

UNIVERSITY OF MINNESOTA

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

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**KENTUCKY**



**ROBINA INSTITUTE**  
OF CRIMINAL LAW AND CRIMINAL JUSTICE

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

### Kentucky

By

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The authors wish to thank Lelia A VanHoose, Chair, Kentucky Parole Board and  
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# PROFILES IN PAROLE RELEASE AND REVOCATION:

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### 1. Background; Sentencing System

#### a. Sentencing Framework

Sentences imposed in Kentucky are for a specific number of years (i.e. “three years”); referred to as a “fixed” sentence in state statute.<sup>1</sup> Kentucky does not have sentencing guide-lines or a sentencing commission.

Parole was first authorized in Kentucky in 1888. In 1900, the Board of Prison Commissioners was granted releasing authority. A full-time parole board was established in 1962 and, most recently, was expanded to nine members in 2010.<sup>2</sup> In 2011, HB 463 (the Offender Accountability Act) passed; as a result, parole release now requires risk and needs assessment, parolees can complete some correctional programming in the community, and many other changes have been made.<sup>3</sup> In 2012, some provisions were modified by HB 54, a bill that allowed the Department of Corrections to set special conditions of parole based on risk assessment.<sup>4</sup> Finally, in 2015, SB 192 modified parole release for some serious heroin offenses and now requires cost calculations for reentry services for those with opiate or other drug addictions.<sup>5</sup>

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

Yes, the Kentucky Parole Board.<sup>6</sup>

<http://paroleboard.ky.gov/Pages/default.aspx>

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

The Kentucky Department of Corrections supervises parolees.<sup>7</sup>

#### d. Which Agency Has Authority Over Parole Revocation?

The Kentucky Parole Board.<sup>8</sup>

## 2. Parole Release and Other Prison-Release Mechanisms

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

*General rules of release eligibility.* By law, a nonviolent offender convicted of a Class D felony with an aggregate sentence of one to five years is eligible for parole review after serving 15% or two months of their original sentence, whichever is longer. For all felonies committed after December 3, 1980, the time of service required before first parole review is as follows:<sup>9</sup>

| Sentence Being Served                                   | Time Before First Review |
|---------------------------------------------------------|--------------------------|
| 1 year, up to but not including 2 years                 | 4 months                 |
| 2 years, up to and including 39 years                   | 20% of sentence          |
| 39 + years, including life                              | 8 years                  |
| Persistent felony offender with class A, B, or C felony | 10 years                 |

*Violent offenders.* Kentucky has enacted many different versions of a “truth in sentencing” law that denies parole eligibility for inmates who have committed certain violent or sex offenses before they have served 85% of their sentence. This profile limits discussion to the provision that applies to offenders sentenced after June 26, 2007.<sup>10</sup> Inmates with the following convictions must serve 85% of their sentence, or 20 years, whichever is less; or must serve 20 years if sentenced to life:<sup>11</sup>

- Capital offenses;
- Class A felonies or complicity to Class A felonies;
- Class B felonies involving the death of a victim or serious injury to a victim;
- The commission or attempted commission of Class A or B sex offenses listed in the penal code;<sup>12</sup>
- The use of a minor in a sexual performance as a Class A or B felony;
- Promoting sexual performance by a minor as a Class A or B felony;
- An unlawful transaction with a minor in the first degree where the minor is less than 16 years of age or incurs physical injury;<sup>13</sup>
- Human trafficking where the victim is a minor;<sup>14</sup>
- First-degree burglary accompanied by the commission or attempted commission of certain types of assault;<sup>15</sup>
- First-degree burglary accompanied by the commission or attempted commission of kidnapping; or
- First-degree robbery.

*Sex offenders.* A sexual offender who does not complete the sex offender treatment program for any reason shall serve his or her entire sentence without the benefit of sentencing credit, parole, or any other form of early release.<sup>16</sup>

*Drug offenders.* Anyone convicted of a Class C felony offense or higher involving first-degree heroin trafficking must serve at least 50% of the sentence imposed.<sup>17</sup>

*Life sentences.* A person convicted of a capital offense may be sentenced to life in prison without the benefit of probation or parole, life in prison with a minimum term of 25 years after which there is a possibility of parole, or simply life in prison.<sup>18</sup> Class A felons may also be sentenced to life in prison.<sup>19</sup> As mentioned above, those sentenced simply to life in prison must serve a minimum 20-year term.<sup>20</sup>

*Recurring eligibility after denial of release.* Offenders convicted of non-violent, non-sexual Class C or D felonies must be granted a review after at most 24 months. Parole review must occur for all other prisoners at least every five years, unless deferment is approved by a majority of the full Board. No parole deferment can exceed 10 years, except for life sentences.<sup>21</sup> Apart from these rules, subsequent review is at the discretion of the Board; the Board may order a serve-out of a remaining sentence at an initial or subsequent review.<sup>22</sup>

