

UNIVERSITY OF MINNESOTA

THE CONTINUING LEVERAGE OF RELEASING AUTHORITIES:

Findings from a National Survey

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

EXECUTIVE SUMMARY



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Executive Summary

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About the Parole Release and Revocation Project

The Parole Release and Revocation Project of the Robina Institute of Criminal Law and Criminal Justice is committed to engaging releasing authorities in both indeterminate and determinate sentencing states in examining all elements of the discretionary parole release and post-release violations process. A goal of this project is to contribute to the enhancement of decision-making at every stage. To achieve this goal we have partnered with select jurisdictions; begun research and publication of profiles of the legal and statutory framework of parole release decision making of each state and the U.S. Parole Commission; and launched and completed a nation-wide survey of releasing authorities. In 2016 we published a detailed report of the findings from this survey, *The Continuing Leverage of Releasing Authorities: Findings from a National Survey*, and this Executive Summary offers highlights from that report.

Visit robinainstitute.umn.edu to read or download both reports.



The Robina Institute brings legal education, theory, policy and practice together to achieve transformative change in punishment policies and practices. The Institute is focused nationally on sentencing guidelines, probation revocations, and parole release and revocations, and locally on the Minnesota criminal justice system.

The Robina Institute of Criminal Law and Criminal Justice was established in 2011 at the University of Minnesota Law School thanks to a generous gift from the Robina Foundation. Created by James H. Binger ('41), the Robina Foundation provides funding to major institutions that generate ideas and promising approaches to addressing critical social issues.

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Executive Summary

This Executive Summary offers highlights drawn from the larger survey report published in 2016, titled *The Continuing Leverage of Releasing Authorities: Findings from a National Survey*. The summary below includes salient findings from the national survey report and focuses on the jurisdiction and reach of releasing authorities, the sentencing structures in which they are found, their organizational features, their nexus to post-release supervision, and release and revocation practices. It also encapsulates the views of releasing authority chairs on the challenges they face. The intent of the Executive Summary is to provide a brief snapshot within and across these key areas of interest.

- It is important to note that the number of responses for particular questions are often lower than the total responses to the survey.
- When asked to *self-report* which type of sentencing system each state had, 11 (26%) states reported that they had a determinate system, 12 (29%) stated they had an indeterminate system, and 19 (45%) states incorporated elements of both systems.

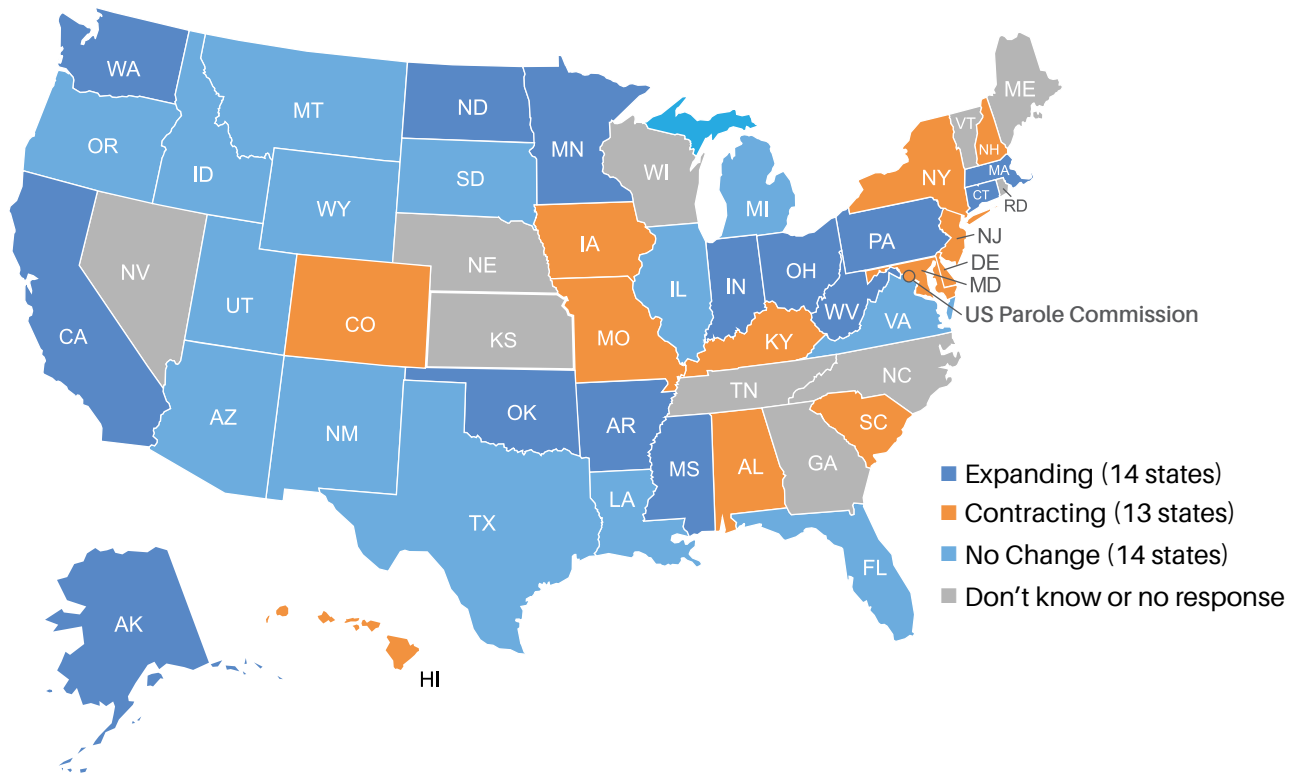
Determinate Sentencing Systems: are those in which an offender's date of release can be predicted with a fair amount of accuracy at the time a term of imprisonment is imposed by a judge following a criminal conviction, albeit with adjustments or allowances for earned credit reductions.

