

UNIVERSITY OF MINNESOTA

PROFILES IN PAROLE RELEASE AND REVOCATION: Examining the Legal Framework in the United States

A publication by the Robina Institute of Criminal Law and Criminal Justice

IDAHO



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Idaho

By

Alexis Lee Watts, Kevin R. Reitz, and Edward R. Rhine

The authors wish to thank Janeena Wing, Evaluation and Compliance Supervisor at the Idaho Department of Correction, and Sandy Jones, Executive Director of the Idaho Commission of Pardons and Paroles.

© 2017. Regents of the University of Minnesota. All Rights Reserved.

CONTENTS

1. Background; Sentencing System

a. Sentencing Framework	3
b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?	3
c. Which Agencies Are Responsible for the Supervision of Released Prisoners?.....	3
d. Which Agency Has Authority Over Parole Revocation?.....	3

2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System	4
b. Good Time, Earned Time, and Other Discounts.....	4
c. Principles and Criteria for Parole Release Decisions.....	4
d. Parole Release Guidelines.....	4
e. Risk and Needs Assessment Tools	4
f. Medical or Compassionate Release.....	5
g. Executive Clemency Power	5
h. Emergency Release for Prison Crowding	5

3. Parole Release Hearing Process

a. Format of Release Hearings.....	5
b. Information Before the Board; Factors the Board May Consider	5
c. Prisoners' Procedural Rights.....	6
d. Victims and Other Participants	6
e. Burden of Proof or Standards of Persuasion.....	7
f. Possible Outcomes at Parole Release Hearings; Form of Decisions	7
g. Administrative or Judicial Review of Parole Denial.....	7
h. Rescission of Parole Release Dates.....	7

4. Supervision Practices

a. Purposes of Supervision.....	7
b. Are All or Only Some Releasees Placed on Supervision?	7
c. Length of Supervision Term.....	8
d. Conditions of Supervision.....	8
e. Fees and Other Financial Sanctions	9

CONTENTS

5. Parole Revocation

a. Principles and Criteria of “When to Revoke”	9
b. Revocation Guidelines.....	9
c. Risk and Needs Assessment Tools	10
d. Preliminary and Final Revocation Procedures.....	10
e. Offenders’ Procedural Rights	10
f. Victims and Other Participants.....	10
g. Burden of Proof or Standards of Persuasion.....	11
h. Revocation and Other Sanctions	11
i. Issuing Parole Revocation Decisions.....	11
j. Administrative or Judicial Review of Parole Revocation Decisions.....	11
k. Re-Release Following Revocation	11

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction.....	11
b. Location in Government	11
c. Purpose (Vision/Principles/Rationale).....	11
d. Appointment and Qualifications of Board Members.....	12
e. Tenure of Board Members, Ease of Removal.....	12
f. Training and Continuing Education	12
g. Workload	12
h. Reporting and Accountability of Parole Board	12

End Notes.....	13
-----------------------	-----------

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Alexis Lee Watts, Kevin R. Reitz, and Edward R. Rhine

1. Background; Sentencing System

a. Sentencing Framework

Idaho has had a parole release authority since 1899.¹ Idaho's sentencing framework requires judges to impose a minimum length of incarceration in each felony case; judges may also impose a subsequent indeterminate term of incarceration, during which an inmate may be eligible for parole. Idaho law also imposes mandatory minimum sentences for some crimes.² Idaho does not have a sentencing commission or sentencing guidelines.

b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?

Yes, the Idaho Commission of Pardons and Parole.³

<http://parole.idaho.gov/index.html>

c. Which Agencies Are Responsible for the Supervision of Released Prisoners?

The Idaho State Board of Correction is responsible for supervising those released from prison.⁴

https://www.idoc.idaho.gov/content/directors_office/board_of_correction

d. Which Agency Has Authority Over Parole Revocation?

The Idaho Commission of Pardons and Parole handles revocation proceedings.⁵



2. Parole Release and Other Prison Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

In Idaho, a felon is anyone sentenced to a crime punishable by death or imprisonment in the state prison.⁶ Idaho felons must be sentenced by a judge to a minimum term of incarceration with no parole eligibility. The judge may then impose an additional indeterminate sentence, during which inmates may be released on parole.⁷ These two portions of the sentence, often called a “unified sentence” may not exceed the statutory maximum set for the crime.⁸ Correctional employees make a sentencing calculation when an inmate is committed to the Department of Correction. Based on this information, the Commission conducts a review to determine the initial parole hearing date, which is set at most six months before an inmate’s first parole eligibility (i.e., six months before the minimum term expires).⁹ All inmates who are eligible for parole release must be considered at least once by the Commission.¹⁰

Violent, sex, and drug offenders. There are several mandatory minimum sentences in place for certain sex offenders, drug trafficking offenders, and recidivist offenders. Any person convicted of a violent crime must be sentenced to an extended term of imprisonment in which the maximum sentence is increased by 15 years.

Life sentences. Indeterminate life sentences have a minimum period set by the judge as with any other sentence.¹¹ However, offenders sentenced to a life term must serve at least five years on parole if released.

Recurring eligibility after denial of release. There is no statutory requirement for a subsequent hearing after an initial parole hearing has been conducted. Thus, if parole is denied, the Commission has discretion regarding whether and when to conduct the next hearing.¹²

b. Good Time, Earned Time, and Other Discounts

The passage of the Unified Sentencing Act in 1986 eliminated the use of “good time” credits, eliminating any effect of such credits on prospective parole eligibility dates. The state retains a statutory provision of “good time” credit reduction for deductions in sentence terms for offenses committed prior to July 1, 1986.¹³

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. By statute, “a parole shall be ordered when, in the discretion of the commission, it is in the best interests of society, and the commission believes the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.”¹⁴

Statutory factors the commission must consider. The Commission must consider a current risk assessment, criminal history, institutional behavior, and program completion when evaluating suitability for parole release. The Commission must also consider the compliance of the prisoner with any order of restitution entered as part of the sentence.¹⁵

