

WHITE PAPER:
THE CURRENT STATE OF PAROLE
IN MASSACHUSETTS

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I INTRODUCTION AND EXECUTIVE SUMMARY

This paper reviews parole in Massachusetts from 2010 through October 2012.

Ninety-seven percent of all prisoners in Massachusetts correctional facilities are eventually released. A significant number of these prisoners, however, are being released without supervision because they are not granted parole but are instead completing their sentences or “wrapping up”. In the past two years, paroling rates have declined significantly so that more prisoners serve their entire sentences in custody rather than completing them on parole.

In 2002, the work of the Boston Bar Association’s (BBA) Task Force on Parole and Community Reintegration established the importance of the parole process in making our communities safer by providing a supervised structure for prisoners’ reintegration.¹ The Task Force was formed because of a concern throughout the legal community that for prisoners incarcerated in state facilities as well as county houses of correction, the grant of parole as a percentage of those eligible for parole had declined significantly during the 1990s. For state sentences, the grant rate had declined from 69.9% in 1990 to 40.5% in 2000, and for county sentences, the grant rate had declined from 57.7% in 1990 to 48.7% in 2000.

In response to these alarming statistics, the Task Force formed in 2000. Its members were prosecutors, other government lawyers, members of the criminal defense bar, court personnel, criminal justice practitioners from local programs and the federal probation system, civil rights advocates and community representatives. After two years of study, the Task Force concluded that the parole situation presented a serious public safety challenge and made five recommendations.² None of the recommendations were fully implemented.

¹ Report of the Boston Bar Association: Task Force on Parole and Community Reintegration, <http://www.bostonbar.org/prs/reports/finalreport081402.pdf>

² The 2002 Task Force recommendations were:

- 1)The Parole Board should implement a system of “presumptive parole;”
- 2)Prisoners should presumptively move to lower custody status as they progress toward their initial parole hearing;
- 3)The Parole Board should work with prisoners and the Department of Correction staff to prepare and implement individual release and reintegration plans;
- 4)The membership of the Parole Board should be diversified to achieve the intent of the existing Massachusetts Law; and

Today, we are faced with a similar challenge. Our parole rates have plummeted during the past two years to rates lower than those in 2000. Only 26% of the state prisoners eligible for parole are released on parole. Our county release rate is only 28%. Like the 2002 Task Force, the authors of this white paper offer recommendations that will improve the overall operation of the Massachusetts parole system, making it more integral to the overall sentencing system, and that will make parole more effective and just. Our recommendations, some of which echo the 2002 Task Force recommendations, are as follows:

- (1) Incorporate positive reinforcement and incentives into the parole system to maximize results and reduce recidivism;
- (2) Require that the Parole Board give sufficient weight to the results of a risk assessment instrument in making decisions;
- (3) Train Parole Board members on a variety of topics to ensure that they are equipped to consider all relevant factors and impose sound conditions of release;
- (4) Require the use of graduated problem-solving responses and sanctions to violations of parole conditions;
- (5) Institute a mechanism for presumptive parole;
- (6) Appoint a Parole Advisory Panel, in keeping with M.G.L. c.27, §4, to review and update parole regulations.

II. THE CURRENT STATE OF PAROLE

In December 2010, parolee Dominic Cinelli killed Officer John McGuire, a Woburn police officer, during an attempted robbery. Amid public consternation and constant media coverage, in January 2011 Governor Patrick replaced five Parole Board members who had voted for Cinelli's release. Four of the five new members had law enforcement backgrounds. One of the five, career prosecutor Joshua Wall, was named to be the new Chairman of the Board. Throughout the vetting process and the hearing before the Governor's Council, Wall espoused the value of an evidence-based approach to parole decision making. He pointed repeatedly to the fact that Cinelli's release did not rely on the use of a risk assessment.

At present, five of the six sitting members of the Board have backgrounds in law enforcement. There are three former prosecutors (Josh Wall, Cesar Archilla, and Ina Howard-Hogan), a former victim-witness advocate (Lucy Soto-Abbe), and a former Department of Correction (DOC) administrator (Sheila Dupre). There is also a former court forensic psychologist (Charlene Bonner, Ph.D). There is one vacancy. The Governor recently nominated criminal defense attorney Tonomey Coleman to fill that vacancy and re-nominated Lucy Soto-Abbe to a second term on the Board. Their hearings before the Governor's Council are scheduled for February 27, 2013.

5)The research departments for the Commonwealth's criminal justice and related agencies should coordinate their data collection and share their research with one another and the public.

Since the new Parole Board members assumed their roles, the parole rate has decreased and prisons have become increasingly overcrowded. In 2009, Massachusetts parolees successfully completed parole at the exceptionally high rate of 78%, far above the national average of 44%.³ State prisoners saw their parole release rate drop from 42% in 2010 to 26% in 2011.⁴ Similarly, from 2010 to 2011, county parole rates dropped from 40% to 28%.⁵ The reduction in parole contributes to overcrowding: as of December 17, 2012, Department of Correction facilities were operating at 139% of design capacity, with 11,148 prisoners in facilities meant to hold 8,029.⁶ Similarly, county correctional facilities combined are operating at 135% design capacity, with 11,648 prisoners in facilities intended to hold 8,633. The most over-burdened facility is the Bristol County House of Correction at 360%.⁷ Increasing the prison population comes at a price. The yearly cost of prison per person in Massachusetts is approximately \$45,500, while the corresponding cost of parole is \$5,000.⁸

3 Massachusetts Executive Office of Public Safety, “Fact Sheet: Patrick/Murray Administration Proposed Legislation: “An Act to Prevent Crime and Reduce Recidivism by Increasing Supervision and Training Opportunities for Inmates,” May 7, 2009, available at: <http://www.mass.gov/eopss/docs/eops/post-release-and-sentencing-fact-sheet-5709.pdf>.

4 See chart of parole statistics taken from DOC and Parole Board Annual Reports of 2010 and 2011, attached hereto as an Addendum: “Parole Statistics: 2010-2011”. The parole release rate is the rate of eligible prisoners who are actually released on parole. It is a more realistic measure of the parole rate than the favorable vote rate used by the Board.

