

120 CMR: PAROLE BOARD

120 CMR 301.00: INITIAL PAROLE RELEASE HEARINGS; REVIEW HEARINGS

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301.01: Scheduling of Initial Parole Release Hearing and Subsequent Review Hearings

- (1) The parole hearing panel conducts a parole hearing prior to the parole eligibility date. Such hearings are conducted at the inmate's place of incarceration, except for offenders serving a life sentence or Victim Access Hearings conducted pursuant to 120 CMR 401, *et seq.* Where an inmate is serving a life sentence, the parole release hearing and subsequent review hearings are public and are generally held in a place easily accessible by the public.
- (2) For offenders not serving a life sentence, if parole is not granted at the initial parole release hearing, a parole review hearing occurs annually thereafter, except where the Parole Board members act to cause a review at an earlier time or as noted below in 120 CMR 301.01(3) and (4), or where the hearing has been postponed under 120 CMR 301.02.
- (3) In cases involving offenders sentenced as "habitual criminals" under M.G.L. c. 279, § 25(a), a parole review hearing occurs two years after the initial parole release hearing and every two years thereafter. M.G.L. c. 127, § 133B.
- (4) In cases involving offenders civilly committed as sexually dangerous persons who are also serving concurrent house of correction and/or state prison sentences, a parole review hearing occurs three years after the initial parole release hearing on the criminal imprisonment, except where Parole Board members act to cause a review at an earlier time.
- (5) In cases involving inmates serving life sentences with parole eligibility, a parole review hearing occurs five years after the initial parole release hearing, except where the Parole Board members act to cause a review at an earlier time. M.G.L. c. 127, § 133A. Date calculation for the next hearing starts from the date of the hearing itself, not from the date the Parole Board renders a Record of Decision.

301.02: Postponement of Initial Parole Release Hearing or Subsequent Review Hearings

- (1) Upon request by an inmate, the Massachusetts Parole Board may grant a postponement of an initial parole release hearing or review hearing to the next available docket. Such request must be in writing and witnessed by a parole staff member.
- (2) If an inmate who is serving a life sentence with attendant parole eligibility voluntarily requests postponement of an initial parole release hearing or review hearing within seven days of the scheduled hearing date, such request must be reviewed and approved by Parole Board members.
- (3) If an inmate who is serving a life sentence with attendant parole eligibility voluntarily requests postponement of an initial parole release hearing or review hearing within 24 hours of the scheduled hearing date, the request will be considered a waiver pursuant to 120 CMR 301.03 and M.G.L. c. 127, § 134. This section does not apply to inmates who are unavailable as defined by 120 CMR 301.04.
- (4) The Massachusetts Parole Board shall postpone an initial parole release hearing or review hearing to the next available docket in cases in which the inmate is unavailable or where circumstances prevent the appearance of the parole hearing panel. Unavailability includes, but is not limited to, a commitment to Bridgewater State Hospital. An inmate will not be considered unavailable in situations where the inmate causes his or her absence from the hearing. Such situations include, but

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are not limited to, refusal to leave one's cell or other area of the custodial institution, or refusal to safely participate in transportation to the hearing. The Massachusetts Parole Board shall determine whether such circumstances constitute a waiver of the hearing.

(5) Where the parole hearing panel determines that it lacks sufficient information to make a decision, it may postpone the initial release or review hearing until the next available docket in order to obtain the needed information.

301.03: Waiver of Initial Parole Release Hearing or Review Hearings

(1) An inmate may waive the initial parole release hearing or any review hearing. The parole hearing panel shall not consider parole release for any inmate who waives the initial or review parole hearing. M.G.L. c. 127, § 134.

(2) Such waiver must be in writing and witnessed by a parole staff member.

(3) The inmate will execute the waiver only after a parole staff member informs the inmate of the initial parole hearing process and the consequences of such waiver.

301.04: Pre-hearing Interview and File Review

The Massachusetts Parole Board shall disclose to an inmate information in ~~that~~ inmate's file pursuant to 120 CMR 500 *et seq.*, provided the inmate requests such disclosure in writing at least 30 days prior to any scheduled release or review hearing. Information deemed confidential by the Massachusetts Parole Board will not be disclosed. M.G.L. c. 127, § 130. Any disclosure of other information will be in a form determined to be appropriate by the Massachusetts Parole Board consistent with M.G.L. c. 6, § 172; M.G.L. c. 66; and M.G.L. c. 66A. The Massachusetts Parole Board may orally summarize available police, court, and institutional data likely to be considered by the parole hearing panel during the initial release hearing or any review hearing.

301.05: Procedure at Initial Parole Release Hearing and Subsequent Review Hearings, Except Where the Inmate is Serving a Life Sentence

(1) The initial release hearing and any subsequent review hearings are administrative hearings conducted by a parole hearing panel.

(2) The following proceedings do not occur in the presence of the inmate:

(a) The pre-hearing conference among the parole hearing panel members and parole institutional staff.

(b) The presentation of the parole staff member's report and any custodial authority documents to the parole hearing panel.

(c) The parole hearing panel deliberations which occur after examining the inmate and receiving any information and/or documents offered by the inmate.

(d) Consideration of information deemed confidential by the Massachusetts Parole Board.

(3) At the conclusion of the hearing, the parole hearing panel verbally informs the inmate of its decision or recommendation and reasons therefor, except where the inmate is serving a life sentence or where the hearing is a Victim Access Hearing.

