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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

Missouri

By

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1. Background; Sentencing System

a. Sentencing Framework

In Missouri, sentences imposed are for a definite term of years, and parole eligibility begins after a percentage of the term has been served. Sentencing judges use the Missouri Advisory Recommended Sentences, which the Missouri Sentencing Advisory Commission promulgated in 2004, as advisory guidelines. The state's parole board worked with the Commission to produce parole guidelines in March 2006. Missouri's Commission currently studies and reports on sentencing in the state, but no longer has authority to write specific sentencing recommendations.¹ The Commission publishes a User Guide related to the Recommended Sentences each year that contains any legislative updates and includes information about sentencing and parole.²

Unlike boards in many other states, the Missouri Board of Probation and Parole can perform a pre-sentence investigation using a sentencing assessment report (SAR) in felony and some class-A misdemeanor cases. However, the trial court may waive this process. This SAR, if made, is distributed to the court, and must be available to the defendant and counsel upon request.³ It contains a calculation of offender risk based on criminal history and the severity of the crime. A sample SAR can also be found in the User Guide.⁴

Even where no SAR is made, Missouri's unique information-based sentencing process allows sentencing judges using a computer tool – the Automated Recommended Sentencing Information calculator (available at <http://www.mosac.mo.gov/page.jsp?id=45498>) to see the Board's release guidelines. Both the SAR and the automated recommendation "disclose the percentage of the sentence that the offender with a particular risk score can be expected to serve for a particular offense."⁵ These figures are based on actuarial data gathered from past release decisions.⁶

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

The Missouri Board of Probation and Parole has parole release authority over offenders sentenced to the Department of Corrections.⁷ Circuit courts have parole release authority over offenders sentenced to county or city jail.⁸ In circuits that are composed of a single county, circuit court judges form county-level parole boards that consider release.⁹

<http://doc.mo.gov/PP/>

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

The Division of Probation and Parole, which is the supervisory arm of the Board, is responsible for supervision of all offenders, including those referred to them by circuit courts.¹⁰

d. Which Agency Has Authority Over Parole Revocation?

The Missouri Board of Probation and Parole has parole revocation authority over offenders sentenced to the Department of Corrections.¹¹ Circuit courts have parole revocation authority over offenders sentenced to county or city jail, and in some counties,¹² circuit-level parole boards make revocation decisions.¹³

2. Parole Release and Other Prison-Release Mechanisms

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

Felons are sentenced to an exact term of years (i.e. a Class B felon can be sentenced to any specific punishment that is between 5 years and 15 years in length; thus a 7-year sentence or a 10-year sentence would be appropriate; a 16-year sentence would not). The authorized punishments available to courts are:¹⁴

Felony Level	Minimum Punishment	Maximum Punishment
Class A	10 years	30 years or Life
Class B	5 years	15 years
Class C	N/A	7 years
Class D	N/A	4 years

General rules of release eligibility. Offenders convicted of class C or D felonies related to drugs, DWI, or other non-violent crimes are generally eligible for release after 15% of their sentence has been served.¹⁵ Offenders convicted of class A or B non-violent or drug felonies, or class B DWIs are eligible for release after 25% of their sentence has been served. If a parolee is serving consecutive sentences, the minimum term for eligibility for parole must be calculated by adding the minimum terms for each individual sentence together; however, this must not exceed the minimum term for parole eligibility for an ordinary life sentence.¹⁶

Several types of convictions make offenders ineligible for parole; these include convictions for first-degree murder,¹⁷ tampering with a victim or witness,¹⁸ certain recidivist drug trafficking offenses, and conviction as a persistent sexual offender.²⁰

Circuit courts have jurisdiction to grant parole to offenders serving sentences under 2 1/2 years (in other words, those serving non-prison sentences). There do not appear to be guidelines or other criteria for court-based parole release.²¹

Conditional release. In addition to discretionary parole, conditional release (which is mandatory release controlled by statute) is available to inmates who have not committed dangerous felonies at one-third of their term for terms of nine years or less, three years for terms between nine and 15 years, and five years for sentences over 15 years.²²

Repeat offenders. Repeat offenders (offenders with past prison commitments) face both longer sentences and more limited release eligibility. First-time repeat offenders must serve at least 40% of their imposed sentence or, if over 70 years of age, serve at least 30% of the sentence imposed. Second-time repeat offenders must serve at least 50% of the imposed sentence, or, if over 70, serve at least 40% of the imposed sentence. After three or more repeat offenses, an offender must serve at least 80% of the imposed sentence, or if over 70, serve at least 40% of the imposed sentence.²³

Violent/sex offenders. Offenders convicted of violent offenses, sex offenses, or child abuse are eligible for release after 33% of their maximum sentence has been served. However, an offender convicted of a dangerous felony (as defined by statute) must either serve at least 85% of the sentence imposed or, if over 70, serve at least 40% of the sentence imposed.²⁴

Life sentences. For the purposes of determining the minimum prison term to be served, a life sentence is considered 30 years; a sentence (or an aggregate sentence) of over 75 years is considered equal to 75 years for release purposes. Offenders serving life sentences or sentences totaling 45 years or more are eligible for parole after 15 years has been served.²⁵ In addition, offenders sentenced to either life with no parole for 50 years, or to life without parole before December 31, 1990 have limited eligibility for parole release.²⁶

Recurring eligibility after denial of release. If denied parole, an offender's case is reviewed at a reconsideration hearing. At that hearing, the Board will consider the offender's case and any significant developments or changes in the offender's status that may have occurred subsequent to the previous hearing. Reconsideration hearings must be conducted every one to five years at the Board's discretion until a presumptive release date has been established.²⁷

b. Good Time, Earned Time, and Other Discounts

Good time credit is available to select inmates who serve their sentences in an "orderly and peaceable manner" and take advantage of rehabilitative programming. Credits are calculated at the rate of one calendar month for each year of the sentence for Class A or B offenders and two calendar months for each year of the sentence for Class C or D offenders. The credit is subtracted from the established conditional release date, creating a "projected time credit release date."²⁸ In other words, the credit does not

affect discretionary parole eligibility but rather the timing of administrative parole.

