

UNIVERSITY OF MINNESOTA

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

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**LOUISIANA**



**ROBINA INSTITUTE**  
OF CRIMINAL LAW AND CRIMINAL JUSTICE

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

### Louisiana

By

Alexis Lee Watts, Julia Barlow, Eric Arch, Kevin R. Reitz

In contrast to many of the parole profiles already posted, in-state experts did not review this document. We encourage readers to use this profile as an informative guide, but to exercise caution in relying solely on the description of the parole process in Louisiana without checking additional sources. We also welcome corrections to the profile.

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### 1. Background; Sentencing System

#### a. Sentencing Framework

Since 1916, Louisiana has had some type of parole releasing authority and an indeterminate sentencing scheme. However, the authority's size, location in government, and other important attributes have changed many times in the last century. In 2012, the previous Board was abolished and the Committee on Parole was created by combining the existing Board of Pardons with additional members that sit solely on the Committee.<sup>1</sup>

Louisiana has had a sentencing commission since 1987, and its original mandate was to develop sentencing guidelines. Legislation passed in 2008 restructured the commission and changed the mandate. The commission now studies sentencing outcomes and offender re-entry but is not responsible for the overall sentencing scheme.<sup>2</sup>

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

Yes, the Committee on Parole, which is part of the Louisiana Board of Pardons and Parole.<sup>3</sup>

<http://doc.louisiana.gov/louisiana-board-of-pardons-and-parole/>

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

The Louisiana Department of Public Safety and Corrections is responsible for the supervision of released prisoners.<sup>4</sup>

<http://doc.louisiana.gov/community-corrections/>

#### d. Which Agency Has Authority Over Parole Revocation?

The Committee on Parole.<sup>5</sup>

### 2. Parole Release and Other Prison-Release Mechanisms

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

*General rules of release eligibility.* Each crime in Louisiana appears to have a statutory maximum. For example, theft of something with a value of \$25,000 or over will result in imprisonment of not more than twenty years or a fine of not more than fifty thousand dollars, or both.<sup>6</sup> Any sentence to imprisonment must be "determinate," in other words, judges sentence individuals to a maximum sentence rather than a range with minimum and maximum limits.<sup>7</sup>

Eligibility for parole is determined by type of crime and by criminal history:<sup>8</sup>

Description of case	Eligibility
First felony offense for a non-violent, non-sexual offender not sentenced as habitual offender <sup>9</sup>	After 25% of sentence is served
First felony offense	After 33 1/3 % of sentence is served
Second felony offense for a non-violent, non-sexual offender not sentenced as habitual offender	After 1/3 of sentence is served
Second felony offense	After 2/3 of sentence is served
Crime of violence with no prior crime of violence or sex-offense conviction	After 65% of sentence is served <sup>10</sup>
Second crime of violence or first or second sex-offense conviction	After 75% of sentence is served
Third or subsequent felony offense	No parole eligibility

Unusually, prisoners who have been convicted of non-violent, non-sexual offenses can also age out of the Louisiana prison system even if they are ineligible for parole. If sentenced to a term of over 30 years, a prisoner who has served at least 20 of those years and has reached the age of 45 is eligible for parole consideration. If sentenced to any term without the benefit of parole, a prisoner who has reached the age of 60 and has completed various institutional requirements may be eligible for parole.<sup>11</sup>

*Sexual and violent offenders.* Offenders convicted of armed robbery and denied parole eligibility at sentencing and offenders convicted as serial sexual offenders are not eligible for parole. As noted in the table above, offenders convicted of violent crimes are not eligible for parole until they have served 65% of their total sentence.<sup>12</sup>

*Habitual offenders.* Sentencing under the habitual offender law is discretionary with the District Attorney in all cases involving a second or subsequent felony within the five or ten-year window.<sup>13</sup> If a person is sentenced as a habitual offender, their sentence may be greatly enhanced. For some crimes, punishment under this statute may include life without parole. Some individuals sentenced under the habitual offender statute are eligible for parole, however, if their underlying crime allows parole.

*Life Sentences.* In Louisiana, a person who has received a life sentence with or without the benefit of parole for a non-violent, non-sexual crime and has met certain conditions may be considered for parole as shown below:<sup>14</sup>

Age at time of sentence	Time before eligibility if other conditions are met <sup>15</sup>
Age 18-25	25 years
Age 25-35	20 years
Age 35-50	15 years
Age 50+	10 years

In addition, a person serving a sentence of life imprisonment with the possibility of parole who was under 18 at the time of the offense is eligible for parole consideration after they have served at least 30 years of the sentence imposed (35 years for first- or second-degree murder) and met other requirements while incarcerated.<sup>16</sup> This is true regardless of whether the crime was violent or sexual in nature, but aggravated and first degree rape convictions carry an additional requirement.<sup>17</sup>

Apart from the above, offenders serving life sentences are not eligible for parole unless and until their sentence has been commuted to a fixed term of years.<sup>18</sup>

*Recurring eligibility after denial of release.* Prisoners must apply for parole rehearing with the Board, which can either rehear the parole release decision or deny a rehearing. If a request is denied, a subsequent request may be made as per the following schedule:<sup>19</sup>

Type of Crime	Initial request for rehearing	Subsequent request for rehearing
Nonviolent*	6 mos. after original date of denial	6 mos. after initial reapplication
Crime of violence	1 year after original date of denial	Every 2 yrs. after initial reapplication
Crime against person	1 year after original date of denial	Every 2 yrs. after initial reapplication
Sex offense	2 yrs. after original date of denial	Every 2 yrs. after initial reapplication
Murder 1st or 2nd deg.	2 yrs. after original date of denial	Every 2 yrs. after initial reapplication
Manslaughter	2 yrs. after original date of denial	Every 2 yrs. after initial reapplication

\*except as otherwise restricted

## b. Good Time, Earned Time, and Other Discounts

Some prisoners convicted of felonies may qualify for good time in lieu of incentive wages. Good time is earned through good behavior and performance of work or self-improvement activities. Inmates serving life sentences may be eligible for good time that will be applied to the sentence if it is ever commuted to a term of years. Many offenders earn credit at the rate of 30 days for every 30 days in custody. However, first-time violent offenders earn credit at the rate of 3 days per 17 days of incarceration. In addition, some offenders do not qualify for good time credit at all because they have committed a sex crime or multiple crimes of violence.