Sentencing Structure

- Determinate
- Indeterminate
- Elements of Both

US Parole Commission

Figure 1 - Modification of Statutes Impacting Parole Release Decision-Making



- The majority of respondents reported that the minimum term is set by statute. Those states that described their sentencing systems as determinate almost uniformly did not have the power to establish the minimum term.
- All but one of the states that self-described as having indeterminate sentencing structures reported that for all offense types they have the discretion to release offenders prior to the maximum release date. Conversely, it was much less common for releasing authorities in determinate states to report such discretion.

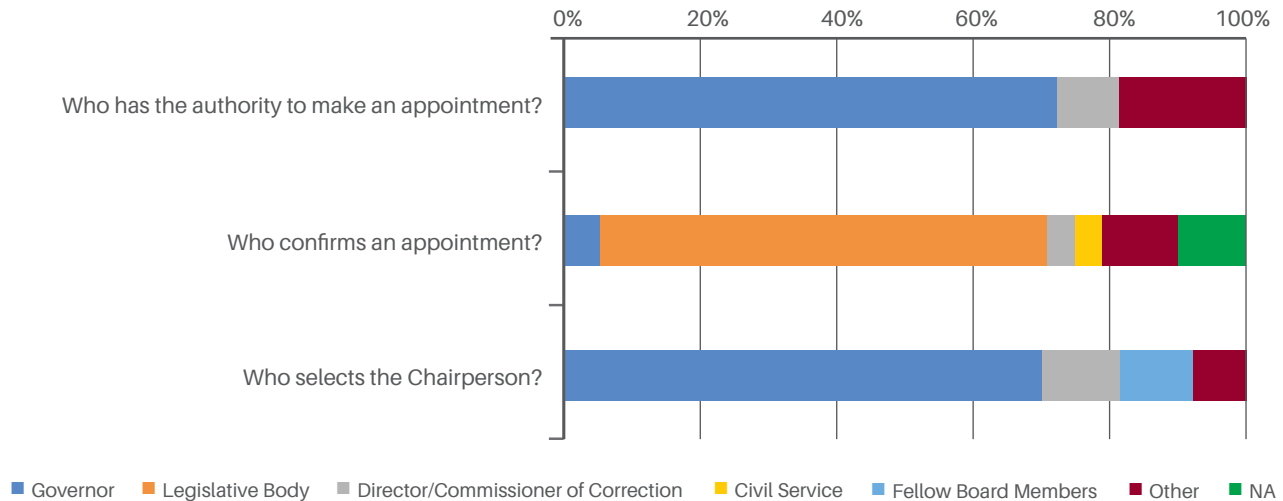
Releasing Authority: refers to the individuals and organizational entity in government whose function is to consider offenders for parole, render decisions for release from prison, set conditions, and/or monitor offenders under supervision, and/or determine revocation outcomes.

- During the past 15 years (2000-2015), of 41 jurisdictions responding, 14 states (34%) reported modifying their statutes to expand discretionary parole release practices, while another 13 jurisdictions (31%) (inclusive of the U.S. Parole Commission) had their discretion contracted by statutory modifications. An additional 14 states (34%) reported no change in the scope of their paroling authorities release discretion during this time.

Appointment Process and Board Membership

- Of 45 respondents, 25 states (56%) reported having statutory qualifications for releasing authority members, while 20 jurisdictions (44%), including the U.S. Parole Commission, did not. Nevertheless, board members were highly qualified both in educational achievement and years of experience. This is largely due to the appointment process.
- A total of 37 respondents stated that the Governor had the sole authority to make an appointment to the releasing authority, while another 3 states indicated that the Governor and another agency were involved in the appointment process. For the U.S. Parole Commission, the President of the United States is the appointing authority.

Board Member Appointment Process



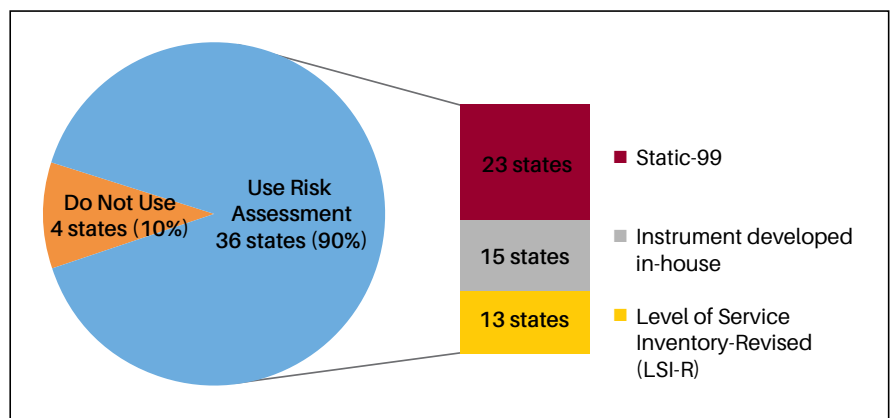
- 31 respondents indicated that a legislative body confirms the appointments to the parole board or releasing authority, while in three states the Governor confirmed the appointments, and in two states the Director or Commissioner of Corrections confirmed the appointments. In one state the gubernatorial appointment process did not require any confirmation.
- The majority of releasing authorities (26 states; 58%) have either 4 or 6-year term length. Two states indicated that board members serve concurrently with the Governor, while two other states reported their board members serve at the "pleasure of the Governor." In one state, board members serve an unspecified or open term.