### b. Good Time, Earned Time, and Other Discounts

Inmates must receive program credit for successfully completing a GED, high school diploma, two- or four-year college degree, a two- or four-year degree in applied sciences, a technical education program, or an online or correspondence program. Credit must also be awarded for any civics education program that requires a final exam. Finally, credit must be awarded for successfully completing a drug treatment or other “evidence-based” program. This type of credit is awarded at 90 days per diploma, degree, or program.<sup>23</sup>

Inmates may receive credit for good behavior at a rate of up to ten days per month served. They may also receive credit for performing exceptionally meritorious service, duties of outstanding importance in connection with institutional operations and programs, or acts of exceptional service during times of emergency at a rate of up to seven days per month.<sup>24</sup>

Eligible inmates may also slowly earn additional credits by working on a “governmental services program-related project.” An inmate earns one “sentence credit” for every eight hours of work, five “credits” equals one day deducted from a sentence (in other words, a full work week results in a one day deduction from the sentence).<sup>25</sup>

Sex offenders may earn credit, but may not have it applied until they have successfully completed the sex offender treatment program. After the program is completed, sex offenders are eligible to have all credit earned up to that point applied to their sentence. Any credit earned may be forfeited if the inmate commits any offense while incarcerated or violates the rules of the institution.<sup>26</sup> Meritorious credit that is forfeited is not subject to restoration.<sup>27</sup>

All types of time credits reduce the maximum sentence to be served either in the institution or on parole, but do not affect eligibility for parole release.<sup>28</sup>

### c. Principles and Criteria for Parole Release Decisions

*General statutory standard for release decisions.* Parole shall be ordered only for the best interests of society. In addition, a prisoner may be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the Board believes he or she is able and willing to fulfill the obligations of a law-abiding citizen.<sup>29</sup>

*Statutory factors the board must consider.* The Board member or hearing panel must consider the results of a risk and needs assessment prior to parole release.<sup>30</sup>

*Special standard for sex offenders.* As mentioned in §2b, sex offenders must complete sex offender treatment before they are eligible for parole.<sup>31</sup>

### d. Parole Release Guidelines

It does not appear that the Board utilizes formal parole release guidelines.

### e. Risk and Needs Assessment Tools

*Statutory Mandate.* As of 2011, the Board must consider a risk and needs assessment prior to parole release.<sup>32</sup>

*Transparency.* The Board has publicly available information about which risk instrument is utilized, however it is difficult to find any parole-specific validation study of the instrument. The Board publishes risk and needs assessment data for each fiscal year, showing the percentage of inmates that fall into each risk category and the parole rate for each group.<sup>33</sup> In preparation for a parole hearing, inmates must be prepared to talk about their risk scores.<sup>34</sup>

*Risk instruments utilized.* Since 2003, the Board has used a risk assessment called the Parole Guidelines Risk and Needs Assessment (PGRNA) developed by Dr. James Austin. It was revalidated in 2009, and again in 2016. The risk assessment considers both static and dynamic factors and assigns one of four possible risk levels to each offender.<sup>35</sup>

*Sex offenders.* The Department of Corrections uses various sex offender risk assessments, in particular the Static-99, in addition to the validated risk and needs assessment for all offenders.<sup>36</sup>

### f. Medical or Compassionate Release

Notwithstanding any statute eliminating parole or establishing minimum time for parole eligibility for a certain class or status of offenders, the Board, with the written consent of a majority of the full Board, may review the case of any prisoner and release that prisoner on parole, despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one year or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility as a result of stroke, disease, or trauma; or is dependent on external life support systems and would not pose a threat to society if paroled.<sup>37</sup>

### g. Executive Clemency Power

The governor has the power to remit fines and forfeitures, commute sentences, and grant reprieves and pardons, except in the case of impeachment, and must file with each application a statement of the reasons for the decision. The application and statement shall always be open to public inspection. In cases of treason, the governor has the power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but does not have the power to remit fees of the clerk, sheriff or commonwealth’s



attorney in penal or criminal cases.<sup>38</sup> If requested by the governor, the Board must investigate any case of pardon, commutation of sentence, reprieve, or remission of fine or forfeiture.<sup>39</sup>

#### **h. Emergency Release for Prison Crowding**

Though it appears that Kentucky suffers from prison overcrowding, there does not appear to be an emergency release mechanism. One solution to crowding has been to house some prisoners in county jails.<sup>40</sup>

### **3. Parole Release Hearing Process**

#### **a. Format of Release Hearings**

Parole release hearings must be conducted by the Board or a panel of board members.<sup>41</sup> A panel may consist of two or more board members. A release interview involving the offender must be conducted either face-to-face or by video. However, for non-violent Class C felonies and Class D felonies, the Board may conduct a file-only review before making a release decision.<sup>42</sup> Note that victims can request a hearing in a Class D felony case in order to testify.<sup>43</sup>

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

The Department of Corrections obtains pertinent information regarding each prisoner, including the results of a risk and needs assessment, criminal records, conduct information, employment records, and the reports of physical and mental examinations that have been made. The Department must provide the Board with information on the circumstances of the offense, the results of the most recent risk and needs assessment, and an account of the offender's previous social history. The Board must consider "the pertinent information regarding the prisoner" before granting parole.<sup>44</sup>

