

120 CMR: PAROLE BOARD

120 CMR 100.00: DEFINITIONS

Section

100.00: Definitions

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

Advisory Board of Pardons. The Massachusetts Parole Board (Parole Board) 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 and 154.

Aggregation. The calculation process by which the parole ineligibility periods of consecutive sentences are combined, thereby producing a single parole eligibility date.

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 imposed by 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 another sentence. When an inmate who is serving one Massachusetts sentence receives an additional Massachusetts sentence, the Parole Board shall consider such sentence to be concurrent unless the *mittimus* expressly directs that the sentences are to be served consecutively.

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

CORI Registration. 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. M.G.L. c. 6, § 178A.

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

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.

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 M.G.L. c. 276, § 58A where the defendant was detained prior to trial or released with conditions under M.G.L. c. 276, § 58A subsection (2), 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

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acts of delinquency committed by any person younger than 18 years old; provided, however, that if a person younger than 18 years old 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.

Department of Correction. The agency of the Commonwealth that manages and oversees state correctional institutions. 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 custody that 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. The custodial authority may grant and consequently calculate 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 individuals charged with a crime and compiled by criminal justice agencies that appraise mental conditions, physical conditions, extent of social adjustment, rehabilitative progress, and the like, and that are primarily used in connection with bail, pretrial or posttrial proceedings, sentencing, correctional and rehabilitative planning, and probation or parole decisions.

Evidentiary Standards.

(a) Probable Cause. 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.

(b) Reasonable Belief. Belief based on objective, specific and articulable facts, and inferences drawn from those facts. This standard is utilized to issue a warrant for temporary custody pursuant to M.G.L. c. 127, § 149A and 120 CMR 303.04: *Issuance of Warrant for Temporary Custody (Detainer)*.

(c) Preponderance of the Evidence. The standard used to 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 rescission and final revocation hearings. See 120 CMR 302.07: *Postponement of Preliminary Revocation Hearing* and 303.24: *Procedure at Final Revocation Hearing*.

(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 900.00: *Executive Clemency: Generally*.

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 that an individual is to begin serving immediately and that is imposed pursuant to the provisions of M.G.L. c. 279, § 27. Forthwith state prison sentences extinguish prior house of correction sentences.

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Full Board. The total number of members of the Parole Board who the Governor has appointed to serve on the Parole Board, with the advice and consent of the Executive Council (also known as the Governor's Council), as provided in M.G.L. c. 27, § 4. For hearings pertaining to inmates serving life sentences, 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 members currently appointed and voting, and three where there are five or fewer members. 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 through 25.

(a) Special Parole Board members 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 full Board.

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

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

Habitual Criminal. An offender, as defined in M.G.L. c. 279, § 25(a).

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

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

House of Correction Sentence. M.G.L. c. 279, §§ 6, 15, 16 and 23, 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 Parole Board regulation as provided by 120 CMR 200.02: *Parole Eligibility Calculations*.

Institutional Parole Officer. A staff member of the 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. 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 Parole Board members render their individual vote upon independent review of the issue at hand. Office votes take place by each Parole Board member separately, and do not occur immediately after a hearing or during executive session.

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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 (also known as the Governor's Council). M.G.L. c. 127, § 152.

(a) Unconditional Pardon. An unqualified grant of pardon, conferring 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 ends 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. M.G.L. c. 127, § 130A.

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

(e) Parole Ineligibility 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 July 1, 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 deductions accumulated while incarcerated from the maximum term of incarceration.

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

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

Parole Revocation Hearings.

(a) Preliminary Revocation Hearing. A proceeding conducted before a hearing examiner or other official designated by the Chair of the Parole Board to determine whether 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 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 or presents their findings to the full Parole Board for a vote on a later date.

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

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Parole Violation Report. A written summary of the facts and circumstances that 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 Parole Board members concerning the appropriate sanction for the reported violation.

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

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, §§ 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 statute that an 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 to a jail or house of correction, 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 c. 279, § 24. 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 200.00: *Parole Eligibility*.

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 by the Department of Criminal Justice Information Services (DCJIS) to receive Criminal Offender Record Information (CORI) pursuant to M.G.L. c. 258B or c. 6, § 172(a)(19) or as defined in 120 CMR 401.02: *Definitions*.

Warrant. The document that authorizes the arrest and return of a parolee to penal custody because of an alleged violation of parole. M.G.L. c. 127, § 149 and 120 CMR 303.04: *Issuance of Warrant for Temporary Custody (Detainer)* and 303.15: *Issuance of Parole Violation Warrant*. Warrants include:

- (a) Detainers, or warrants for temporary custody, which authorize the detention of a parolee pending a preliminary revocation hearing;
- (b) Warrants for Permanent Custody, which may be authorized by the Parole Board upon a finding of probable cause that a violation occurred; and
- (c) Warrants authorized and issued by the Parole Board to detain a parolee whom the 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 through N and Rule 4.109-1 of the Interstate Compact Rules.

REGULATORY AUTHORITY

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