Risk Assessment Instruments: offer actuarial tools that incorporate a standard set of questions for evaluating individual cases that predict the likelihood of future reoffending. Some tools include static or unchangeable risk factors (e.g., age at first conviction), as well as criminogenic needs or dynamic risk factors (e.g., substance abuse) that may be mitigated by evidence-based programming and interventions.

Release Decision-Making

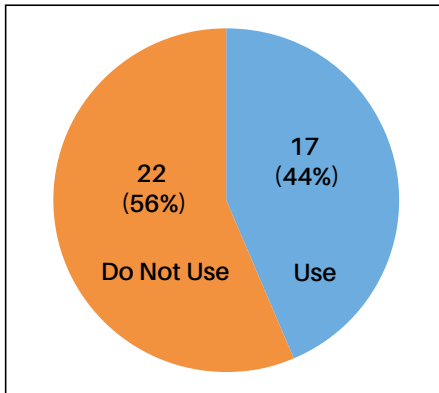
- Of 43 releasing authorities, 38 releasing authorities (88%) published information explaining how their parole process works, while 5 states did not.
- The states split evenly on whether inmates can review and contest their risk assessments. Of 37 respondents, 18 releasing authorities (49%) stated inmates can contest the results of their risk assessment, while this opportunity is denied in 19 states (51%).

Use of Risk Assessments and the Most Commonly Used Tools



An overwhelming majority of 40 releasing authorities relied on an actuarial tool to assess offenders' risk and needs prior to making their release decision. The LSI-R and the Static-99 are the two most frequently used tools.

Use of Parole Guidelines or Sequential Models

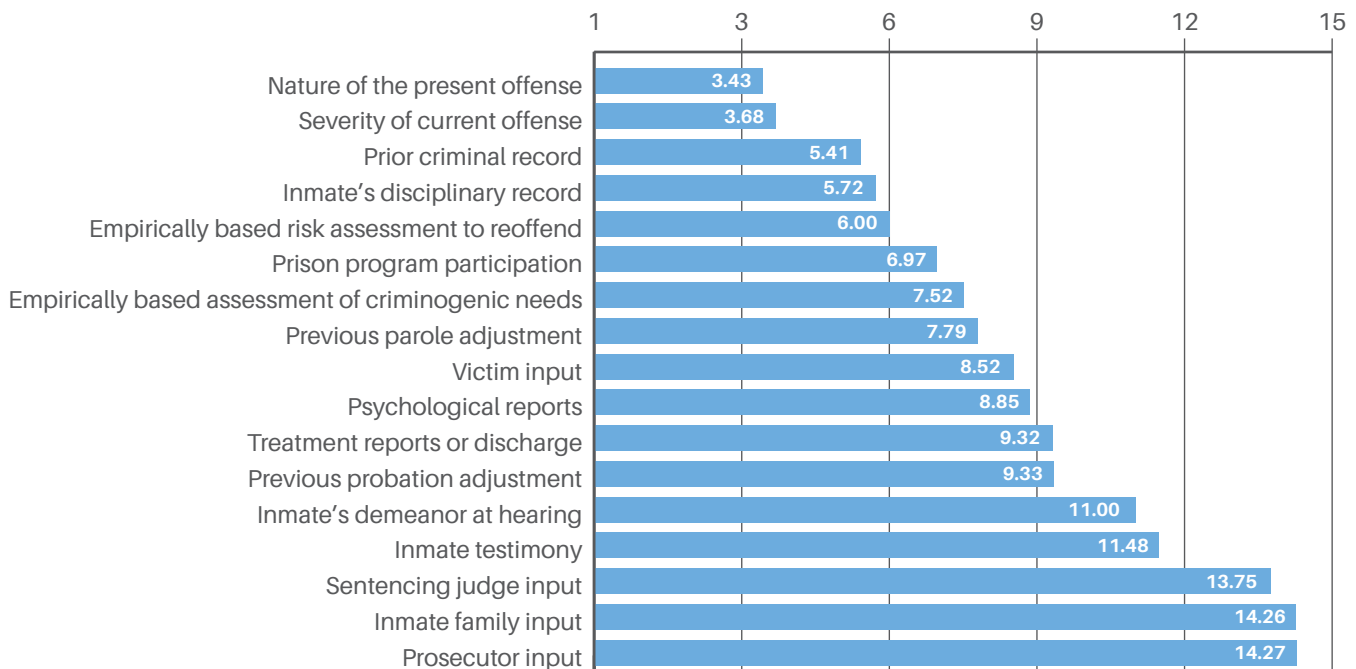


- 17 out of 39 releasing authorities (44%) used parole guidelines or sequential models, while 22 (56%) jurisdictions responded that they did not.
- Releasing authorities tended to utilize panels in their release decision voting. Of 39 respondents, 31 (80%) relied on panels, while the remaining 8 (20%) did not. For those that use a panel, the number of panel members varies by type of crime with most panels consisting of 3 voting members.
- The majority of releasing authorities did not have a burden of proof requirement for either contested issues of fact (21 jurisdictions) or for the decision to grant parole (25 jurisdictions), as such forums were considered an administrative hearing.