Special standard for sex offenders. Inmates serving sentences for certain sex crimes may not be released on parole except upon the examination and evaluation of one or more mental health professionals designated by the Department of Correction and selected by the Commission. The results of the evaluation must be considered by the Commission in making a parole determination.¹⁶

d. Parole Release Guidelines

Parole release guidelines used for most offenders (other than sex offenders). Idaho has employed parole release guidelines since May 2015. These guidelines are exempt from public disclosure; however, some components of the guidelines are based on statutory law.¹⁷

e. Risk and Needs Assessment Tools

Statutory Mandate. The Board of Correction must use a validated risk assessment to determine, for each prisoner, the risk of re-offense and suitability for release.¹⁸ The Commission must use the results of such a risk assessment to determine parole suitability.¹⁹

Transparency. A risk assessment prepared by commission staff or a designated Department of Correction employee that is specifically used in making a parole determination is exempt from public disclosure.²⁰

Risk instruments utilized. Idaho uses both the Level of Service Inventory-Revised (LSI-R) and the Global Appraisal of Individual Needs (GAIN) Core risk assessments to gather information presentence and verify during prison intake for use in release decision making. The LSI-R is

a risk of re-offense evaluation; its results inform supervision intensity, program needs, and treatment needs. The GAIN Core is a “comprehensive biopsychosocial assessment tool;” it is used to inform sentencing decisions.²¹

Sex offenders. The Commission is required to review a Sex Offender Risk Assessment prior to releasing any sex offender. This is a clinical assessment of risk factors completed by correctional staff.²²

f. Medical or Compassionate Release

The Commission may consider a permanently incapacitated or terminally ill prisoner for medical parole only during the determinate portion of a sentence, and only when the Commission reasonably believes the prisoner no longer poses a threat to the safety of society.²³ An inmate or a member of the Department of Correction may petition for this type of release. While considering the petition, the Commission requires that specific medical information regarding the condition, the treatment plan, and other information deemed necessary by the Commission are considered.²⁴ The petition may be granted on a vote of the majority of the Commission.²⁵

g. Executive Clemency Power

Idaho’s Commission of Pardons and Parole is vested with the authority to grant commutations or pardons after conviction and judgment. The Governor can also temporarily grant respites or reprieves, except in cases of treason or impeachment, but they will only remain in effect until the Commission can ultimately render a clemency decision.²⁶

h. Emergency Release for Prison Crowding

Idaho does not have a statutory provision governing the early release of prisoners when penitentiaries reach maximum capacity. However, in promulgating future parole guidelines, the legislature has stated its “intent [. . .] to focus prison space on the most violent or greatest risk prisoners. To help accomplish this goal, the commission shall promulgate rules that establish clear guidelines and procedures that retain the commission’s discretion in individual cases while achieving a reduction in the overall average percentage of time spent beyond the fixed term for prisoners who have been convicted of a property or drug offense.”²⁷

3. Parole Release Hearing Process

a. Format of Release Hearings

Before the parole-release hearing itself, an interview with a Parole Hearing Investigator must be conducted face-to-face, by telephone, or by other electronic means. The Investigator will “conduct an interview and investigation and write a very detailed report for the Parole Commissioners regarding the offender’s past, present, and plans for the future.” The Commission can then either hold a hearing at which the inmate can be present, or make a decision based on the contents of the parole file (called an Executive Session Review).²⁸ If an inmate chooses to waive presence at the interview or hearing phase, the decision may be made upon any other information available to the Commission at the time.²⁹ Any decision of the Commission requires a majority vote; in other words, a vote of three commissioners.³⁰

b. Information Before the Board; Factors the Board May Consider

Within the first six months of an inmate’s admission to prison, the Commission and the Board of Correction work to secure all pertinent, available information about the inmate. This includes the circumstances of the offense, a social history and criminal record, inmate conduct, employment and attitude in prison, and the results of any physical or mental examinations related to treatment.³¹ The Commission may also request the production of a psychological report. Psychological reports are reviewed by the Commission for sex offenses and any other crimes for which reports are requested.³²

Each inmate must also work with a caseworker to develop a parole plan, which is another critical component of the parole release hearing and must be made available at the hearing. This plan must address specific factors that will provide for the positive re-entry of the inmate back to the community.³³

The Commission considers several factors in making a parole release decision, but still retains the discretion to deny parole in individual cases based on countervailing, discrete case factors. Factors include, but are not limited to:

- Seriousness and aggravation and/or mitigation of the crime;
- Prior criminal history of the offender;
- Failure or success of past probation and parole;
- Institutional history, to include conformance to established rules, involvement in programs and jobs custody level at the time of the hearing, and overall behavior;
- Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen;
- Information or reports regarding physical or psychological condition;
- The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care; and
- The outcome of a validated risk and needs assessment.³⁴

c. Prisoner's Procedural Rights

An inmate is not required to be interviewed or to be present at the parole release hearing. Inmates who choose to participate in their parole release hearings appear in front of the Commission and are asked questions. Attorneys for inmates or other inmate advocates are able to participate in parole release hearings, so long as they notify Commission staff five days in advance of the scheduled hearing.³⁵ Offender supporters or witnesses are also offered the opportunity to testify.³⁶ However, due to time constraints, the Commission may limit the number of witnesses or the length of testimony given.³⁷ If inmate advocates wish to submit written letters and documents, they must submit them at least seven days in advance of the scheduled hearing in order to be considered; additional documents may be allowed by a unanimous vote of the commissioners present at the hearing.³⁸

A designated report and risk assessment prepared by commission staff or a designated Department of Correction employee that is specifically to be used by the commission in making a parole determination are exempt from public disclosure.³⁹ There does not appear to be a statutory provision allowing for inmate access to these documents.

d. Victims and Other Participants

In Idaho, victims of crime have a statutory and constitutional right to prior notice regarding the release of defendants. They also have the right to be present at all criminal justice proceedings.⁴⁰ The Commission has responsibility for notifying victims of these rights, including their right to be notified of parole hearings and their right to provide written testimony or statements at those hearings.⁴¹ The Commission also has the responsibility for establishing "a record for victims of inmates who may be considered for parole, commutation, or pardon."⁴² Victims have the option of refusing notification or contact by the Commission regarding parole hearings.⁴³