Violations of institutional rules may result in the loss of all or a portion of good time credit earned. Several types of convictions make offenders ineligible for good time credit.²⁹ Other inmates are not eligible for good time credits until their minimum term of incarceration has been served.³⁰

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. The Board may release an eligible offender “when in its opinion there is reasonable probability that an offender of a correctional center can be released without detriment to the community or himself.”³¹ Parole should only be ordered in the best interest of society, and only when the Board believes that an inmate is “able and willing to fulfill the obligations of a law-abiding citizen.”³²

Statutory factors the board must consider. The Board must consider (but is not required to follow) the parole guidelines, which weigh “offense seriousness and offender characteristics” as well as aggravating or mitigating circumstances. The guidelines are meant to “establish a uniform parole policy in order to promote consistent exercise of discretion and equitable decision-making without removing equitable case consideration.”³³

In addition, the Board may not release an inmate who has not obtained a high school diploma or its equivalent, unless the offender has made an honest, good faith effort to do so.³⁴

Criteria for sex offenders. The Board requires offenders imprisoned for sex offenses to participate in and complete the prescribed treatment plan developed by the Department of Corrections prior to release.³⁵

d. Parole Release Guidelines

Parole release guidelines used for most offenders (other than sex offenders). The Board utilizes Parole Guideline Matrices that are published on the Department of Correction website and by the state’s sentencing commission (as part of the “User Guide” published annually). The Board has statutory authority to review the guidelines periodically and modify them at any time as deemed appropriate. The Board also has the authority to depart from the guidelines based on aggravating or mitigating factors.³⁶

According to written materials “the guidelines are only a tool to assist the Board in meeting the goals previously stated. Nothing in guideline policy can be read to mandate release.”³⁷

There are several different matrices: the drug offense matrices and non-violent offense matrices are different for male and female offenders, and are further differentiated by level of crime (A or B felonies versus C or D felonies). The violent, sex, and child abuse matrices and the DWI matrices are differentiated by level of crime, but not by the sex of the offender.³⁸ These matrices are available in an addendum to this report.

Along the horizontal axes, each of the matrices list five risk categories ranging from “excellent” to “poor.” Along the vertical axes, sentences (in years) are listed. Where the sentence in years and the risk score intersect, the parole board is given three numbers that represent the “minimum,” “guideline,” and “maximum” portion of the sentence that should be served (in months).³⁹

Thus, for example, a male offender who has been given a seven year sentence for a class C felony drug offense and has an “average” risk score is recommended to serve a minimum incarceration period of 13 months, a guideline incarceration period of 14 months, and a maximum incarceration period of 17 months.⁴⁰ Guideline time served for sentences outside the authorized range are provided for prisoners with enhanced sentences.

Parole release guidelines for sex offenders. There is a separate system of matrices for violent, sex, and child abuse that reflects the statutory percentage of time that must be served, which is higher for these categories of offenders.⁴¹

e. Risk and Needs Assessment Tools

Statutory mandate. The Board must utilize a risk assessment as part of its decision-making under the parole guidelines.

Risk instruments utilized. The Board utilizes a tool called the Salient Factor Scale to determine risk of recidivism among inmates eligible for parole. The Salient Factor Scale is reproduced in an addendum to this report. This tool takes several factors into account, including:

- Other convictions and incarcerations
- A five-year period of being conviction/incarceration free (as a factor lowering risk)
- Revocations of probation or parole
- Current offense is considered recidivism-related
- Current age

- Institutional risk score
- Educational attainment
- Vocational readiness
- Alcohol or drug history
- Successful alcohol/drug treatment (if applicable to the inmate)
- Conduct violations per year during commitment
- Major conduct violations during commitment
- Prison escape

Each factor adds or subtracts between -2 to 2 points to the overall score, with an excellent score being between 4 and 9 and a poor score being between -4 and -11.⁴² For an example, an offender may receive -2 points for being under the age of 18, 0 points for having no prior incarceration, and 1 point for undergoing successful treatment for a combined score (without the other factors yet added in) of -1, which is “average” risk.

Transparency. The factors that go into the assessment risk instrument are available to the public.⁴³ However, there is no statistical data available on the application or outcomes of the risk assessment tool. The Board reports that the instrument has recently been validated.⁴⁴

Sex offenders. The Board relies on STATIC-99R information following completion of the Missouri Sex Offender Program and prior to release.⁴⁵

f. Medical or Compassionate Release

The Board must consider medical parole if a specific recommendation is made by the physician of a correctional facility and the Board determines that the offender will be able to obtain and receive proper care and helpful attention outside of the institution.⁴⁶ Medical parole is appropriate when an offender is afflicted with a disease that is terminal (death anticipated within six months); when an offender needs long-term nursing care; or when confinement will necessarily greatly endanger or shorten the offender’s life.⁴⁷ The offender will be required to comply with all conditions of parole as set forth on the parole release document. An offender who has been granted a medical parole will be under the same kind and degree of field supervision as any other paroled offender unless the Board modifies supervision. In addition, medical parolees are financially responsible for their medical and other needs while on release.⁴⁸

The Parole Board will not consider medical parole for certain categories of offenders, including those that are under a sentence of death; offenders serving a sentence for

a crime that cannot warrant parole, and offenders serving a sentence that has a minimum prison term where that minimum term has not been met.⁴⁹

g. Executive Clemency Power

The Governor has the power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment.⁵⁰ The Governor may also impose conditions, restrictions and limitations, as he deems proper. All applications for pardon, commutation of sentence or reprieve must be referred to the Board of Probation and Parole for investigation.⁵¹ The Board is responsible for investigating each case and making a recommendation to the Governor.⁵²

h. Emergency Release for Prison Crowding

There is no emergency release mechanism for prison overpopulation.