29 chairpersons ranked a list of factors in order of their importance. Four factors were identified as the most important for the majority of releasing authority chairs, including the nature of the present offense, severity of the present offense, prior criminal record, and the inmate's disciplinary record.

Chairs' Ranking of Release Factors in Order of Importance

Average Ranking (Smaller Number = More Important)



Notification and Parole Procedures with Inmates

- In 38 out of 39 jurisdictions (97%), the inmate is notified of their parole eligibility date at admissions to prison or shortly thereafter. The inmate is notified by the prison staff in 23 jurisdictions (59%), the releasing authority in 3 jurisdictions (8%), or both in 12 jurisdictions (31%).
- Of 39 respondents, 19 states (48%) establish presumptive parole release dates for all or some of the inmate population following their admission to prison; 16 (40%) do not.
- All of the responding 39 states conducted inmate interviews, but there were various levels of requirement. 27 states (69%) were required to interview all parole eligible inmates, while 9 states (23%) were only required to interview some parole eligible inmates. An additional 3 states (6.4%) were not required to conduct interviews, but interviews still occurred.
- Of 40 respondents, 19 (48%) releasing authorities tell inmates at the parole hearing or immediately following the hearing of their decision to grant or deny parole; 13 (33%) states notify the inmate of the board's decision between 8 and 30 days after the hearing, 6 (15%) paroling authorities do so within seven days of the hearing, while 2 (5%) states take longer than 30 days to notify the inmate of the board's decision.

- Some states allow inmates to appeal or request the releasing authority to reconsider its decision to deny release either through statute in 8 states, administrative rule in 18 states, and/or by agency policy in 16 states. In 11 states, inmates are not entitled to appeal.

Parole or Post-Release Supervision

- In terms of jurisdiction, of 41 respondents, 21 releasing authorities (51%) indicated they exercised full authority for parole supervision. Another 10 (24%) noted they had partial authority, while 10 releasing authorities (24%) said they had no such authority or jurisdiction.
- The vast majority of releasing authorities are responsible for setting conditions that govern supervision. A total of 38 releasing authorities (93%) determine the conditions driving parole or post-release supervision. Only 3 states (7%) do not set conditions.

Parole Release Guidelines: structure the release decision by factoring in the recommended time to be served, the severity of the criminal offense, and the results of the risk assessment.

Timeline for Inmate Notification of Release-Decision

- 19** States Notify: At or immediately after the hearing/interview
- 6** States Notify: Within 7 days of the hearing/interview
- 13** States Notify: Between 8 and 30 days of the hearing/interview
- 2** States Notify: Greater than 30 days after the hearing/interview

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

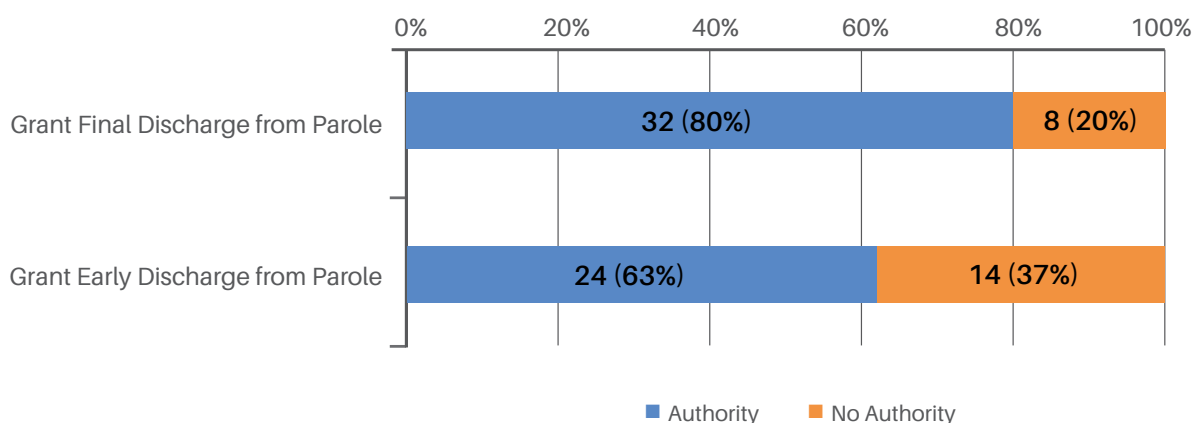
- 41 releasing authorities were almost evenly split between those that recommended a specific level of supervision for individual cases (20; 49%) versus those who did not (21; 51%).
- Almost two-thirds of the 40 respondents required more conditions for offenders assessed as medium or high risk than for those who are assessed as low risk. Meanwhile in a separate question, only 14 releasing authorities (38%) reported minimizing their requirements for low risk parolees.
- Of 38 respondents, 20 releasing authorities (53%) stated the amount of time releasees must serve under parole supervision is the period between their date of release and the maximum sentence expiration, while 8 releasing authorities (21%) stated it was determined by statutory prescription. Ten respondents (26%) marked "other" for this question.
- Of 40 respondents, 32 releasing authorities (80%) grant final discharge from parole. In the remaining 8 jurisdictions (20%), the releasing authority does not possess this power.

