain violent or sexual crimes may be denied additional parole review for a period of five to ten years.²⁷

b. Good Time, Earned Time, and Other Discounts

In Texas, some inmates are eligible for good conduct time that can be applied to eligibility for parole or for mandatory supervision release, but does not “otherwise affect an inmate’s term.”²⁸ Accrual of good conduct time varies based on the security classification of the prison inmate.²⁹ Additional good time can be earned for participation in vocational or literacy programming at the rate up to 15 days per 30 days served.³⁰ The maximum rate of good time accrual for any inmate is 30 days per 30 days served.³¹ Good time credit may be suspended or forfeited for a variety of reasons and, if forfeited, it generally cannot be restored.³²

Inmate Class	Good Time Credit/30 Days Served	Discretionary Credit/30 Days Served
Trusty ³³	20 ³⁴	10
Class I	20 ³⁵	Not eligible
Class II	16 ³⁶	Not eligible
Class III	Not eligible ³⁷	Not eligible

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. In Texas, “release to parole is a privilege, not a right.”³⁸ Release to mandatory supervision is also based on a case-by-case determination by the Board.³⁹ The Board determines the standards of release for parolees based on “the seriousness of the offense and the likelihood of a favorable parole outcome.”⁴⁰

Statutory factors the Board must consider. According to regulations “there are no mandatory rules or guidelines that must be followed in every case because each offender is unique. The Board and parole commissioners have the statutory duty to release inmates “for the best interest of society” and only when they are “able and willing to fulfill the obligations of a law abiding citizen.”⁴¹ The Board must also weigh the impact on the victim of the crime when making a parole release decision.⁴² Finally, the Board uses parole guidelines as a tool to aid in the discretionary parole decision process.”⁴³

Special standard for sex offenders. There are several statutes that limit parole eligibility for sex offenders. Sex offenders, however, are released through the same process as other offenders, with a determination made according to “the seriousness of the offense and the likelihood of a favorable parole outcome.”⁴⁴

d. Parole Release Guidelines

Parole release guidelines used for most offenders. The current guidelines combine a risk assessment tool with an examination of offense severity.⁴⁵ The Board has determined the severity of each of the 2,623 felony offenses in the penal code classifying them into four levels ranging from “low” to “moderate” to “high” to “highest.”⁴⁶ After a result is obtained from a risk assessment tool (discussed below), it is used in a matrix that combines an offender’s risk score with the severity ranking of the most serious active offense committed to reach a final “Parole Guidelines Score.” This score ranges from 1 (poorest probability of parole success) to 7 (best probability of parole success).⁴⁷ Regardless of an offender’s Parole Guidelines Score, no presumption or expectation is created concerning release.

While the Board has set out guidelines for parole and mandatory supervision, state statutes limit Board authority to release certain prisoners. For example, the Board is not authorized to release inmates who do not have arrangements in place for employment or maintenance and care.⁴⁸

The Board also has created parole target approval rates based on their general guidelines. For example, in 2015, the Board recommended that between 0 and 20% of the highest risk inmates be approved for release, and between 65% and 100% of the lowest risk inmates be approved.⁴⁹ While there are no separate target approval rates for those convicted of sexual or violent crimes, these inmates tend to fall into higher risk categories where the recommended rate of parole approval is lower.

e. Risk and Needs Assessment Tools

Statutory mandate. Risk assessment is mandated by statute, and is designed to be utilized in release decisions along with consideration of an offense severity scale.⁵⁰

Main risk instrument. The Risk Assessment Instrument combines static and dynamic factors, and produces a numerical score that places an inmate into one of four levels for males and three levels for females ranging from “low” to “moderate” to “high” to the “highest” risk of a negative parole outcome.⁵¹ Static factors, which are scored on a scale of 0-10, include age at first commitment to a juvenile or adult correctional facility, history of supervised release revocations for felony offenses, prior incarcerations, employment history, and the commitment offense. Dynamic factors, which are scored on a scale of 0-9, include current age, whether the inmate is a confirmed gang member, education, vocational, and on-the-job training programs completed during present incarceration, prison disciplinary conduct, and current prison custody level. The parole board then consults a table that converts the numerical score to a risk category based on the gender of the inmate.⁵² As noted above, the intersection of an inmate’s risk level with the offense severity rating produces a Parole Guidelines Score that predicts offenders’ greater or lesser probability of success.

Sex offenders. The Static-99 is used in addition to the standard risk instrument when evaluating the release of sex offenders.⁵³

Transparency. The Texas Board of Pardons and Paroles publishes details about its main risk assessment instrument online and in its mandated Annual Report.⁵⁴ The Board does not publish any data on exactly how many inmates fall into each risk category, but does publish how many inmates fall within each level of its release guidelines.

f. Medical or Compassionate Release

A parole panel has the discretion to invoke a broad exception to the parole standards for inmates facing serious medical conditions and release them to Medically Recommended Intensive Supervision.⁵⁵ Inmates with medical conditions may be released unless serving a sentence of death or life without parole. The nature of the conviction may change the process by which medical release is granted in that those charged with certain serious crimes must be “elderly, physically disabled, mentally ill, terminally ill, or mentally retarded or having a condition requiring long-term care,” or be in a persistent vegetative state, and no longer present a danger to society. Their release must also be approved by a panel consisting of the presiding officer of the board and two members appointed to the panel by that officer.⁵⁶ In 2014, there were 67 individuals approved for medical release out of 1,113 screened.⁵⁷

g. Executive Clemency Power

The Governor has the power to grant pardons, commutations of sentences, and reprieves in all criminal cases (except those involving treason or impeachment) to a prisoner who has received a written, signed recommendation and advice from a majority of the Board of Pardons and Paroles.⁵⁸

h. Emergency Release for Prison Crowding

When a prison reaches 99% or more of capacity, the Director of the Correctional Institutions Division has to notify the Executive Director of the Department of Criminal Justice and its Board, making weekly reports until the facility’s capacity is reduced.⁵⁹ If the prison reaches full capacity (100%), the Director of the Correctional Institutions Division must notify the Texas Attorney General, the Executive Director of the Department of Criminal Justice, and the Board of Criminal Justice. The Board of Criminal Justice can then direct the Board of Pardons and Paroles to start a review process in which it considers the early release to intensive supervision parole of each eligible inmate.⁶⁰