5 See Addendum.

6 This does not include the 271 state prisoners held in non-DOC facilities or those held at Bridgewater State Hospital or Lemuel Shattuck Hospital. MASSACHUSETTS DEPARTMENT OF CORRECTION, *Weekly Count Sheet* (12/17/12), available at: <http://www.mass.gov/eopss/docs/doc/research-reports/wkly-countsheet/2012/12-17-12.pdf>.

7 *Id.*

8 Massachusetts Department of Correction, “Frequently asked questions about the DOC,” available at: <http://www.mass.gov/eopss/agencies/doc/faqs-about-the-doc.html>; Massachusetts Parole Board, “Frequently Asked Questions,” available at <http://www.mass.gov/eopss/agencies/parole-board/frequently-asked-questions.html>.

A. **Prisoners serving sentences other than life in the Department of Correction**

The vast majority of prisoners in the state prison system – about 82% – are not serving life sentences.⁹ These individuals will return to the community, after either serving the entirety of their sentences in prison or being released on parole to serve the remainder of their sentences under parole supervision and assistance in the community. Within the next 5 years, 6,213 prisoners, representing 73% of the non-lifer prison population in the DOC will be released.¹⁰

A panel of two or three Parole Board members conduct parole hearings for prisoners serving non-life state prison sentences.¹¹ Non-lifers in state prison seeking parole do not have the right to call witnesses or to legal representation at these hearings.¹²

1. ***DOC Parole Releases***

Under the current Board, the number of prisoners released on parole has decreased significantly. In 2010, 58% of the state prisoners who appeared before the Parole Board received a favorable vote granting parole upon satisfying specified conditions.¹³ In 2011, the favorable vote rate dropped to 40%.¹⁴ For the first nine months of 2012, the favorable vote rate increased to 50%.¹⁵ However, the favorable *vote* rate is not the same thing as the parole *release* rate. In fact, the currently reported favorable vote rate

9 See Massachusetts Department of Correction, *Analysis of Inmates Eligible for Release within Next 5 Years*, p. 1-2 (October 2012), available at: <http://www.mass.gov/eopss/docs/doc/research-reports/brief-percent-eligible-rel-5yrs.pdf>.

10 See *Id.* at 4.

11 M.G.L. c.127, §134; M.G.L. c.27, §5.

12 120 CMR 300.08.

13 Massachusetts State Parole Board, “2010 Annual Report,” p. 12, available at: <http://www.mass.gov/eopss/docs/pb/annualreport2010.pdf>.

14 See Addendum.

significantly overestimates the number of prisoners actually released on parole. For example, in 2010, 891 state prisoners were released to parole supervision; in 2011, only 395 prisoners were released to parole – a drop of more than 50%. Although the favorable parole vote rate increased in 2012, the number of prisoners actually released on parole in the first nine months of 2012, 424 people, is still only approximately 60% of what it was during the same period in 2010.¹⁶ Although the Board has not yet produced data sufficient to determine the 2012 parole release rate, it is clear from the number of prisoners who have actually been released on parole from the Department of Correction that the release rate remains dramatically lower than it was in 2010 despite the increase in the favorable vote rate.

There are several reasons why the dramatic decline in the number of prisoners actually released on parole is not fully explained by the lower favorable vote rate.

- **Waivers:** There has been a significant increase in the number of prisoners who “waive” parole, i.e. decline the opportunity to appear before the Board.
 - In 2010, 447 state prisoners waived parole hearings; in 2011 this number rose to 538, an increase of about 20%. This is largely because many prisoners decided not to attend a hearing when there was no realistic prospect of parole.
- **Conditions of Parole Release:** When the parole hearing panel approves a release plan, it may set certain conditions, such as program completion or time served in lower custody, which must be fulfilled before a prisoner can be released.
 - In 2010, the percentage of prisoners who were actually released on parole after a favorable vote was 91%. In 2011 the rate decreased dramatically to 64%, largely because the Board has increasingly imposed strict conditions on release that are often impossible to meet.¹⁷

B. “Lifers” in the Department of Correction

By statute, initial parole hearings and subsequent parole review hearings for people serving life sentences for crimes other than first-degree murder, colloquially known as “lifers,” are held before the full Parole Board.¹⁸ According to the Department of Correction, 630 lifers – 72% of all parole-eligible lifers – will be eligible for parole release within the next five years.¹⁹ There is a significant amount of information

¹⁵ Information provided by the Parole Board to Executive Office of Public Safety. .

¹⁶ See Department of Correction Quarterly Reports on Admission and Release Trends in Massachusetts Department of Correction, Third Quarter 2012, available at <http://www.mass.gov/eopss/docs/doc/research-reports/ar-3q-2012-report.pdf>.

¹⁷ According to the Parole Board, this rate has risen slightly to 69% in 2012.

available about lifer parole hearings and the Parole Board's decisions because the hearings are public and recorded; the decisions are also posted on the Parole Board's website.²⁰

1. *Lifer Parole Releases*

Two hundred nineteen (219) lifer hearings were conducted between April 14, 2011 (when the new Board members began hearing lifer cases) and October 25, 2012. Decisions from 111 of these hearings were posted on the Parole Board's website as of the date of the following analysis.²¹ Of those decisions, unlike prior Boards, 100 were unanimous, showing a strong similarity of thought between board members. As detailed below, only two individuals were released from prison as a result of those two hundred nineteen hearings. Two men died before receiving a published decision and one man died in prison after waiting five months to be released on a positive parole vote to a veterans' community facility.

Table 1: Lifer Parole Decisions April 2011-October 2012

Of the 112 known outcomes:

- **Twenty-one people, or 18.5%, received "positive votes."** They will not be released on parole unless and until they complete certain conditions set by the Parole Board.
 - **Two people**, just under 2% of the published hearing decisions, have actually been released from prison.
 - **Fifteen people** have not yet been released. They are working through the conditions set by the Parole Board, including waiting months or even years to get a bed in a lower security facility. In practice, it is difficult for people to get to lower security even when the Parole Board has ordered it. See "E. The Process of Gaining Release After a Grant of Parole," *infra*.