Parole Violations and Revocation

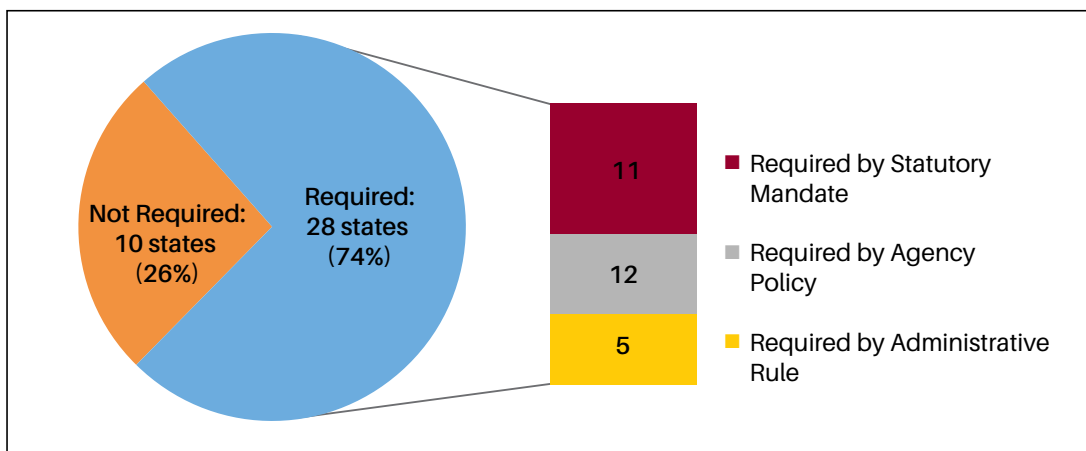
- Of 38 respondents, 31 releasing authorities (82%) possessed the authority to adjudicate violations of the conditions of supervision, while this authority resides elsewhere for 7 boards (18%).
- The majority of releasing authorities have not been subject to a contraction of their revocation responsibilities. During the past five years, of 38 respondents, only 8 boards (21%) indicated their authority over "who" could be revoked had been limited either by statute, or policy. Over three-quarters, or 30 (79%), releasing authorities indicated no such decrease.

Revocation: reflects a decision by a parole board to terminate an offender's conditional release for violations of parole supervision, post-release supervision, or supervised release.

Authority to Grant Final Discharge and Early Discharge from Parole



Requirement of Risk Assessments at Revocation



- Twenty-six of the 36 responding releasing authorities published information on the revocation process. This level of transparency was similar for information on paroling practices and policies.
- Of 38 respondents, most releasing authorities (30; 79%) provide a preliminary hearing to establish probable cause for parolees suspected of violations. Another 5 releasing authorities (13%) determine probable cause administratively rather than through a hearing. In 3 states (8%) the preliminary and final hearing are combined.
- According to 38 respondents, final revocation hearings are conducted by releasing authority members in 21 states (55%), while hearing officers or hearing examiners do so in 11 states (29%). Administrative law judges, and criminal law judges do so in a much smaller number of states.
- The majority of the 38 responding jurisdictions required the use of a risk assessment at revocation. This requirement was either by statutory mandate, agency policy, or administrative rule. The most common assessments were the LSI-R and Static-99.
- Numerous releasing authorities have also embraced progressive sanction grids or more structured guidelines in responding to parolee violations. Of 37 respondents, the majority of releasing authorities report using such an approach while 8 releasing authorities (22%) did not.
- If parole is revoked and the releasee is returned to prison, over two-thirds of the 36 releasing authorities (25; 69%) set the amount of time to be served for a revocation to prison or jail.
- Of 37 respondents, 34 releasing authorities (91%) had the leverage to revoke and order parolees to serve the remainder of their sentence in prison; 16 (43%) impose such outcomes with no restrictions, while 18 (48%) were subject to some limitations. Only 3 releasing authorities (8%) could not do so.

Preliminary Revocation Hearing: is a first-stage preliminary hearing held by an impartial decision maker to assess if there is probable cause to believe that the parolee has violated the conditions of parole.

Final Revocation Hearing: happens if probable cause is found. Then, a second-stage final revocation hearing is conducted during which the parolee is accorded a modicum of due process protections in reaching a determination of the outcome.

Parole Board Chairs & Executive Directors' Views

The views of 31 releasing authority chairs/executive directors are highlighted regarding several key issues confronting paroling authorities today.