Credits effect the length of the sentence rather than the parole eligibility date. However, offenders who are released based on good time are placed on what is termed "good time parole." Credits will be forfeited if an offender escapes or commits battery on a police or correctional officer. Credits will also be forfeited after revocation, how-



ever, the offender may earn additional credits while re-incarcerated. In all other cases, the maximum forfeiture of good time credit is 180 days.<sup>20</sup>

### c. Principles and Criteria for Parole Release Decisions

*General statutory standard for release decisions.* A parole shall be ordered only for the best interest of society, not as an award of clemency, and upon determination by the committee that there is reasonable probability that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen so that he can be released without detriment to the community or to himself.<sup>21</sup>

*Statutory factors the board must consider.* Before release, the committee must consider all pertinent information with respect to the eligible offender, including the nature and circumstances of the offense, their prison records, the presentence investigation report, any recommendations of the chief of probation and parole officer, and any information and reports of data supplied by the staff.<sup>22</sup> The Committee may grant parole by a majority panel vote to offenders who meet certain conditions, including that:

- (a) The offender has not been convicted of a sex offense as defined by statute, or an offense which would constitute a sex offense as defined by statute, regardless of the date of conviction;
- (b) The offender has not committed any major disciplinary offenses in the twelve consecutive months prior to the parole eligibility date. A major disciplinary offense is an offense identified as a Schedule B offense by the Department of Public Safety and Corrections in the Disciplinary Rules and Procedures of Adult Offenders;
- (c) The offender has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with statutory law if such programming is available at the facility where the offender is incarcerated;
- (d) The offender has completed substance abuse treatment as applicable;
- (e) The offender has obtained a GED credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to a learning disability. If the offender is deemed incapable of obtaining a GED credential, the offender must complete at least one of the following: a literacy program, an adult basic education program, or a job skills training program; and

- (f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.<sup>23</sup>

*Special standard for sex offenders.* In cases where the offender has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of a violation of a sex offense as defined by statute and parole is permitted by law and the offender is otherwise eligible, the Committee shall consider reports, assessments, and clinical information, as available, including any testing and recommendations by mental health professionals, as to all of the following:

- (i) Whether the offender has successfully completed the sex offender program.
- (ii) Whether, in the expert's opinion, there is a likelihood that the offender will or will not repeat the criminal conduct and that the offender will or will not be a danger to society.<sup>24</sup>

In these cases, the panel must render specific findings of fact in support of its decision.<sup>25</sup> In addition, some sex offenders may be required to undergo a "truth verification examination," such as a polygraph or voice stress examination, prior to consideration for parole release.<sup>26</sup>

### d. Parole Release Guidelines

It does not appear that the Committee utilizes parole release guidelines.

### e. Risk and Needs Assessment Tools

*Statutory Mandate.* The Committee must consider the results of a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections ("DPSC").<sup>27</sup>

*Risk instruments utilized.* The Committee considers the Louisiana Risk/Need Assessments that has been developed by the DPSC.

The factors in the assessment include:

- Age at first arrest;
- History of revocations;
- History of mental health problems;
- Employment history;
- Type of criminal record;
- History of drug/alcohol abuse; and
- Number of felony convictions

Dynamic factors include:

- The offender's current age;
- Whether the offender is a confirmed security threat group (gang) member;
- Educational, vocational, or other certified treatment and rehabilitation programs completed during the present incarceration;
- Prison disciplinary conduct;
- Current prison custody level; and
- Current mental health status<sup>28</sup>

*Transparency.* The information above is available through policies published online by the DPSC and the Committee. It appears that the state may be in the process of developing a new risk/needs assessment called TIGER (Targeted Interventions Gaining Enhanced Re-entry) in collaboration with Louisiana State University. It is currently being validated and field tested.<sup>29</sup>

*Sex offenders.* Sex offenders face a higher level of scrutiny before release, and it appears that decisions about their risk to reoffend are based on expert opinion. However, it appears that all potential parolees are also evaluated using a risk assessment.<sup>30</sup>

#### **f. Medical or Compassionate Release**

After a referral by the Department of Corrections, the Committee may consider medical parole for any inmate who is not in prison for first- or second-degree murder. Eligible inmates must have an existing medical or physical condition and meet one of the following definitions:

- "Permanently disabled inmate" means any person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical impairment which can be expected to result in death or which is or can be expected to be permanently irreversible.
- "Terminally ill inmate" means any inmate who, because of an existing medical condition, is irreversibly terminally ill. For the purposes of this Section, "terminally ill" is defined as having a life expectancy of less than one year due to an underlying medical condition.

The Committee must consider the inmate's crime and criminal history, length of time served in custody, institutional conduct, an indication that the inmate represents a low risk to himself or society, and a medical assessment

of the inmate's condition. Medical parole must last for the remainder of an inmate's sentence, without any diminution for good time. The parolee must be supervised through periodic medical evaluations, and if the condition improves to the point that the inmate is no longer permanently disabled or terminally ill, medical parole may be revoked.<sup>31</sup>

#### **g. Executive Clemency Power**

The Governor may pardon, commute sentences, and remit fines and forfeitures based on a recommendation from the Louisiana Board of Pardons.<sup>32</sup> However, a first offender never previously convicted of a felony automatically receives a pardon upon completion of their sentence without any recommendation.<sup>33</sup>

#### **h. Emergency Release for Prison Crowding**

Louisiana has no statutory provisions that address prison overcrowding.