3. Parole Release Hearing Process

a. Format of Release Hearings

The Board does not hold formal hearings, and inmates are not present when the board members are considering whether to grant parole. Inmates may be interviewed prior to their initial or subsequent review dates.⁶¹ Interviews provide offenders, their families, and their friends the opportunity to speak before decisions are made, but will not necessarily affect the outcome of any given case.⁶²

A parole panel generally consists of three members including “at least one board member and any combination of board members and parole commissioners.”⁶³ However, inmates convicted of certain offenses may be paroled only by a two-thirds majority of the seven-member Board.⁶⁴

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

The Board makes an individualized determination using the offender’s guideline score and the contents of the offender’s file, which includes (among other things) details about the offender’s criminal background, letters of support and/or protest, and institutional adjustment information.⁶⁵ The Institutional Parole Officer provides notes from any offender interviews conducted in preparation for the parole hearing and prepares a case summary for the Board.⁶⁶ During the parole hearing process, the parole board can ask a public official who has information “relating to an inmate eligible for parole” to provide it to the board.⁶⁷ The Board also considers letters in support or protest of release. Finally, the Board reviews an “Individual Treatment Plan” which the Department of Corrections is mandated to create for each inmate based on their social history, medical needs, and other factors.⁶⁸

c. Prisoners’ Procedural Rights

Texas inmates eligible for parole release do not have any due process rights with regard to a hearing or discretionary release on a specific date.⁶⁹ However, Texas inmates and their families may submit “parole packets” in support of any type of release decision.⁷⁰ The information contained in the confidential portions of an inmate’s file is not made available to the inmate for review.⁷¹ Information and arguments in support of release are generally made in writing.⁷²

The parole panel is not obligated to interview any inmates or their supporters before any type of release,⁷³ and open meetings to interview or counsel inmates are not required.⁷⁴ Inmates eligible for parole or mandatory supervision release have the right to employ attorneys if they so desire, but any representative receiving a fee must be a licensed attorney.⁷⁵

Texas courts have held that the language of the mandatory supervision release statute creates a liberty interest guaranteeing prisoner rights in connection with the denial of mandatory release.⁷⁶ Therefore, inmates who are eligible for mandatory supervision must have the opportunity to prepare and submit materials for review by the parole board before a release decision is made.⁷⁷ In such cases, the inmate is provided a hand-delivered notice of a mandatory supervision review and is then given 30 days to submit relevant information.⁷⁸

d. Victims and Other Participants

The Board must notify “a victim, a guardian of a victim, or a close relative of a deceased victim” using the name and address that was provided on the victim impact statement before considering parole release for an inmate.⁷⁹ Victim impact statements are an important part of parole hearings.⁸⁰ The Board must also allow victims or suitable representatives to submit written statements or to make statements in person before the board.⁸¹ If subpoenaed, victims are entitled to be represented by counsel, but the associated costs will not be provided by the state.⁸² While the parole board is not obligated to interview inmates, they are required to interview victims or their representatives.⁸³

When parole is granted, notice of a prisoner’s impending release is given to “the sheriffs, each chief of police, the prosecuting attorneys, and the district judges in the county in which the inmate [was] convicted and the county to which the inmate is [being] released” eleven days before the release.⁸⁴ Protest letters received in response to these notices may be considered without any disclosure to the inmate.⁸⁵

Anyone who visits the Texas Department of Criminal Justice website can access an offender information search tool that provides information about release dates and parole eligibility dates.⁸⁶ The public is also given opportunities to comment at Board meetings about general issues once a year.⁸⁷ However, as the Board’s website notes, “the Texas Board of Pardons and Paroles does not hold formal hearings for parole or mandatory release consideration. [This is because] parole panel members vote case files individually.”⁸⁸

e. Burden of Proof or Standards of Persuasion

The policy statement of the Board makes it clear that in evaluating parole release decisions “there are no mandatory rules or guidelines that must be followed in every case because each offender is unique.”⁸⁹

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

In general, actions regarding release on parole or mandatory supervision release are performed in a panel of three board members and parole commissioners where at least one person on the panel has to be a parole board member.⁹⁰ A majority vote is required to make decisions and if a majority is not reached, the vote is forwarded to a new panel designated by the chair for a re-vote.⁹¹ A two-thirds vote of the entire board is required to release inmates who have been convicted of certain serious crimes.⁹²

The Board is required to produce a written notice of its decision after granting or denying parole or mandatory supervision. This must explain the decision and “the reasons for the decision only to the extent those reasons relate specifically to the inmate.”⁹³ If parole is denied, the prisoner may be given a next review date or be required to “serve-all” with no further parole review.⁹⁴

g. Administrative or Judicial Review of Parole Denial

An offender can file a request for special review after a denial of parole or mandatory supervision. These requests must cite information not previously available to the Board, and are limited to responses from trial officials and victims, a change in an offender’s sentence and judgment, or an allegation that the parole panel committed an error of law or board rule. A similar process can also be triggered if a board member decides to change his or her vote, or if all of the members of the parole board that voted with the majority to deny release are no longer active board members.⁹⁵

Depending on the alleged error, inmates may have the ability to file a writ of habeas corpus against decisions of the Board.⁹⁶ Habeas corpus is normally used to challenge the validity of the conviction or punishment, and is available in cases challenging release procedures.⁹⁷

h. Rescission of Parole Release Dates

Parole release becomes effective when an offender signs his or her release certificate, agreeing to the conditions of release.⁹⁸ The Board has the right to withdraw its decision (and trigger a new review date as required by statute) before the time of release based on “information not previously available to the parole panel.”⁹⁹

4. Supervision Practices

Parole Supervision Rate. In 2014, according to the Texas Department of Criminal Justice, there were more than 87,000 parole and mandatory supervision offenders monitored by about 1,470 district parole officers.¹⁰⁰ The Bureau of Justice Statistics estimated the 2014 year-end parole population to be 111,412.¹⁰¹

There were 562 adults on parole for every 100,000 adult residents in 2014. Thus, Texas had the 5th highest state parole population rate in the United States. Texas also has a higher than average prison population rate, ranking 6th highest among the states at 837 prisoners per 100,000 adults.¹⁰²

The ratio of parolees on supervision to prisoners in 2014 was 67 percent in Texas. For all states combined in 2014, the equivalent ratio was 56 percent.¹⁰³

a. Purposes of Supervision

The stated mission of the Parole Division is to “provide public safety and promote positive offender change through effective supervision.”¹⁰⁴

