120 CMR 100.00: DEFINITIONS

Section

100.00: Definitions

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As used in 120 CMR 100.00 through ~~902.12~~900.05 the following words and phrases have the following meanings:

Advisory Board of Pardons. The Massachusetts Parole Board ~~M~~members act as the Advisory Board of Pardons receiving all petitions for executive clemency, whether for a pardon of offense or commutation of sentence, and making a report and recommendation to the Governor regarding the petitions. M.G.L. c. 127, §§ 152, 154.

Aggregation. The calculation process by which the parole ineligibility periods of consecutive sentences are combined,~~added,~~ thereby producing a single parole eligibility date. ~~The aggregation of parole ineligibility periods doesnot always follow the rules which pertain to aggregation of sentence structures; the two methods of calculation are distinct and separate.~~

Commutation of Sentence. The executive clemency power of the Governor, upon recommendation of the Advisory Board of Pardons, by and with the advice of the Executive Council (also known as the Governor's Council), as conferred by the Massachusetts Constitution, to effect the substitution of a lesser sentence than that previously imposedby a court of the Commonwealth. Commutations may be granted with conditions.

Concurrent Sentence. A sentence to be served at the same time, in whole or in part, with ~~as~~ another sentence. When~~re~~ an inmate who is serving one sentence receives an additional sentence, the Massachusetts Parole Board shall consider such sentence to be concurrent unless the mittimus expressly directs that the sentences ~~they~~ are to be served consecutively.

Consecutive Sentence. A sentence to be served "from and after" another sentence. The Massachusetts Parole Board will consider the sentences in the order named in the mittimuses.

CORI Registration~~Certification~~. ~~Those certifications~~ Registration, granted by the Department of Criminal Justice Information Services (DCJIS) through the Victim Notification Registry, for a victim of a crime, family member of a homicide victim, witness, parent/guardian of a minor victim, or parent/guardian of a minor witness, as defined by M.G.L. c. 258B, that allows access to all available CORI of the person arraigned or convicted of said crime. ~~granted by the Criminal History Systems Board (CHSB) pursuant to M.G.L. c. 258B or~~ .M.G.L. c. 6, § 178A~~172(c)~~.

County Correctional Institutions (~~"~~houses of correction~~"~~ or ~~"~~jails~~"~~). ~~Those penal~~Custodial institutions that ~~which~~ are maintained by county governments and governed by county Sheriff's Departments.

~~Criminal History Systems Board (CHSB). The agency established by M.G.L. c. 6, § 168 which regulates the installation, operation, and maintenance of the data processing and data communication systems known as the Criminal Offender Record Information System and performs other duties as provided in 803 CMR 2.00 *et seq* and the general laws.~~

Criminal Justice Agency. A state or federal court with criminal jurisdiction or a juvenile court; federal, state, county or local police; any governmental agency which incarcerates or rehabilitates juvenile offenders as its principal function; or any government agency that performs as its principal function activities relating to crime prevention, including research or the sponsorship of research; the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders, or the collection, storage, dissemination or usage of criminal offender record information. ~~which has a primary responsibility to perform duties relating to:~~
~~crime prevention including research or the sponsorship of research;~~
~~the apprehension, prosecution, defense, adjudication, incarceration or rehabilitation of criminal offenders; or~~
~~the collection, storage, dissemination or usage of CORI.~~

Criminal Offender Record Information (~~"~~CORI~~"~~). Records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter

276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto. CORI shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. CORI shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 is adjudicated as an adult, information relating to such criminal offense shall be CORI. CORI shall not include information concerning any offenses not punishable by incarceration.
~~Records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and which relate to the nature or disposition of a criminal charge, including an arrest, pretrial proceedings, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. 803 CMR 2.03. CORI does not include evaluative information, certain statistical and analytical reports, or intelligence information as defined by 803 CMR 2.03; the dissemination of such evaluative information is restricted by M.G.L.c. 6, §§ 172 and 178.~~

Department of Correction. The agency of the Commonwealth that manages and oversees ~~which administers~~ state correctionalinstitutions. M.G.L. c. 27, § 1.