### **3. Parole Release Hearing Process**

#### **a. Format of Release Hearings**

Parole hearings are automatically scheduled within six months of the offender's parole eligibility date.<sup>34</sup> Parole hearings are conducted by a panel of three randomly selected members of the committee.<sup>35</sup> The committee may go into an executive session to discuss an offender's case prior to releasing a decision.<sup>36</sup> It may also extend an invitation to individuals to observe the proceedings and direct questions and/or request statements from anyone appearing before the committee.<sup>37</sup> These public hearings are generally held via videoconference, with the committee members at the committee headquarters in Baton Rouge and offenders appearing via videoconference from their designated prison facilities.<sup>38</sup>

A unanimous vote is required to grant parole or to recommend work release, as well as to consider any action when the offender is not present (e.g. for reasons of medical treatment). If the offender has been convicted of a crime of violence against a peace officer, his/her parole grant must win a unanimous vote of a meeting with at least five of the seven committee members present. Special conditions of release must also be approved by a unanimous vote of the panel.<sup>39</sup>



Parole can be granted by a majority vote when:

- The offender has *not* been convicted of a crime of violence or a sex offense
- The offender has not committed any major disciplinary offenses while incarcerated in the 12 months prior to the parole hearing date
- The offender has completed the mandatory minimum of 100 hours of pre-release programming, if available
- The offender has completed substance abuse treatment, if applicable and if available
- The offender has completed certain education credentials
- The offender has obtained a low-risk level designation determined by a validated risk assessment instrument.<sup>40</sup>

A majority vote is required to revoke parole, to continue or recess a meeting or hearing, to grant an offender's request for rehearing, to begin an executive session, and to recommend a reduction in sentence.<sup>41</sup>

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

The panel considers the following, non-exclusive, criteria upon which to base its decisions:

- Nature and circumstances of the crime
- Prior criminal record
- Character, social background, and emotional and physical condition
- Institutional adjustment
- Police, judicial and community attitudes toward the offender
- Parole plan
- Program participation
- Risk assessment.<sup>42</sup>

## **c. Prisoners' Procedural Rights**

The person eligible for parole must be present for the panel to consider parole, revocation, and recommendations for transitional work programs.<sup>43</sup> An individual "docketed for a public hearing may be represented by counsel," however, it appears that representation by counsel is not a right at this phase.<sup>44</sup> It is unclear whether or not individuals eligible for parole have the right to see the materials that the Board considers when making a release decision.

## **d. Victims and Other Participants**

Parole hearings are open to the public.<sup>45</sup> A victim (or spouse, or next of kin of a deceased victim) may make an appearance at a parole hearing. S/he may make an oral or written statement as to the impact of the crime.<sup>46</sup>

## **e. Burden of Proof or Standards of Persuasion**

There does not appear to be a burden of proof related to parole release hearings.

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

The decision to grant or deny parole is made and disclosed to the offender at the time of the parole hearing. The offender is also then furnished with a copy of the parole decision form.<sup>47</sup>

The Committee may grant conditional parole in which an offender is required to complete a program before release. However, physical release from custody must occur within six months. Failure to complete the prerequisite for parole within nine months will result in rescission or reconsideration of release.<sup>48</sup>

## **g. Administrative or Judicial Review of Parole Denial**

An offender may apply in writing for parole reconsideration. The application will be allowed only if the offender has not had certain disciplinary infractions in the six months prior to the reapplication request, including no disciplinary misconduct reports and no disciplinary lockdown status.<sup>49</sup> Reconsideration is only available for one of the following reasons:

- Allegation of misconduct by a committee member, substantiated by the record
- Significant procedural error by a committee member
- Significant new evidence that was not available when the hearing was conducted.<sup>50</sup>

The statute notes that reconsideration is not "a formal appeal process as parole is an administrative discretionary decision that is not subject to appeal."<sup>51</sup>

Over the years, some aspects of parole release have been subject to state or federal judicial review based on extraordinary writs. For example, in *Johnson v. Cain*, decided in 2014, an offender argued that a new statute that removed his possibility of parole was a violation of the *ex post facto* clause.<sup>52</sup> In *Smith v. Dunn*, a 1972 case, an inmate unsuccessfully attempted to use a writ of mandamus to compel the chief parole officer to explain reasons for denial of parole.<sup>53</sup>

## h. Rescission of Parole Release Dates

The Commission may rescind parole if they have granted release contingent on program completion and the offender has failed to meet the requirement.<sup>54</sup>

## 4. Supervision Practices

*Parole supervision rate.* As of Dec. 31, 2016, Louisiana had 864 parolees per 100,000 adult residents. This is much higher than the national average of 303 parolees per 100,000 adult residents.<sup>55</sup>

### a. Purposes of Supervision

The stated mission of the Division of Probation and Parole is “to protect public safety by providing for the investigation and supervision of adjudicated adult offenders through the enforcement of legal statutes and community based programs designed to facilitate the offender’s adjustment and reintegration into society.” Further, the Division claims that it “is committed to a program of offender management that will contribute to restoring the victim and community by holding the offender accountable for his actions and providing opportunities for restitution.”<sup>56</sup>

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

It appears that all parolees are initially placed on supervision.

### c. Length of Supervision Term

*Maximum supervision terms.* The parole term must be for the remainder of the prisoner’s sentence, without any decrease for good behavior. When a parolee has completed their full parole term, they will be discharged from parole unless there is a warrant, detainer related to parole violation, or indictment against them.<sup>57</sup>

*Early termination.* After a minimum of 18 months of supervised parole, the Committee may determine that a parolee merits unsupervised parole and may suspend a parolee’s supervision. This early termination of the supervision requirement is available for parolees who:

- are first- or second-felony offenders;
- have a “minimum” risk score;
- have completed all special conditions ordered by the sentencing judge or the Committee;
- are conviction free (excluding minor traffic/municipal offenses) for the period of supervision and have no pending cases;
- are not on parole for a DWI;
- are not sex offenders; and
- are current non-violent offenders.<sup>58</sup>

If an offender has a current violent offense, they may qualify for unsupervised parole after a five-year period if they meet the other conditions above and remain arrest free. A violent offender may also qualify for unsupervised parole if they have a medical/physical condition that diminishes that threat to public safety.<sup>59</sup> Note that the Committee may not terminate parole altogether until the original sentence has been served in its entirety.<sup>60</sup>

*Extension of supervision term.* It does not appear that a parole supervision term can extend beyond the length of the original sentence.