3. Parole Release Hearing Process

a. Format of Release Hearings

Offenders receive written notice of their parole eligibility hearing “shortly after” admission to the Missouri Department of Corrections, though a second notice of an exact hearing date will also be sent 45 days before the hearing. Prior to the hearing, the offender must meet with an Institutional Parole Officer who will submit a report to the Board.⁵³

By statute, parole hearings are confidential.⁵⁴ The hearings are generally held where the offender is housed.⁵⁵ Decisions of the board regarding granting of paroles, extensions of a conditional release date or revocations of a parole or conditional release are made by a majority vote of the hearing panel members. The hearing panel consists of one member of the board and two hearing officers appointed by the board. A member of the board may remove the case from the jurisdiction of the hearing panel and refer it to the full board for a decision.⁵⁶

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

Through the required interview that is part of the hearing process, the Board has an opportunity to consider input from the offender including their version of the present offense and of prior criminal history, problems and needs,

progress made towards rehabilitation, their argument for granting parole, and future plans. The Board also considers information presented by victim(s) and authorities involved in the case such as the sentencing judge, the prosecutor, and/or a representative from law enforcement.⁵⁷

The Board reviews and discusses all available reports, pertinent case history material, and any other material they deem to be relevant. This may include medical, psychological, and psychiatric reports, prior record of arrests, convictions and incarcerations, past and present patterns of behavior, and confidential information. The Board also reviews and discusses institutional adjustment, conduct, and progress, as, according to statute, this will reflect upon the offender's attitudes and preparation to resume life in free society. The Board evaluates the offender in regard to suitability for parole, and also determines conditions to be accomplished prior to – and after – release.⁵⁸

c. Prisoner's Procedural Rights

The hearing panel must conduct an interview with an offender before release, unless the offender waives this right.⁵⁹ Parole hearings are seen in part as an opportunity for offenders to state their case for release. Offenders may have a person of their own choosing at the hearing, but have no right to appointed counsel. The offender's representative may offer a statement on behalf of the offender, ask questions and provide additional information that may be requested by the hearing panel.⁶⁰ An offender may request that a parole hearing be scheduled for a later date between three months and five years in the future. An offender with less than a 24-month sentence or serving their first incarceration for a non-violent C or D felony with a sentence of seven years or less may waive their personal hearing.⁶¹

There is no statutory or regulatory language that requires the Board to share any information that is not publicly available. Federal courts reviewing Missouri's parole procedure have held on several occasions that inmates are not constitutionally entitled to view any contents of their parole file as part of the release process.⁶²

d. Victims and Other Participants

Victims have a constitutional right to notification of an offender's custody status and to appear at any hearing at which the offender has a right to appear.⁶³ If requested, the victim will be notified of parole hearings, hearing results, release to the community, escape, and death.⁶⁴ Notifications are made by the Department of Corrections Victim Services, and must be made 30 days in advance of a hearing.⁶⁵

The victim may be accompanied by one other person at the hearing or represented at the hearing by another person. Victims can present information to the hearing panel, with or without the offender being present. They may instead elect to write or telephone the Board or meet with a Board Member outside of the hearing process by appointment. The victim is also entitled to receive access to the decision of the Parole Board.⁶⁶

The Parole Board must provide notice of the parole hearing to the judge/prosecuting attorney/law enforcement upon written request. The judge/prosecuting attorney/law enforcement or their representative may attend the hearing and present information to the hearing panel, with or without the offender being present. They may also elect to write or telephone the Board or set up a meeting with a Board member prior to the hearing.⁶⁷

Parole hearings are closed to the public and considered confidential proceedings.⁶⁸ Board hearings are recorded; however, parole records are confidential and are considered closed records.⁶⁹

e. Burdens of Proof or Standards of Persuasion for Release

There is no specific burden of proof or standard of persuasion for parole release; it is a discretionary function of the board.⁷⁰

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

After the hearing, the Board may request additional reports before making a final decision. However, after the hearing, an offender will receive a written notice of the Board's action as soon as the notice can be prepared and delivered. In the written decision, the Board may set a presumptive release date; deny parole and set a conditional or maximum release date as authorized by statute; or deny parole and schedule a future hearing date for reconsideration.⁷¹

g. Administrative or Judicial Review of Parole Denial

An offender may appeal a hearing panel decision to deny parole. Any appeal to the Board must be in writing on forms provided by the Institutional Parole Officer. It must be filed within thirty days after the decision has been received by the offender. An offender is presumed to have received the decision within ten days of the date of the notice of the decision to the offender. The appeal must be

considered by the full Board within thirty days of receipt of the appeal or as soon thereafter as possible and the offender will be advised of the Board's decision as soon as the notice can be prepared and delivered. The Board's new decision will be made by a majority vote of the members, and is considered final. If the appeal is not filed within thirty days after the offender receives the original decision, the original decision will stand as final.⁷²

By statute, the orders of the Board are subject to judicial review only for compliance with the law and with administrative rules.⁷³ Inmates have filed Petitions for Declaratory Judgment at the trial court level and, through that mechanism, have received judicial consideration of their cases.⁷⁴

h. Rescission of Parole Release Dates

A presumptive release date does not automatically entitle the offender to be released on that date. Release is dependent on a finding by the Board that the offender has a continued record of good conduct, has satisfied the requirements of any mandated programs, and has an acceptable release plan. Again, the offender must also obtain a high school diploma or GED or make a good-faith showing prior to parole.⁷⁵

If evidence comes to the attention of the Board that an offender has concealed or misrepresented information deemed significant, or if information which has not previously been considered comes to the attention of the Board, the case may be reviewed to determine whether such release should be rescinded.⁷⁶

4. Supervision Practices

Parole supervision rate. In 2015, there were 376 parolees per 100,000 adult residents. This is higher than the 50-state average of 304 parolees per 100,000 adults.⁷⁷

a. Purposes of Supervision

According to the Board's supervision division, the stated purpose of supervision is "to prepare offenders to live civil, sober and productive lives. The goal is to ensure an opportunity for positive personal progress within the least restrictive environment. By outlining specific offender management strategies, eligibility criteria and the referral process where applicable, it is our hope an offender's needs will be more adequately assessed and met."⁷⁸

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

All parolees are initially placed on supervision.⁷⁹

c. Length of Supervision Term

Maximum supervision terms. The length or term of post-release supervision cannot exceed the maximum prison sentence imposed at the time of sentencing of the original offense, although there is the possibility of lifetime supervision for certain sexual offenses.⁸⁰

Early termination. The Board has the discretion to discharge an offender prior to the expiration of the offender's sentence. To do so, the Board must be satisfied that the offender has performed the obligations of his or her parole and that the offender's final release would not be incompatible with the best interest of society and the welfare of the individual. However, the parolee must be on supervision for a minimum of three years before the Board can issue a final discharge unless the sentence would expire before that date. An offender convicted of a violent felony must be supervised for five years prior to final discharge unless the sentence would expire before that date.⁸¹

