

120 CMR: PAROLE BOARD

120 CMR 200.00: PAROLE ELIGIBILITY

Section

- 200.01: Definitions
- 200.02: Parole Eligibility Calculations
- 200.03: Split Sentences
- 200.04: Concurrent Sentences
- 200.05: Concurrent Sentence for Crime Committed While Incarcerated
- 200.06: Concurrent Sentence for Crime Committed While on Parole
- 200.07: Concurrent with a Civil Commitment to the Massachusetts Treatment Center
- 200.08: Consecutive (“From and After”) Sentences
- 200.09: Forthwith Sentences
- 200.10: Early Consideration of Parole Release
- 200.11: Early Parole for Pregnant Females
- 200.12: Parole Eligibility for Habitual Criminals and Habitual Offenders

200.01: Definitions

Early Consideration. Consideration for release prior to reaching parole eligibility date. House of correction inmates are the only class of inmates eligible for early consideration, unless an inmate is serving a state prison sentence for a crime committed before July 1, 1994 and the state prison sentence carries a $\frac{2}{3}$ parole eligibility.

Interruption of Service of Sentences. Any interruption in the service of a sentence prior to the inmate reaching his or her parole eligibility date shall delay the inmate reaching his or her parole eligibility date. Parole eligibility will be delayed by the number of days that the sentence was interrupted and the inmate was not serving time on the sentence.

Measurement of Period of Confinement. The period of confinement shall be measured in days, months, and/or calendar years as stated by the court in the committing *mittimus*. For sentencing purposes, a month is 30 days. M.G.L. c. 4, § 7.

Minimum Mandatory Term. “Minimum mandatory term” for purposes of 120 CMR 200.00 applies to an inmate serving a sentence for violation of a statute which expressly provides for a minimum mandatory term of incarceration and which expressly precludes parole release prior to service of the mandatory term.

Parole Eligibility. The date on which an inmate becomes eligible for parole release.

200.02: Parole Eligibility Calculations

(1) House of Correction Sentences. An inmate serving a house of correction sentence or total aggregate sentence of 60 days or more shall be eligible for parole. The parole eligibility date for house of correction inmates shall be $\frac{1}{2}$ of the total aggregate term of incarceration or two years, whichever is shorter unless the inmate is serving one or more minimum mandatory terms which exceed two years. The parole eligibility date for a house of correction inmate serving one or more minimum mandatory terms which exceed two years shall occur after the inmate has served a period of incarceration equal to the aggregate length of any minimum mandatory terms.

(2) State Prison Sentences. An inmate serving a state prison term or mandatory minimum sentence shall be eligible for parole after serving the minimum term of sentence minus deductions, if applicable, for earned good time pursuant to M.G.L. c. 127, §§ 129C through D, unless the inmate is serving a life sentence. An inmate sentenced for second degree murder shall be eligible for parole after serving the minimum term of years fixed by the Court pursuant to M.G.L. c. 279, § 24, unless commuted to a lesser sentence which carries an earlier parole eligibility date. M.G.L. c. 265, § 2(c). An inmate sentenced for first degree murder who committed the murder between 14 and 18 years of age shall be eligible for parole after serving the minimum term of years fixed by the Court pursuant to M.G.L. c. 279, § 24, unless commuted to a lesser sentence which carries an earlier parole eligibility date. M.G.L. c. 265, § 2(b). No inmate sentenced for first degree murder who committed the murder on or after the inmate's 18th birthday shall be eligible for parole, unless commuted to a lesser sentence which carries a parole

120 CMR: PAROLE BOARD

200.02: continued

eligibility date. M.G.L. c. 265, § 2(a). Any inmate commuted to a lesser sentence shall be eligible for parole after serving the minimum term of sentence minus deductions, if applicable, for earned good time.

200.03: Split Sentences

(1) House of Correction Sentences. A house of correction inmate shall be eligible for parole as provided in 120 CMR 200.02(1).

(2) Probation Violations. An inmate who has completed the original committed portion of his or her sentence and later is returned as a probation violator to serve out the balance of his or her sentence shall have parole eligibility calculated based on the entire term of the sentence imposed by the court.

200.04: Concurrent Sentences

(1) Mixed Sentences. An inmate serving a sentencing structure that has any combination of house of correction and state sentences shall have the parole eligibility date for each component sentence determined. The latest occurring parole eligibility date shall control the parole eligibility date on the mixed sentencing structure.

(2) Same Sentences.

(a) House of Correction. An inmate serving concurrent house of correction terms shall be eligible for parole as provided in 120 CMR 200.02(1). The parole eligibility date for concurrent house of correction sentences shall be $\frac{1}{2}$ of the total aggregate term of incarceration or two years, whichever is shorter unless the inmate is serving one or more minimum mandatory terms which exceed the two years. The parole eligibility for a house of correction inmate serving one or more minimum mandatory terms which exceed two years shall occur after the inmate has served a period of incarceration equal to the aggregate length of any minimum mandatory terms.

(b) State Prison. An inmate serving concurrent state prison terms shall have parole eligibility determined by calculating the parole eligibility date on each component sentence as provided in 120 CMR 200.02(2) and determining which component carries the latest date. The latest date shall control parole eligibility for the aggregate sentencing structure.

200.05: Concurrent Sentence for Crime Committed While Incarcerated

(1) An inmate serving a sentence for a crime committed while incarcerated or while on escape, furlough, or work release, shall be eligible for parole on that sentence as provided in 120 CMR 200.02.

(2) An inmate serving a sentence for a crime committed while incarcerated, which is ordered to run concurrent with the balance of his or her governing sentence, shall have parole eligibility determined by calculating the parole eligibility for each new component sentence. The latest eligibility date on the new component sentences shall be the controlling parole eligibility date for the new aggregate sentencing structure.