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

The standard conditions of parole include reporting to a supervision officer and permitting visits from that officer; in this sense, all releasees are placed on supervision.¹⁰⁵ There are several levels of parole supervision, ranging from a one contact per month¹⁰⁶ to Super-Intensive Supervision with GPS monitoring for potentially dangerous offenders.¹⁰⁷

c. Length of Supervision Term

Maximum supervision term. The length of parole is computed by subtracting the calendar time served on the sentence from the full term for which the inmate was sentenced.¹⁰⁸ The term of mandatory supervision is calculated in the same manner.¹⁰⁹ Good time credits earned during incarceration allow for eligibility for release from prison, but do not reduce the term of the inmate’s sentence; thus, they function only to shift time spent in prison to time spent on post-release supervision.¹¹⁰ In general, a parolee must serve the entire term of supervision in order to be released from parole.¹¹¹

Early termination from supervision. The Criminal Justice Parole Division may allow a releasee to serve the remainder of his or her sentence without supervision and without being required to report, if the parole supervisor at a regional level has approved an early release. A releasee is eligible for early release if: 1) the parolee has been under supervision for at least half of the time that remains on the sentence; 2) the parolee has not violated any rules or conditions of the release in the past two years; 3) the term of supervision has not been revoked; and 4) the division determines that it is in the best interests of society.¹¹²

Extension of supervision term. There is no provision that allows the Board or the Criminal Justice Parole Division to lengthen a parole term beyond the maximum sentence length. However, parole revocation results in forfeiture of all good conduct time previously accrued, thus potentially lengthening the term of supervision if parole is later reinstated.¹¹³

Parole incentives. As described above, parolees become eligible for early release from supervision based on their good conduct over the previous two-year period and their completion of at least one-half of their parole term.¹¹⁴

d. Conditions of Supervision

Parolees must be released to the county where they resided when the crime was committed (or in the county where the crime was committed, if the releasee was not from Texas), unless there are safety concerns or is better support for reentry available elsewhere.¹¹⁵ Basic education up to the 6th grade level is also required for parolees who are mentally competent.¹¹⁶

Standard conditions of parole may include reporting to a parole officer, committing no new offenses, avoiding “injurious or vicious habits,” avoiding “persons or places of disrepute,” remaining in a specific place, paying fines and court costs, supporting dependents, participating in programs or substance abuse counseling, participating in victim-defendant mediation, having no contact with crime victims, submitting to drug and alcohol testing, submitting a DNA sample, and/or submitting to electronic monitoring.¹¹⁷

Any condition approved for those on community supervision (e.g., probation) can be imposed as a condition of parole or mandatory supervision. Thus, the parole panel may impose “any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant.”¹¹⁸ Specific conditions may be invalid if they have no relationship to the crime, if they relate to conduct that is not in itself criminal, or if they forbid or require conduct that is not reasonably related to the future criminality of the defendant.¹¹⁹

Sex offenders. Offenders may be placed on a sex offender caseload due to conviction for a sex offense or for an offense involving criminal sexual behavior, admission of criminal sexual behavior, disciplinary action involving sexual abuse while incarcerated, or revocation due to an alleged sex offense. Sex offenders are assigned to specific, trained parole officers with smaller caseloads who work in a team with a therapist and polygraph examiner.¹²⁰

Modification of conditions. The Board has the authority to modify or withdraw conditions of parole at any time. The offender must be notified in writing of any additional conditions imposed after release.¹²¹

e. Fees and Other Financial Sanctions

Parole supervision fees. The Board panel granting release must require a parole supervision fee of \$10 and an administrative fee of \$8, assessed monthly.¹²² Parolees convicted of certain sex offenses may be required to pay an additional \$5 fee.¹²³

Payments for drug and alcohol testing and treatment. There is no statutory fee associated with drug and alcohol testing.¹²⁴

Restitution. Parole panels must direct a parolee to make restitution as a condition of parole or mandatory supervision.¹²⁵

Child support. Providing support to dependents is a standard condition of parole.¹²⁶

Other financial obligations. The state of Texas may also order parolees to reimburse the county for the costs of criminal defense or for the cost of a laboratory’s analysis of the evidence.¹²⁷

Criteria for non-payment. Inability to pay the amount ordered is an affirmative defense to revocation based solely on failure to pay assessed fees.¹²⁸ Inability to pay must be proven by a preponderance of the evidence.

5. Parole Revocation

Parole revocation proceedings. According to the Board, in the 2014 fiscal year, there were 37,134 revocation hearings resulting in 6,455 revocations of parole or mandatory supervision.¹²⁹ Roughly 32% of 2014 prison admissions were the result of violations of conditional release.¹³⁰

Absconders. In 2014, there was no official estimate for how many parolees absconded supervision.¹³¹

a. Principles and Criteria of “When to Revoke”

Statutorily enumerated factors. Revocation can be triggered if a parolee is arrested for a new offense, if there is a self-authenticating document¹³² stating that the person violated a condition of release, if there is reliable evidence that a parolee has exhibited behavior during release that indicates to a reasonable person the parolee poses a danger to society that warrants immediate return to custody, or if there is a reason to believe a person has been released though not eligible for release (i.e. through administrative error).¹³³

b. Revocation Guidelines

While revocation can be triggered by a violation of parole, Texas has implemented several alternatives to revocation, including mechanisms to modify parole or to transfer parolees to halfway houses, treatment facilities, Intermediate Sanctions Facilities or Substance Abuse Felony Punishment Facilities.¹³⁴ These alternatives allow for punishment through shorter terms of incarceration and other treatment-focused interventions. While there are no formal published revocation guidelines, the Board tries to use graduated sanctions based on the severity of each violation.¹³⁵

At the field supervision level, the Parole Division utilizes a Violation Action Grid that is designed to “provide guidance to staff and outline actions that may be taken where an offender has violated the terms and conditions of release.”¹³⁶ This grid is used by field staff to evaluate the seriousness of a violation and decide whether or not to initiate revocation proceedings.