Victims who "have a direct relationship to the specific hearing or subject of the hearing" are allowed to participate, so long as they notify the Commission five days in advance of the scheduled hearing.⁴⁴ At the discretion of the Commission, victim testimony may also give information to the executive director of the Commission and/or to other commissioners outside of the actual hearing process.⁴⁵

Provided that any of the sentencing judges, prosecuting attorneys, or law enforcement professionals have a "direct relationship" to the inmate's scheduled parole hearing, they may participate so long as they notify the Commission five days in advance of the scheduled hearing. These individuals may also submit written comments "seven days in advance of the scheduled hearing in order to ensure that it will be considered," while all other documents may be brought at the time of the scheduled hearing and allowed by unanimous consent of the commissioners present. Verbal testimony given by these individuals may be limited at the discretion of the Commission.⁴⁶

A list of inmates scheduled for hearings may be prepared for district judges, county prosecutors, sheriffs, legislators, and others as requested.⁴⁷ Outside of the hearing process itself, the Commission also has the enumerated duty to "transmit to the sheriff and the prosecuting attorney of the county within which said prisoner shall be paroled, a copy of the parole agreement."⁴⁸

Idaho has adopted a public meetings law that allows public participation in most public agency meetings, including parole hearings.⁴⁹ The media, per the administrative rules, have an open invitation to attend any parole hearing of the Commission of Pardons and Parole. The media has the additional opportunity to tape or video record the hearings, at the discretion and direction of the Commission.⁵⁰

Any member of the public may also obtain the results of any parole, pardon or commutation action by the commission without reference to the manner in which any member voted, and the commission shall make such information public. The decisions for each hearing session are usually posted online five business days after the last day of the hearing session.⁵¹

e. Burdens of Proof or Standards of Persuasion for Release

There does not appear to be any universal standard applicable to parole release; each case is considered on its merits.⁵²

f. Possible Outcomes at Parole Release Hearings; Form of Decisions

Parole release decisions are given orally following the interview and consideration of a case by the Commission.⁵³ There is no law or administrative policy requiring the Commission to provide reasons for its decision.⁵⁴ All parole release dates are tentative, and a parole plan must be approved and received at the Commission office before an actual release date will be set.⁵⁵

If the Commission denies parole, it has discretion to determine when another hearing is scheduled. At the initial release hearing, the Commission can also order that an offender serve the full term of a sentence.⁵⁶

g. Administrative or Judicial Review of Parole Denial

An inmate may appeal the last parole decision of the Commission once in any twelve-month period, but no sooner than six months following the last hearing, no later than the first day of the month. The inmate initiates this process by making a request for reconsideration and submitting a designated application provided by the Commission. The Commission deliberates on this application through executive session, and sends written notice to the inmate regarding its decision.⁵⁷

Inmates in some cases may make limited appeals to the judiciary. The Commission has broad discretion in making its parole decisions, however, and a court may not substitute its judgment for that of the Commission.⁵⁸ When a court reviews a parole decision in response to a habeas corpus petition, it may inquire into whether there is a rational basis in the record for the Commission's decision. It may also address other major Constitutional concerns raised by the petitioner.⁵⁹

h. Rescission of Parole Release Dates

Any decision made by the Commission may be reconsidered at any time.⁶⁰ If the Commission issues a tentative parole release date, release still remains within the discretion of the Commission, and the date can be rescinded.⁶¹

4. Supervision Practices

Parole supervision rate. The parole supervision rate in Idaho on December 31, 2015 was 396 per 100,000 adults, which is slightly higher than the statewide average of 304 parolees per 100,000 adults.⁶²

a. Purposes of Supervision

According to official accounts, “[t]he Bureau of Probation and Parole holds the core values that community protection is the first priority in supervision, that offenders are responsible and must be accountable for their own behavior, that offenders can change for the better if provided the right opportunities and that everyone is entitled to be treated with respect and dignity.”⁶³

In addition, the Bureau website declares that: “[t]he mission of the Bureau of Probation and Parole is to provide for public safety through the supervision of adult felons under either probation or parole jurisdiction. . . . The Division of Probation and Parole seeks to involve all facets of the community, which includes, but is not limited to, victims and their families, programs for offenders, their families, involvement in community activities and partnerships with other criminal justice agencies. We also provide offenders the opportunity to make positive changes while in the community by providing individual support, programs and assistance. Accountability and protection are provided by individual case management plans that are created, monitored and supervised through an assigned officer.” Finally, the Division states that its mission “is to enhance public safety by positively impacting offenders so they will lead pro-social and crime-free lives.”

b. Are All or Only Some Releasees Placed on Supervision?

All parolees are required to enter into, and comply with, a supervision agreement as a standard parole condition.⁶⁴

c. Length of Supervision Term

Maximum supervision terms. When the maximum indeterminate sentence has expired for an offender, a final discharge is issued by the Commission, “unless a Commission warrant was issued before the full term or the good time release date.”⁶⁵

Early termination. The Board of Correction may submit a request to the Commission for an order of discharge for any parolee under the Board of Correction’s supervision at any time during the period of parole except during the first year.⁶⁶ However, those convicted of a sexual or violent offense must serve at least one-third of their remaining parole sentences. Offenders sentenced to life terms must serve at least five years on parole.⁶⁷

The Commission must notify victims of the request for final discharge from parole, and must file a response to the request within 30 days. The Commission may (or may not) choose to hold a hearing on the matter, but must rule on the request within 90 days of submission. Final release may not be incompatible with the welfare of the parolee or the welfare of society.⁶⁸

Extension of supervision term. Judges set only the minimum term; the maximum term of incarceration is set by statute. The Commission cannot extend punishment beyond the maximum term provided by law.⁶⁹

Incentives; “goal parole.” Early discharge can be a reward for continued positive behavior while on parole under the Idaho Response Matrix (discussed in more detail below).⁷⁰

d. Conditions of Supervision

Mandatory conditions. There are many standard conditions of parole supervision. A parolee is required to:

