

PAROLE DECISION MAKING

THE POLICY OF THE MASSACHUSETTS PAROLE BOARD

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I. STATEMENT OF GENERAL PURPOSE

This document is a reflection of the general beliefs, values, and principles of the Chairperson and Members of the Massachusetts Parole Board pertaining to the discharge of their parole release decision making responsibilities. The Chairman and Members of the Board believe that by sharing their general beliefs, values and principles concerning parole decision making that inmates, victims, members of the public, public officials, staff, and others will have a better understanding of the elements and circumstances that Board Members consider to be particularly significant when making decisions. The primary purpose of this document is to articulate why the Massachusetts Parole Board makes its decisions to deny, postpone, or grant parole. In each and every year the Members of the Parole Board conduct approximately 10,000 face to face release hearings and render decisions on approximately 20,000 cases.

The Parole Board articulated a description of the factors, considerations, and policies that impacted parole decision making in 1990. Since that time, the composition of the Parole Board members completely changed and the Chairman and Board Members believed that it was appropriate for them to describe, in a document, their perspectives and direction regarding parole decision making. As a result, in 2006 the Chairman and Board Members developed an updated decision making guideline. In 2009 the Chairman and Board Members reaffirmed their commitment to these guidelines.

This document also outlines various methods, procedures and tools that can be utilized to assist Board Members in fulfilling their parole release decision making responsibilities. The Chairman and Members of the Board believe that the use of certain methods or tools, when they are consistent with the beliefs and principles of the Board, may assist them in identifying

particular factors or issues that can be significant in individual cases, aid in their consideration of these factors or issues, and encourage consistency and equity in the discharge of their responsibilities. The Board believes that parole decisions should and do rest upon a sound basis. The use of certain tools and methods may also assist the Board in more clearly demonstrating the basis for individual determinations. The Board also recognizes the need for transparency in the decision making process.

Nothing in this document is intended to diminish or compromise in any way the absolute discretion of the Chairman or Members of the Board to make individual parole decisions. No person is entitled to parole, nor shall they necessarily be denied parole, as a result of the language, terms, methods or tools described in this document. Nothing in this document will preclude individuals who are eligible for parole consideration from receiving all appropriate consideration. The guidelines contained herein are advisory only. They create no enforceable rights in the inmate, nor do they restrict the powers granted to the Parole Board pursuant to M.G.L. c. 27 § 5. No person has the right to have their parole case considered using any particular tool or guideline. A guideline, as that term appears in this document, is a guide that should be used by the Chairman or Board Members to assist them in the discharge of their responsibilities regarding parole decision making. Tools or guidelines may be changed or modified at any time as may be determined by the Chairman and Members of the Board.

Finally, portions of this document are intended to describe for parole staff how various types of information should be organized, summarized and detailed so that a more standardized parole case file can be given to Board Members for their review and consideration.

II. STATUTORY AND REGULATORY FRAMEWORK FOR PAROLE

Introduction: The Massachusetts Parole Board

The Massachusetts Parole Board is an agency under the Executive Office of Public Safety that currently employs 214 full time employees. The central office of the Massachusetts Parole Board is located in Natick, Massachusetts and there are 8 regional field parole offices located in Quincy, Springfield, Worcester, Mattapan, New Bedford, Brockton, Braintree, Framingham and Lawrence. Institutional Parole Officers are located in approximately 24 state and county correctional facilities across the state and are responsible for parole issues at the 32 county and state institutions in Massachusetts. The Massachusetts Parole Board serves adult incarcerated offenders and is responsible for the decision-making authority as well as the supervision of offenders in the community. Annually, the Board conducts over 11,000 hearings and supervises nearly 6,000 offenders in the community.

Parole is a procedure by which prisoners are released from incarceration prior to the expiration of their complete sentences, permitting them to serve the remainder of those sentences under supervision by the parole agency, in the community and in compliance with general rules of conduct and specified conditions of release.

Parole decision making is the process of (1) assessing the degree and nature of risk to the public represented by an offender's release from prison, and (2) determining if, when, and under what supervised conditions that release would be most compatible with the safety and welfare of the general public.