c. Risk and Needs Assessment Tools

While the Board uses risk assessment tools to determine whether or not to grant parole, it does not use risk tools in the revocation process. The Board website refers to a “graduated sanctions” approach to violations of parole supervision rules intended to address some violations without returning parolees to prison in all cases.¹³⁷

d. Preliminary and Final Revocation Procedures

Arrest or summons. A warrant may be issued for the return of the parolee by the Parole Division if grounds for revocation exist.¹³⁸ In some cases, a violation will instead trigger a summons to appear for an out-of-custody hearing.¹³⁹

Preliminary hearing. When revocation procedures are initiated, a preliminary hearing must be held by a parole panel or a “designee of the board” to determine whether probable cause or reasonable grounds exist to believe that the inmate has committed an act that violates the conditions of release.¹⁴⁰ If probable cause is found, the inmate will be held in county jail pending the action of a parole panel.¹⁴¹ A parolee can waive the preliminary hearing. A preliminary hearing is not held when the individual has been charged only with an administrative violation, or the same individual has been adjudicated guilty or has pled guilty to an offense committed after release.¹⁴²

Final hearing. At a revocation hearing, an officer reviews the evidence to determine whether or not a parole violation has occurred. This determination is considered to be a sufficient hearing to revoke the parole or mandatory supervision without further hearing or determination, except that the parole panel or designated agent shall conduct a hearing to consider mitigating circumstances, if requested by the releasee.¹⁴³ After this determination is made, the officer summarizes the evidence heard and forwards it to the parole panel and a board analyst for their recommendations.¹⁴⁴

e. Offenders’ Procedural Rights

A parolee has a right to appear at a revocation hearing and present mitigating evidence showing why a subsequent felony conviction should not result in revocation of his or her parole, notwithstanding that the issue of whether a condition of parole has been violated need not be re-litigated at the revocation hearing.¹⁴⁵ The parolee has the right to waive both the preliminary and the revocation hearing if desired.¹⁴⁶

Parolees do not have an absolute right to counsel. The board administrator or board designee weighs a number of factors in determining whether or not an attorney will be appointed in a revocation proceeding.¹⁴⁷ The factors considered include whether the releasee is indigent, whether the releasee lacks the ability to articulate or present a defense or mitigation evidence in response to allegations, the complexity of the case, and whether the releasee admits the alleged violation.¹⁴⁸

f. Victim and Other Participants

Victims have a right to be informed, upon request, of parole proceedings concerning a defendant in the victim’s case.¹⁴⁹ No statutes clearly define the role of judges, prosecutors or law enforcement officials in the revocation process. There is no statute that governs public or media notification of revocation.

g. Burden of Proof or Standards of Persuasion

The state must show by a preponderance of the evidence that a parole violation has occurred.¹⁵⁰

h. Revocation and Other Sanctions

If parole or mandatory supervision is revoked, the person may be required to serve the remaining portion of the sentence on which the release occurred. As an alternative to revocation, the Board may modify the parole or mandatory supervision or require the releasee to remain under custodial supervision in a county jail for a period of not less than 60 days or more than 180 days.¹⁵¹ This may include, for example, incarceration in an Intermediate Sanctions Facility or a requirement that the individual receive inpatient drug treatment.

i. Issuing Parole Revocation Decisions

While a designated agent of the Board can make a recommendation regarding revocation, only members of the Board may revoke an offender's parole.¹⁵² The parolee is notified of the revocation decision 2-4 weeks after the hearing, when the Board sends an officer to deliver the decision to the parolee.¹⁵³

j. Administrative or Judicial Review of Parole Revocation Decisions

Within 60 days of a parole revocation hearing, the parolee or his or her attorney may motion to reopen a case for any substantial error in the revocation process or upon newly discovered information. If the parole panel grants the motion, the Board will review materials from the preliminary hearing, the parolee's motion, and other relevant information. They may then choose to continue the revocation action, rescind the revocation action and reinstate supervision, or reinstate supervision, but impose some intermediate period of confinement.¹⁵⁴ A habeas corpus challenge can also be brought under certain circumstances.¹⁵⁵

k. Re-Release following revocation

Following revocation, some revoked offenders are required to serve the remainder of their sentence in custody.¹⁵⁶ There is no specific statute governing eligibility for re-release. However, upon return to incarceration, an offender's time is recalculated and a new release eligibility date will be set.¹⁵⁷

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Texas Board of Pardons and Paroles was established by the Legislature, as per the Texas Constitution.¹⁵⁸ Board members are tasked with making decisions governing discretionary and mandatory release, setting and modifying conditions of release, and revoking release when appropriate.¹⁵⁹

b. Location in Government

The Board of Pardons and Paroles is an independent agency operating under the Governor.¹⁶⁰ The Board consults with the Texas Board of Criminal Justice, however, when crafting its mission statement.¹⁶¹

c. Purpose (Vision/Principles/Rationale)

According to their Vision Statement, "[t]he Texas Board of Pardons and Paroles, guided by sound application of the discretionary authority vested by the Constitution of the State of Texas, shall:¹⁶²

- Render just determinations in regard to parole release and revocations, thereby maximizing the restoration of human potential while restraining the growth of prison and jail populations;
- Impose reasonable and prudent conditions of release consistent with the goal of structured reintegration of the offender into the community; and,
- Resolutely administer the clemency process with recommendation to the Governor fully commensurate with public safety and due consideration."

The Board's Parole Guidelines Annual Report purports that "while the Board seeks to maximize the state's ability to restore human potential to society through the granting of parole, its first priority always is public safety."¹⁶³

d. Appointment and Qualifications of Board Members

Board members are appointed by the Governor with the advice and consent of the Senate.¹⁶⁴ The Presiding Officer is selected by the Governor, and serves at the pleasure of the Governor.¹⁶⁵

Qualifications. An individual must reside in Texas for two years prior to becoming a board member, and must wait two years after finishing employment with the Department of Corrections before any appointment to the Board. There may be no more than three former employees of the Department of Corrections on the Board at any time.¹⁶⁶ There are clearly delineated conflicts of interest described in statute that also disqualify individuals as board members.¹⁶⁷

e. Tenure and Number of Board Members, Ease of Removal

The Board consists of seven members with one presiding officer.¹⁶⁸ A board member may be removed if he or she does not have the proper qualifications at the time of taking office, is ineligible due to a conflict of interest, cannot discharge the duties because of illness or disability, is absent for more than half of Board meetings, or fails to "comply with policies or rules adopted by the board."¹⁶⁹

f. Training and Continuing Education

The Board develops and implements a training program for new board members and parole commissioners that provides introductory information about the Board and the laws and ethics policies applicable to their jobs.¹⁷⁰ This program must be completed before new board members and parole commissioners can vote or deliberate.