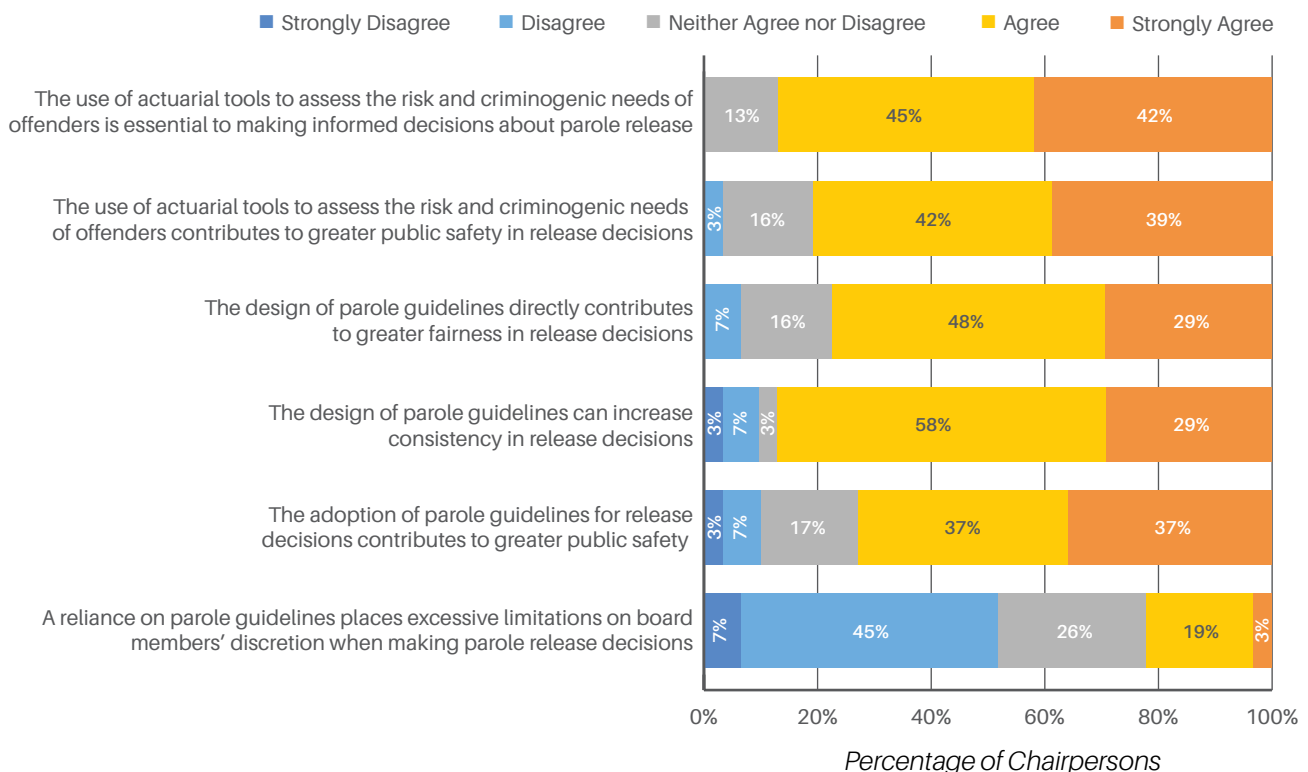
It appears that for several decades releasing authorities' reliance on risk assessment tools has accelerated while the growth in the use of parole guidelines has evolved more modestly. Both trends appear to have substantial support from releasing authority chairs or the executive director.

During the past several decades, most releasing authorities have "opened-up" the release consideration process to be more inclusive of victims and various justice-system stakeholders. The results of the 2015 survey are largely consistent with earlier research on this topic finding that the top three sources of input are victims, the offender's family,

and the prosecutor or district attorney, with judges following next in the ordering. When asked about the value of such input, the views of releasing authority chair or executive director showed some variation.

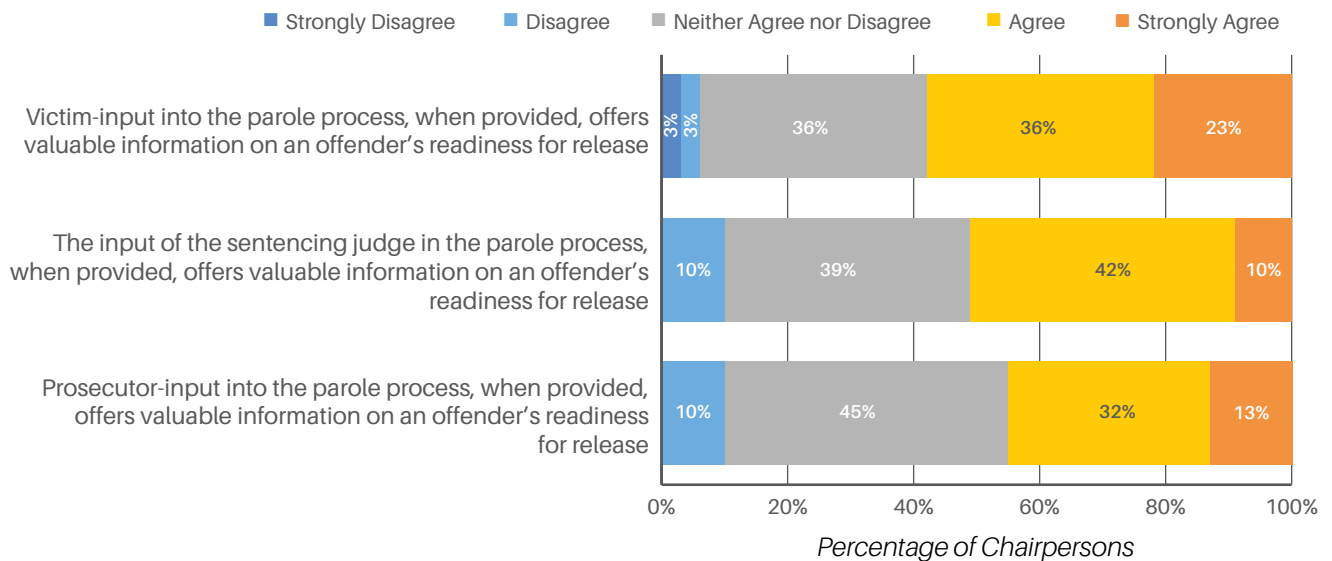
In recent decades, there has been a noticeable decrease in the number of states that have fully independent and autonomous releasing authorities (Alper, et. al. 2015). The overall trend appears to point in the direction of less autonomy and greater interdependence of releasing authorities with departments of corrections. The chairs/executive directors seem to share similar views of the importance of what may be a shifting relationship with the Department of Corrections relative to the release and reentry of offenders to the community.