The Massachusetts Parole Board is the state agency with legislated decision-making authority for matters of parole granting and parole revocation. It has jurisdiction over all

individuals committed to terms of 60 days or more in county institutions, and those committed to state correctional facilities whose sentences provide for parole eligibility (Massachusetts General Laws Chapter 127, s. 128). The Parole Board is a statutory body established under M.G.L. Chapter 27, s. 4.

As currently constituted, the Board is comprised of seven members appointed by the Governor for five year terms. One member is designated by the Governor to serve as Chairman. The Chairman thus becomes the executive and administrative head of the Parole Board, and is responsible for effective operation not only of the decision, policy-making, and policy implementation functions of the Board, but also for field operations and supervision of parolees.

Under provisions of the Massachusetts General Laws, the Parole Board has as its *principal functions* the duty to: (1) determine whether and under what conditions an individual should be released to the community; and (2) supervise the individual in the community, monitor the implementation of parole conditions, determine whether any imposed conditions have not been observed, (M.G.L. Chapter 27, s. 5). In fulfilling its statutory obligations, the Parole Board is called upon to make such decisions as: determining parole eligibility; establishing hearing dates; granting, postponing or denying parole; detaining clients; and revoking parole permits. The Parole Board's agency staff also provides services to the victims of crimes, as well as supervising those who have been released on parole in their communities.

Parole supervision involves the monitoring of parolee behavior to ensure compliance with the law and with case management plans for work, education, counseling, etc., combined with the agency's authority to use its *power of revocation* to immediately return an individual to prison for criminal behavior or for otherwise violating any of the terms and conditions of his or her parole.

Parole Decision Making

The Massachusetts Parole Board, by legislative intent, is provided with a significant degree of discretionary authority with respect to parole decision making. However, according to Massachusetts law, the Parole Board must base its decision upon two major factors or considerations: the reasonable probability that the individual would not violate the law if released, and the compatibility of release on parole with the welfare of society (Chapter 127, s. 130).

Within this statutory framework, the Parole Board perceives its principal decision making objectives to be: first, an assessment of risk, and second, the management of risk for the long term protection of the general public and of societal welfare. A number of factors contribute to each decision which the Board makes to determine how best to serve these purposes.

The consideration of risk focuses on whether an individual, if paroled, would again violate the law, a task which necessarily involves the prediction of human behavior. This judgment is based in part on the recognition that incapacitation (i.e., incarceration, or the physical removal of an individual from personal contact with society) may, but does not necessarily, allow significant changes in that person bearing on his or her rehabilitation and subsequent ability to cope in a free society.

In making its risk assessment, the Parole Board attempts to identify factors associated with the criminal offense(s) which led to the individual's incarceration, and then considers the issue of whether that relationship has been addressed through a combination of: a period of incarceration (loss of freedom), treatment, natural maturation, training, education, reintegration programming, changed circumstances in the community, and/or other positive pro-social influences. A validated risk assessment tool provides the Board with statistical risk information

about the risk of a particular offender based upon factors such as age, prior criminal history, and substance abuse issues.

Consideration of how to supervise parole cases, so as to manage (or minimize) risk for the purpose of protecting the general public and the welfare of society, is necessary because of the fact that the vast majority of inmates will eventually be released from prison. In fact, nationwide approximately 600,000 ex-offenders return back to the community annually; in Massachusetts well over 25,000 incarcerated offenders are released annually to our 351 cities and towns.

The basic question faced in each parole hearing is: "Is it better for the welfare of society to keep an individual incarcerated until his or her sentence is completed, or to use some portion of that sentenced time for parole, as a managed, supervised reintegration of that person back into society?" In general, it is believed that longer term and higher risk will exist when an offender completes his or her sentence in prison and is finally released with (as required by law) no opportunity for parole supervision or for the provision of necessary supportive services such as drug and alcohol counseling. The statistics support the fact that the most dangerous population in the Commonwealth are the ex-offenders who leave the prison setting from high levels of security without any form of post-release supervision and support. This is why the parole process is not only a critical element in the public safety continuum but is also critical part of the safety of our communities.