g. Workload

There were 77,300 parole cases considered in 2014. There were also 37,134 hearings on revocation, 318 considerations of medical parole, and 199 hearings on executive clemency.¹⁷¹

h. Reporting and Accountability of Parole Board

The Board is required to publish a Parole Guidelines Annual Report, which explains current parole guidelines and shows a comparison between guideline approval rates and actual approval rates.¹⁷²

The Board must keep record of its actions and the reasons for its actions.¹⁷³ All minutes of the board and parole panels, final decisions relating to parole, mandatory supervision, pardons, and clemency, statistical and general information concerning the parole and mandatory supervision program and system, including the names of releasees and data recorded relating to parole and mandatory supervision services are matters of public record and subject to public inspection.¹⁷⁴ Confidential and privileged information includes victim protest letters or impact statements, lists of inmates eligible for release on parole, and the arrest records of inmates if they relate to an inmate, a releasee, or a person who is part of a releasee's parole plan.¹⁷⁵

END NOTES

- ¹ The authors thank David Gutiérrez, Chair, Texas Board of Pardons and Paroles, and Timothy S. McDonnell, Board Administrator, Texas Board of Pardons and Paroles for comments on an earlier draft of this report.
- ² Tex. Const. Art. IV § 11, Interpretive Commentary (2007).
- ³ See, e.g. George A. Dix & John M. Shmolensky. 43A Texas Practice, Criminal Practice and Procedure § 46:160 (3d. Ed., database updated Nov. 2015).
- ⁴ Tex. Const. Art. IV § 11.
- ⁵ Tex. Dep't of Crim. Just., *Parole Division*, <http://tdcj.state.tx.us/divisions/parole/index.html> (last visited Apr. 11, 2016).
- ⁶ Tex. Gov't Code Ann. § 508.283 (West).
- ⁷ Tex. Penal Code Ann. §§ 12.04, 12.31 *et seq.* (West).
- ⁸ See, e.g. *Donnell v. State*, 191 S.W. 3d 864 (Tex. App. 2006).
- ⁹ Tex. Penal Code Ann. § 12.42 (West).
- ¹⁰ Tex. Attorney Gen., *Penal Code Offenses by Punishment Range* (Nov. 2015), <https://www.texasattorneygeneral.gov/files/cj/penalcode.pdf>.
- ¹¹ Tex. Penal Code Ann. § 12.32 (West).
- ¹² Tex. Penal Code Ann. § 12.33 (West).
- ¹³ Tex. Penal Code Ann. § 12.34 (West).
- ¹⁴ Tex. Penal Code Ann. § 12.35 (West).
- ¹⁵ Tex. Gov't Code Ann. § 508.145(f) (West).
- ¹⁶ Tex. Gov't Code Ann. § 508.150 (West).
- ¹⁷ Tex. Gov't Code Ann. § 508.151 (West). However, note that this date can be rescinded based on negative reports about the inmate.
- ¹⁸ Tex. Gov't Code Ann. § 508.147(a) (West).
- ¹⁹ Tex. Gov't Code Ann. § 508.149(b)(1), (2) (West).
- ²⁰ Tex. Gov't Code Ann. § 508.145(d)(1) (West). This type of sentence requires a minimum two-year term in prison.
- ²¹ *Id.*
- ²² Tex. Gov't Code Ann. § 508.149(a) (West).
- ²³ Tex. Gov't Code Ann. § 508.145(a) – (c) (West).
- ²⁴ Under 37 Tex. Admin. Code § 145.11, “initial or subsequent review dates or both are subject to change in cases where an offender’s status is changed.” A parole hearing may also be “deferred for request and receipt of further information.” 37 Tex. Admin. Code § 145.12(1).
- ²⁵ 37 Tex. Admin. Code § 145.12(2); See also Tex. Gov't Code Ann. 508.141 (West).
- ²⁶ 37 Tex. Admin. Code § 145.12(3). Note that, “if the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review.” *Id.*
- ²⁷ *Id.* The ten-year denial of review applies to those convicted of aggravated sexual assault or those serving a life sentence for a capital felony.
- ²⁸ Tex. Gov't Code Ann. § 498.003(a) (West). Some offenders have limited or no eligibility to accrue good time credits. For example, inmates who are serving mandatory minimum sentences for some sexual or violent crimes are only eligible for release “without consideration of good conduct time.” *Id.* at (d) (2).
- ²⁹ Tex. Gov't Code Ann. § 498.003(b) (West).
- ³⁰ Tex. Gov't Code Ann. § 498.003(d) (West) (This type of good time accrues at a maximum rate of 15 days per 30 days served).
- ³¹ Tex. Gov't Code Ann. § 498.002 (West).
- ³² Tex. Gov't Code Ann. § 498.004(a) (West) (One exception to this is that a parole or mandatory supervision revocation can result in forfeiture of previously accrued good time, but this time can be restored after three months of good behavior in custody under § 498.004(b). The time cannot be restored if the revocation was due to a new criminal conviction. Some or all of the good time an inmate has accrued can also be forfeited for making contact with victims under § 498.0042(b), or filing frivolous lawsuits under § 498.0045).
- ³³ A trusty is an inmate who works within the prison as janitors or other institutional support staff.
- ³⁴ Tex. Gov't Code Ann. § 498.003(b)(1) (West).
- ³⁵ Tex. Gov't Code Ann. § 498.003(b)(2) (West).
- ³⁶ Tex. Gov't Code Ann. § 498.003(b)(3) (West).
- ³⁷ Tex. Gov't Code Ann. § 498.003(c) (West).
- ³⁸ 37 Tex. Admin. Code § 145.3.
- ³⁹ Tex. Gov't Code Ann. § 508.147 (West).
- ⁴⁰ Tex. Gov't Code Ann. § 508.144 (West). The Board is also tasked with developing ideal approval rates for each category or score within the guidelines.
- ⁴¹ Tex. Gov't Code Ann. §§ 508.141(3)(e)(2), (3)(f) (West).
- ⁴² Tex. Gov't Code Ann. § 508.153(c) (West).
- ⁴³ 37 Tex. Admin. Code § 145.3.
- ⁴⁴ Tex. Gov't Code Ann. § 508.144 (West).
- ⁴⁵ Tex. Bd. of Pardons & Paroles, *Revised Parole Guidelines*, http://www.tdcj.state.tx.us/bpp/parole_guidelines/parole_guidelines.html (last visited May 20, 2016).
- ⁴⁶ Tex. Bd. of Pardons & Paroles, *Parole Guidelines Annual Report FY 2015 at 7* (2016), <http://www.tdcj.state.tx.us/bpp/publications/PG%20AR%202015.pdf> [hereinafter *Annual Report*].
- ⁴⁷ *Id.* at 7.
- ⁴⁸ Tex. Gov't Code Ann. § 508.141(3)(e)(1) (West); See also *Id.* § 508.147(b), (c).
- ⁴⁹ *Annual Report*, *supra* note 46 at 9.
- ⁵⁰ 37 Tex. Admin. Code § 145.2.
- ⁵¹ *Annual Report*, *supra* note 46 at 8; Tex. Bd. of Pardons & Paroles, *Revised Parole Guidelines*, http://www.tdcj.state.tx.us/bpp/parole_guidelines/parole_guidelines.html (last visited Apr. 11, 2016).
- ⁵² The Board notes that in 2012, a consulting firm recommended that the numerical score reflect different levels of risk based on gender. Women with a score above 9 are placed into the “high risk” category, but are never placed in the “highest risk” category. Men, on the other hand, are placed into the “high risk” category with a score above 8, and fall into the “highest risk” category with a score above 15. See *Annual Report*, *supra* note 46, at 6-7.
- ⁵³ Interview with David Gutiérrez, Chair, Tex. Bd. of Pardons & Paroles & Timothy S. McDonnell, Board Administrator, Tex. Bd. of Pardons & Paroles (May 17, 2016).
- ⁵⁴ See, e.g. *Annual Report*, *supra* note 46.
- ⁵⁵ Tex. Gov't Code Ann. § 508.146. Note that this type of release requires approval by the Texas Correctional Office on Offenders with Medical or Mental Impairments.
- ⁵⁶ *Id.*
- ⁵⁷ Tex. Board of Pardons & Paroles, *Annual Statistical Report at 12* (2014), <http://www.tdcj.state.tx.us/bpp/publications/FY2014%20BPP%20StatisticalReport.pdf> [hereinafter *Annual Statistical Report*].
- ⁵⁸ Texas Constitution § 11(b). The governor may also pardon, without the Board’s consent, if an offender has successfully completed a term of deferred adjudication community supervision. Note that the executive clemency process is separate and distinct from the parole process.
- ⁵⁹ Tex. Gov't Code Ann. § 499.025 (West).
- ⁶⁰ Note that inmate eligibility is determined by Tex. Gov't Code Ann. § 499.027 (West). Under this statute, eligible inmates are offenders serving 10 years or less, nor are they serving a sentence for certain explicitly enumerated violent crimes.
- ⁶¹ 37 Tex. Admin. Code § 145.9.
- ⁶² Tex. Bd. of Pardons & Paroles, *Parole Panel Review*, <http://www.tdcj.state.tx.us/bpp/faq/ParolePanelReview.html> (last visited Apr. 11, 2016) [hereinafter *Parole Panel Review*].
- ⁶³ Tex. Gov't Code Ann. § 508.045 (West).
- ⁶⁴ Tex. Gov't Code Ann. § 508.046 (West).
- ⁶⁵ Tex. Bd. of Pardons & Paroles, *Parole/Mandatory Supervision Information*, http://www.tdcj.state.tx.us/bpp/what_is_parole_review.htm (last visited Apr. 11, 2016).