Chairs' Views - Actuarial Tools and Parole Guidelines



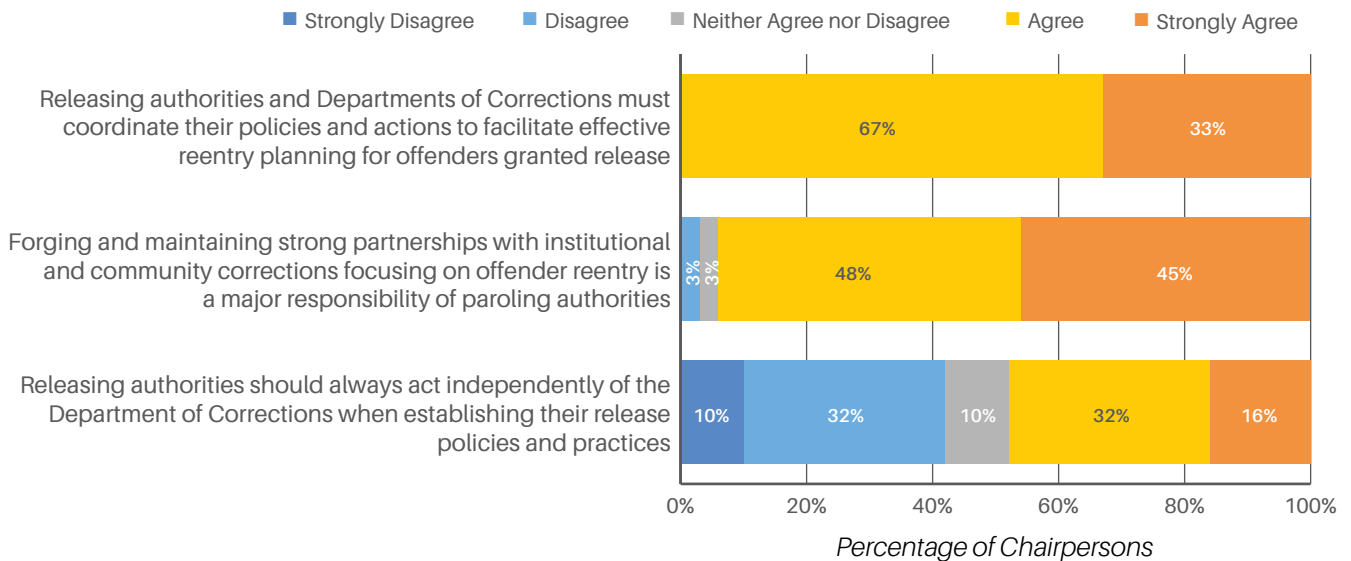
Releasing authorities in a majority of states rely on structured-decision tools, most notably, risk assessment instruments, when they are determining whether to grant or deny parole release.

Chairs' Views - Input of Victim, Judge, and Prosecutor



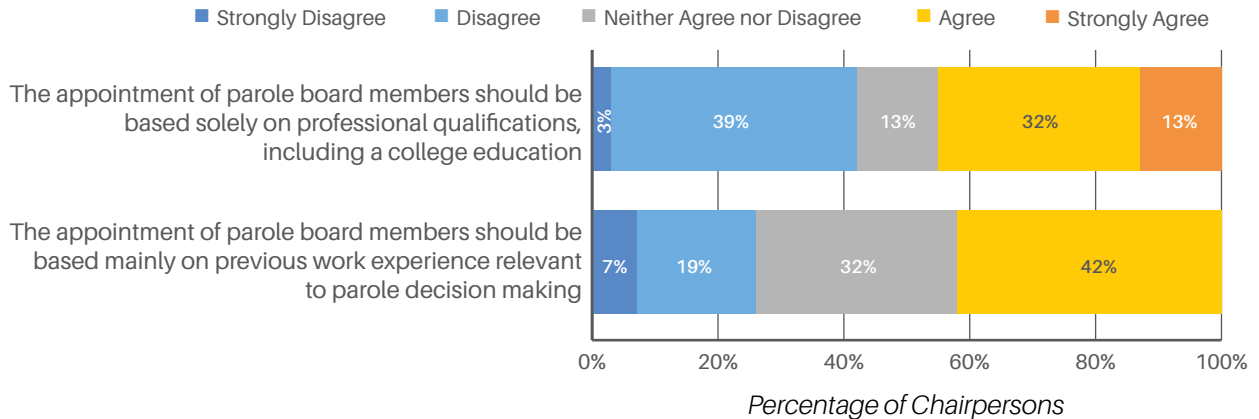
This chart highlights the views of chairs and executive directors in response to the value of considering feedback from victims, the prosecutor, and the judge. While about half of the chairs agreed that victims, sentencing judges, and prosecutors provide valuable input on an inmate's readiness for release, a large percentage (34-45%) were neutral on this point.