*Incentives; “goal parole.”* It does not appear that there is an incentive program related to early release from supervision or termination of parole.

### d. Conditions of Supervision

By statute, the only mandatory condition of parole for most offenders is to refrain from engaging in criminal conduct.<sup>61</sup> However, there are also several other standard conditions listed on the Department of Corrections website:

- Upon release, I will report no later than 48 hours to the Probation and Parole Office, Department of Public Safety, which is listed on this certificate.
- I will submit a monthly report by the fifth of every month until I complete my supervision. I will also report to my Parole Officer when ordered to do so.
- I will live at the address on this Certificate. If I must move from this address, I will get permission from my Parole Officer before doing so. In addition, I will not leave the State of Louisiana without written permission from my Parole Officer.

- I will not engage in any criminal activity, nor will I associate with people who are known to be involved in criminal activity. I will avoid bars and casinos. I will refrain from the illegal use of drugs or alcohol.
- I shall not have in my possession or control any firearms or dangerous weapons.
- I will work at a job approved by my Parole Officer; if I become unemployed, I will immediately report this to my Parole Officer.
- I will truthfully and promptly answer all questions directed to me by my Parole Officer.
- I will submit myself to available medical, mental health or substance abuse exams, treatment or both when ordered to do so by my Parole Officer. Also, I will submit to drug and alcohol screens at my own expense.
- I agree to visits at my residence or place of employment by my Parole Officer at any time. I also agree to searches of my person, property, residence, and/or vehicle, when reasonable suspicion exists that I am or have been engaged in criminal activity.
- I will pay supervision fees in an amount set by the Louisiana Department of Corrections pursuant to the Louisiana Revised Statutes. Payments are due the first day of each month.
- That I do hereby waive extradition to the State of Louisiana from any jurisdiction in or outside of the United States where I may be found and also agree that I will not contest any effort by any jurisdiction to return me to the State of Louisiana.
- I understand that should my parole be revoked for any reason, I will forfeit all good time earned and/or any additional credits earned or could have earned on that portion of my sentence served prior to the granting of parole. I am to serve the remainder of my sentence as of the date of my release on parole.<sup>62</sup>

If the offender does not have a high school degree or its equivalent, receiving education is a requirement of parole.

Discretionary parole conditions may include:

- Attendance at AA/NA meetings (the committee may specify the number of meetings to attend weekly);
- Mental health evaluation and treatment;
- Substance abuse evaluation and treatment;
- Payment of restitution for a direct pecuniary loss other than damage to or loss of property;
- Payment of fines and/or costs of court;
- Prohibited contact with the victim(s);
- Prohibited contact with co-defendant(s);
- Required GED, vo-tech or other educational plan;
- Compliance with treatment plan as ordered in the mental health or substance abuse treatment provider; and
- Any other special conditions the Committee may deem appropriate.<sup>63</sup>

*Sex offenders.* Offenders who have been convicted of a “sex offense” as defined by statute must agree to searches of his person, his property, his place of residence, his vehicle, or his personal effects, or any or all of them, at any time, by a law enforcement officer, duly commissioned in the parish or municipality where the sex offender resides or is domiciled, designated by his agency to supervise sex offenders, with or without a warrant of arrest or with or without a search warrant, when the officer has reasonable suspicion to believe that the person who is on parole is engaged in or has been engaged in criminal activity for which the person has not been charged or arrested while on parole.<sup>64</sup>

*Modification of conditions.* The Committee may modify supervision conditions (by lessening those conditions) if a parolee has obeyed the conditions of parole and no longer needs the supervision and guidance initially imposed. Additional conditions of parole may be imposed as the result of a parole violation in lieu of (or in addition to) other intermediate sanctions. However, the Committee must approve of any new conditions set by the parole officer in response to a violation.<sup>65</sup>

*Incentives; lighter conditions.* While it appears that there is a relationship between good behavior on parole and receiving lighter conditions, there does not appear to be a formal incentive program.

## **e. Fees and Other Financial Sanctions**

*Parole supervision fees.* Parolees may be required to pay supervision fees of up to \$63 per month based on their ability to pay as determined by the Committee.<sup>66</sup>

*Payments for drug and alcohol testing and treatment.* Parolees must submit to drug and alcohol screening at their own expense.<sup>67</sup>

*Restitution.* The trial court must order restitution for any financial costs incurred by a victim in connection with a criminal prosecution. The court can order payment in installments if a defendant is indigent.<sup>68</sup> The Committee may impose restitution to the victim as a condition of parole in any case. The Committee must impose restitution to the victim or the Crime Victim’s Reparation Fund (if the victim has already received payment through the Fund) in any case where the victim has suffered damage or loss of property. However, the Committee must take into account the ability to pay and must not revoke parole unless the parolee willingly fails to pay restitution. The condition of parole must remain in place until the money has been paid or parole expires.<sup>69</sup>

*Child support.* It does not appear that payment of child support is a standard condition of parole, however, it also appears that there is nothing that would prohibit the Committee from requiring it as a special condition if it had been ordered by a court.

*Other financial obligations.* Parolees may be required to pay fines and court costs as a condition of parole.<sup>70</sup>

*Incentives; reduction of economic sanctions.* There do not appear to be economic incentives related to parole.

## 5. Parole Revocation

*Parole revocation proceedings.* In 2016, 1,439 parolees returned to incarceration due to conviction for a new crime and 1,232 more parolees returned to incarceration through parole revocation. Further, around 1,396 additional parolees returned to incarceration through “other/unknown” means.<sup>71</sup>

*Absconders.* There is no current data on absconders in the Louisiana system.