END NOTES

- ⁶⁶ *Id.*, Institutional Parole officers are physically assigned to specific Texas Department of Criminal Justice units and are employed by the Board. See Tex. Bd. of Pardons & Paroles, *Institutional Parole Officer*, <https://www.tdcj.state.tx.us/divisions/hr/hr-home/parole-ipo.html> (last visited April 11, 2016).
- ⁶⁷ Tex. Gov't Code Ann. § 508.311 (West).
- ⁶⁸ Tex. Gov't Code Ann. § 508.152(b)(2) (West).
- ⁶⁹ See, e.g., *Malchi v. Thaler*, 211 F. 3d 953 (5th Cir. 2000).
- ⁷⁰ Tex. Bd. of Pardons & Paroles, *Parole Packets*, <http://www.tdcj.state.tx.us/bpp/faq/ParolePackets.html> (last visited Apr. 11, 2016). The Board clarifies, however, that “the offender does not need to make, nor have made, a “parole packet” to obtain a favorable Board vote.
- ⁷¹ See, e.g., Tex. Gov't Code Ann. §508.313; *Cook v. Whiteside*, 505 F.2d 32 (5th Cir. 1977) holding that there was no deprivation of Constitutional rights when Board documents were not made available to inmate.
- ⁷² 37 Tex. Admin. Code §141.60.
- ⁷³ Parole Panel Review, *supra* note 62.
- ⁷⁴ Tex. Gov't Code Ann. §551.080 (West).
- ⁷⁵ Tex. Gov't. Code Ann. §§ 508.082, 508.083 (West); Tex. Bd. of Pardons & Paroles & Tex. Dep't of Criminal Justice Parole Div., *Parole in Texas* at 51 (2011), http://www.tdcj.state.tx.us/documents/parole/PIT_English.pdf [hereinafter *Parole in Texas*].
- ⁷⁶ *Ex parte Geiken*, 28 S.W.3d 553 (Tex. Crim. App. 2000).
- ⁷⁷ 58 Tex. Jur. Penal and Correctional Institutions §134 (3d ed.) (database last updated Apr. 2016) *citing Ex parte Evans*, 338 S.W. 3d 545 (Tex. Crim. App. 2011); *Ex parte Campbell*, 267 S.W. 3d 916 (Tex. Crim. App. 2008); *Ex parte Barry*, 109 S.W. 3d 510 (Tex. Crim. App. 2003).
- ⁷⁸ Tex. Bd. of Pardons & Paroles, Memorandum BPP-POL.145.202 (November 13, 2013).
- ⁷⁹ Tex. Gov't Code Ann. §508.117(a). (Victims may register with the Victim Services Division to receive written information or create an account with the VINE system, which offers updates by telephone). VINE refers to Victim Information and Notification Everyday, an information service that allows victims and others to access timely and reliable information pertaining to offenders.
- ⁸⁰ Tex. Code Crim. Proc. Ann. art. 56.03.
- ⁸¹ Tex. Gov't Code Ann. §508.153(a) (West).
- ⁸² Tex. Gov't. Code Ann. §508.0481 (West).
- ⁸³ Parole Panel Review, *supra* note 62.
- ⁸⁴ Tex. Gov't Code Ann. §508.115 (West).
- ⁸⁵ *Johnson v. Rodriguez*, 110 F. 3d 299 (Tex. Ct. App., 1997).
- ⁸⁶ Tex. Dep't Criminal Justice, *Texas Offender Information Search*, <http://offender.tdcj.state.tx.us/OffenderSearch/index.jsp> (last visited Apr. 11, 2016).
- ⁸⁷ Tex. Bd. of Pardons & Paroles, Memorandum BPP-POL. 144.203 (October 4, 2013).
- ⁸⁸ Parole Panel Review, *supra* note 62.
- ⁸⁹ 37 Tex. Admin. Code §145.3(1)(B).
- ⁹⁰ Tex. Gov't Code Ann. §508.045(a), (b) (West).
- ⁹¹ 37 Tex. Admin. Code tit. 37, §145.1. It is unclear whether or not this second panel can consist of any members from the original panel.
- ⁹² Tex. Gov't Code Ann. §508.045(a) (West); See also *id.* §508.046.
- ⁹³ Tex. Gov't Code Ann. §508.1411 (West).
- ⁹⁴ Parole in Texas, *supra* note 75 at 62. “Serve all” can only be ordered where the inmate’s sentence is shorter than the next mandatory review date (e.g., an offender whose case must be reviewed every 5 years with 4 years remaining on their sentence). Interview with David Gutiérrez, Chair, Tex. Bd. of Pardons & Paroles & Timothy S. McDonnell, Board Administrator, Tex. Bd. of Pardons & Paroles (May 17, 2016).
- ⁹⁵ 37 Tex. Admin. Code § 145.17. Note that requests for review must be signed by the offender, his or her attorney, or someone acting on an incapacitated offender’s behalf.