Chairs' Views - Relationship with DOC



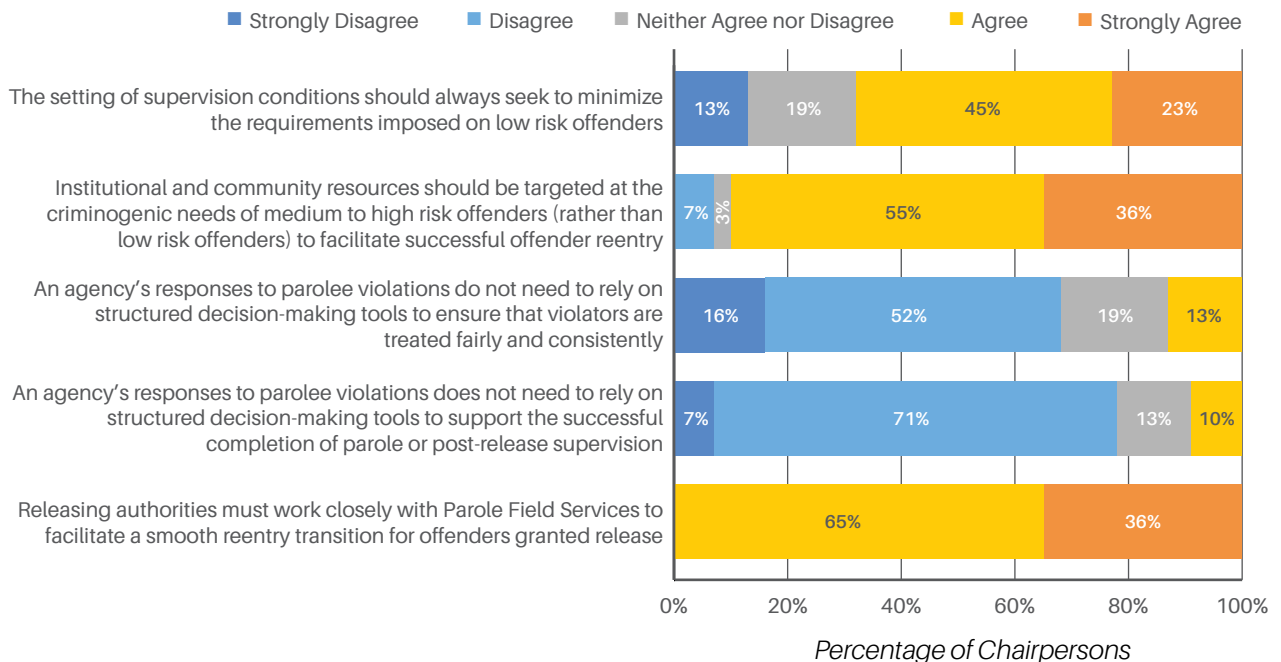
The chairs agree on the importance of what may be a shifting relationship with the DOC regarding the release and return of offenders to the community.

Chairs' Views - Qualifications of Board Members



The institutional structure of releasing authorities is shaped profoundly by how board members are appointed, and just as importantly, by the continuing absence of meaningful statutory qualifications for board membership. The views of the chairs/executive directors on this issue show a broader range of opinion or no opinion at all when compared to other challenges they confront.

Chairs' Views - Risk Assessments and Decision-Making Tools in Supervision and Revocation



Though it does not occur as frequently in release decisionmaking, structured decision tools, inclusive of risk assessments and progressive sanctions grids, are increasingly used in supervision and in responding to parolee violations. It is evident that releasing authority chairs and executive directors view structured decision tools as adding value to supervision and revocation decision-making.

Conclusion

In 2015 the Robina Institute of Criminal Law and Criminal Justice launched a national survey of releasing authorities and the U.S. Parole Commission. In 2016 we published the full findings from this survey in *The Continuing Leverage of Releasing Authorities: Findings from a National Survey*.

This Executive Summary includes some brief highlights of key findings from the larger report.

Both the larger survey report and the Executive Summary show that releasing authorities continue to retain significant and unrecognized clout in their decision-making. Their practices and policies greatly impact the achievement of the criminal justice system's fundamental goals: fairness, offender rehabilitation, and public safety. Across the spectrum of sentencing structures in which they are located, the operation of releasing authorities reflects a fair measure of resiliency set against recurrent challenges to their operation.

We hope that both the Executive Summary and the full report will be useful resources to releasing authorities and others who are interested in parole-release decision-making. The information included here is intended to provide releasing authorities and other key criminal justice system stakeholders with a comparative understanding of their colleagues' work across the nation, and contribute to the larger conversation pertaining to effective parole release and revocation practices.

To download or read a copy of the full report, visit robinainstitute.umn.edu/publications/continuing-leverage-releasing-authorities-findings-national-survey.

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