18 M.G.L. c.127, §133A.

19 See Massachusetts Department of Correction, *Analysis of Inmates Eligible for Release Within Next 5 Years* (October 2012), available at <http://www.mass.gov/eopss/docs/doc/research-reports/brief-percent-eligible-rel-5yrs.pdf>.

20 See <http://www.mass.gov/eopss/agencies/parole-board/lifer-records-of-decision.html>.

21 *Id.* Analysis conducted with decisions posted on or before October 25, 2012.

- **Three people** in the “Other” category received positive votes: two were granted parole to start consecutive criminal sentences and one was granted parole into Immigration and Customs Enforcement (ICE) custody.
- Two people in the “Other” category were given new hearings: one because the translation service was inadequate and one because the parole seeker had a serious mental disability that prevented him from representing himself.
- **One man** received a positive vote, but died waiting to be released on parole to a veterans’ community facility.
- **Eighty-seven people, or 78%, were denied parole.** When the Parole Board issues a denial, it specifies the amount of time that must elapse before the parole seeker’s next hearing. This time is known as a “setback.”
- **Sixty-two people** were given a 5-year setback before they may have a new parole hearing, the longest delay permitted by law.²²
- **Two men**, whose requests for parole were based in large part on their advanced age, declining health, and resultant lack of dangerousness, died from long illnesses within months of their hearings.

2. *Delays in Decision-making in Lifer Cases*

Lifers seeking parole face extremely long delays in receiving their decisions. In Massachusetts, the current average wait between the hearing and receipt of the written decision is 262 days, with the longest wait 537 days—nearly a year and a half. Prior Parole Boards generally issued lifer decisions within four to eight weeks of the hearing. Waiting anywhere from eight months to eighteen months for a decision is fiscally wasteful, has increased tension and hopelessness in already overcrowded prisons and is perceived as disrespectful of prisoners, their families and their representatives.

Lifers who are on parole in the community and are charged with a parole violation also face lengthy and often unlawful delays in the parole revocation process. Paroled lifers may lose their freedom and be returned to prison if they violate conditions of parole. These people face excessive delays waiting for a determination as to whether they violated parole and, if so, whether they should resume serving their sentences in prison or be re-paroled. The Supreme Court has said that parole revocation hearings “must be tendered within a reasonable time after the parolee is taken into custody,” and recognized two months as reasonable. *Morrissey v. Brewer*, 408 U.S. 471, 488 (1972). Since the new parole board members took office, the average wait between a lifer’s return to custody for an alleged parole violation and a decision as to whether he or she should be re-paroled has been over a year at 481 days, with the longest wait being 881 days, or two years and five months.

Two people, both of whom were sick and elderly, died waiting for action by this Parole Board: one waiting for a decision, and one waiting for an approved home plan after the Board failed to release him to the veterans’ nursing home that had agreed to accept him. One more person died of a long-term illness shortly after receiving a negative parole vote. He had been too sick to attend his hearing, and had simply asked the Board to allow him to die at home with his family.

²² See M.G.L. c.127, §133A.

C. Parole in County Correctional Facilities

Except when a mandatory minimum sentence is involved, prisoners serving sentences in county correctional facilities become parole eligible after serving one-half of their sentences.²³ Accordingly, virtually everyone serving a house of correction sentence is, at some point, parole-eligible. All will eventually reenter the community. A single Parole Board member conducts parole hearings for county prisoners. In practice, the hearings are held at the correctional facility where the prisoner is held. Like non-lifers in state prison, county prisoners seeking parole do not have the right to call witnesses or to legal representation.²⁴

1. *County Parole Releases*

In 2010, 64% of the prisoners serving sentences at a house of correction who appeared before the Board received a favorable vote. In 2011, the favorable rate dropped to 50%.²⁵ However, as with state prison sentences, the favorable vote rate significantly overestimates the number of prisoners actually released on parole and county correctional facilities are increasingly overcrowded. For example, in 2010, 3,417 county prisoners were actually released to parole supervision; in 2011, only 2,008 prisoners were released to parole – a drop of more than 40%.²⁶ Furthermore, the number of county prisoners who waive parole has also increased, going from 1,949 in 2010 to 2,103 in 2011.²⁷

23 Amendments to M.G.L. c.94C, §32(c) enacted in 2010 granted individuals serving mandatory minimum sentences for drug offenses at county Houses of Correction parole eligibility after serving one-half of their sentences, so long as their cases did not involve certain “aggravating factors” related to violence, gun possession, sales to minors, or “kingpin” activities.

24 120 CMR 300.08.

25 See Addendum.

26 See Addendum.

27 See Addendum.

D. The Effect of Lower Parole Rates

Overall, the number of state and county prisoners released on parole decreased from 4,508 in 2010 to 2,403 in 2011. At the end of 2011, only 1,649 individuals were on parole, compared to 2,489 individuals at the end of 2010.²⁸

Low parole rates mean that more people are released directly to the street without supervision, services, or support. In 2010, 38% of prisoners released to the street were placed on parole. By contrast, only 15% of prisoners released during the year ending June 30, 2012 were under parole supervision.²⁹ Reduced parole release rates also result in more prisoners returning to the community directly from medium and maximum security institutions, which is correlated with higher recidivism rates. Recognizing the importance of rehabilitation in reducing recidivism, it is significant also that, in 2011, the Parole Board's Substance Abuse Coordinator served only 1,172 new clients, compared to 2,149 clients in 2010.³⁰

In addition, low parole rates exacerbate prison overcrowding. Not only are fewer people being released on parole, some parolees reported that their parole officers have become increasingly strict and returned them to prison for minor, non-criminal violations of the rules. The result is that in the year ending June 30, 2012, only 17 more prisoners were paroled on average each month than were returned to DOC as parole violators.³¹ Thus, the net effect of parole on DOC population was a decrease of 210 prisoners. Contrast this with 2010, when the net effect of parole was a decrease of 588 prisoners in DOC prisons.³²

Although there has been some hope that the 2012 statutory reductions in the length of mandatory minimum drug sentences might help ease overcrowding, the effect has been minimal. Although over

²⁸ See Addendum.