### a. Principles and Criteria of “When to Revoke”

*Policy considerations.* In 2011, the legislature allowed for administrative sanctions in response to technical violations.<sup>72</sup> In 2015, the legislature somewhat shortened jail penalties for parole revocations based on technical violations.<sup>73</sup> In March 2017, the Louisiana Justice Reinvestment Task Force released a major report on ways to reduce the prison population in the state. One suggested reform was to further “address gaps and deficiencies in swift, certain, and proportional sanctions for violations of probation and parole conditions.”<sup>74</sup> In 2017, the legislature reduced jail penalties for parole revocations based on technical violations even further.<sup>75</sup>

*Legal predicates.* Revocation can occur if a parolee violates or attempts to violate any condition of parole.<sup>76</sup>

*Statutorily enumerated factors.* One important initial factor is whether the Committee has decided that the parolee is eligible for administrative sanctions. If so, certain violations may be addressed by parole officers in the field rather than in revocation proceedings. If not, or if the technical violation is too serious to be addressed at that level, revocation proceedings may begin.<sup>77</sup>

The Committee may order revocation of parole on determination that the parolee has failed, without a satisfactory excuse, to comply with a condition of his parole; and, that the violation of the parole condition involves the commission of another felony, or misconduct including a substantial risk that the parolee will commit another felony, or misconduct indicating that the parolee is unwilling to comply with proper conditions of parole.<sup>78</sup>

### b. Revocation Guidelines

There do not appear to be revocation guidelines in use.

### c. Risk and Needs Assessment Tools

There does not appear to be a risk assessment utilized at the revocation phase.

### d. Preliminary and Final Revocation Procedures

*Arrest or summons.* If a parole officer has reasonable cause to believe that a parolee has violated or is attempting to violate a condition of parole and that an emergency exists (i.e. an immediate risk to the public or the parolee), the parole officer may arrest the parolee without a warrant.<sup>79</sup> If a parole officer has reasonable cause to believe that a parolee has violated conditions of parole but is not an immediate risk, the parole officer can inform the chief officer who will send the parolee’s file to the Committee. The Committee can decide to either issue a warning, change the conditions of parole, or issue a warrant for the parolee’s arrest.<sup>80</sup>

If a parolee is convicted of a new felony and the appeals process has been exhausted, the Committee will automatically revoke parole, and there is no hearing process as described below.<sup>81</sup>

*Preliminary hearing.* If a parolee is arrested, there must be a “prerevocation hearing” conducted by a hearing officer within a reasonable time to determine whether there is probable cause to detain the parolee pending orders of the Committee.<sup>82</sup> With the authorization of the Committee, a parolee may be released on bond.<sup>83</sup>

*Final hearing.* The final hearing is conducted by a panel with the purpose of determining whether there is a violation of parole conditions, and whether that violation warrants re-incarceration.<sup>84</sup> At the hearing, which is public, the parolee must be present, may be represented by counsel, and usually may have one witness testify on his or her behalf.<sup>85</sup> The alleged violations are read and



the parolee is asked to respond to each as guilty or not guilty.<sup>86</sup> The parolee is encouraged to make a statement on his or her own behalf, and the board may request oral testimony from any participant who has knowledge about the violation.<sup>87</sup>

The parolee can admit to the violation and waive the right to a final hearing. In doing so, the panel will make a final decision based on the record.<sup>88</sup>

### **e. Offenders' Procedural Rights**

Before the preliminary hearing, the parolee must receive written notification of the charges pending against him, his rights to a hearing, and the date, time, and location of the hearing. The parolee may retain an attorney, or, if indigent, can be represented by appointed counsel.<sup>89</sup> The parolee may present documentary evidence and favorable witnesses including friends and family.<sup>90</sup>

### **f. Victims and Other Participants**

The final revocation hearing is a public hearing.<sup>91</sup>

### **g. Burden of Proof or Standards of Persuasion**

There does not appear to be a specific standard of evidentiary persuasion at the revocation phase.

### **h. Revocation and Other Sanctions**

Besides parole revocation, the panel in a revocation hearing may make one of the following decisions:

- "reprimand and restore to parole supervision with or without special conditions imposed;
- unsatisfactory termination of parole if full term date of parole supervision has passed;
- participation in a transitional work program for up to six months in lieu of revocation;
- as an alternative to incarceration, in lieu of revocation, be committed to a community rehabilitation center or a substance abuse treatment program operated by, or under contract with, the Department of Public Safety and Corrections for a period of time not to exceed six months, provided that the period of such commitment does not extend beyond the full parole term;
- as an alternative to incarceration, in lieu of revocation, participation in other specific therapeutic programs as approved by the Department of Public Safety and Corrections and/or the Division of Probation and Parole;
- do not revoke, continue on supervision."<sup>92</sup>

### **i. Issuing Parole Revocation Decisions**

The panel advises the offender of their decision orally at the conclusion of the hearing, and the offender is furnished with a copy of the parole revocation decision form. This form is also forwarded to the Probation and Parole district office assigned to the offender.<sup>93</sup>

### **j. Administrative or Judicial Review of Parole Revocation Decisions**

An offender may petition for a writ of habeas corpus on the basis of parole being improperly revoked.<sup>94</sup>

### **k. Re-Release Following Revocation**

If the offender has been returned to incarceration for a parole violation that does not include a new sentence for a felony offense, he or she is returned to serve the remainder of the original sentence as of the date of release on supervision. The Committee may allow the parolee to receive flat credit for good behavior while on parole supervision.<sup>95</sup>

## **6. Parole Board; Institutional Attributes**

### **a. Source of Authority and Jurisdiction**

The Committee has statutory authority "to determine the time and conditions of release on parole of any person who has been convicted of a felony and sentenced to the Louisiana Department of Public Safety and Corrections and who is statutorily eligible for parole consideration; and to determine and impose sanctions for violation of the conditions of parole."<sup>96</sup>

### **b. Location in Government**

The Committee on Parole is a committee within the Board of Pardons.<sup>97</sup>

### **c. Purpose (Vision/Principles/Rationale)**

The Board's mission is "[t]o serve the citizens of Louisiana through informed decision-making, thereby promoting public safety, addressing the needs of crime victims, and to facilitate successful reentry for offenders who have appropriately prepared for community supervision."