- Go directly to the destination approved by the Commission, and upon arrival, report to the parole officer or other designee;
- Work diligently in a lawful occupation or approved program;
- Support dependents to the best of the parolee’s ability;
- Live within lawful income without incurring unnecessary indebtedness;
- Submit a complete and truthful report to the assigned parole officer or other designee before the fifth day of each month or as otherwise instructed;
- Direct communication to the district supervisor if a parole officer is unavailable;
- Obey all municipal, county, state, and federal laws;
- Refrain from conduct which is harmful, or intended to be harmful, to the parolee’s self or others;
- Follow written or oral instructions of the parole officer and the Commission;
- Not purchase, own, sell, or have in his or her control any type of firearm for whatever purpose;
- Not have any dangerous weapon used or intended to be used for other than normal purposes, such as knives for household use;
- Abstain from excessive use of alcoholic beverages;
- Abstain from drugs except as prescribed by a licensed medical practitioner;
- Cooperate and voluntarily submit to drug or alcohol testing;
- Participate in treatment programs as specified by the Commission or parole officer;
- Submit to search of person or property, including residence and vehicle, by any agent of field services or the Commission, at any time or place, and waive the constitutional right to be free from such searches;
- Obtain written permission to willfully change employment or residence, or to leave the district;
- Make himself or herself available for supervision and not actively avoid supervision.

Discretionary conditions. The Executive Director of the Commission may add special conditions either before or during parole release. These conditions are established using the offender’s most current risk and needs assessment, and should be “appropriate to the individual case.”⁷¹ However, conditions of parole “must be reasonable and aimed toward rehabilitation.”⁷²

Sex offenders. There are no specific conditions for sex offenders; however, it should be noted that these offenders must undergo psychosexual evaluation while in prison and may face restrictions on association, housing, and employment based on their conviction.⁷³

Modification of conditions. The Commission may modify conditions of parole on request from the parole officer or the supervising agency.⁷⁴ Conditions may also be modified as an alternative to parole revocation.⁷⁵

Incentives; lighter conditions. The Idaho Response Matrix (discussed further below) contains incentives, including lighter conditions of parole that are a reward for positive behavior change.⁷⁶

e. Fees and Other Financial Sanctions

Parole supervision fees. Parolees pay a supervision fee of \$60 per month, which offsets the direct and indirect costs of supervision incurred by the Department of Correction. There may be additional costs associated with treatment classes, electronic monitoring, or other special offender programs. The Department may exempt some individuals from payment if they have diligently attempted but are unable to obtain employment or have a disability affecting employment.⁷⁷

Payments for drug and alcohol testing and treatment. Parolees must freely cooperate and voluntarily submit to medical and chemical tests and examinations to determine whether they are under the influence of alcohol, narcotics, or other substances. Some of the costs of testing are already incorporated into supervision fees.⁷⁸ However, the Department of Corrections may conduct the tests at the parolees' expense.⁷⁹

Restitution. Payment of restitution may be a special condition of parole if it has been ordered by the court.⁸⁰ Courts must consider the needs and earning ability of the defendant when setting restitution.⁸¹

Child support. As a condition of parole, parolees are required to support dependents to the best of their ability while on parole.⁸²

Incentives; reduction of economic sanctions. There do not appear to be any parole incentives that reduce economic sanctions.

5. Parole Revocation

Parole revocation proceedings. In 2015, the Bureau of Justice Statistics reports that an estimated 572 parolees were returned to incarceration due to parole revocation.⁸³ The Commission reported 692 revocations in that same year. In 2016, the Commission reported 398 revocation hearings and 384 revocations.⁸⁴

Absconders. In 2015, there were an estimated 13 absconders reported by the Bureau of Justice Statistics.⁸⁵

a. Principles and Criteria of "When to Revoke"

Policy considerations. In 2013 and 2014, the Commission and Department of Correction worked with the Justice Reinvestment Initiative to reform the Commission's response to parole violations and revocation. As a result, there are relatively new laws in place that impose graduated sanctions for technical violations.⁸⁶ In late 2015, the Department of Correction also introduced a "response matrix" to help the Division of Probation and Parole staff who directly supervise parolees mete out alternative punishments for some types of violations. For example, a parole officer may place a parolee on a restrictive curfew in response to a mid-level violation, or require electronic monitoring for a high-level violation.⁸⁷

Legal predicates. Revocation is triggered by a parole violation that is "sufficient cause for the revocation of parole."⁸⁸ Parole officers must begin the violation process if a parolee is charged with a new felony crime, is in possession of a firearm, or is found to have absconded from supervision.⁸⁹

b. Revocation Guidelines

Probation and Parole Officers often initiate the parole revocation process; however, they can also select from a number of alternative responses under the Idaho Response Matrix. Some parolee behaviors require a violation report to be filed, as discussed above. However, many violations can be addressed in the field by modifying conditions, raising the level of supervision, requiring community service, or intervening in other ways.⁹⁰

There are no revocation guidelines at the hearing phase, however. Commission members and hearing officers make a discretionary determination based on the facts presented at the hearing.

c. Risk and Needs Assessment Tools

Parole officers use the LSI-R in the field, and results are taken into account when sanctions are being considered prior to the filing of a request for revocation. Risk and needs assessments are not taken into consideration in the revocation process, however.⁹¹

d. Preliminary and Final Revocation Procedures

Arrest or summons. To initiate parole revocation, a parole officer first prepares a written report describing the conditions that were violated. This report is submitted to the Commission's Executive Director. The Commission may decide by a majority vote to issue a warning letter to the parolee, allowing the offender to continue on parole. Alternatively, the Executive Director or one of the Commissioners can elect to issue a warrant for the parolee's arrest, suspending parole until a determination has been made on the merits of the revocation case.⁹²

Preliminary hearing. Technical parole violators⁹³ are entitled to a preliminary hearing within a reasonable amount of time.⁹⁴ At this phase, a hearing officer will determine whether or not there is probable cause to support the charges; if not, the parolee will be released to continue parole. Parolees who have allegedly committed a new crime or are charged with absconding are only entitled to a hearing to determine guilt or innocence, as described below.⁹⁵