²⁹ Massachusetts Department of Correction, *Quarterly Report on Admissions and Releases – Second Quarter 2012*, p. 8, available at <http://www.mass.gov/eopss/docs/doc/research-reports/2ndq-2012-report.pdf>.

³⁰ See Addendum.

³¹ Massachusetts Department of Correction, *Quarterly Report on Admissions and Releases – Second Quarter 2012*, p. 12, available at <http://www.mass.gov/eopss/docs/doc/research-reports/2ndq-2012-report.pdf>.

1,000 prisoners have been made newly eligible for parole, as of October 25, 2012, only 23 of these prisoners had actually been released by the Parole Board.

E. The Process of Gaining Release After a Grant of Parole

Prisoners, their families, the Parole Board and prisoners' advocates agree that prisoners should 1) "step down" in security levels (maximum security to medium and minimum security) before being released to the street and 2) complete programming that will make their re-entry successful. The critical problem in Massachusetts is the timing of step-downs and the lack of available programming. Rather than stepping down throughout their time in prison, many state prisoners often do not step-down in security levels until after they get a positive vote from the Parole Board. For example, a prisoner serving an eight to ten year sentence will see the Parole Board at eight years. If he is living in a medium security institution, the Parole Board will likely determine he must serve a year in lower security without any problems before being paroled to the street. Since there are over 7,663 medium security beds and only approximately 1,400 minimum and pre-release beds in the DOC, it will take the prisoner most of his remaining two years to get transferred to a minimum where he must live for a with no disciplinary reports. (A vote of "parole upon completion of one year in minimum security," however unachievable it may be, counts as a positive parole vote even though the prisoner may never be paroled).

The Parole Board has decided that all lifers should serve twelve to eighteen months in minimum or pre-release status before being paroled. The DOC, however, has a policy that lifers are prohibited from living in a prison below medium security status, unless they have a positive parole vote (e.g. "parole upon completion of one year in minimum and/or pre-release"). Thus, by their policies, the DOC and the Parole Board have decided that all life sentences are now at least 16+ year sentences. Both DOC and house of correction prisoners have been receiving parole decisions telling them they must complete certain programs prior to being released on parole. The programs are often not available and the prisoners are never paroled. The Parole Board includes these cases as positive votes.

III. RECOMMENDATIONS

(1) Incorporate positive reinforcement and incentives into the parole system to maximize results and reduce recidivism

An effective paroling board enhances public safety by helping prisoners successfully reenter their communities. In keeping with current research, the Massachusetts Parole Board should incorporate

32 See Massachusetts Department of Correction, "Quarterly Report on Admissions and Releases - Fourth Quarter 2010," p. 12, available at <http://www.mass.gov/eopss/docs/doc/research-reports/admin-rel-4th-qtr2010-final.pdf>. The net decrease in prisoners was calculated by subtracting the 440 prisoners who were returned to prison from parole from the 1,028 total parole releases that occurred in 2010.

positive reinforcement into both the parole review and the parole supervision processes. The parole system should incentivize parolee development, rewarding those who reach significant milestones with certificates of recognition, reduction in fees, and early termination of supervision. Such measures have been shown to reduce recidivism, strengthen communities, and significantly reduce state costs. The Parole Board should move away from negative, adversarial hearings and instead focus on motivating prisoners to attain parole release.

a. **Best Practices**

The U.S. Department of Justice’s National Institute of Corrections (NIC) and the Pew Center on the States recognize that success increases and, accordingly, recidivism rates decrease when parole staff motivate prisoners and parolees to change.³³ “Sustained behavioral change occurs when an individual receives more positive reinforcement than negative reinforcement.”³⁴ This is true when it comes to parole board hearings and parole supervision.

The NIC explains that, in an effective parole hearing:

The climate of a hearing includes the expression of appreciation for progress, actively listening, acknowledging a parolee’s challenges, and creating goals that regard progress, which are all actions that provide positive reinforcement. Similarly, a parole board’s response to violations can provide both consequences for failure and positive reinforcement for those areas that have gone well.³⁵

Indeed, in order to be a successful and effective parole board member, the NIC includes as one of five required competencies “Respect for Self and Others.”³⁶ This competency entails an ability to accurately self-assess and to manage emotions and requires that a member demonstrate “effective interpersonal skills with a wide variety of people.”³⁷

³³ Nancy M. Campbell, *Comprehensive Framework for Paroling Authorities in an Era of Evidence-Based Practices*, NATIONAL INSTITUTE OF CORRECTIONS (2008), available at <http://nicic.gov/Library/022906>; Pew Center on the States, *Smart Responses to Parole and Probation Violations*, p. 7 (November 2007).

³⁴ Campbell, *supra* note 4, at 38.

³⁵ Id. at 39.

³⁶ Id. at 60.

³⁷ Id. at 61.

In accordance with this research, a number of states have implemented systems of positive reinforcement into supervision programs, including early termination of parole. For example, Ohio uses a structured incentive system so that beneficial activity is met with rewards, including certificates of recognition, reductions in supervision fees or time, or recognition at a special public event.³⁸ Georgia also gives incentives for positive behavior, including recognition at “graduation” ceremonies, early termination of supervision, and gift certificates.³⁹ Nevada rewards parolees by shortening their terms of parole on a monthly basis for successfully complying with their conditions, and with additional deductions when their “diligence in labor or study merits such credits.”⁴⁰ South Carolina similarly allows parolees to earn early dismissal from parole based on each month of compliance with parole conditions.⁴¹ Kentucky requires that parolees fulfilling their conditions receive compliance credits to shorten their sentence for work, treatment, and educational accomplishments.⁴² New York law permits the paroling authority to terminate parole supervision for individuals sentenced for drug offenses after three consecutive years of unrevoked community supervision.⁴³ South Carolina actually requires the state to transition individuals from parole to administrative monitoring if all parole conditions are completed, except financial ones.⁴⁴

38 Urban Institute, *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*, p. 32 (December 2008).

39 Id.

40 N.R.S. 209.447; N.R.S. 209.4475; see Urban Institute, *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*, p. 17 (December 2008).