- ⁹⁶ See, e.g. *Ex parte Geikin*, 28 S.W.3d 553, 560 (Tex. Crim. App. 2000) (challenging the amount of notice given to an inmate prior to mandatory supervision release).
- ⁹⁷ Tex. Code Crim. Proc. Ann. Art. 11.01; See *Ex parte Baird*, 228 S.W. 2d 511 (Tex. Crim. App. 1950) However, habeas corpus cannot be used to challenge good time credit issues under *Ex parte Whiteside* 12 S.W. 3d 819. (Tex. Crim. App. 2000).
- ⁹⁸ Parole in Texas, *supra* note 75 at 62.
- ⁹⁹ 37 Tex. Admin. Code tit. 37, §145.16(a)(2); see also *Malchi v. Thaler*, 211 F. 3d 953 (5th Cir. 2000).
- ¹⁰⁰ Tex. Dep't. of Crim. Justice, *Annual Review* at 27 (2014), http://www.tdcj.state.tx.us/documents/Annual_Review_2014.pdf.
- ¹⁰¹ Danielle Kaebler et al., U.S. Dep't. of Justice Bureau of Justice Statistics, *Probation and Parole in the United States, 2014* at 18 (2015).
- ¹⁰² Mariel E. Alper, Robina Institute, *By the Numbers: Parole Release and Revocation Across 50 States* at 203 (2016).
- ¹⁰³ *Id.*
- ¹⁰⁴ Tex. Dep't. of Crim. Justice, *Annual Review* at 27 (2014), http://www.tdcj.state.tx.us/documents/Annual_Review_2014.pdf.
- ¹⁰⁵ Tex. Gov't Code Ann. § 508.221 (West).
- ¹⁰⁶ Parole in Texas, *supra* note 75 at 57.
- ¹⁰⁷ *Id.* at 66.
- ¹⁰⁸ Tex. Gov't Code Ann. §§ 508.142(c), 508.145 (West).
- ¹⁰⁹ Tex. Gov't Code Ann. § 508.147 (West).
- ¹¹⁰ Tex. Gov't Code Ann. § 498.003 (West).
- ¹¹¹ Tex. Gov't Code Ann. § 508.1555 (West).
- ¹¹² *Id.*
- ¹¹³ See Tex. Gov't Code Ann. § 498.004 (West).
- ¹¹⁴ Tex. Gov't Code Ann. § 508.1555 (West).
- ¹¹⁵ Tex. Gov't Code Ann. § 508.181 (West).
- ¹¹⁶ Tex. Gov't Code Ann. § 508.183 (West).
- ¹¹⁷ Tex. Gov't Code Ann. § 508.221 (West); Parole in Texas, *supra* note 75 at 65. Note that these conditions are not mandated by statute or regulation; however, it can be assumed that conditions such as “committing no new offense” are often or always imposed.
- ¹¹⁸ Tex. Code Crim. Proc. Ann. art 42.12 (West).
- ¹¹⁹ *Todd v. State*, 911 S.W. 2d 807 (Tex. App. 1995).
- ¹²⁰ Parole in Texas, *supra* note 75 at 64-65.
- ¹²¹ Tex. Gov't Code Ann. § 508.0441 (West); 37 Tex. Admin Code § 145.22.
- ¹²² Tex. Gov't Code Ann. § 508.182(a) (West).
- ¹²³ Tex. Gov't Code Ann. § 508.189 (West).
- ¹²⁴ See, e.g. Texas Admin. Code §§ 195.71, 195.73.
- ¹²⁵ Tex. Code Crim. Proc. Ann. art. 42.037 (West).
- ¹²⁶ Tex. Gov't Code Ann. § 508.221 (West).
- ¹²⁷ *Id.*
- ¹²⁸ Tex. Gov't Code Ann § 508.182 (West).
- ¹²⁹ Annual Statistical Report, *supra* note 57 at 21.
- ¹³⁰ See Mariel E. Alper, Robina Institute, *By the Numbers: Parole Release and Revocation Across 50 States* at 203 (2016).
- ¹³¹ See, e.g., Danielle Kaebler et al., U.S. Dep't. of Justice Bureau of Justice Statistics, *Probation and Parole in the United States, 2014* at 20 (2015).
- ¹³² See Tex. R. Evidence 902.
- ¹³³ Tex. Gov't Code Ann. § 508.252 (West).
- ¹³⁴ See, e.g. Tex. Bd. of Pardons & Paroles, *Actions Taken During the Parole Revocation Process*, www.tdcj.state.tx.us/bpp/revocation/Actions_of_Rev_Process.html (last visited May 20, 2016).
- ¹³⁵ Tex. Bd. of Pardons & Paroles, www.tdcj.state.tx.us/bpp/index.htm (last visited May 20, 2016).
- ¹³⁶ Tex. Dep't. of Criminal Justice Parole Div. Memorandum PD/POP-4.1.1 (Aug. 24, 2015). See also Tex. Bd. of Pardons & Paroles, *Violation Grid*, http://www.interstatecompact.org/Portals/0/library/statefiles/TX/TX_ViolationActionGrid.pdf; Tex. Parole Div., *Uniform Allegations and Uniform Instructions* (2011), http://www.interstatecompact.org/Portals/0/library/statefiles/TX/TX_ParoleAllegationsHandbook.pdf.