Its vision is: “The Louisiana Board of Pardons & Parole, guided by evidence based principles, shall:

- Render just determination in regard to parole release and revocations, thereby maximizing the restoration of human potential;
- Ensure crime victims have a voice in the decision-making process;
- Use appropriate Department of Corrections and community resources to facilitate an offender’s successful transition from confinement to the community;
- Impose reasonable conditions of release consistent with the goal of structured reintegration of the offender;
- Hold accountable those offenders who violate the conditions of release;
- Foster a positive relationship with all stakeholders;
- Administer the clemency process with recommendation to the Governor fully commensurate with public safety and due consideration;
- Strive to be a continuously learning organization.”<sup>98</sup>

#### **d. Appointment and Qualifications of Board Members**

There are seven members of the Board of Pardons. The Committee on Parole is a committee within the Board of Pardons, and is composed of five members of the Board of Pardons plus two at-large members appointed by the Governor. All of the committee members are appointed by the Governor, subject to confirmation by the Louisiana Senate. The Chairperson of the Board of Pardons is the chief administrative officer for the committee.<sup>99</sup>

Additionally, in a given hearing, the warden of the correctional facility in which the offender is incarcerated serves as an ex-officio member of the Board. He is not a voting member, nor is he counted for the purposes of the members necessary to take Board action.<sup>100</sup>

*Qualifications?* Members of the Commission must have a bachelor’s degree and at least five years of experience in the field of penology, corrections, law enforcement, sociology, law, education, social work, medicine, or a combination thereof. If s/he does not have a bachelor’s degree, s/he must have at least seven years of experience in the above areas.<sup>101</sup>

#### **e. Tenure of Board Members, Ease of Removal**

Members of the Board of Pardons serve concurrently with the Governor.<sup>102</sup> The Governor may serve up to two consecutive terms of four years.<sup>103</sup> It is unclear within the statute how long the at-large members serve.

#### **f. Training and Continuing Education**

Members appointed to the board are required to complete, within 90 days of their appointment, a comprehensive orientation program. They also must complete 8 hours of in-service training annually.<sup>104</sup> Training components include an emphasis on data-driven decision making, evidence-based practices, stakeholder collaboration, and recidivism reduction.<sup>105</sup>

#### **g. Workload**

Most individuals on supervision in Louisiana are “good time” parolees; in other words, they were released due to good time earned in prison rather than because of the parole board. In 2016, for example, there were 474 people released on parole but 13,484 released due to “good time” provisions.<sup>106</sup>

In 2016, the Board granted parole in 44% of release hearings, authorizing parole for a total of 647 individuals (this means the Board conducted around 1,470 release hearings). However, in 189 cases, the parole was contingent on completing specific programming prior to release.<sup>107</sup>

#### **h. Reporting and Accountability of Parole Board**

The Committee must submit an annual report to the Secretary of the Department of Public Safety and Corrections by February 1 each year. The report must “include statistical and other data with respect to work the committee may make of sentencing, parole, or related functions, and may include recommendations for changes considered necessary to improve its effectiveness.”<sup>108</sup> This report is available to the public.<sup>109</sup>

For committee business meetings, audio recordings and written minutes are available upon request.<sup>110</sup> By statute, there cannot be communication with the committee regarding any inmate except in an open hearing or by written letter addressed to the board. All communication with the committee is a public record subject to inspection, unless the communication is from a victim or a public official.<sup>111</sup>

Louisiana has a public records act that requires disclosure of certain documents held by public agencies, but that also shields the Department of Public Safety and Corrections from having to disclose certain information.<sup>112</sup> The Commission “may disseminate information regarding an offender’s criminal convictions without restriction.”<sup>113</sup>