41 Pew Center on the States, *South Carolina’s Public Safety Reform: Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs*, p. 8 (June 2010).

42 KRS §439.345

43 N.Y. Exec. Law §259-j.

b. *The Need for Change in Massachusetts*

Unfortunately, the key motivational tool of positive reinforcement is virtually unused in the Massachusetts parole system. Successful parolees are not rewarded or recognized for their compliance with conditions or significant achievements and the Board completely ignores the statute that authorizes it to terminate the sentence of any parolee who has completed at least one year of parole supervision, G.L. c. 127, § 130A. The result is that the Board continues to expend scarce resources supervising individuals who have demonstrated that they are fully rehabilitated.

Furthermore the attitude of the Parole Board is negative and often confrontational during hearings. Hearings are adversarial. The underlying crimes are discussed in great detail, at times, to the elimination of other relevant considerations, and the inquiry is not limited to the evidence at trial or agreed upon at the time of pleas. Indeed, Chairman Wall has hired investigators to uncover information regarding the underlying crimes. Assistant district attorneys who appear at hearings play a central role in arguing against parole yet are not sworn in as witnesses. Parole Board members often fail to recognize—or they minimize—achievements by prisoners and parolees facing revocation, even when considering the cases of parolees who successfully lived as law-abiding citizens on parole for years.

Moreover, a number of Parole Board members habitually make derisive comments and pose condescending questions to individuals seeking parole. Some do not hesitate to exhibit their personal disgust with the past conduct of prisoners and parolees. At hearings, prisoners, their family members, and their representatives are often cut off by Parole Board members while they are speaking. This unproductive and at times unprofessional conduct is apparent when reviewing the recordings made of hearings and speaking with those disheartened by their experience before the present Parole Board. The tenor of the hearings discourages prisoners from continuing and/or embarking on a path of change and rehabilitation, as evidenced by the number of prisoners who choose to waive their hearings, rather than face the Parole Board.

QUOTES FROM LIFER PAROLE BOARD HEARING PARTICIPANTS AND ATTENDEES⁴⁵

“As soon as the Chairman started speaking, you could tell by his demeanor, that he wanted to show that they were in control. There’s a way you can do that without being hostile. I felt that their professionalism, because of their condescending manner and because of their attitudes, did not fit into what we were expecting...They seemed so hostile and like they had already made their decision. I don’t think that they wanted to take the time to hear what [my husband] or I wanted to say. Josh Wall just cut me right off...Watching how they treated [my husband], I felt horrible...They made [my husband] feel like his 16 years of success meant nothing.”

44 American Civil Liberties Union, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs while Protecting Communities*, p.39 (2011), available at: http://www.aclu.org/files/assets/smartreformispossible_web.pdf.

45 Recordings are not made of non-lifer hearings before the Parole Board.

– Family member after attending a parole revocation hearing

“Soto-Abbe stared at the ceiling the whole time rolling her eyes, even while I was answering her questions. Michel was basically really, really rude...Michel was being pals with the district attorney who was there against me, like they were buddies...I was worried how [the hearing] was affecting my family...My sister was going to speak, but she decided not to after watching them...When my stepmother got up to speak, they ‘spoke out of the sides of their neck’ [made false statements]. They were cutting her off, talking down to her...That was my fifth parole hearing. Going in front of the old Parole Board was terrifying...during those hearings, I had some badgering, but they looked like saints in comparison to this board.”

– Parolee following a parole revocation hearing

“Their behavior as professional jurists is reprehensible and their actions are a crude and blatant attempt to dismantle a hearing process of fairness and civility for one that is abusive and above the law...The problem with this scenario is that they are revisiting 40 year old crimes as though a person just committed [them] and acting as judge and jury, while the offenses they were returned on are either magnified or ignored depending on how much negative mileage they can extract. They have shown a clear pattern of this behavior and display obvious contempt and prejudice at the very outset of each hearing. The remarks made at my hearing [were] reminiscent of a feeding frenzy and not of an orderly process. Out of control is a better description. Each member anxiously waiting their turn to humiliate myself and my family...”

– Parolee following a parole revocation hearing

“Have you had the opportunity to explain to him that the Parole Board will not be disregarding the jury’s verdict?”

– Chairman Josh Wall (Hearing on 11/8/11; speaking to law student attorney)

“You know, it would seem to me, at least someone could argue, that the reason you would argue for a two-year setback is you don’t have a snowball’s chance in hell of getting a parole board to let you walk out that door.”

– Cesar Archilla (Hearing on 2/16/2011)

“You know that a cynical person would think, what I had mentioned earlier, that, what would you say to a person that was cynical and said, well, the reason he has really dealt with his behavior was because he realizes that it’s the only way he’s going to get out of jail and it’s not really because he truly believes, ya know, what he says or that he’s truly remorseful and it’s not about the victim’s family, it’s more about the fact that you saw the writing on the wall when the Parole Board said, matter of fact, ‘no way, no WAY we’re going to parole you.’”

– Cesar Archilla (Hearing on 10/25/2011)

(2) Require that the Parole Board rely upon the risk assessment instrument in making decisions

“Criminal justice policies are more effective when crafted based on criminology or science rather than fear and emotion.”⁴⁶ Rather than relying on conjecture to make parole release and parole revocation decisions, the Parole Board should rely on a validated, evidence-based risk assessment instrument. Based on social science factors, the instruments are able to sort every individual seeking parole into low,

46 American Civil Liberties Union, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs while Protecting Communities*, p.9 (2011), available at: http://www.aclu.org/files/assets/smartreformispossible_web.pdf.

medium, or high risk of recidivism and gauge their programmatic needs while on parole.⁴⁷ In order to be effective, the instrument must be applied in every case and the score noted in each parole decision.