Offenders with drug or alcohol related convictions may also petition the sentencing court to reduce the term of parole. The court must determine that the convicted person was convicted of a crime that involved alcohol or drugs but *did not involve* violence or the threat of violence. The court must also determine that since the commission of the crime, the convicted person has successfully completed a detoxification and rehabilitation program. This remedy is not available to people who have been convicted under various recidivism statutes.⁸²

Extension of supervision term. By statute, the term of parole supervision cannot extend past the maximum prison sentence imposed by the court.⁸³

Incentives; "goal parole." Eligible offenders can pare down their time on supervision with earned compliance credits. Earned compliance credits reduce the term of parole by thirty days for each full calendar month of compliance with the terms of supervision.⁸⁴ Once the combination of time served in custody, time served on parole, and earned compliance credits satisfies the total term of parole, the Board must issue a final discharge of the offender, so long as the offender has completed at least two years of parole, including time served in detention facilities used as alternatives to revocation proceedings.⁸⁵

d. Conditions of Supervision

As part of the standard conditions of supervision, an offender must:

- Obey all federal and state laws and report all arrests to a parole officer within 48 hours;
- Obtain advance permission from parole officer before leaving the state or area in which they are living;
- Obtain advance permission from parole officer before making any change in residency;
- Obtain and maintain employment unless engaged in a specific program approved by parole officer. Offender must obtain advance permission from parole officer to quit or leave job or program. If the offender loses their job or is terminated from a program (in lieu of employment) they must notify their parole officer within 48 hours.
- Obtain advance permission from parole officer before associating with any person convicted of a felony or misdemeanor, or with anyone currently under the supervision of the Board.
- Not possess or use any controlled substance unless prescribed by a licensed medical practitioner.
- Not own, possess, purchase, receive, sell, or transport any firearms, ammunition, or explosive device or any dangerous weapon if they are on parole for a felony charge or for a misdemeanor involving firearms or explosives.
- Report as directed to their parole officer and abide by any directives given by their parole officer.
- Enter into and successfully complete any supervision strategy and abide by all rules and program requirements ordered by the board, Court, or supervising parole officer.
- Pay a monthly intervention fee, an amount set by the Department of Corrections,
- Follow any special conditions of parole determined by the Board and/or the court.⁸⁶

Both the circuit courts and the Board also have wide discretion in setting special conditions of parole, and may set conditions that are “reasonably necessary to insure that the defendant will not again violate the law.”⁸⁷ Conditions are only limited in that they may not be illegal or impossible to perform.⁸⁸

Sex offenders. Parolees who are subject to lifetime supervision (generally recidivist sex offenders) must comply with GPS monitoring requirements, including maintaining a residence that allows for that type of supervision and must pay a monthly intervention fee.⁸⁹ In general, the

parole restrictions on sexual offenders are much more prohibitive and restrictive – some conditions may include registering as a sex offender, completion of sex offender treatment, increased prohibition on movement and place of residency, as well as limits on the age of individuals the offender may associate with.⁹⁰

Modification of conditions. The Board has broad discretion to modify the conditions of parole without a hearing.⁹¹ Trial courts have similar ability to modify

Incentives; lighter conditions. Earned compliance credits (described in § 4c) may decrease a parolee’s level of supervision.⁹²

e. Fees and Other Financial Sanctions

Parole supervision fees. All offenders placed on parole are required to pay an intervention fee not to exceed \$60 per month. The fee is used to support services for offenders under the Agency’s jurisdiction, as well as address the public expectation that offenders help offset the costs of intervention services to the state.⁹³ Fees may be waived in whole or in part based on insufficient income. However, the waiver is only valid for 90 days and can be rescinded if a parole officer determines that the offender can pay.⁹⁴

Payments for drug and alcohol testing and treatment. Payment for drug and alcohol testing and treatment does not appear to be a standard condition of parole.

Restitution. Restitution may be a condition of parole. It is also important to note that offenders may be responsible for additional fees related to any action taken to collect restitution; these fees may be up to 10% of the total restitution owed for amounts over \$250.⁹⁵

Child support. Child support can be a condition of parole, and is explicitly a condition of parole for those convicted of criminal nonsupport.⁹⁶

Other financial obligations. Parolees may be required to repay the county for medicine, dental care, or medical attention received while in jail or prison.⁹⁷

Incentives; reduction of economic sanctions. There does not appear to be any reduction of economic sanctions based on performance on parole.

5. Parole Revocation

Parole revocation proceedings. The U.S. Bureau of Justice Statistics reports that 3,873 parolees exited parole through revocation in 2015.⁹⁸

Absconders. There were 1,452 parole absconders in 2015.⁹⁹

a. Principles and Criteria of “When to Revoke”

Policy considerations. Missouri has designed a system of alternative parole sanctions that allow for punishment of parole violators without revocation of parole. While revocations do occur, parole officers can also respond to minor violations using other tactics.

Legal predicates. The revocation process may begin if an offender has violated one or more of the conditions of supervision.¹⁰⁰

b. Revocation Guidelines

The Board has guidelines for parole violators who are revoked for technical violations. They are based on the type of violation and the type of supervision the offender is under (which is related to risk). See Appendix E of this report for details.

c. Risk and Needs Assessment Tools

According to the Board, a risk assessment has been developed for parole violators. Many of the variables in the salient factor risk assessment are included in the violator risk assessment but the weighting was based upon parole violators. The instrument weighs 16 factors, including the time from revocation to the completion of sentence and the parolee’s age at the time of revocation. The instrument has been validated for use at the revocation phase.¹⁰¹

d. Preliminary and Final Revocation Procedures

Arrest or summons. The Board or a supervising parole officer may issue an arrest warrant if they have probable cause to believe that that parolee has violated a condition of parole. The arresting officer must present a statement regarding the circumstances of the violation to the detaining authority.¹⁰²

The Board may also order a preliminary hearing (described below) for a parolee who is not in custody on a parole violation warrant but faces potential revocation.¹⁰³ There are no published criteria as to when an offender will be taken into custody for an alleged violation or when the offender will remain out of custody. Once in custody, however, pending hearing(s) upon any charge of violation the offender is to remain in custody or incarcerated without consideration of bail.¹⁰⁴

Preliminary hearing. The preliminary hearing is an informal hearing to determine probable cause. It must be held as promptly as is convenient after arrest. The offender has a right to be notified of the date, time, and location of the hearing as well as the charges alleged. A parole officer will conduct this hearing, however, the offender’s supervising officer (or that officer’s supervisor) cannot preside at the hearing.