## END NOTES

- <sup>1</sup> La. Bd. of Pardons & Parole, 2016 *Annual Report* at 6–9 (2017), [http://www.doc.la.gov/media/1/1.25.17.2016.annual.report\\_final.pdf](http://www.doc.la.gov/media/1/1.25.17.2016.annual.report_final.pdf) [hereinafter 2016 *Annual Report*].
- <sup>2</sup> La. Sentencing Comm’n, *Report of the Louisiana Sentencing Commission* at 3 (2014), [http://www.lcsl.la.gov/sentencing\\_commission/2014\\_BiAnnual\\_Report\\_LLSC\\_final\\_reduced.pdf](http://www.lcsl.la.gov/sentencing_commission/2014_BiAnnual_Report_LLSC_final_reduced.pdf).
- <sup>3</sup> La. Stat. Ann. § 15:574.2 (2018).
- <sup>4</sup> La. Stat. Ann. § 36:401(B)(2), (3) (2018).
- <sup>5</sup> La. Stat. Ann. § 15:574.9(A), (B) (2018).
- <sup>6</sup> La. Stat. Ann. § 14:67(B)(1) (2018).
- <sup>7</sup> La. Code. Crim. Proc. Ann. art. 879.
- <sup>8</sup> La. Stat. Ann. §§ 15:574.4, 15:529.1(A)(1)–(2)(b) (2018).
- <sup>9</sup> Habitual offenders are, by definition, those who have been convicted of another felony within the past 10 years, La. Stat. Ann. § 15:529.1(C)(2) (2018); Louisiana’s habitual offender statute is quite complex and several of its provisions create parole ineligibility.
- <sup>10</sup> Note that offenders sentenced before August 2016 must serve 85% of their sentence for violent crimes. See La. Act No. 509 (2016).
- <sup>11</sup> La. Stat. Ann. § 15:574.4(A)(2), (4) (2018).
- <sup>12</sup> La. Stat. Ann. § 15:574.4(B)(1) (2018).
- <sup>13</sup> La. Stat. Ann. § 15:529.1(C), (D)(1)(a) (2018).
- <sup>14</sup> La. Stat. Ann. § 15:574.4(B)(2) (2018).
- <sup>15</sup> Conditions include: 1) No major disciplinary infractions within twelve consecutive months prior to the parole hearing date; 2) Completion of the mandatory minimum 100 hours of pre-release programming; 3) If applicable, completion of a substance abuse program; 4) GED certification, or, if incapable: a literacy program, an adult basic education program, or a job skills training program; 5) Low-risk level designation.
- <sup>16</sup> La. Stat. Ann. § 15:574.4(D)(1) (2018).
- <sup>17</sup> La. Stat. Ann. § 15:574.4(D)(1)(h) (2018) (“If an offender is convicted of aggravated or first degree rape, he shall be designated a sex offender and upon release shall comply with all sex offender registration and notification provisions as required by law.”)
- <sup>18</sup> La. Stat. Ann. § 15:574.4(B)(1) (2018).
- <sup>19</sup> La. Admin. Code tit. 22, pt. XI, § 705 (2018).
- <sup>20</sup> La. Stat. Ann. §§ 15:571.3(A)(1), (B)(1)(a); 15:571.4(A)–(B)(4) (2018).
- <sup>21</sup> La. Stat. Ann. § 15:574.4.1(B) (2018).
- <sup>22</sup> La. Stat. Ann. § 15:574.4(C)(1) (2018).
- <sup>23</sup> La. Stat. Ann. § 15:574.2(C)(2) (2018).
- <sup>24</sup> La. Stat. Ann. § 15:574.4(C)(2)(a) (2018).
- <sup>25</sup> La. Stat. Ann. § 15:574.4(C)(2)(b) (2018).
- <sup>26</sup> La. Stat. Ann. § 15:574.4.3(F)(3) (2018).
- <sup>27</sup> La. Stat. Ann. § 15:574.2(C)(2)(f) (2018).
- <sup>28</sup> La. Bd. of Pardons & Parole, Committee on Parole Policy 07.701-POL (Aug. 2012), <http://doc.louisiana.gov/media/1/2013/07/07-701-POL-PAROLE-DECISIONS.pdf>.
- <sup>29</sup> La. Dep’t of Corr. *Legislative Report for HCR 25 of the 2016 Regular Session* (2016), [http://house.louisiana.gov/housefiscal/HCR25\\_Responses/DOC%20Legislative%20Report%20for%20HCR%2025%20of%20the%202016%20Regular%20SessionNL.pdf](http://house.louisiana.gov/housefiscal/HCR25_Responses/DOC%20Legislative%20Report%20for%20HCR%2025%20of%20the%202016%20Regular%20SessionNL.pdf).
- <sup>30</sup> La. Stat. Ann. § 15:574.4(C)(2)(a), (b) (2018).
- <sup>31</sup> La. Stat. Ann. § 15:574.20(B), (D), (F) (2018).
- <sup>32</sup> La. Stat. Ann. § 15:572(A) (2018).
- <sup>33</sup> La. Stat. Ann. § 15:572(B) (2018). However, a first offender pardon will not be issued unless the offender has paid all court costs related to the case.
- <sup>34</sup> La. Bd. of Pardons & Parole, Parole and Pardon Board Policy, 05-500-DIR Parole Hearing Process, <http://doc.louisiana.gov/parole-and-pardon-board-policies/> (last visited Jul. 10, 2018).
- <sup>35</sup> La. Admin. Code tit. 22, pt. XI, ch. 5, §§ 501, 503.
- <sup>36</sup> *Id.* § 504(E).
- <sup>37</sup> *Id.* § 504(F), (G).
- <sup>38</sup> *Id.* § 511(C).
- <sup>39</sup> *Id.* § 514(A).
- <sup>40</sup> *Id.* § 514(B)(1).
- <sup>41</sup> *Id.* § 514(B)(2)–(6).
- <sup>42</sup> La. Admin. Code tit. 22, pt. XI, ch. 7, § 701(C).
- <sup>43</sup> La. Admin. Code tit. 22, pt. XI, ch. 5, § 511(B)(1).
- <sup>44</sup> La. Bd. of Pardons & Parole, Committee on Parole Policy 05-505-POL, § (B)(1)(b) <http://doc.louisiana.gov/parole-and-pardon-board-policies/>.
- <sup>45</sup> La. Admin. Code tit. 22, pt. XI, ch. 5, § 501.
- <sup>46</sup> *Id.* § 510(H).
- <sup>47</sup> La. Admin. Code tit. 22, pt. XI, ch. 7, § 703(A).
- <sup>48</sup> *Id.* § 711.
- <sup>49</sup> *Id.* § 705(C).
- <sup>50</sup> *Id.* at § 705(D)(2)(c).
- <sup>51</sup> *Id.* at § 705(D).
- <sup>52</sup> *Johnson v. Cain*, 68 F. Supp. 3d 593 (E. D. La., 2014).
- <sup>53</sup> *Smith v. Dunn*, 268 So. 2d 670 (La. 1972).
- <sup>54</sup> La. Admin. Code tit. 22, pt. XI, ch. 7, § 711.
- <sup>55</sup> Danielle Kaebler, Bureau of Justice Statistics, Probation and Parole in the United States, 2016 at 18 (Appendix Table 5) (Apr. 2018), <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.
- <sup>56</sup> La. Dept. of Public Safety & Corrections, Probation Parole Overview, <http://doc.louisiana.gov/probation-parole-overview> (last visited Jul. 10, 2018).
- <sup>57</sup> La. Stat. Ann. § 15:574.6 (2018).
- <sup>58</sup> La. Admin. Code tit. 22, pt. XI, ch. 15, § 1501.
- <sup>59</sup> *Id.*
- <sup>60</sup> La. Stat. Ann. § 15:574.6 (2018), La. Admin. Code. tit. 22, pt. XI, ch. 15, § 1503.
- <sup>61</sup> La. Stat. Ann. § 15:574.4.2(A)(1) (2018).
- <sup>62</sup> La. Dep’t of Corr., *Parole Conditions*, <http://doc.louisiana.gov/supervision-conditions> (last visited Jul. 10, 2018).
- <sup>63</sup> La. Admin. Code tit. 22, pt. XI, ch. 9, § 901.
- <sup>64</sup> La. Stat. Ann. § 15:574.4.2(A)(3) (2018).
- <sup>65</sup> La. Stat. Ann. § 15:574.7(A), (C)(1)(b) (2018).
- <sup>66</sup> La. Stat. Ann. § 15:574.4.2(A)(2)(e) (2018).
- <sup>67</sup> La. Dep’t of Corr., *Parole Conditions*, <http://doc.louisiana.gov/supervision-conditions> (last visited Jul. 10, 2018).
- <sup>68</sup> La. Code Crim. Proc. Ann. Art. 883.2(A), (D).
- <sup>69</sup> *Id.*; La. Admin. Code tit. 22, pt. XI, ch. 9, § 901(C)(1).
- <sup>70</sup> La. Admin. Code tit. 22, pt. XI, ch. 9, § 901(C)(1).
- <sup>71</sup> Kaebler, *supra* note 55, at 22 (Appendix Table 7).
- <sup>72</sup> 2011 La. Sess. Law Serv. Act 104 (West), codified as La. Stat. Ann. § 15:574.7(B) (2018).
- <sup>73</sup> 2015 La. Sess. Law Serv. Act 299 (West) codified as L.A.C. Title 15 Part II Ch. 5 § 574.9 (2018).
- <sup>74</sup> Louisiana Justice Reinvestment Task Force Report, Report and Recommendations, 46–47, [http://www.lasc.org/documents/LA\\_Task\\_Force\\_Report\\_2017\\_FINAL.pdf](http://www.lasc.org/documents/LA_Task_Force_Report_2017_FINAL.pdf) (last visited Jul. 10, 2018).
- <sup>75</sup> 2017 La. Sess. Law Serv. Act 280 (West), codified as La. Stat. Ann. § 15:574.9(H)(1)(a) (2018).
- <sup>76</sup> La. Stat. Ann. § 15:574.9(B) (2018).
- <sup>77</sup> La. Stat. Ann. § 15:574.7(B)(1), (B)(2)(e) (2018).
- <sup>78</sup> La. Stat. Ann. § 15:574.9(B) (2018).
- <sup>79</sup> La. Stat. Ann. § 15:574.8(B) (2018).
- <sup>80</sup> La. Stat. Ann. § 15:574.7(D)(1) (2018).
- <sup>81</sup> La. Admin. Code tit. 22, pt. XI, ch. 11, § 1101(A).
- <sup>82</sup> La. Stat. Ann. § 15:574.7(D)(1)(c) (2018).
- <sup>83</sup> La. Admin. Code tit. 22, pt. XI, ch. 11, § 1101(B)(2).
- <sup>84</sup> *Id.* § 1113(A).
- <sup>85</sup> *Id.* § 1113(B), (C).
- <sup>86</sup> *Id.* § 1113(E)(2).
- <sup>87</sup> *Id.* § 1113(F).
- <sup>88</sup> La. Bd. of Pardons & Parole, Parole in Louisiana at 4, <http://doc.louisiana.gov/media/1/2009/10/PAROLE-IN-LOUISIANA.pdf> (last visited Jul. 10, 2018).
- <sup>89</sup> Though it appears that all indigent parolees are appointed counsel, this is somewhat unclear.
- <sup>90</sup> La. Admin. Code tit. 22, pt. XI, ch. 11, § 1105(B)(1), (C)(1)–(2).
- <sup>91</sup> *Id.* § 1113(B).
- <sup>92</sup> *Id.* § 1115(A).
- <sup>93</sup> *Id.* § 1115(C).