Therefore, it is essential that:

- There be a presumption that the Parole Board rely on the risk assessment instrument findings in making its decision;
- The risk assessment instrument score for the individual seeking parole be included in his or her written parole decision;
- Each written parole decision must include an explanation of its weight, and a description of reasons for assigning it less weight in any decision where that is the case; and
- Setting an override cap so that the Board cannot disregard it in more than 25% of cases.

a. **Best Practices**

The Pew Center on the States, the Justice Center of the Council of State Governments, the National Institute of Corrections, the Urban Institute, and American Civil Liberties Union are among a growing number of national and state entities that recognize the importance of incorporating risk assessment instruments into the parole decision-making process.⁴⁸

“Research consistently has shown that assessing each individual’s risk of reoffending, matching supervision and treatment to an offender’s risk level and targeting his or her unique criminal risk factors and needs with proven programs significantly improves offender outcomes, reduces recidivism and

47 Id.

48 See, e.g., Pew Center on the States, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders*, pp. 2-4 (September 2011), available at: http://www.pewstates.org/uploadedFiles/PCS_Assets/2011/Pew_Risk_Assessment_brief.pdf;

Council of State Governments Reentry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, p. 236, 248 (January 2005), available at: <http://www.reentrypolicy.org/publications/1694>; National Institute of Corrections, *Evidence-Based Policy, Practice, and Decisionmaking Implications for Paroling Authorities* (March 2011), available at: <http://static.nicic.gov/Library/024198.pdf>; Urban Institute, *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*, pp. 12,17, 24-25 (December 2008), available at: http://www.urban.org/UploadedPDF/411791_public_safety_first.pdf; American Civil Liberties Union, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs while Protecting Communities*, p. 9, 33, 45 (2011), available at: http://www.aclu.org/files/assets/smartreformispossible_web.pdf.

enhances public safety. In fact, studies have demonstrated that evidence-based community supervision and treatment strategies consistently reduce recidivism as much or more than incarceration.”⁴⁹ “An objective, validated risk-assessment instrument is a far more effective way of measuring risk than a parole board officer’s subjective evaluation, and it allows for more informed and appropriate clinical decision-making related to release and conditions of release.”⁵⁰ Indeed, studies have shown that “seasoned professionals who rely exclusively on their experience and professional judgment predict recidivism at rates no better than chance,” but prediction rates improve with the use of risk assessment instruments.⁵¹ In addition to assisting the Parole Board in tailoring programming requirements and other parole conditions to reduce recidivism, risk classifications assist criminal justice officials in maximizing the use of limited resources.⁵² More efficient use of available resources and the reduction of recidivism and reincarceration necessarily reduce law enforcement and correctional costs and improve public safety.⁵³

b. The Use of Risk Assessment Instruments in Massachusetts

Currently, the Parole Board only considers the DOC’s COMPAS assessment. However, they do not rely on the tool’s findings or any other evidence-based practice in making release decisions. In light of 2012 amendments to G.L. c. 127, § 130, requiring the Parole Board to utilize a risk assessment instrument, members have reportedly been receiving trainings on the use of the Level of Service/Case Management Inventory (LS/CMI) assessment tool and plan to begin utilizing it by the end of the year. However, it is unclear how much weight the Parole Board intends to give the LS/CMI scores.

49 Pew Center on the States, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders*, p. 4 (September 2011) (internal citations omitted), available at: http://www.pewstates.org/uploadedFiles/PCS_Assets/2011/Pew_Risk_Assessment_brief.pdf.

50 Council of State Governments Reentry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, pp. 235, 248, 252 (January 2005), available at: <http://www.reentrypolicy.org/publications/1694>.

51 National Institute of Corrections, *Evidence-Based Policy, Practice, and Decisionmaking Implications for Paroling Authorities*, p. 5 (March 2011), available at: <http://static.nicic.gov/Library/024198.pdf>.

52 *Id.* at p. 3.

53 National Institute of Corrections, *Evidence-Based Policy, Practice, and Decisionmaking Implications for Paroling Authorities*, p. 21 (March 2011), available at: <http://static.nicic.gov/Library/024198.pdf>.

(3) Require that Parole Board members receive training on a variety of topics to ensure that they are equipped to consider all relevant factors and impose sound conditions of release

Parole Board members must be well-informed about a broad range of topics to be able to assess the prospects of individuals seeking parole. As the American Civil Liberties Union reports, “[i]n most states, the governor appoints members to the parole board. Often, individuals on these boards lack training and make decisions about parole release based on instinct instead of evidence. This results in an unfair execution of justice with little predictability, transparency or accountability for parole decisions.”⁵⁴ The entire Parole Board, given the diverse background of its members, must be trained in a variety of areas including: the effects of poverty on human development, the school-to-prison pipeline, adolescent brain development and cognitive development, mental illness, developmental disabilities, traumatic brain injury, substance abuse and dependence, gang culture, impediments related to language abilities, the experience and cost of aging in prison and the elderly in prison. Trainers should be chosen by independent experts in the above fields, and not exclusively by the Board. A current Board member has repeatedly stated that he does not believe in substance-abuse related “blackouts”. This misinformed belief makes clear the need for trainings by independent experts and not those chosen exclusively by the Board, as is currently the case. It is unprofessional for the Board to have the freedom to choose trainers who may mirror members’ personal beliefs while excluding trainings based on research and evidence-based best practices.

In addition to trainings in cultural competence, the Parole Board must be continually trained on the nature, availability, and effectiveness of programs within the DOC and sheriffs’ departments for prisoners and in the community for parolees. At times, the Parole Board imposes unnecessary or impossible conditions that prisoners and parolees are expected to fulfill in order to gain or maintain their release; this is a recurring problem. Some programs mandated by the Parole Board as “step down” requirements and as conditions of release are not available or nonexistent. Similarly, some programs mandated for individuals granted parole are not available or nonexistent, which can result in further delays and make parole release impossible.

Equipped with the knowledge from these trainings and a validated risk-assessment instrument, the Parole Board will be able to make well-informed, consistent decisions in the best interests of the community.