These realities regarding eventual release from prison and risk to the long term welfare of society require that the Parole Board seek to achieve a balance between short-term and long-term risk management, in weighing the potential consequences of its decision in each particular case. In striving to achieve this balance in a fair and consistent manner, the Board looks at a number of

factors and considerations, to obtain a composite picture of each individual and the circumstances of his or her incarceration and the agency's ability to provide necessary programmatic resources. On the basis of this information, the Board may identify varying needs and requirements for individual cases, and it then makes a carefully reasoned decision in each instance. In most cases, it is believed that risk can be properly managed and therefore a decision to grant parole is the most appropriate option. In other cases, with all other considerations being equal, continued incarceration until completion of a sentence may be the best decision that can be made, given the Board's legislated mandate and whether adequate resources are available in the community to manage an individual safely.

Decision Options of the Parole Board

After carefully reviewing all of the information available, the Parole Board will then vote and render a disposition of each case it hears. Three decision options are available to the Board:

1. One decision option of the Parole Board is to deny parole, in which case the individual remains under Department of Correction custody or a county correctional facility until the time of his or her next parole review, which is usually conducted on an annual basis;
2. A second option is to postpone parole for a stated period, e.g. six months, if certain stated conditions are met in the interim;
3. The third decision option is to grant parole, in which case the Parole Board will communicate to the individual its requirements about his or her supervision and treatment plan, referred to as a case management plan, sometimes in the form of special conditions for parole. Field Services, which has day-to-day responsibility for monitoring, supervising and otherwise overseeing all parolees in the Commonwealth, will ensure that

the conditions of parole are being met by the parolee in the community. Such conditions may include being drug and alcohol free, attending treatment for substance abuse or counseling for mental health issues if applicable, and making legitimate efforts to maintain employment.

A. Powers and Duties

The powers and duties of the Massachusetts Parole Board, as outlined in Chapter 27, Section 5, of the Annotated Laws of Massachusetts, include the authority to:

“ . . . determine which prisoners in the correctional institutions of the Commonwealth or in jails or houses of corrections may be released on parole, and when and under what conditions . . . ”

Generally, inmates must be serving an aggregate sentence of 60 days or more (M.G.L.c.127. § 128) and if sentenced to state prison, must have served the minimum term for their sentence (M.G.L. c. 127. § 133).

B. Parole decision making considerations

In making a decision regarding parole for an eligible offender, M.G.L. c. 127. § 130, and 120 CMR 300.04, indicates:

Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society. Parole Board Members may not grant a parole permit merely as a reward for good institutional conduct.

This language indicates that, in making parole decisions, Board Members should consider the potential likelihood of the offender's success in the community, the risks that may be posed by particular offenders to individuals in their communities, and how the general welfare of

society may be impacted by their decision. While good institutional conduct is not sufficient, by itself, to merit parole, the offender's behavior while incarcerated is a relevant factor that should be considered.

C. *Information considered by the Board*

Under 120 CMR 300.05, Parole Board Members may consider various types of information when making a parole decision that include:

- Reports and recommendations from parole staff;
- Information concerning the offender's prior criminal record;
- Information regarding pending cases;
- Pre-sentence investigation reports;
- Reports concerning the nature and circumstances of the offense;
- Statements by victims or family members of victims;
- Physical or psychological examinations;
- Information provided by the inmate;
- Information provided by the District Attorney's Office or legal representative for the offender;
- Information provided by the custodial authority, such as disciplinary reports, or achievements by the offender while incarcerated.

III. VALUES AND BELIEFS OF BOARD MEMBERS

A. *General values and beliefs regarding parole*

In discharging their responsibilities, the Chairman and the Members of the Board believe that their fundamental objectives are to:

- reduce recidivism (that is, reduce the likelihood that an offender will return to a criminal lifestyle and will be returned to prison after release),
- reduce future victimization, and
- have a positive impact on the offender and public safety.

In making parole decisions, the Board also believes that:

- It should strive for equity in case decisions;
- It can encourage the development of positive offender behavior;
- It can encourage offenders to change their behaviors; and
- A certain degree of calculated risk-taking is inherent in the work of a parole board due to the nature of the work

And, in general, Board Members believe that:

- Parole release and supervision of offenders as they re-enter the community is preferable to allowing offenders to complete their sentences in prison or jail (sentence "wrap ups").