The Department of Criminal Justice Information Services (DCJIS). The Commonwealth agency statutorily designated to provide a public safety information system and network to support data collection, information sharing, and interoperability for the Commonwealth's criminal justice and law enforcement communities; to oversee the authorized provision of CORI to the non-criminal justice community; to provide support to the Criminal Record Review Board (CRRB); to operate the Firearms Records Bureau (FRB); and to operate and technically support the Victim Notification Registry (VNR).

Detainer. A warrant for temporary ~~or permanent~~ custody ~~that~~which authorizes the detention of a parolee pending a preliminary revocation hearing or pending the return of a parole violator to penal custody. M.G.L. c. 127, §§ 149 and 149A.

Earned Good Time. An inmate serving any sentence of imprisonment may earn deductions from the maximum term of incarceration for his or her satisfactory performance in an approved employment, educational, or vocational training program or activity.~~when the inmate participates in and satisfactorily completes programs which make him or her eligible to receive earned good time deductions.~~ The custodial authority calculates such deductions pursuant to M.G.L. c. 127, § 129D. Earned good time deductions reduce the maximum term of incarceration and reduce the maximum term of parole supervision. Where the inmate is serving a state prison sentence, earned good time deductions also reduce the minimum term of incarceration.

Evaluative Information. Records, data or reports regarding~~concerning identifiable~~ individuals charged with a crime and compiled by criminal justice agencies that~~which~~ appraise mental conditions, physical conditions,extent of social adjustment, rehabilitative progress, and the like, and that ~~which~~ are primarily used in connection with bail, pre-trial or post-trial proceedings, sentencing, correctional and rehabilitative planning, and probation or parole decisions. ~~See also 803 CMR.~~

Evidentiary Standards.

(a) Probable Cause ~~to Believe~~. Sufficient reason based on known facts and circumstances to believe an individual has committed, is committing, or is going to commit a crime or behavior constituting a danger to self or to the community. This standard is utilized to issue a parole warrant pursuant to M.G.L. c. 127, § 149.~~An apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent individual to believe that the parolee constitutes a danger to self or to the community, thus justifying the issuance of a parole warrant pursuant to M.G.L. c. 127, § 149.~~

(b) Reasonable Belief. ~~A~~ ~~b~~Belief based on objective, specific and articulable facts, and inferences drawn from those facts. ~~known to a parole officer which belief is reasonable under the circumstances.~~ This standard is utilized to issue a warrant for temporary custody pursuant to M.G.L. c. 127, § 149A and 120 CMR 303.04.

(c) Preponderance of the Evidence. The standard used to ~~applied at the final revocation hearing where the Parole Board Members~~ determine whether based upon all of the evidence, it is more likely than not that allegations against an individual are true. This standard is utilized by Parole Board members at final revocation hearings. See 120 CMR 303.24. ~~the parolee has violated a condition of~~

parole.

(d) Clear and Convincing Evidence. The standard used in considering whether the evidence presented is highly and substantially more probable to be true than not. This standard is applied by the Advisory Board of Pardons in assessing facts offered in a pardon or commutation petition. See 120 CMR 901 and 902, *et seq*.

Felony. As defined by M.G.L. c. 274, § 1, a felony is a crime punishable by death or imprisonment in state prison.

Forthwith Sentence. A state prison or house of correction sentence thatwhich an individual is to

begin serving immediately and thatwhich is imposed pursuant to the provisions of M.G.L. c. 279, § 27 or 28. Forthwith state prison sentences extinguish prior house of correction sentences. and reformatory sentences. Forthwith house of correction sentences do not extinguish prior reformatory sentences. In such instances, the reformatory sentence is served concurrently with the forthwith house of correctionsentence.