By regulation, “the hearing officer will be in charge of the hearing and only the alleged violator and the hearing officer will be present, unless the hearing officer feels a security officer should be in attendance. Only one (1) witness will be allowed in the hearing room at a time. The hearing officer will initiate all questioning of witnesses and may terminate any questioning if the testimony becomes irrelevant, repetitious, or excessive.”¹⁰⁵

Final hearing. The revocation hearing allows the paroling authority to reach a final decision as to whether to revoke parole. This hearing must occur within a reasonable time after the offender has been made available for an appearance before the Board or a court with the proper jurisdiction. If a parolee is under the Board’s jurisdiction, the revocation hearing panel must consist of one member of the Board and two hearing officers appointed by the Board.¹⁰⁷

Court based revocation hearings. If the sentencing court has jurisdiction over a parole case and conducts a revocation proceeding, the preliminary and final hearings may be combined. The offender is still entitled to standard hearing rights, discussed in §5e.¹⁰⁸

e. Offender’s Procedural Rights

At both the preliminary and final hearings, an offender may present testimony, documents, or other evidence of mitigating circumstances related to the violation. An offender may present witnesses who can give relevant information concerning the violation; but may not present character witnesses. An offender may also confront and cross-examine adverse witnesses unless there is good cause to disallow such confrontation.¹⁰⁹

At a final hearing, the parolee may have a representative of their choice present, including a family member, friend, employer, or legal counsel. Legal counsel may be provided to an indigent defendant, or to a defendant who appears to be incapable of self-representation.¹¹⁰ While an attorney may be present at the final revocation hearing, attorneys “do not have a role to play” in the preliminary hearing process unless the offender is deemed incapable of understanding the proceedings.¹¹¹

f. Victims and Other Participants

Parole revocation hearings and votes of the Board are considered “closed,” and do not require public disclosure.¹¹²

g. Burdens of Proof or Standards of Persuasion for Revocation

There is no clear evidentiary standard for proof of a parole violation; however, “the degree of proof necessary for parole or probation revocation is less than that required to sustain a criminal conviction. The hearing judge need only be reasonably satisfied that the terms of parole have been violated...”¹¹³

h. Revocation and Other Sanctions

Following a revocation hearing, the Board may:

- Request additional information by means of various types of reports from the supervising probation and parole officer, consulting psychologist or psychiatrist or any other party or agency that may be able to supply additional information regarding the violations;
- Schedule the offender for another personal hearing before the Board to further assess the violations;
- Revoke and schedule the offender for either a hearing or release;
- Continue parole, but consider the offender for reinstatement on supervision or placement in a community corrections program. The release will occur as soon as a satisfactory plan is approved by the Parole Board.

If parole is revoked, “the paroled person shall serve the remainder of his/her prison term and all the additional conditional release term, as an additional prison term.”¹¹⁴ Revocation of parole results in ineligibility for conditional release, though not ineligibility for future parole.¹¹⁵ Board regulations note that upon revocation, a violator may be rescheduled for a hearing on release. However, “If the remaining time on the sentence from the date of revocation is less than twelve months, it is very likely the board will give a complete denial of further parole consideration.”¹¹⁶

Parole violators may face several alternatives to revocation, including short periods of detention in a county jail or other appropriate institution ordered by a parole officer. The first detention of this type may not exceed 48 hours. Subsequent periods may exceed 48 hours but the total detention time may not exceed 360 hours per calendar year. Prior to this type of detention, an officer must present the offender with a written report detailing in what manner the offender has violated the conditions of parole or conditional release and advise the offender of the right to a hearing before the court or Board prior to the period of detention. Upon successful completion of the period of detention under this section, the court or Board may not revoke the term of parole or conditional release or impose additional periods of detention for the same incident, unless new information is discovered that indicates that the offender committed a crime.¹¹⁷

i. Issuing Parole Revocation Decisions

Revocation requires a majority vote of the hearing panel members; as with parole release. The hearing panel consists of one member of the board and two hearing officers appointed by the board. A member of the board may remove the case from the jurisdiction of the hearing panel and refer it to the full board for a decision.¹¹⁸ After the revocation hearing, the Parole Board must reach a decision within a reasonable amount of time, although “reasonable” is not specifically defined.¹¹⁹ Offenders must receive a statement as to the evidence relied upon for revocation and the reasons for revoking parole.¹²⁰

j. Administrative or Judicial Review of Parole Revocation Decisions

The appeal procedure for parole revocation decisions mirrors the process for appealing Board decisions regarding the granting of an offender on parole and/or conditional release. Specifically, [w]ithin thirty days of entry of the decision of the hearing panel... to revoke a parole or conditional release, the offender may appeal the decision of the hearing panel to the Board. The Board shall consider the appeal within 30 days of receipt of the appeal. The decision of the Board is to be by majority vote of the board members and is final.

Judicial review is limited by statute to whether or not the Board has complied with statutory procedures.¹²¹ However, several courts have also addressed parole revocation issues through habeas corpus proceedings, especially where the constitutional rights of parolees are implicated.¹²² The consideration of a petition for writ of habeas corpus is limited to determining the facial validity of the confinement.¹²³

k. Re-Release Following Revocation

An inmate who is serving the remainder of a sentence due to parole revocation may be eligible for future parole release. Parole violators are assessed by the Department of Corrections and given a guideline release date that the Board may accept or reject.¹²⁴

Technical parole violators who are not given a new release date within guidelines are scheduled for a parole reconsideration hearing as soon as possible. Parole violators returned with new law violations will be scheduled for a reconsideration hearing in six months to allow for adjudication of the new offense.¹²⁵

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board was created by statute and has the authority to “consider, grant, revoke, alter, or terminate paroles and to exercise all the powers herein granted and such other powers as may be provided by law.”¹²⁶

b. Location in Government

The Board is a sub-agency of the Missouri Department of Corrections.¹²⁷ The Board Chairperson reports to the Governor of the State of Missouri.¹²⁸

c. Purpose (Vision/Principles/Rationale)