## END NOTES

<sup>94</sup> See e.g., *Baggett v. State*, 350 So.2d 652 (La. 1977); *State ex rel. Clark v. Hunt*, 337 So.2d 438 (La. 1976).

<sup>95</sup> La. Admin. Code tit. 22, pt. XI, ch. 13, § 1301(A)(1)–(2).

<sup>96</sup> La. Admin. Code tit. 22, pt. XI, ch. 1, § 101.

<sup>97</sup> La. Bd. of Pardons & Parole, About The Board, <http://doc.louisiana.gov/about-the-board/> (last visited Jul. 10, 2018).

<sup>98</sup> La. Bd. of Pardons & Parole, Parole and Pardon Board Policies, 01-101 Vision and Mission of the Board, <http://doc.louisiana.gov/parole-and-pardon-board-policies/> (last visited Jul. 10, 2018).

<sup>99</sup> La. Bd. of Pardons & Parole, About The Board, <http://doc.louisiana.gov/about-the-board/>; La. Admin. Code tit. 22, pt. XI, ch. 1, § 103(A), (B).

<sup>100</sup> La. Bd. of Pardons & Parole, About The Board, <http://doc.louisiana.gov/about-the-board/>; La. Admin. Code tit. 22, pt. XI, ch. 1, § 103(A)(1)(a).

<sup>101</sup> La. Admin. Code tit. 22, pt. XI, ch. 1, § 103(D).

<sup>102</sup> La. Stat. Ann. § 15:572.1(A)(1)(a) (2018).

<sup>103</sup> La. Const. Art. IV, § 3.

<sup>104</sup> La. Admin. Code tit. 22, pt. XI, ch. 1, § 117.

<sup>105</sup> La. Stat. Ann. § 15:574.2(A)(9)(b) (2018).

<sup>106</sup> See 2016 Annual Report, *supra* note 1 at 26.

<sup>107</sup> *Id.* at 32.

<sup>108</sup> La. Admin. Code tit. 22, pt. XI, ch. 1, § 102(A)(8); see 2016 Annual Report, *supra* note 1.

<sup>109</sup> 2016 Annual Report, *supra* note 1.

<sup>110</sup> La. Admin. Code tit. 22, pt. XI, ch. 5, § 507(C).

<sup>111</sup> La. Stat. Ann. § 547.2.1(A), (B) (2018).

<sup>112</sup> La. Stat. Ann. § 44:3(A) (2018).

<sup>113</sup> La. Admin. Code tit. 22 pt. XI, ch. 1, § 122(E).