Releasing individuals on parole, creating appropriate conditions of release, and effectively supervising offenders in the community on parole supervision can have a positive impact on public safety. Ensuring that offenders are participating in appropriate community programs or activities, working productively, and engaging in actions that are consistent with the expectations of the community are important ingredients in the attainment of a successful

transition and ultimate re-integration of the offender into the community. Allowing individuals to complete their sentences and to be released to the community without supervision or oversight may, in the long run, compromise public safety.

B. *Values and beliefs concerning individual case considerations*

As noted above, Board Members may consider various types of information, which may contain many complex elements. In evaluating individual cases, the following factors are considered most significant by Board Members:

- The offender's risk of re-offending after release;
- The severity of the offense;
- Whether acts of violence were involved;
- The inmate's institutional behavior;
- The inmate's participation in institutional programming;
- Prior failures under supervision;
- Input from victims, police/prosecutors, the offender's family or support network and the community at large;
- The strength and appropriateness of the offender's transition plan;
- Information presented at the hearing which provides insights or clarifications regarding the nature of the case or the likelihood of risk if released, and any other pertinent matters.

IV. PRINCIPLES REGARDING PAROLE RELEASE DECISIONS

In light of the beliefs and values noted above, the Board embraces the following 16 principles regarding parole:

1. We believe in parole, and in the value of parole supervision;
2. The fundamental objective of parole is to reduce recidivism, reduce victimization, and to have a positive impact on both the offender and public safety;
3. We seek to achieve equity and promote consistency in the resolution of parole consideration matters. The outcome of particular parole cases should not be completely dependent upon which Board members are hearing a case;
4. Objectively assessing risk should be an important component of release decision making;
5. The Board should consider the seriousness of the governing offense;
6. We seek to encourage offenders to engage in change by having them participate in risk-reducing programs and activities prior to release;
7. Parole staff should be involved, soon after incarceration begins, in the identification of significant crime-producing risks and needs and to aid in the development of an individualized offender case/treatment plan;
8. In general, parole release and supervision is preferable to having offenders "wrap up" their sentence and be released without supervision. Creating a period of parole supervision is an appropriate way to address both short and long term risks that an offender may pose to the community and is consistent with both public safety interests and the general welfare of society;

9. Offenders who address their most significant crime producing risks and needs during incarceration will enhance their likelihood of parole;
10. Major institutional disciplinary infractions involving violent behavior, substance abuse, and other offenses that are significant in relation to the offender's criminal history will significantly diminish the offender's likelihood of being paroled;
11. Offenders who have committed extremely violent acts, or have a pattern of previous violent behavior can represent an unacceptable risk to the community;
 - Extremely violent acts are those which cause harm to victims involving death, permanent or long-lasting physical or psychological injury, damage, or severe trauma.
 - Violent acts involve circumstances where serious injuries are caused to persons, a deadly weapon is used in the commission of the crime, there is intent to inflict serious bodily injury, or there is a gratuitous use of violence.
 - A pattern of violent acts involves three or more violent acts occurring within five years prior to the offender's incarceration and can include violent acts perpetrated during that incarceration.
12. Offenders who are being considered for parole who have had their parole revoked for the commission of a new crime, or for committing major violations of their parole conditions, may have a diminished likelihood of release.
13. Sex offenders who do not complete their institutional sex offender treatment programming may have a diminished likelihood of release. An offender is determined to be a sex offender based on his/her present or prior convictions.

14. For offenders who are paroled, conditions will be created that are appropriate in light of the identified crime producing risks and needs of the offender, and the conditions imposed should become a part of the supervision case plan.

15. When offenders are paroled, there is an expectation that the offender, and parole supervision staff, will work together to help generate a successful parole supervision outcome.

16. The purpose of the parole hearing is to:

- gain additional and specific information about the inmate which can assist Board Members in assessing or gauging the suitability of the inmate for parole,
- review institutional programs and institutional conduct to gain a greater appreciation of the conduct and behavior of the inmate,
- resolve inconsistencies or conflicts in the available information,
- consider the offender's motivation for parole and indications of change,
- consider input from the victim and other interested parties.