Final hearing. Technical parole violators are entitled to a hearing to determine guilt or innocence within 30 days of when charges were served.⁹⁶ Other violators are entitled to this type of hearing within a reasonable amount of time.⁹⁷ The final hearing must be conducted by either a hearing officer or one or more Commission members. The individual(s) who preside at the hearing will make a finding of guilt or innocence on each allegation, and may dismiss some or all allegations. They will also prepare a report on their findings for the Commission. If a finding of guilt is made on one or more of the charges, the Commission will consider whether or not parole will be revoked. However, the hearing officer or Commission member(s) who presided at the hearing may make a recommendation to the Executive Director that the offender be reinstated on parole even when the offender is found guilty.⁹⁸

e. Offender's Procedural Rights

All parolees are entitled to "pertinent due process" upon their arrest for alleged violations of their parole.⁹⁹ These due process rights are rights that include, but are not limited to, reasonable notice of hearing time and location, the right to appear at the hearing and address the allegations, and the right to cross-examine witnesses who have given adverse information. A parolee also has the right to waive any hearing and admit to one or more of the violations of parole.¹⁰⁰

The alleged parole violator may request a continuance of any hearing, and the hearing officer, Executive Director, or a majority of the Commission will consequently determine whether the continuance will be granted.¹⁰¹ When an alleged parole violator requests a continuance of any hearing, he waives any and all time limits involved in the adjudication of his revocation proceeding.¹⁰²

A parole violator may utilize the services of an attorney at any hearing conducted during the revocation process.¹⁰³ An attorney will be paid at the alleged parole violator's expense unless it is determined by a hearing officer for the Commission, the Executive Director, or the Commission that there is a colorable claim that the alleged violation(s) did not occur, and that the alleged parole violator does not understand the proceedings or is otherwise incapable of representing himself.¹⁰⁴ Parole violators can hire an attorney at their own expense for representation at any hearing conducted by the Commission.

f. Victims and Other Participants

Victim's rights at a parole revocation hearing are similar to those available at a parole release hearing. For example, they may attend the hearing and provide testimony.¹⁰⁵ It does not appear that any particular officials (other than the supervising parole officer) are normally informed of revocation proceedings. The media is invited to attend any hearing or session of the Commission, and information about future scheduled hearings is publicly available on the Commission's website.¹⁰⁶

g. Burdens of Proof or Standards of Persuasion for Revocation

A parole violation must be found by a preponderance of the evidence before parole may be revoked.¹⁰⁷

h. Revocation and Other Sanctions

If a technical parole violation is not considered “sufficient cause for revocation,” the parolee may be reinstated on parole with the same, or modified, conditions.¹⁰⁸ A finding of guilt on a technical parole violation (or a non-sexual, non-violent misdemeanor) may result in a series of graduated sanctions. If one of the periods of confinement listed below is imposed, it may be reduced by up to 30 days if the Commission or hearing officer finds that there has been no instance of misconduct during the initial period of time the parolee is confined. Intermediate sanctions are not required if the parolee has been arrested for a new felony or violent misdemeanor, or if the violation is violent or sexual in nature.¹⁰⁹ (In such cases, revocation may occur immediately upon a finding of guilt.) Sanctions include:

- First violation: up to 90 days of confinement;
- Second violation: up to 180 days of confinement;
- Third or subsequent violation: dispositional hearing to execute an order of parole revocation and determine the period that the violator shall be returned to state custody.¹¹⁰

A finding of guilt related to absconding from parole may also result in graduated sanctions:

- First violation: up to 180 days of confinement;
- Second or subsequent violation: dispositional hearing to execute an order of parole revocation and determine the period that the violator shall be returned to state custody.¹¹¹

If parole revocation occurs, time spent on parole may be forfeited in whole or in part and may not be deemed a part of the sentence for which the offender was committed. (Otherwise, time spent on parole counts toward completion of the sentence.) In addition, any time served as the result of committing a new crime (rather than due solely to arrest pending revocation for a technical violation) will not be credited toward the underlying sentence.¹¹²

i. Issuing Parole Revocation Decisions

After a parole revocation hearing has concluded, the member(s) of the Commission or the designated hearing officer must enter a decision within 20 days.¹¹³ Any decision of the Commission requires a majority vote of three or more commissioners.¹¹⁴

j. Administrative or Judicial Review of Parole Revocation Decisions

A writ of habeas corpus may be used to challenge the revocation of parole when a parolee’s constitutional rights have allegedly been violated during the course of parole revocation proceedings. If a court finds that a constitutional violation has occurred, a revocation hearing may be reconvened so the violation can be cured.¹¹⁵ In reviewing factual findings, the habeas court is limited to reviewing whether or not the findings were supported by substantial evidence.¹¹⁶ However, the court exercises de novo review over questions of law raised on appeal.¹¹⁷

k. Re-Release Following Revocation

Periods of incarceration for technical violations are limited; offenders are re-released to parole after they have served the term imposed by statute. This is also true for parolees who are charged with non-sexual, non-violent misdemeanors.¹¹⁸

6. Parole Commission; Institutional Attributes

a. Source of Authority and Jurisdiction

The Commission of Pardons and Parole was created by statute and has the discretionary power to determine parole release and revocation for Idaho felons.¹¹⁹

b. Location in Government

The Commission became a stand-alone agency on July 1, 2010. The agency is fully and separately funded from the state general fund, but operates in tandem with the Idaho Department of Correction (which supervises parolees).¹²⁰

c. Purpose (Vision/Principles/Rationale)

The current mission statement provides that “the Commission of Pardons and Parole will contribute to public safety by utilizing sound, professional judgment and evidence-based parole decision making practices.”¹²¹

d. Appointment and Qualifications of Commission Members

The Commission is composed of five part-time members, not more than three members from any one political party, appointed by the governor and “subject to the advice and consent of the senate.”¹²²

The Commission has one Executive Director, who is a full-time employee appointed by the governor. The Director is the official representative of the Commission, and is responsible for management and administration of daily commission business. The Director schedules hearing sessions and designates one of the members of the Commission as the presiding officer to conduct each hearing.¹²³

Qualifications? There are no specific qualifications required for appointment to the Commission, nor for the Executive Director. However, no more than three of the Commission members shall be from any one political party.¹²⁴

e. Tenure of Commission Members, Ease of Removal

Appointments to the Commission are for three-year terms, vacancies for unexpired terms serve for the remainder of the term, and appointees may be reappointed at the end of their term.¹²⁵ There are no limits on how many times a Commission member may be reappointed.