200.06: Concurrent Sentence for Crime Committed While on Parole

A sentence for a crime committed while on parole may be served concurrent with the governing sentence if the Massachusetts parole violation warrant is served on the parolee prior to the imposition of the new sentence.

200.07: Concurrent with a Civil Commitment to the Massachusetts Treatment Center

An inmate serving a state sentence concurrent with a civil commitment to the Massachusetts Treatment Center for the Sexually Dangerous shall be eligible for parole as provided in 120 CMR 200.02(2).

120 CMR: PAROLE BOARD

200.08: Consecutive (“From and After”) Sentences

- (1) House of Correction. Parole eligibility for an inmate serving consecutive house of correction sentences shall be determined as provided in 120 CMR 200.02(1).
- (2) State Prison. Parole eligibility for an inmate serving consecutive state prison sentences shall be determined by calculating the parole eligibility date for each component sentence. This shall be accomplished by basing parole eligibility dates on the running of each component sentence from and after each other in the order imposed. The dates calculated shall be aggregated with the latest date controlling the parole eligibility date for the aggregate sentencing structure.
- (3) Exceptions. The following exceptions to the above-provisions shall be recognized:
 - (a) Consecutive sentence for a crime committed while on parole shall not be aggregated with the governing sentence for purposes of determining parole eligibility on the consecutive sentence;
 - (b) A split sentence may not be aggregated with any other sentence to determine parole eligibility if the parole eligibility date of the split sentence exceeds the committed portion of that sentence;
 - (c) A sentence for a crime committed on or after January 1, 1988 which is ordered to run consecutive to a life sentence shall not be aggregated with the life sentence for purposes of calculating parole eligibility on the consecutive sentence.

200.09: Forthwith Sentences

An inmate who is serving a house of correction sentence and receives a forthwith state prison sentence shall have parole eligibility calculated on the basis of the state prison sentence.

200.10: Early Consideration of Parole Release

- (1) House of Correction. For compelling reasons, a parole hearing panel may release a house of correction inmate up to 60 days earlier than his or her parole eligibility date. For compelling reasons, the full Board may release a house of correction inmate more than 60 days from his or her parole eligibility date.
- (2) State Prison. An inmate serving a state prison sentence is not eligible for early consideration of parole release, unless the inmate is serving a sentence for an offense committed before July 1, 1994 and the state sentence carries a $\frac{2}{3}$ parole eligibility. An inmate serving a state prison sentence with a $\frac{1}{3}$ parole eligibility may not petition for early consideration. An inmate serving a $\frac{2}{3}$ sentence shall serve $\frac{1}{3}$ of his or her sentence before he or she is eligible for early consideration. To petition for early consideration, an eligible state inmate shall present his or her petition to the Department of Correction.
- (3) The Parole Board may consider advancing the parole eligibility of an inmate based on its own review of a case or review of an inmate petition. An inmate filing a petition shall include with specificity the reason for his or her request for early consideration. A petition shall be given more weight when the inmate includes proof of his or her basis for the early consideration request.
- (4) A compelling reason for granting early consideration includes, but is not limited to, the following:
 - (a) serious medical or physical condition;
 - (b) exceptional achievement in a rehabilitative program;
 - (c) acceptance into a community rehabilitative program;
 - (d) any other reason that the Parole Board determines is sufficiently compelling to warrant early consideration for parole release.
- (5) A majority vote by the panel or full Board shall be required to grant early consideration.
- (6) The Parole Board shall provide written notice of the early consideration request hearing to the sentencing judge, Office of the District Attorney that prosecuted the governing offense(s), and the victim(s) of the governing offenses, as registered by the Department of Criminal Justice Information Services.

120 CMR: PAROLE BOARD

200.11: Early Parole for Pregnant Females

A pregnant inmate is immediately eligible for parole when she presents the Parole Board with a treating physician's certification which states that the best interest of the mother or her unborn child require that she be granted parole release. The certification shall state the medical or physical condition warranting early consideration and the manner in which early release would serve to address the medical or physical condition.

200.12: Parole Eligibility for Habitual Criminals and Habitual Offenders

(1) Habitual Criminal. An offender who is sentenced pursuant to M.G.L. c. 279, § 25(a) shall be considered a Habitual Criminal. A Habitual Criminal is parole eligible after serving $\frac{2}{3}$ of their maximum sentence minus any deductions for earned good time. After serving $\frac{2}{3}$ of their maximum sentence, a Habitual Criminal shall be eligible for parole every two years until released on parole or the sentence has expired. M.G.L. c. 127, § 133B.

(2) Habitual Offender. An offender who is sentenced pursuant to M.G.L. c. 279, § 25(b) shall be considered a Habitual Offender. A Habitual Offender shall be sentenced to the maximum term provided by law for the offense enumerated in M.G.L. c. 279, § 25(b) clause (i). A Habitual Offender is not eligible for parole. M.G.L. c. 127, § 133B.

(3) The criteria and parole eligibility for offenders sentenced as Habitual Criminals or Habitual Offenders in 120 CMR 200.12(1) and (2) only applies to triggering offenses occurring on or after August 2, 2012. For offenses occurring prior to August 2, 2012, the statute in effect at the time of the offense governs, with parole eligibility at $\frac{1}{2}$ of the maximum sentence, minus any deductions for earned good time, and no category of Habitual Offenders who are not eligible for parole.

REGULATORY AUTHORITY

120 CMR 200.00: M.G.L. c. 27, §§ 4 through 7 and c. 127, §§ 128 through 133B and 142.

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