The stated mission of the Board is “to provide for the professional assessment and release of offenders and their supervision in the community, using appropriate treatment, sanctions, and controls, with the primary consideration being promotion of public safety.”¹²⁹

d. Appointment and Qualifications of Board Members

The Governor appoints all seven members of the Board by and with the advice and consent of the senate. The Governor designates one member of the board as Chairman and one member as Vice Chairman. The Chairman is the director of the division and controls the division’s operations, funds and expenditures. If the chairman were removed through death, resignation, or inability to serve, the vice chairman would act as chairman upon written order of the governor or chairman.¹³⁰

Qualifications. No more than four members of the Board may be from the same political party. Board members must be “persons of recognized integrity and honor, known to possess education and ability in decision-making through career experience and other qualifications for the successful performance of their official duties.”¹³¹

e. Tenure of Board Members, Ease of Removal

Board members serve terms of six years, and members “may be appointed to succeed themselves.”¹³² The governor can remove any official they appointed from office, “whenever in [their] opinion such removal is necessary for the betterment of public service.” The governor may, but is not required to “assign additional and more specific reasons for such removal.”¹³³

f. Training and Continuing Education

While no formal training is required by statute, the agency requires 30 hours of training annually for all staff. Board members apply to The National Institute of Corrections to attend “Orientation for New Parole Board Members” within the first year of their appointment and confirmation. Board members attend agency and departmental training in topics including Motivational Interviewing, Criminogenic Needs, Institutional Parole Officer-Specific training, Salient Factor Scoring, as well as sessions on domestic violence, substance abuse, mental health, victim’s issues, etc. Conference participation in areas of interest is promoted by the Parole Board Chairman.¹³⁴

g. Workload

There were 11,776 reported parole board hearings in 2014, as well as 11,316 parole or conditional releases. This averages to 85 parole hearings per working day.¹³⁵ The total number of board decisions in 2015 was 42,056, including 11,448 parole consideration decisions. In addition to parole board hearings, the workload of the board is comprised of file reviews, revocation waivers, early discharge reviews and executive clemency actions.¹³⁶ Finally, the Board compiles sentencing assessment reports as described in §1a of this report but there is no published data on how many are compiled annually.

h. Reporting and Accountability of Parole Board

The Board and the Department of Corrections publish a fairly limited annual statistical report, but there is little other information available on parole practices in the state. Public information about the results of hearings is unavailable. As stated in statute, “notwithstanding any other provision of law, any meeting, record, or vote of proceedings involving probation, parole, or pardon, may be a closed meeting, closed record, or closed vote.”¹³⁷ In 2015, the St. Louis Post-Dispatch published an article claiming that the Board operated with a lack of transparency.¹³⁸