The Governor may remove any member of the Commission of Pardons and Parole, but is required by statute to give the member a copy of the grounds for removal. Reasons for removal may include disability, inefficiency, neglect of duty, or malfeasance in the office.¹²⁶

f. Training and Continuing Education

There is no requirement of training or continuing education for Commission members.¹²⁷

g. Workload

In 2016, the Commission conducted 4,721 total hearings of all types and granted parole to 3,601 offenders. The Commission conducted 398 revocation hearings.¹²⁸

h. Reporting and Accountability of Parole Commission

The Commission must conduct quarterly business meetings, and the public has access to the minutes from those meetings. The Commission also publishes a list of upcoming parole hearings (including inmates’ and judges’ names and case numbers), statistics related to parole and probation grants, and detailed information about Commission decisions.¹²⁹ The Commission does not appear to publish an Annual Report on its operations, but must report to the legislature annually on the percentage of inmates sentenced to a term in prison for a property or drug offense who are released before serving 150% of the fixed portion of their sentence.¹³⁰ The Commission is required to submit an annual budgetary performance report.¹³¹

END NOTES

- ¹ 1899 Idaho Sess. Laws 11-12.
- ² Idaho Code § 19-2513. This framework was instituted by the Unified Sentencing Act of 1986 and affects the punishment of all felony offenses committed after February 1, 1987.
- ³ Idaho Code § 20-210A.
- ⁴ Idaho Code § 20-219.
- ⁵ Idaho Code § 20-229.
- ⁶ Idaho Code § 18-111. If another punishment is not prescribed by statute, the maximum felony sentence is 5 years' imprisonment and/or a \$50,000 fine. Idaho Code § 18-112.
- ⁷ Idaho Code § 19-2513.
- ⁸ See, e.g., *State v. Anderson*, 266 P.3d 496 (Idaho 2011).
- ⁹ Idaho Admin. Code r. 50.01.01.250(02). If an inmate is committed to the department of correction and such inmate is eligible for parole immediately or within a short period of time, the initial parole hearing will be scheduled six (6) months from the month the commission was notified of the commitment.
- ¹⁰ Correspondence with Sandy Jones, Executive Director, Idaho Comm. Pardons & Parole (Oct. 3, 2016).
- ¹¹ See, e.g., *State v. Ramsey*, 364 P.3d 1200 (Idaho Ct. App. 2015).
- ¹² Correspondence with Olivia Craven, Executive Director, Idaho Parole Commission (Aug. 8, 2014). See also Idaho Code § 20-223 ("The commission may also by its rules fix the times and conditions under which any application denied may be reconsidered.").
- ¹³ Idaho Code §§ 19-2513, 20-101A.
- ¹⁴ Idaho Code § 20-223(4).
- ¹⁵ Idaho Code § 20-223(5), (9) - (10).
- ¹⁶ *Id.* at (3).
- ¹⁷ Correspondence with Sandy Jones, *supra* note 10.
- ¹⁸ Idaho Code § 20-224(2).
- ¹⁹ Idaho Code § 20-223(4).
- ²⁰ *Id.*
- ²¹ Justice Center, The Council of State Gov'ts. *Justice Reinvestment in Idaho: Analysis & Policy Framework 25* (2014) https://www.idoc.idaho.gov/content/document/justice_reinvestment_in_idaho_report.
- ²² Correspondence with Sandy Jones, *supra* note 10.
- ²³ Idaho Code § 20-223 (7); Idaho Admin. Code r. 50.01.01.250 (07) (a).
- ²⁴ Idaho Admin. Code r. 50.01.01.250 (07) (c).
- ²⁵ Correspondence with Olivia Craven, *supra* note 12.
- ²⁶ Idaho Const. art. IV, § 7.
- ²⁷ Idaho Code § 20-233 (10).
- ²⁸ Idaho Admin. Code r. 50.01.01.200 (03); Idaho Comm. Pardons & Paroles, *FAQ: What Are the Steps Involved in the Parole Hearing Process?* <http://parole.idaho.gov/accfrequentlyaskedquestions.html> (last visited March 23, 2016).
- ²⁹ Idaho Admin. Code r. 50.01.01.200 (05) (a).
- ³⁰ Idaho Admin. Code r. 50.01.01.200 (08) (a). Commissioners usually meet in a panel of three, and thus require a unanimous vote of the panel. If there is not a unanimous vote, the decision is referred to the one day a quarter when the full commission is scheduled to meet. The average number of parole release decisions continued onto the full commission is 2 to 7 per quarter. Correspondence with Olivia Craven, *supra* note 12.
- ³¹ Idaho Code § 20-224.
- ³² See Idaho Code § 20-233; Idaho Admin. Code r. 50.01.01.200 (04) (b).