V. PAROLE GUIDELINE CONSIDERATIONS

A. *Purpose of a guideline*

The Chairman and Members of the Board believe that some particular approaches or tools may assist them in better accomplishing many of the principles noted above. A tool which organizes some of the most important types of information, aids Board Members in applying information to particular cases in a consistent manner, and which helps promote rational decision making can have great value. Such an instrument might also promote greater consistency between individual Board members in the disposition of cases. Further, equity and fairness is promoted by having commonly accepted principles or rules that Board Members embrace and apply when making release decisions. Finally, having an objective or policy driven basis for decision making will assist Board Members in explaining their reasons for individual determinations, as well as demonstrate the use of best paroling practices, to inmates, victims, public officials, the public and other interested parties.

B. *Use of a validated risk assessment tool*

Assessing the offender's risk is a critical factor for the Board in discharging its statutory and regulatory responsibilities. As was noted above, having an offender's risk determined through the use of an objective instrument would appear to be most beneficial as a component of parole decision making. Presently, the COMPAS risk assessment tool is currently being piloted in collaboration with the Massachusetts Department of Correction. Over time, risk assessment tools will be developed, modified, and improved. In addition, the agency is piloting the use of the Static-99 risk assessment tool for sex offenders.

VI. USE OF A GUIDELINE

In order to apply all of the above information and elements to an individual case, a guideline can be utilized. The guideline would have three components. The first component would consider the inmate's level of risk if released into the community. In addition to this information, Board Members will consider other factors such as the seriousness of the governing offense, the transitional plan of the offender, or the strides and efforts that an offender has made to address the causative factors of their criminal actions and thinking. Third, and finally, according to the governing law, parole decision makers must consider risk to re-offend as well as to ensure that an offenders release is not incompatible with the welfare of society.

Every case for parole consideration presents certain unique qualities. The Board believes that the presence of any of the special circumstances noted below could significantly alter the outcome of a particular case.

Collectively, these three components can constitute a general guideline for decision making. In order for other considerations (those noted in the values, beliefs and principles sections outlined above) to be incorporated, a second step in the decision making process is the evaluation of specific factors or developments in particular cases. Listed below are some of the significant factors the Board has identified:

- The presence of particular factors in the governing offense;
- Severity of governing offense;
- Institutional behavior;
- Institutional programming;
- The offender's security level;

- The strength of the offender's transition plan; and
- Victim or community input.

These considerations also include but are not limited to:

- The offender will complete his/her sentence without supervision before their next parole hearing. (The presence of this factor would increase the likelihood of parole);
- Release at this time would represent a grievous harm to the health or welfare of society (decreases likelihood of parole);
- A history of assaultive behavior that demonstrates an unacceptable risk to public safety if released at this time (decreases likelihood of parole);
- Assaultive episodes during the current sentence involving staff (decreases the likelihood of parole); and
- The offender committed a felony while on parole for this sentence (decreases the likelihood of parole).

VII. ORGANIZATION OF CASE INFORMATION

In reviewing a parole case file, it is important for Parole Board Members to be able to readily identify the critical areas or specific components that are most significant to the decision in that case. In order to encourage more uniformity in the presentation of information, a standardized format is being developed that will provide the much need standardized information.

The specific elements of the new format are organized into the following areas:

- Identifying information

- Sentence data
- Parole eligibility dates
- Parole warrant information
- Other agency warrant information
- Co-defendant information
- Listing of other commitment offenses
- Institutional disciplinary history
- Chronology of institutional placements
- Summary of official version of the offense
- Parole violation history
- Participation in institutional programs
- Classification status
- Social history
- Employment history
- Medical comments
- Mental health/substance abuse information
- IPO/TPO pre-hearing summary
- Recommendation by staff
- Victim information

Organizing information into these sections, in this order, will aid Board Members in identifying critical elements of the case.

VIII. CONCLUSION

In order to conduct its parole decision making activities in a manner that is consistent with the values and beliefs of its Board Members, in harmony with statutory and regulatory responsibilities, reflective of best practices, and in a consistent and equitable manner, the Board has determined that the approach to decision making outlined above has considerable value and should be utilized.

It is the intention of the Board to help staff understand the direction and focus of the Board concerning these matters, so that staff can conduct their activities in the most effective and efficient manner possible. Towards that end, this document will form the basis of training for appropriate staff that will occur at times and in locations as will be determined by the Board.

The Board also wishes for all interested persons to have a clear idea of the basis of its decision making and the processes that are followed in arriving at a decision. Towards those ends, this document may help to shed some appropriate light.