(4) Require the use of graduated problem-solving responses and sanctions to violations of parole conditions

The Parole Board must enact a more clearly-defined system of graduated problem-solving responses and sanctions that the Board and parole officers must follow when parolees violate conditions of their parole, except in limited, extraordinary circumstances. Technical violations, i.e. missing meetings, positive drug screens, or so-called “irresponsible conduct,” must be treated differently than new criminal offenses. Formal revocation proceedings and reincarceration should only be used for technical violations as a last

⁵⁴ American Civil Liberties Union, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs while Protecting Communities*, p.14 (2011), available at: http://www.aclu.org/files/assets/smartreformispossible_web.pdf.

resort. However, technical violations in Massachusetts make up about 75% of all parole violations.⁵⁵ In order to effectively implement the system of graduated problem-solving responses and sanctions, parole officers must be trained and given the authority to take swift corrective action in response to technical violations. This will ease the burden on Parole Board members, empower parole officers, and reduce the costly and often unnecessary reincarceration of parolees.

Furthermore, even when formal parole revocation proceedings are deemed necessary, the Parole Board should be encouraged to permit parolees who are alleged to have committed technical violations to remain in the community while awaiting the Parole Board's determination. Rather than serving as a deterrent, "[t]he disruption caused by incarceration can substantially diminish the chance of successful reintegration."⁵⁶

a. ***Best Practices***

"In many agencies, it is often easier to revoke parole than to continue working with a parolee."⁵⁷ Parole violations account for approximately one-third of all prison admissions in the United States.⁵⁸ Still, incarceration is not the answer to reducing recidivism. "[O]ffenders serving longer sentences in prison do not recidivate less often than those who serve shorter sentences. Research demonstrates that even modest increases in time served may increase recidivism."⁵⁹ Accordingly, many states including Delaware, Georgia, Hawaii, Ohio, Oregon, Pennsylvania, and South Carolina have made systemic changes by enacting guidelines to respond proportionately and consistently to violations with graduated sanctions.⁶⁰ Outcomes in these states have been very promising in terms of improvements in parolee success rates and reductions in the costs incurred through formal revocation proceedings and reincarceration.

⁵⁵ See Parole Board 2010 Annual Report.

⁵⁶ Nancy M. Campbell, *Comprehensive Framework for Paroling Authorities in an Era of Evidence-Based Practices*, NATIONAL INSTITUTE OF CORRECTIONS, p. 26 (2008), available at: <http://nicic.gov/Library/022906>.

⁵⁷ Urban Institute, *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*, p. 33 (December 2008), available at: http://www.urban.org/UploadedPDF/411791_public_safety_first.pdf.

⁵⁸ *Id.*

⁵⁹ National Institute of Corrections, *Evidence-Based Policy, Practice, and Decisionmaking Implications for Paroling Authorities*, p. 9 (March 2011), available at: <http://static.nicic.gov/Library/024198.pdf>.

“There is broad agreement among experts, supported by a growing research base, that many parolees who violate their conditions without committing a new offense (technical violators) can be managed in the community without compromising community safety or utilizing expensive prison beds.”⁶¹ The Parole Board’s purpose in responding to violations should be to change the parolees’ behavior and to promote compliance without disrupting the reintegration process.⁶² Graduated sanctions imposed in response to parole violations have been shown to decrease noncompliance with conditions.⁶³ “Swift, certain, and proportional actions that reflect disapproval of behavioral misconduct are more effective in reducing recidivism than actions that are disproportionate, delayed, or inconsistent.”⁶⁴ For instance, the continuum of graduated sanctions for substance abuse-related violations can range from increased drug screens or community-based treatment requirements to secure residential treatment options.

60 See Council of State Governments Reentry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, pp. 391-92 (January 2005), available at: <http://www.reentrypolicy.org/publications/1694>; Urban Institute, *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*, p. 33-35 (December 2008), available at: http://www.urban.org/UploadedPDF/411791_public_safety_first.pdf; Nicole D. Porter, *The State of Sentencing 2012: Developments in Policy and Practice*, THE SENTENCING PROJECT, 12 (January 2013), available at: http://sentencingproject.org/doc/publications/sen_State%20of%20Sentencing%202012.pdf.

61 Urban Institute, *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*, p. 34 (December 2008), available at: http://www.urban.org/UploadedPDF/411791_public_safety_first.pdf.

62 *Id.*

63 National Institute of Corrections, *Evidence-Based Policy, Practice, and Decisionmaking Implications for Paroling Authorities*, p. 8 (March 2011), available at: <http://static.nicic.gov/Library/024198.pdf>; see also Urban Institute, *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*, p. 33-34 (December 2008), available at: http://www.urban.org/UploadedPDF/411791_public_safety_first.pdf; see also American Civil Liberties Union, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs while Protecting Communities*, p.13-14 (2011), available at: http://www.aclu.org/files/assets/smartreformispossible_web.pdf; Council of State Governments Reentry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, pp. 391-92 (January 2005), available at: <http://www.reentrypolicy.org/publications/1694>.

64 National Institute of Corrections, *Evidence-Based Policy, Practice, and Decisionmaking Implications for Paroling Authorities*, p. 8 (March 2011), available at: <http://static.nicic.gov/Library/024198.pdf>.

b. ***The Use of Risk Graduated Sanctions in Massachusetts***

Under the current Massachusetts parole system, like others, it is easier to revoke parole and reincarcerate parolees rather than work to keep them in the community. Despite the Graduate Sanctions Policy discussed on the Parole Board's website,⁶⁵ the Graduated Sanctions Guidelines Grid⁶⁶ is indistinct and reincarceration remains a primary response to technical parole violations, even in situations where the parolee is likely to be re-paroled at the conclusion of revocation proceedings. Unfortunately, under the current Board there was a decline of over 40% in the number of graduated sanctions between 2010 and 2011.⁶⁷

Indeed, according to the Graduated Sanctions Guidelines Grid, high risk level parolees can be reincarcerated pending a hearing for even the most minor violation and must be reincarcerated if they are alleged to have committed violations deemed to be of the highest severity. Violations of the lowest severity include using inappropriate language with a parole officer, failure to pay the parole supervision fee, failure to find or maintain employment, and a positive drug screen or even a self-reported incident of substance abuse. Violations of the highest severity mostly consist of technical violations as well and include the vaguely defined violation of "irresponsible conduct." This is a costly pattern that, as research has shown, does not reduce recidivism and improve public safety.