301.06: Procedure at Initial Parole Release Hearing and Review Hearings for Inmates Serving Life Sentences

(1) For inmates serving sentences with parole eligibility where the maximum term is life, the following comprise the hearing panel:

(a) The full Parole Board membership conducts initial release hearings unless a member is unavailable as provided in M.G.L. c. 127, § 133A. Provided, however, that nothing in these regulations shall prevent the inmate from waiving a full Parole Board hearing. No initial release hearing shall proceed unless a majority of Parole Board members are present. Unless the Chair finds a Board member unavailable under M.G.L. c. 127, § 133A, or otherwise disqualified from hearing the case under 120 CMR 300.02(4), any Board member who was not present at the public, initial release hearing shall vote after reviewing the video recording and the written record.

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(b) The full Parole Board membership conducts review release hearings unless a member is unavailable as provided in M.G.L. c. 127, § 133A. Provided, however, that nothing in these regulations shall prevent the inmate from waiving a full Parole Board hearing. No review release hearing shall proceed unless a majority of Parole Board members are present. Unless the Chair finds a Board member unavailable under M.G.L. c. 127, § 133A, or otherwise disqualified from hearing the case under 120 CMR 300.02(4), any Board member who was not present at the public review release hearing shall vote after reviewing the video recording and the written record.

(2) For all inmates serving life sentences, the initial parole release hearing and any subsequent parole review hearings are public proceedings to the extent considerations of security and confidentiality allow. M.G.L. c. 127, § 133A.

(a) The Massachusetts Parole Board reserves the right to limit attendance or assign seating in consideration of security and space availability.

(b) All individuals in attendance who are not employees of the Massachusetts Parole Board must sign their name and provide their home or work address on a list provided.

(c) The Massachusetts Parole Board reserves the right to conduct searches of persons and effects of all individuals in attendance.

(d) The hearing is conducted with appropriate decorum. Observers or participants who create any disturbance on or about the premises of the hearing may be removed and barred from the proceeding.

(e) The Massachusetts Parole Board may regulate media coverage to ensure order, security, and confidentiality.

(3) Pursuant to M.G.L. c. 127, § 133A:

(a) The Massachusetts Parole Board shall give notice of the initial parole release hearing and any subsequent parole review hearings for inmates serving life sentences to the following agents of the Commonwealth:

1. Attorney General of the Commonwealth;
2. Office of the District Attorney in which district the sentence was imposed;
3. Chief of Police of the municipality in which the crime was committed; and
4. Executive Office of Public Safety and Security.

(b) The Massachusetts Parole Board shall make reasonable efforts to notify the victim(s) or the victim's family members at least 30 days prior to the parole hearing. M.G.L. c. 127, § 133A and M.G.L. c. 258B.

(4) Subject to 120 CMR 301.06(2), the following guidelines apply to the presentation of evidence at an initial or review parole hearing for inmates serving life sentences:

(a) The Chair of the Parole Board or the designee of the Chair presides over the full Board parole hearing and will administer oaths before the receipt of testimony.

(b) The inmate or a representative may make a brief opening statement.

(c) The Parole Board members may inquire of the inmate concerning any relevant matter.

(d) The Parole Board members shall elicit information regarding the status of the inmate within the Department of Correction.

(e) The Parole Board members shall elicit available evidence and testimony from persons advocating parole for the inmate.

(f) The Parole Board members shall elicit available evidence and testimony regarding the impact of the crime on the victim(s) or victim's family, and any recommendation by the victim or a representative of the family regarding the issue of parole of the inmate. The Parole Board members shall also elicit available evidence and testimony unfavorable to the inmate upon any relevant subject.

(g) Public officials of the Commonwealth may offer evidence and testimony in rebuttal or supplementation of any relevant issue raised during the consideration of parole.

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(h) The Chair or designee, after the close of evidence and testimony, may permit a closing statement by the inmate or representative.

(5) The Parole Board members may allow submission of supplemental memoranda or other documentation from any party after the close of the hearing. Requests for such subsequent submissions must be made at the close of the parole hearing.

(6) The full Board shall vote on the final decision regarding parole release at a regularly scheduled executive session following the public hearing. Any decision shall be by majority of the full Board. The Massachusetts Parole Board shall notify the inmate of its decision in writing and the reasons therefor. The decision of the Parole Board members is a public record, as provided by M.G.L. c. 127, § 130.

301.07: Referral to Full Board for Decision

By request of one Board member of a hearing panel, any case may be referred to the full Parole Board for further action. Such referral is only for that decision. Subsequent decisions are made by a parole hearing panel unless again referred for full Parole Board consideration, or unless the full Parole Board votes to retain jurisdiction over such case.

301.08: Reasons for Parole Denial

When release on parole is denied, Parole Board members shall provide the inmate with a written summary of the reasons supporting the decision of the full Parole Board or parole hearing panel. Parole Board members shall provide the inmate such written notice within 21 calendar days after a decision has been rendered.

301.09: Massachusetts Inmates Incarcerated in the Federal Prison System or in Another State's Prison System

(1) Where possible, any inmate serving a Massachusetts sentence in the Federal Prison System or in another state will be transported to Massachusetts to appear before a parole hearing panel for that inmate's initial parole release hearing. Parole Board members may conduct parole hearings using video conferencing.

(2) Inmates serving Massachusetts sentences in the Federal Prison System may submit a request to the Board, at least 120 days prior to parole eligibility, that the federal paroling authorities review the inmate's suitability for parole release and submit a written report to the Massachusetts Parole Board for final decision. M.G.L. c. 127, § 134(c).

(3) The Parole Board may request any paroling authority of the state in which an inmate is serving a Massachusetts sentence to conduct a parole hearing and to submit a written report to the Massachusetts Parole Board as to the suitability of that inmate for parole release. In such cases, final decision as to release on parole is made by Massachusetts Parole Board members. M.G.L. c. 127, § 134(c).

REGULATORY AUTHORITY:

120 CMR 301.00: M.G.L. c. 27, § 5.