Full Board. The total number of Mmembers of the Parole Board who the Governor has appointed to serve on the Board, with the advice and consent of the Executive Council (also known as the Governor's Council), as provided in have been appointed to the Boardby the Governor with the advice and consent of the Executive Council as provided in M.G.L. c. 27, § 4. The Majority of the full Board is five where there are seven members currently appointed and voting. M.G.L. c. 127, § 133A. The majority of the full Board is four where there are six or seven Mmembers currently appointed and voting, and. The majority is three where there are five or fewer Mmembers. currently appointed. Pursuant to M.G.L. c. 30A, § 1C, the Parole Board is exempt from open meeting laws promulgated by M.G.L. c. 30A, §§ 18-25.

(a) Special Board Mmembers are appointed by the Secretary of the Executive Office of Public Safety and Security pursuant to M.G.L. c. 27, § 7, and are not counted in determining the size or membership of the fullBoard.

(b) Where one or more Board Mmembers are disqualified from hearing a case, otherwise required by law to be conducted by the full Board, the remaining Mmembers comprise the full Board. See generally, M.G.L. c. 127, § 133A; 120 CMR 300.02(4).

Good Conduct Deductions from Sentence.

(a)

(a) Statutory Good Time. Statutory good time refers to the reduction of a maximum term of imprisonment as authorized by state law and as calculated by the custodial authorities pursuant to M.G.L. c. 127, §1 29. Sentences for offenses committed on or after July 1, 1994 do not receive statutory good time credits.

Governor's Pardon/Commutation Guidelines. General policy statements that the Governor publishes published periodically by the Governor to assist the Advisory Board of Pardons during its consideration of petitions for pardon and commutation petitions.

Habitual Criminal. An offender defendant, as defined in M.G.L. c. 279, § 25(a). having two previous convictions and having received terms of not less than three years each and who does not show that he has been pardoned for either crime on the ground that he was innocent, may be sentenced by the court as a "habitual criminal" upon conviction of a third felony. M.G.L. c. 279, § 25. Such statute requires that a sentence imposed upon a defendant after being found a "habitual criminal" be the maximum state prison term allowed by law for the crime of which the defendant was found guilty.

Habitual Offender. An offender, as defined in M.G.L. c. 279, § 25(b)-(d). Habitual offenders are not eligible for parole or other sentence deduction.

Hearing Panel. Mmembers of the Parole Board or Hearing Examiners who conduct parole release, rescission, or preliminary, or final revocation hearings. A Parole hearing panel may consist of anywhere from one to seven Board members, depending on the sentence structure and type of hearing.

House of Correction Sentence. M.G.L. c. 279, §§ 6 and 15, a sentence to a house of correction contains a maximum term of 2½ years for any one offense. Parole eligibility for a house of correction sentence is set by Massachusetts Parole Board regulation as provided by 120 CMR 200.02. 200.01(1).

Institutional Parole Officer. A staff member of the Massachusetts Parole Board whose work location is a county or state correctional facility. Institutional parole officers prepare inmates for their parole hearings, assist inmates in formulating plans for parole, and facilitate the decision making process of the parole hearing panel by compiling information for parole hearings.

Intelligence Information. Records and data compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual. Intelligence information shall also include records and data compiled by a criminal justice agency for the purpose of investigating a substantial threat of harm to an individual, or to the order or security of a correctional facility. ~~Records and data compiled by a criminal justice agency for the purposes of criminal investigations, including reports of informants, investigators, or other persons of any type of surveillance associated with an identifiable individual. Intelligence information shall also include records and data compiled by a criminal justice agency for the purposes of investigating a substantial threat to an individual, or to the order or security of a correctional facility.~~ Such information is not included in the definition of CORI. M.G.L. c. 6, § 167.

Intervening Sentence. A new sentence which interrupts the service of a prior existing sentence.

Maximum Term of Sentence. The maximum period of time that an inmate may be held in a custodial facility or under parole supervision on a sentence or sentences.

Mittimus. A document signed by an officer of the court which memorializes the terms and duration of any sentence of imprisonment imposed on the defendant by the court and authorizes the transfer of that defendant from the custody of the sentencing court to a correctional institution in the Commonwealth.