(5) **Institute a mechanism for presumptive parole**

Massachusetts should introduce a mechanism for presumptive parole whereby the prisoner is presumed to be released on parole after serving a specified portion of their sentence or upon meeting individually-tailored program participation requirements determined by a risk assessment tool upon their admission to the Department of Correction or county correctional facility. This system would result in a much-needed shift in favor of parole release upon eligibility, but ensure that the Parole Board maintains their role as protectors of public safety by permitting it to deny parole release with sufficient justification.

a. ***Best Practices***

65 See <http://www.mass.gov/eopss/law-enforce-and-cj/parole/field-svcs-unit/graduated-sanctions-overview.html>.

66 See Massachusetts Parole Board, *Graduated Sanctions Guideline Grid*, available at: <http://www.mass.gov/eopss/docs/pb/grad-sanctions-grid.pdf>.

67 See 2010 and 2011 Annual Reports.

Multiple states, including Hawaii, Iowa, New Jersey, New Mexico, Oregon, Pennsylvania, West Virginia, and Wisconsin, have statutory language that indicates prisoners should be released on parole before the conclusion of their sentences, with some exceptions based on the type of underlying crime or bad behavior during incarceration.⁶⁸ South Carolina mandates parole release for certain prisoners 180 days before the end date of their sentences.⁶⁹ South Carolina law also allows any cost savings resulting from reduced incarceration to be shifted to strengthening parole and probation programs.⁷⁰ In addition to saving money, this policy of presumptive release allows prisoners to make a supervised transition back into their communities.

b. *The Situation in Massachusetts*

There is no existing mechanism for presumptive parole in Massachusetts. As a result, all prisoners eligible for parole must go before the Parole Board, which can grant or deny parole based on the discretion of its members. The product of Massachusetts' fully discretionary parole system is that more than three-quarters of state prisoners reenter the community at the expiration of their sentences, rather than under parole supervision.⁷¹ During the third quarter of 2012, 77% of the 630 prisoners released from state prison – 485 people – were released without supervision; only 23% – 145 people – were able to attain release after being granted parole by the Parole Board.⁷² The high percentage of individuals released from state prisons without any supervision suggests that the Parole Board is not accomplishing the goals of reintegrating prisoners into society in furtherance of the public interest.

68 See Haw. Rev. Stat. § 706-670, Iowa Code Ann. § 906.4, N.J. Stat. Ann. § 30:4-123.53, N.M. Stat. Ann. § 31-21-4, Or. Rev. Stat. Ann. § 144.245, W. Va. Code Ann. § 62-12-13, and Wis. Stat. Ann. § 302.11; Nicole D. Porter, *The State of Sentencing 2012: Developments in Policy and Practice*, THE SENTENCING PROJECT, 10 (January 2013), available at: http://sentencingproject.org/doc/publications/sen_State%20of%20Sentencing%202012.pdf

69 Pew Center on the States, *South Carolina's Public Safety Reform: Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs*, p. 8 (June 2010).

70 *Id.*

71 Massachusetts Department of Correction, *Quarterly Report on Admissions and Releases in the Massachusetts Department of Correction: Third Quarter 2012*, p.13 (October 2012), available at: <http://www.mass.gov/eopss/docs/doc/research-reports/ar-3q-2012-report.pdf>.

72 *Id.*

(6) Appoint a Parole Advisory Panel, in keeping with M.G.L. c.27, §4, to review and update parole regulations and ensure that they address the following:

- The implementation of the new requirements in M.G.L. c.127, § 130 that the Parole Board consider risk and needs assessment and the effect of risk reduction programs. The regulations should set an override cap so that the Parole Board cannot disregard the risk assessment findings in more than 25% of cases reviewed.
- The requisite content of parole decisions that specifically include: (1) the date of birth and race of the individual seeking parole; (2) the risk assessment score; (3) an explanation of the weight that the deciding Parole Board panel gave to the risk assessment score and any reasons for choosing not to rely on said score;
- Time standards for the release of Parole Board decisions in initial, review and revocation matters; and
- Public reporting requirements for Parole Board statistics to increase transparency concerning its performance and practices. The “Parole Figures” currently released by the Parole Board, which should contain, at a minimum,: (1) the number of hearings held; (2) the number of positive votes; (3) the number of waivers; (4) the number of prisoners actually released from incarceration on parole; (5) the number of prisoners with favorable parole votes who completed their sentences before they could be released on parole; (5) the number of parole admissions; and (6) the number of parole revocations.

IV. CONCLUSION

Without changes in the system, Massachusetts parole will not be able to function consistently or effectively as a means of improving public safety. Parole’s intended purpose as a supervised transition from incarceration into society is being thwarted by the Parole Board’s overly restrictive practices. Implementing the recommendations outlined in this report will help bring the Parole Board’s procedures in line with best practices that are supported by research and proven effective through the experiences of other state governments. Strengthening our parole system and making it available to more prisoners will reduce recidivism, increase public safety, and save tens of thousands in taxpayer dollars.

ADDENDUM

Parole Statistics 2010-2011⁷³

	2010	2011
STATE HEARINGS		
Number of State Hearings	1679	1539
State Favorable Votes and Rate	978 (58%)	618 (40%)
State Waivers	447	538
State Releases on Parole	891	395
True Parole Rate	42%	26%
State Revocations hearings and reparole rate	255 (45% reparaoled)	178 (30% reparaoled)
COUNTY HEARINGS		
Number of County Hearings	6526	5178
County Favorable Votes and Rate	4190 (64%)	2565 (50%)
County Waivers	1949	2103
County Releases on Parole	3417	2008

⁷³ The statistics are taken from the Department of Correction's and the Parole Board's Annual Reports from 2010 and 2011.

True Parole Rate	40%	28%
County Revocations	374 (34% reparaoled)	309 (27% reparaoled)
<i>Total Number Released to Parole Supervision</i>	<i>4508</i>	<i>2403</i>

Other Data

Number Parolees at Year's End	2489	1649
Average Parole Officer Case Load (state and county)	52	35
Substance Abuse Coordinator Initiative	2149	955
New Clients		
Graduated Sanctions	3149	1845