- ³³ See Idaho Admin. Code r. 50.01.01.350 (01) (b) for a full list of factors that must be addressed in the parole plan, which include: the identification of a stable residence, disability information and medical needs if the inmate is unable to work, treatment needs of the inmate for problems ranging from alcohol/drug abuse to sex offender treatment, continuing educational programs.
- ³⁴ Idaho Admin. Code r. 50.01.01.200 (01) (c).
- ³⁵ Idaho Admin. Code r. 50.01.01.200 (06). The five-day rule is, in practice, treated as a guideline. Correspondence with Olivia Craven, *supra* note 12.
- ³⁶ Idaho Comm. Pardons & Paroles, *FAQ: What Are the Steps Involved in the Parole Hearing Process?* <http://parole.idaho.gov/accfrequentlyaskedquestions.html> (last visited Mar. 23, 2016).
- ³⁷ Idaho Admin. Code r. 50.01.01.200 (06).
- ³⁸ Idaho Admin. Code r. 50.01.01.200 (06) (b).
- ³⁹ Idaho Code. § 20-223.
- ⁴⁰ Idaho Const. art. I, §22; Idaho Code. § 19-5306(1).
- ⁴¹ Idaho Admin. Code r. 50.01.01.300 (01) (b).
- ⁴² *Id.* The Commission may notify victims at their last known mailing address. However, Idaho has also contracted with VINE, an automatic victim notification service. See Idaho Dep't of Corr., *Victim Services*, http://www.idoc.idaho.gov/content/prisons/victim_services (last visited Mar. 23, 2016).
- ⁴³ Idaho Admin. Code r. 50.01.01.300 (01).
- ⁴⁴ Idaho Admin. Code r. 50.01.01.200 (06) (a).
- ⁴⁵ Idaho Admin. Code r. 50.01.01.300 (01) (b). If a victim expresses a desire to the Commission to be heard following a hearing, and the Commission was not notified of the victim prior to the hearing, an inmate's release to parole may be suspended until the Commission has had an opportunity to review the victim's written testimony, and may elect to take "no further action... schedule another hearing...or may void the release date and reconsider the parole grant." *Id.* at (03) (c) (i).
- ⁴⁶ Idaho Admin. Code r. 50.01.01.200 (06).
- ⁴⁷ *Id.* at (01) (b).
- ⁴⁸ Idaho Code § 20-234.
- ⁴⁹ Idaho Code § 67-2342(1).
- ⁵⁰ Idaho Admin. Code r. 50.01.01.250 (09).
- ⁵¹ Idaho Code § 20-213A(3).
- ⁵² Idaho Admin. Code r. 50.01.01.250(01) (c).
- ⁵³ Idaho Admin. Code r. 50.01.01.200 (08) (b).
- ⁵⁴ *Izatt v. State*, 661 P.2d 763, 766 (Idaho 1983) ("Idaho Code § 20-223 merely sets forth necessary conditions which must be established before parole can be granted, thereby creating only a possibility of parole. Consequently, the Commission is not obligated as a matter of due process to give written reasons for a denial of parole.").
- ⁵⁵ Idaho Admin. Code r. 50.01.01.350(03).
- ⁵⁶ Correspondence with Olivia Craven, *supra* note 12.
- ⁵⁷ See Idaho Admin. Code r. 50.01.01.500(01). "The offender must explain what has changed since the last hearing that would indicate to the Commission they should reconsider their decision. This could be as simple as improving behavior; completing programming; maybe the offender had refused parole or programming and is now changing his/her mind about this; the next hearing may have been a long pass; etc. A Commission staff member summarizes the history with the Commission and gives information from the hearing so the Commission can understand the prior decision. The Commission is open to seeing change in an offender." Correspondence with Olivia Craven, *supra* note 12.
- ⁵⁸ *Banks v. State*, 920 P.2d 905, 907 (Idaho 1996) citing *Ybarra v. Dermitt*, 657 P.2d 14 (Idaho 1983).
- ⁵⁹ *Drennon v. Craven*, 105 P.3d 34 (Idaho Ct. App. 2004). (holding that inmate's habeas corpus petition containing claim of retaliation by Commission in violation of the First Amendment presented a genuine issue of material fact and could not be simply dismissed.)
- ⁶⁰ Idaho Admin. Code r. 50.01.01.200(08) (d).
- ⁶¹ Idaho Admin. Code r. 50.01.01.350 (03); *Brandt v. State*, 878 P.2d 800, 803- 4 (Idaho Ct. App. 1994).
- ⁶² Danielle Kaeble & Thomas P. Bonzcar, Bureau of Justice Statistics, *Probation and Parole in the United States, 2015* at 21 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁶³ Idaho Dep't of Corr., *Probation and Parole Services*, https://www.idoc.idaho.gov/content/probation_and_parole/probation_and_parole_services (last visited Apr. 19, 2016).
- ⁶⁴ Idaho Admin. Code r. 50.01.01.250(03).
- ⁶⁵ See Idaho Admin. Code r. 50.01.01.250(09) (a).