END NOTES

- ¹ Mo. Rev. Stat. § 558.019.
- ² See, e.g., Mo. Sentencing Advisory Comm'n, *User Guide 2015-2016* at 1 (2016) <http://www.mosac.mo.gov/file.jsp?id=93194> [hereinafter *User Guide*]; 32 Mo. Prac., Mo. Criminal Law §§ 58.1 – 58.8 (2d. ed., last updated May 2016).
- ³ See 28 Mo. Prac., Mo. Crim. Prac. Handbook § 33:8 (last updated Dec. 2015). Note that the trial court has discretion to dispense with the pre-sentence investigation process.
- ⁴ *User Guide*, *supra* note 2 at 20-30.
- ⁵ Michael A. Wolff, Missouri's Information-Based Discretionary Sentencing System, 4 Ohio St. J. Crim. L. 95 at 98-99 (2006).
- ⁶ *User Guide*, *supra* note 2 at 20-30.
- ⁷ Mo. Rev. Stat. § 559.301.
- ⁸ Mo. Rev. Stat. § 559.100.
- ⁹ Mo. Rev. Stat. § 559.301.
- ¹⁰ See, e.g., Mo. Rev. Stat. § 217.655.
- ¹¹ Mo. Rev. Stat. § 559.301.
- ¹² Mo. Rev. Stat. § 559.115.
- ¹³ Mo. Rev. Stat. § 559.301.
- ¹⁴ Mo. Rev. Stat. § 558.011.
- ¹⁵ Mo. Code Regs. Ann. tit. 14 § 80-2.010.
- ¹⁶ Mo. Rev. Stat. § 217.690(5).
- ¹⁷ Mo. Rev. Stat. § 565.020.
- ¹⁸ Mo. Rev. Stat. § 575.270.
- ¹⁹ Mo. Rev. Stat. § 195.295.
- ²⁰ Mo. Rev. Stat. § 558.018.
- ²¹ Mo. Rev. Stat. § 559.100.
- ²² Mo. Rev. Stat. § 558.011.
- ²³ Mo. Code Regs. Ann. tit. 14 § 80-2.010.
- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ Mo. Rev. Stat. § 217.692.
- ²⁷ Mo. Code Regs. Ann. tit. 14 § 80-2.010(6)(c).
- ²⁸ Mo. Code Regs. Ann. tit. 14 § 10-5.010(2)(a).
- ²⁹ Mo. Code Regs. Ann. tit. 14 § 10-5.010(2)(b). These include convictions as a persistent or dangerous offender, a persistent misdemeanor offender, or a persistent sex offender, convictions for certain drug offenses, convictions for witness or victim tampering, and convictions based on crimes committed before January 1, 1979.
- ³⁰ *Id.* These are inmates when sentenced as prior, persistent or a class x-offender, convicted of armed criminal action, or pharmacy robbery I/II.
- ³¹ Mo. Rev. Stat. § 217.690(1).
- ³² Mo. Rev. Stat. § 217.690(2).
- ³³ Mo. Code Regs. Ann. tit. 14 § 80-2.020.
- ³⁴ Mo. Rev. Stat. § 217.690.
- ³⁵ Mo. Rev. Stat. § 589.040.
- ³⁶ Mo. Code Regs. Ann. tit. 14 § 80-2.020.
- ³⁷ Mo. Div. Prob. & Parole, *Rules and Regulations Governing the Granting of Paroles, Conditional Releases, and Related Procedures (Blue Book)*, app. B at 2 (Apr. 2009), <http://doc.mo.gov/Documents/prob/Blue-Book.pdf> [hereinafter *Blue Book*].
- ³⁸ *User Guide 2014 – 2015*, *supra* note 2 at 122-128.
- ³⁹ *Id.*
- ⁴⁰ *Id.* at 124.
- ⁴¹ *Id.* at 123.
- ⁴² *Blue Book*, *supra* note 37, app. B at 2.
- ⁴³ *Id.*
- ⁴⁴ Correspondence with Kelly Dills, Board Operations Director, Mo. Bd. Prob. & Parole (Aug. 31, 2016).
- ⁴⁵ *Id.*
- ⁴⁶ Mo. Code Regs. Ann. tit. 14 § 80-2.010.
- ⁴⁷ Mo. Rev. Stat. § 217.250.
- ⁴⁸ *Blue Book*, *supra* note 37, at 11.
- ⁴⁹ *Id.*
- ⁵⁰ Mo. Const., art. IV, § 7.
- ⁵¹ Mo. Rev. Stat. § 217.800.
- ⁵² Mo. Bd. Prob. & Parole, *Executive Clemency*, http://doc.mo.gov/PP/Executive_Clemency.php (last visited Apr. 8, 2016).
- ⁵³ *Blue Book*, *supra* note 37, at 5.
- ⁵⁴ Mo. Rev. Stat. § 217.670.
- ⁵⁵ *Blue Book*, *supra* note 37, at 5.
- ⁵⁶ See Mo. Rev. Stat. § 217.670(2).
- ⁵⁷ Mo. Code Regs. Ann. tit. 14 § 80-2.010(3).
- ⁵⁸ *Id.*
- ⁵⁹ Mo. Rev. Stat. § 217.690(2).
- ⁶⁰ Mo. Code Regs. Ann. tit. 14 § 80-2.010(5). The representative may also elect to write or telephone the Board or set up a meeting with a Board Member. It is recommended that an appointment be made in advance. This grant of the right to representation is only restricted by the limitation that other incarcerated offenders may not be present at the hearing. See *Blue Book*, *supra* note 37, at 4.
- ⁶¹ Mo. Code Regs. Ann. tit. 14 § 80-2.010(4).
- ⁶² *Ingrassia v. Purkett*, 985 F.2d 987 (U.S. Ct. App. 8th Cir. 1993); *Maggard v. Moore*, 613 F. Supp. 150 (W.D. Mo. 1985).
- ⁶³ Mo. Const., Art. 1, § 32.
- ⁶⁴ These rights automatically attach to victims of dangerous felonies, victims of murder in the first degree, victims of voluntary manslaughter, and victims of an attempt to commit one of the preceding crimes; and, upon written request, the same rights may be afforded to victims of all other crimes and witnesses of crimes. See Mo. Rev. Stat. § 595.209(1).
- ⁶⁵ Mo. Rev. Stat. § 595.209.
- ⁶⁶ *Id.*
- ⁶⁷ See Mo. Rev. Stat. § 217.690.
- ⁶⁸ Mo. Rev. Stat. § 217.670.
- ⁶⁹ Mo. Code Regs. Ann. tit. 14 § 80-1.010(2).
- ⁷⁰ See, e.g., *Miller v. Mo. Dep't of Corr.*, 436 S.W.3d 692 (Mo. Ct. App. 2014).
- ⁷¹ Mo. Code Regs. Ann. tit. 14 § 80-2.010(6).
- ⁷² Mo. Rev. Stat. § 217.670.
- ⁷³ *Id.*
- ⁷⁴ See, e.g., *Kaczynski v. Mo. Bd. of Prob. & Parole*, 349 S.W.3d 354 (Mo. Ct. App. 2011).
- ⁷⁵ See Mo. Rev. Stat. § 217.670.
- ⁷⁶ Mo. Code Regs. Ann. tit. 14 § 80-1.010(6).
- ⁷⁷ Danielle Kaebler & Thomas P. Bonzcar, Bureau of Justice Statistics, *Probation and Parole in the United States*, 2015 at 21 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁷⁸ Mo. Dep't. of Corr., *Supervision Strategies* (2015), <http://doc.mo.gov/Documents/prob/SupervisionStrategies.pdf>.
- ⁷⁹ Mo. Code Regs. Ann. tit. 14 § 80-2.030(1).
- ⁸⁰ See Mo. Rev. Stat. § 217.730(1). If an offender is subject to lifetime parole, they must continue on parole supervision after their sentence expires. See Mo. Rev. Stat. § 217.735(3). A mandatory condition of lifetime supervision is that the offender must be electronically monitored. See Mo. Rev. Stat. § 217.735(4). In limited circumstances, with use of a risk assessment, the Board may terminate the supervision of a lifetime supervision offender when the offender is sixty-five years of age or older. Lastly, violation of any condition of lifetime parole is a class C felony, meaning the offender may be convicted for a separate offense apart from the violation and revocation proceedings. See Mo. Rev. Stat. § 575.206.
- ⁸¹ See Mo. Rev. Stat. § 217.730(2).
- ⁸² Mo. Rev. Stat. § 558.046.
- ⁸³ See *State v. Mallory*, 886 S.W.2d 89 (Mo. Ct. App. 1994).
- ⁸⁴ See Mo. Rev. Stat. § 217.703(3). Credits begin to accrue for eligible offenders after the first full calendar month of supervision or on October 1, 2012, if the offender began a term of probation, parole, or conditional release before September 1, 2012. The term "compliance" means the absence of an initial violation report submitted by a probation or parole officer during a calendar month, or a motion to revoke or motion to suspend filed by a prosecuting or circuit attorney, against the offender. See Mo. Rev. Stat. § 217.703(4).
- ⁸⁵ Mo. Rev. Stat. § 217.703(7).