Office Vote. The process by which Board members render their individual vote ~~on a case~~ upon ~~independant~~ independent review of the issue at hand. Office votes ~~are not rendered simultaneously by all voting Board members at the conclusion of a hearing or during executive session~~ take place by each Board member separately, and do not occur immediately after a hearing or during executive session~~.~~

Pardon. The modification or cancellation of the fact or effect of a criminal conviction by the Governor upon the recommendation of the Advisory Board of Pardons, with the advice and consent of the Executive Council. M.G.L. c. 127, § 152 *et seq*.

(a) Unconditional Pardon. An unqualified grant of pardon, ~~confer~~conferring~~s~~ to the recipient those entitlements and rights enjoyed by persons having no record of Massachusetts criminal convictions.

(b) Conditional Pardon. A qualified grant of pardon, subjecting the recipient to one or more express restrictions on those entitlements and rights enjoyed by persons having no record of Massachusetts criminal convictions.

Parole Dates and Periods.

(a) Parole Date The date upon which an inmate will be paroled.

(b) Reserve Parole Date. The date on or after which an inmate will be paroled if all conditions precedent are fulfilled.

(c) Parole Termination Date. The date upon which parole supervision ~~should~~ ends~~cease,~~ prior to a parole discharge date. The termination of a sentence can only occur by a majority vote of all the members of the Parole Board, who must determine that the termination of such sentence is in the public interest. A certificate of termination of sentence may be issued only after specified criteria are met by the parolee and after the parolee has completed at least one year of satisfactory parole or if the parolee has completed a qualifying program while incarcerated and has subsequently successfully completed at least four months of satisfactory parole. The Parole Board is required to notify the sentencing judge and the Commissioner of Correction if it votes to terminate a sentence. ~~The parole termination date is determined by the Parole Board Members and actual termination of supervision occurs only after specified criteria are met by the parolee and after successful parole supervision of at least one year. As provided in~~ M.G.L. c. 127, § 130A. ~~, this action by the Parole Board Members also terminates the underlying sentence.~~

(d) Parole Eligibility Date. The date upon which an inmate first becomes eligible for release to parole supervision.

(e) Parole Ineligibility Period. ~~That period~~The period of time from the effective date of the sentence until the parole eligibility date during which the inmate cannot be released on parole. The aggregation of parole ineligibility periods does not always follow the rules which pertain to aggregation of sentence structures; the two methods of calculation are distinct and separate.

(f) Parole Discharge Date. The date when the underlying sentence is complete and parole supervision ends. For offenses committed prior to July 1, 1994, the parole discharge date is reached by adding the maximum term of incarceration to the sentence effective date and then deducting all statutory, earned good time, prison camp and blood donation deductions accumulated while incarcerated from the maximum term of incarceration. For offenses committed on or after July1, 1994, the parole discharge date is reached by adding the maximum term of sentence to the sentence effective date and then deducting all earned good time and prison camp deductionsaccumulated while incarcerated from the maximum term of incarceration.

Parole Permit. The official document signed by the Chairman of the Parole Board or his/her designee ~~a Parole Board Member~~ allowing an offender to assume parole status and specifying the conditions of parole.

Parole Revocation. The administrative action of Parole Board ~~M~~members that ~~which~~ removes a person from parole status in response to a violation of one or more ~~the~~ conditions of parole.

Parole Revocation Hearings.

(a) Preliminary Revocation Hearing. A proceeding conducted before a hearing examiner~~s~~ or other official designated by the Chair of the Parole Board to determine whether ~~if there exists~~ probable cause exists to believe that a parolee has violated a condition of parole and, if so, whether parole should be provisionally revoked.

(b) Final Revocation Hearing. An administrative proceeding before a panel of Parole Board ~~M~~members where all pertinent aspects of the parolee's alleged violations of parole are reviewed and the panel determines whether parole should be finally revoked.

Parole Violation. An act or a failure to act by a parolee that~~which~~ does not conform to the conditions of parole.