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¹³⁷ Tex. Bd. of Pardons & Paroles, <http://www.tdcj.state.tx.us/bpp> (last visited May 20, 2016).

¹³⁸ Tex. Gov't Code Ann. §§ 508.251, 508.252 (West). A warrant is issued if a parolee is under intensive or super-intensive supervision, is an absconder, is determined to be a threat to public safety, or if there is a self-authenticating document that states that a parole violation occurred.

¹³⁹ Tex. Gov't Code Ann. § 508.2811 (West); Interview with David Gutiérrez, Chair, Tex. Bd. of Pardons & Paroles and Timothy S. McDonnell, Board Administrator, Tex. Bd. of Pardons & Paroles (May 17, 2016).

¹⁴⁰ *Id.*

¹⁴¹ Tex. Gov't Code Ann. § 508.281 (West).

¹⁴² Tex. Gov't Code Ann. § 508.2811 (West).

¹⁴³ Tex. Gov't Code Ann. § 508.281 (West).

¹⁴⁴ Tex. Bd. of Pardons & Paroles, *How the Administrative Hearing Process Works*, http://www.tdcj.state.tx.us/bpp/revocation/How_Admin_Hearing_Process_Works.html (last visited May 20, 2016).

¹⁴⁵ *Ex Parte Williams*, 738 S.W. 2d 257 (Tex. Ct. Crim. App. 1981).

¹⁴⁶ Parole in Texas, *supra* note 75 at 85-86.

¹⁴⁷ 37 Tex. Admin. Code § 146.3 (2015).

¹⁴⁸ *Id.* See also 37 Tex. Admin. Code § 146.6(a)(2)(H) (2015).

¹⁴⁹ Tex. Crim. Proc. Code Ann. art. 56.02 (West).

¹⁵⁰ Tex. Gov't Code Ann. § 508.281 (West).

¹⁵¹ Tex. Gov't Code Ann. § 508.283 (West).

¹⁵² *Id.*

¹⁵³ Tex. Bd. of Pardons & Paroles, *Revocation Hearings/Waivers*, <http://www.tdcj.state.tx.us/bpp/faq/RevocationHearingsWaivers.html> (last visited May 20, 2016).

¹⁵⁴ 37 Texas Admin. Code § 146.11. See also Bd. of Pardons & Paroles Memorandum BPP-DIR.146.300 (Dec. 1, 2008).

¹⁵⁵ Tex. Code Crim. Proc. Ann. art. 11.07 (West); *Ex parte Elliot*, 746 S.W. 2d 762 (Tex. Crim. App. 1988).

¹⁵⁶ Tex. Gov't Code Ann. § 508.283(b) (West).

¹⁵⁷ Interview with David Gutiérrez, Chair, Tex. Bd. of Pardons & Paroles and Timothy S. McDonnell, Board Administrator, Tex. Bd. of Pardons & Paroles (May 17, 2016).

¹⁵⁸ Tex. Const. Art. IV § 11. The Legislature followed Constitutional authority to create the Board under Tex. Gov't Code Ann. § 508 subchapter B.

¹⁵⁹ Tex. Gov't Code Ann. § 508.0441(a) (West).

¹⁶⁰ See Tex. Bd. of Pardons & Paroles, Board of Pardons and Paroles Organization Chart, http://www.tdcj.state.tx.us/bpp/staff_contacts/staff_main.html (last visited May 20, 2016).

¹⁶¹ Tex. Gov't Code Ann. § 508.049 (West).

¹⁶² Annual Statistical Report, *supra* note 57 at 2.

¹⁶³ <http://www.tdcj.state.tx.us/bpp/publications/PG%20AR%202015.pdf> at 4.

¹⁶⁴ Tex. Gov't Code Ann. § 508.031 (West).

¹⁶⁵ Tex. Gov't Code Ann. § 508.035 (West). The presiding officer is the spokesperson for the Board, and holds a number of duties that are spelled out clearly in 37 Tex. Admin. Code § 141.1.

¹⁶⁶ Tex. Gov't Code Ann. § 508.032 (West).

¹⁶⁷ Tex. Gov't Code Ann. § 508.033 (West). For example, this statute disqualifies anyone who serves (or has a spouse who serves) as an officer, employee or consultant of a Texas trade association in Criminal Justice.

¹⁶⁸ Tex. Gov't Code Ann. § 508.031 (West).

¹⁶⁹ Tex. Gov't Code Ann. § 508.034 (West).

¹⁷⁰ Tex. Gov't Code Ann. §§ 508.0362, 508.042 (West).

¹⁷¹ Annual Statistical Report, *supra* note 57.

¹⁷² Tex. Gov't Code Ann. § 508.1445 (West).

¹⁷³ Tex. Const. Art. 4 § 11.

¹⁷⁴ 37 Tex. Admin. Code § 141.71. Note that there are some exceptions to this within Texas public records laws.

¹⁷⁵ Tex. Gov't Code Ann. § 508.313(a) (West). Confidential information may be requested and accessed by the governor, parole board members/commissioners, the Criminal Justice Policy Council, or certain law enforcement, prosecutorial, correctional, clemency, or treatment entities. *Id.* at (c) – (d).