END NOTES

- ⁸⁶ Mo. Code Regs. Ann. tit. 14 § 80-3.010.
- ⁸⁷ Mo. Rev. Stat. § 559.021.
- ⁸⁸ See, e.g., *Guerra v. Lombardi*, 336 S.W.3d 167 (Mo. Ct. App. 2011).
- ⁸⁹ Mo. Code Regs. Ann. tit. 14 § 80-3.020.
- ⁹⁰ Mo. Div. Prob. & Parole, *Rules and Regulations Governing the Conditions of Probation, Parole, and Conditional Release for Sex Offenders (Orange Book)*, <http://doc.mo.gov/Documents/prob/OrangeBook.pdf> (last visited Apr. 20, 2016).
- ⁹¹ *State ex rel. Aziz v. McCondichie*, 132 S.W.3d 238 (Mo. 2004) (en banc).
- ⁹² See Mo. Rev. Stat. § 217.703(3).
- ⁹³ Mo. Div. Prob. & Parole, *Rules and Regulations Governing the Conditions of Probation, Parole, and Conditional Release (White Book)*, <https://doc.mo.gov/Documents/prob/White-Book.pdf> (last visited Apr. 20, 2016).
- ⁹⁴ Mo. Code Regs. Ann. tit. 14, § 80-5.020. An offender's income is considered insufficient if it is at or below the most recent Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services. However, the income calculation includes the income of all household members.
- ⁹⁵ Mo. Rev. Stat. §§ 559.021, 559.100(3). See Mo. Rev. Stat. § 559.321 ("the board of paroles shall have and exercise the same powers of probation and parole and be subject to the same regulations that trial courts are endowed with and provided for by sections 559.012 to 559.036)."
- ⁹⁶ Mo. Ann. Stat. § 568.040.
- ⁹⁷ Mo. Ann. Stat. § 221.122.
- ⁹⁸ Kaeble & Bonzcar, *supra* note 77 at 24 (Appendix Table 6).
- ⁹⁹ *Id.*
- ¹⁰⁰ Mo. Rev. Stat. § 217.720(1).
- ¹⁰¹ Mo. Bd. Prob. & Parole, Procedure No. P6-5.3 (effective Jun. 30, 2012); Correspondence with Kelly Dills, *supra* note 44.
- ¹⁰² Mo. Rev. Stat. § 217.720.
- ¹⁰³ Mo. Div. Prob. & Parole, *Rights of Offender to Preliminary and Revocation Hearing (Red Book)* at 1 (2012), <http://doc.mo.gov/Documents/prob/Red-book.pdf>.
- ¹⁰⁴ See Mo. Rev. Stat. § 217.720(1).
- ¹⁰⁵ Mo. Code Regs. Ann. tit. 14 § 80-4.020.
- ¹⁰⁶ Mo. Code Regs. Ann. tit. 14 § 80-4.030.
- ¹⁰⁷ Mo. Rev. Stat. § 217.670.
- ¹⁰⁸ Mo. Code Regs. Ann. tit. 14 § 80-4.010(6).
- ¹⁰⁹ Mo. Code Regs. Ann. tit. 14 §§ 80-4.020, 80-4.030.
- ¹¹⁰ Mo. Code Regs. Ann. tit. 14 § 80-4.030; Red Book, *supra* note 103, at 3. However, this rule differs if the court has chosen to combine preliminary and revocation hearings. Appointment of counsel is governed by "the rules of the Court," and there is no other specific language that sets out what is required for appointment.
- ¹¹¹ Red Book, *supra* note 103 at 2.
- ¹¹² See Mo. Rev. Stat. § 217.670; see also Mo. Code Regs. Ann. tit. 14 § 80-1.010(2).
- ¹¹³ *State v. Wilhite*, 493 S.W.2d 397 (Mo. Ct. App. 1973).
- ¹¹⁴ Mo. Code Regs. Ann. tit. 14 § 80-4.030(3).
- ¹¹⁵ *Id.* at (4).
- ¹¹⁶ *Id.* at (2)(c)(2).
- ¹¹⁷ Mo. Rev. Stat. § 217.718. This type of detention is credited against the term remaining on a sentence.
- ¹¹⁸ See Mo. Rev. Stat. § 217.670(2).
- ¹¹⁹ Mo. Code Regs. Ann. tit. 14 § 80-4.030.
- ¹²⁰ *Reiter v. Camp*, 518 S.W.2d 82 (Mo. Ct. App., 1974).
- ¹²¹ See Mo. Rev. Stat. § 217.670(3).
- ¹²² See, e.g., *State ex rel. Mack v. Purkett*, 825 S.W.2d 851 (Mo. 1992) (en banc).
- ¹²³ *State ex rel. Koster v. Jackson*, 301 S.W.3d 586 (Mo. Ct. App. 2010).
- ¹²⁴ Mo. Code Regs. Ann. tit. 14 § 80-4.030(4); Correspondence with Kelly Dills, *supra* note 44.
- ¹²⁵ Correspondence with Kelly Dills, *supra* note 44.
- ¹²⁶ Mo. Rev. Stat. § 559.301.
- ¹²⁷ Mo. Rev. Stat. § 217.015(1).
- ¹²⁸ Mo. Dep't of Corr., *Organizational Chart*, http://doc.mo.gov/Documents/DOC_All_OrgCharts.pdf (last visited Apr. 8, 2016).
- ¹²⁹ Mo. Dep't of Corr., Bd. Prob. & Parole, *Resource Guide*, <http://doc.mo.gov/Documents/prob/ResourceGuide/4B.pdf> (last visited Apr. 8, 2016).
- ¹³⁰ See Mo. Rev. Stat. § 217.665.
- ¹³¹ *Id.*
- ¹³² Mo. Rev. Stat. § 217.665(3).
- ¹³³ Mo. Rev. Stat. § 106.010.
- ¹³⁴ Correspondence with Kelly Dills, *supra* note 44.
- ¹³⁵ Mo. Bd. Prob. & Parole, *2014 Annual Report*, <http://doc.mo.gov/Documents/prob/AR%202014%20P&P.pdf>.
- ¹³⁶ Correspondence with Kelly Dills, *supra* note 44.
- ¹³⁷ Mo. Rev. Stat. § 217.670.
- ¹³⁸ Jesse Bogan, *Missouri's Parole Board Lumbers on in Secrecy with Unfilled Seats*, St. Louis Post-Dispatch, Sept. 20, 2015, http://www.stltoday.com/news/local/crime-and-courts/mis-souri-s-parole-board-lumbers-on-in-secrecy-with-unfilled/article_8fc891c8-3c5f-51f5-9ce6-0416bf437faa.html.