Parole Violation Report. A written summary of the facts and circumstances that have ~~which have~~ caused the parole officer to believe that one or more conditions of parole were violated. The Parole Violation Report shall also contain a recommendation from the parole officer to the Board ~~M~~members concerning ~~from the parole officer as to~~ the appropriate sanction for the reported violation.

Probation. The~~at~~ portion of a sentence that~~which~~ the court orders to be served in the community under the supervision of the~~its~~ Department of Probation as authorized by M.G.L. c. 279, §§ 1 and 1A.

~~Reformatory Sentence. A reformatory sentence carries only a maximum date and parole eligibility is set by Massachusetts Parole Board regulation. 120 CMR 202.00. Reformatory sentences may not be imposed for offenses committed on or after July 1, 1994. St. 1993, c. 432.~~

Sentencing Periods and Dates.

(a) Committed Term of Sentence. The term of actual incarceration ordered to be served by the court in cases where a split sentence is imposed.

(b) Discharge Date of Sentence. That date upon which a sentence ends after crediting deductions from the sentence under the provisions of M.G.L. c. 127, §§ ~~129, 129A,~~ 129C, and 129D.

(c) Effective Date of Sentence. That date on which a sentence commences, and from which parole eligibility and discharge dates are calculated. The effective date of a sentence may differ from the date the sentence is imposed due to jail credits applied pursuant to M.G.L. c. 127, § 129B and 129C, c. 279, § 33A, and in those instances where the sentence is consecutive to another sentence as provided by M.G.L. c. 279, § 8A.

(d) Mandatory Minimum Term of Incarceration. The term of imprisonment required by

~~which a~~ statute that an ~~requires the~~ individual must serve, usually without the benefit of probation, parole, furloughs, or work release.

(e) Minimum Term of Sentence. The minimum term of a state prison sentence.

Split Sentence. A sentence of imprisonment, a portion of which is ordered to be served in custody and the remainder of which is suspended while the defendant serves a period of probation for such time and on such terms and conditions as the court orders. M.G.L. c. 279, §§ 1 and 1A.

State Prison Sentence. A sentence to a state prison containing a minimum and a maximum term, with parole eligibility governed by M.G.L. c. 127, § 133 and M.G.L.~~;~~ c. 279, § 24. ~~Individuals sentenced as "habitual criminals" are deemed to be serving a state prison sentence, M.G.L. c. 279, § 25. Provided however that for~~ For individuals serving a sentence that contains life as the maximum term of the sentence and those sentenced as habitual criminals to a life sentence, the parole eligibility and parole hearing processes are governed by M.G.L. c. 127, §§ 133A, 133B and 120 CMR 200, *et seq*.

Underlying Sentence. The sentence from which an individual has been~~,~~ or may be paroled.

Victim. A person defined as a victim by M.G.L. c. 258B, § 1 or registered ~~certified~~ by the Department of Criminal Justice Information Services (DCJIS) ~~Criminal History Systems Board (CHSB)~~ to receive Criminal Offender Record Information (CORI) pursuant to M.G.L. c. 258B or M.G.L. c. 6, § 172(a)(19)~~(c).~~ or as defined in 120 CMR 401.02.

Warrant. The document that ~~which~~ authorizes the arrest and return of a parolee to penal custody because of an alleged violation of parole. ~~See~~ M.G.L. c. 127, § 149 and 120 CMR 303.04 ~~,~~ ~~303.05~~ and 303.15. Warrants include: (1) Detainers, or warrants for temporary custody, which authorize the detention of a parolee pending a preliminary revocation hearing; (2) Warrants for Permanent Custody, which may be authorized by the Parole Board upon a finding of probable cause that a violation occurred; and (3) warrants authorized and issued by the Parole Board to detain a parolee whom the Massachusetts Parole Board is supervising under the Interstate Compact for Supervision of Probationers and Parolees and Interstate Compact for Adult Offender Supervision (ICAOS). M.G.L. c. 127, § 151A-N and Rule 4.109-1 of the Interstate Compact Rules.

REGULATORY AUTHORITY

120 CMR 100.00: M.G.L. c. 27, §§ 4-7; and M.G.L. c. 127, §§ 127-169.