END NOTES

- ⁶⁶ See Idaho Code § 20-233(2).
- ⁶⁷ Idaho Dep't. of Corr., Standard Operating Procedure no. 701.04.02.017 (Sept. 4, 2015) <http://www.idoc.idaho.gov/content/policy/636>. One exception is that if a parolee is incapacitated, the Commission may consider and/or grant early discharge after one year for any crime. Idaho Admin. Code r. 50.01.01.250 (09)(c).
- ⁶⁸ See Idaho Code § 20-233(1).
- ⁶⁹ See, e.g., Idaho Admin. Code r. 50.01.01.010(47) ("The maximum full-term date may change upon forfeiture of time on parole due to a violation of that parole"); *Gibson v. Bennett*, 108 P.3d 417 (Idaho Ct. App. 2005).
- ⁷⁰ Idaho Dep't of Corr., Standard Operating Procedure no. 701.04.02.020 (Dec. 23, 2015) [hereinafter *Use of the Idaho Response Matrix*].
- ⁷¹ Idaho Admin. Code 50.01.01.250(04).
- ⁷² *Quinlan v. Idaho Comm. for Pardons and Parole*, 69 P.3d 146 (Idaho 2003).
- ⁷³ See Idaho Code § 18-8301 *et seq.*
- ⁷⁴ Idaho Admin. Code r. 50.01.01.250(09) ("A special progress report may be submitted by the supervising authority to request modification of a special condition of parole or advise of problems that have developed").
- ⁷⁵ Idaho Code § 20-229B.
- ⁷⁶ Use of the Idaho Response Matrix, *supra* note 70.
- ⁷⁷ Idaho Code § 20-225; Idaho Dep't of Corr., *Family & Friends Handbook* at 52 (Jan. 2011), https://www.idoc.idaho.gov/content/document/family_and_friends_handbook.
- ⁷⁸ Idaho Dep't of Corr. *Cost-of-Supervision Fees*, https://www.idoc.idaho.gov/content/probation_and_parole/offender_resources/cost_of_supervision (last visited Feb. 9, 2017).
- ⁷⁹ Correspondence with Sandy Jones, *supra* note 10.
- ⁸⁰ Idaho Code § 20-223(5); Dep't of Corr. Policy 701 § 05.01.02. Parole agents may monitor restitution (and fine) payments, but do not collect them. *Id.*
- ⁸¹ Idaho Code § 19-5304(7).
- ⁸² Idaho Admin. Code 50.01.01.250(03)(c).
- ⁸³ Kaeble & Bonzcar, *supra* note 62 at 24 (Appendix Table 6).
- ⁸⁴ Idaho Comm. Pardons & Parole, *2016 Parole Commission Summary Data*, <https://parole.idaho.gov/documents/statistics/2016%20summary/2016%20Parole%20Commission%20Summary%20Data.pdf> (last visited Feb. 9, 2017).
- ⁸⁵ Kaeble & Bonzcar, *supra* note 62 at 24 (Appendix Table 6).
- ⁸⁶ 2015 Idaho Sess. Laws ch. 150 § 17; Council of State Gov'ts, *supra* note 19.
- ⁸⁷ Use of the Idaho Response Matrix, *supra* note 70.
- ⁸⁸ Idaho Code § 20-229B (2). In *Craig v. State*, 844 P.2d 1371 (Idaho Ct. App. 1992), the court explains that while proof by a preponderance of the evidence is subject to review on the sufficiency of the evidence, whether or not a violation is "sufficient" enough to trigger revocation is a matter of Commission discretion.
- ⁸⁹ Use of the Idaho Response Matrix, *supra* note 70.
- ⁹⁰ *Id.*
- ⁹¹ Correspondence with Sandy Jones, *supra* note 10.
- ⁹² See Idaho Admin. Code r. 50.01.01.400.
- ⁹³ A technical violation is "violation of parole by not conforming to rules of parole, not to include absconding and new criminal conviction." See Idaho Admin. Code r. 50.01.01.010(36).
- ⁹⁴ In 2001, the Idaho Court of Appeals ruled that a preliminary hearing held 38 days after the parolee's arrest violated constitutional due process rights. See *Loomis v. Killeen*, 21 P.3d 929 (Idaho Ct. App., 2001).
- ⁹⁵ Idaho Admin. Code r. 50.01.01.010(07).
- ⁹⁶ *Id.*; Charges must be served within 15 calendar days following arrest and detention on a parole violation warrant. See Idaho Code § 20-229A.
- ⁹⁷ Idaho Admin. Code r. 50.01.01.010(07).
- ⁹⁸ Idaho Admin. Code r. 50.01.01.010(10).
- ⁹⁹ See Idaho Admin. Code r. 50.01.01.400(03)(a).
- ¹⁰⁰ See Idaho Admin. Code r. 50.01.01.400(03) However, note that a parole hearing may be conducted in absentia if new criminal charges result in a new commitment and incarceration or if the parolee has absconded.
- ¹⁰¹ See Idaho Admin. Code r. 50.01.01.400(07)(c).
- ¹⁰² *Id.*
- ¹⁰³ See Idaho Admin. Code r. 50.01.01.400(08)(b).
- ¹⁰⁴ *Id.*
- ¹⁰⁵ See, e.g., Idaho Admin Code r. 50.01.01.300 (03); Correspondence with Olivia Craven, *supra* note 12.
- ¹⁰⁶ Idaho Admin. Code r. 50.01.01.09; Idaho Comm. of Pardons & Parole, *Home Page*, <http://parole.idaho.gov/index.html> (last visited Apr. 19, 2016).
- ¹⁰⁷ Idaho Code § 20-229B(4).
- ¹⁰⁸ Idaho Code § 20-229B(1).
- ¹⁰⁹ Correspondence with Sandy Jones, *supra* note 10.
- ¹¹⁰ Idaho Code § 20-229B(3).
- ¹¹¹ Idaho Code § 20-229B(4).
- ¹¹² Idaho Admin. Code r. 50.01.01.400(11).
- ¹¹³ Idaho Code § 20-229B(1).
- ¹¹⁴ Idaho Admin Code r. 50.01.01.200.
- ¹¹⁵ Idaho Code §§ 19-4205, 19-4213.
- ¹¹⁶ *Matthews v. Jones*, 207 P.3d 200 (Idaho Ct. App. 2009).
- ¹¹⁷ *Smith v. Idaho Dep't of Corr.*, 918 P.2d 1213 (Idaho 1996).
- ¹¹⁸ Idaho Code §§ 20-229B (3), (6) as amended by Idaho S.B. 1343(2016).
- ¹¹⁹ Idaho Code § 20-201 ("There is hereby created the department of correction which shall consist of the board of correction and the commission of pardons and parole.") Idaho Code § 20-210A (2) (parole release); § 20-229 (parole revocation).
- ¹²⁰ Idaho Comm. Pardons & Parole, *Performance Measurement Report* (2015), http://dfm.idaho.gov/Publications/BB/PerfReport/pr2015/publicsafety/PerfRpt_Pardons_Parole.pdf.
- ¹²¹ Idaho Comm. Pardons & Parole, *Mission Statement*, <http://parole.idaho.gov/index.html>.
- ¹²² See Idaho Code § 20-210.
- ¹²³ *Id.*
- ¹²⁴ *Id.*
- ¹²⁵ See Idaho Admin. Code r. 50.01.01.150 (01)(a)(ii).
- ¹²⁶ Idaho Code § 20-203. The Governor shall also arrange a time, no less than ten days after to allow the accused to present a defense to the governor. If, after the member presents his defense the Governor still wishes to remove the member, he shall file a statement with the secretary of state office to complete the removal process.
- ¹²⁷ Correspondence with Sandy Jones, *supra* note 10.
- ¹²⁸ Idaho Comm. Pardons & Parole, *2016 Summary Data*, <https://parole.idaho.gov/documents/statistics/2016%20summary/2016%20Parole%20Commission%20Summary%20Data.pdf> (last visited Feb. 9, 2017).
- ¹²⁹ See Idaho Comm. Pardons & Parole, *Home Page*, <http://parole.idaho.gov/index.html> (last visited Apr. 19, 2016).
- ¹³⁰ Idaho Code § 20-223(11). The intent of this law is to allow the legislature to monitor the amount of prison space occupied by non-violent criminals. The Commission must also document and report the most common reasons for delay or denial of release.
- ¹³¹ Idaho Comm. Pardons & Parole, *Performance Measurement Report* (2015), http://dfm.idaho.gov/Publications/BB/PerfReport/pr2015/publicsafety/PerfRpt_Pardons_Parole.pdf.