#### **c. Prisoners' Procedural Rights**

Offenders must be notified at least 14 days prior to their hearing. They must be given an opportunity, in a face-to-face hearing, to express their views and to describe a release strategy. Offenders are "encouraged to participate and prepare" for release hearings. They may provide information from friends, family members, potential sponsors and employers that relate to their release planning.<sup>45</sup> Offenders with special needs or language difficulties

may request accommodation in advance of a hearing.<sup>46</sup> Inmates do not have the right to counsel or to review of their file before the hearing or during the hearing process. However, by law they have access to any information in their file that is public record.<sup>47</sup>

#### **d. Victims and Other Participants**

Victims (or their next of kin if they are deceased) must be notified between 45 and 90 days before granting parole release. Victims may submit confidential comments in person or in writing which the Board must consider in granting parole release; victims or their representatives are also entitled to attend hearings to present their views if they notify the Board of their intention to do so.<sup>48</sup> Victims may ask the Board to hold a hearing to present their testimony even in Class D felony cases where the parole case is otherwise subject to a file review.<sup>49</sup>

The Commonwealth's attorney must also be notified; in turn, they will notify the sheriff of every county and the chief of police of every city or county in which the offender committed any class A, B, or C felony for which they are imprisoned. These individuals may also submit comments.<sup>50</sup>

Hearings are open to the public unless any individual who has a right to attend requests closure of the hearing for personal safety reasons. The time, date, and location of closed hearings are not available to the public.<sup>51</sup>

#### **e. Burden of Proof or Standards of Persuasion**

There does not appear to be a specific burden of proof or standard of persuasion utilized in the parole release process.

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

Parole may be granted, granted contingent on completion of a program, denied by deferment (in other words, denied until a future hearing date), or denied with the intention that an offender serve out the remainder of their sentence.<sup>52</sup> However, there are limitations on how long the Board can require an inmate to serve out a sentence without a rehearing, as described in § 2a of this report.

If a decision can be reached by the panel, the inmate will be immediately notified and provided a written copy of the Board decision sheet identifying reasons for the



decision. The inmate will also be notified if confidential information was utilized in the decision-making process. If a full Board vote is necessary, the offender will be notified that the decision will be made by the Board. The Board's decision must be delivered to the offender within ten to fourteen days of the full Board hearing. If a case is decided by file review, the offender must be notified of the decision within 24 to 48 hours after it has been entered into the the Kentucky Offender Management System (KOMS).<sup>53</sup>

### **g. Administrative or Judicial Review of Parole Denial**

An offender who is denied parole by deferment or by a decision that they should serve out their term may request reconsideration by the Board. This request must be made no more than 21 days after the final disposition of the case. Reconsideration is at the discretion of the Board and is only available if:

- There is an allegation of misconduct by a Board member that is substantiated by the record;
- There is a significant procedural error by a Board member; or
- There is significant new evidence that was not available when the hearing was conducted.

A request based on the availability of new evidence or information must be accompanied by adequate documentation, while a request based on misconduct or error must clearly indicate the specific behavior being alleged. If a majority of the Board votes to grant reconsideration, the case must be reviewed by the full Board. The decision will be made based on the initial taped interview of the parolee and the record of the parole release proceedings. However, if needed, the Board can conduct a hearing to take additional testimony. At the end of this process, the majority of the Board must vote to change the hearing decision or to let the result stand; this decision is final.<sup>54</sup> Under the law, no other type of administrative review of parole decisions is available.<sup>55</sup>

Board releasing decisions have been judicially reviewed through petition for a declaratory judgment,<sup>56</sup> through motions under Kentucky Rule of Civil Procedure 60.02 ("Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc."),<sup>57</sup> and through civil rights actions brought pursuant to federal law.<sup>58</sup> However, by statute, Board decisions are not reviewable except for compliance with state laws related to sentencing and to the Board.<sup>59</sup>

### **h. Rescission of Parole Release Dates**

The Board may rescind a recommendation of parole at any time prior to release. While it appears that this does not require a hearing, an inmate may contest the decision through the reconsideration process described in §3g.<sup>60</sup>

## **4. Supervision Practices**

*Parole supervision rate.* On December 31, 2015, the parole supervision rate was 484 parolees per 100,000 adult residents. This is greater than the statewide average of 304 parolees per 100,000 adult residents.<sup>61</sup>

### **a. Purposes of Supervision**

The stated mission of the division of probation and parole is to "enhance public safety and promote offender reintegration in the community through proactive supervision and referral to community based resources."<sup>62</sup>

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

All parolees are under supervision of the Department of Corrections and subject to its direction for the duration of parole.<sup>63</sup>

### **c. Length of Supervision Term**

*Maximum supervision terms.* The length of parole supervision is the same as the unserved balance of the prison term originally imposed by the sentencing court. A parolee must be discharged when they have served that term, provided that the parolee has not absconded from parole and a warrant for parole violation has not been issued.<sup>64</sup> Note that many offenders who have not been released on parole are subject to mandatory reentry supervision; if an offender has not been granted parole earlier, they will be released six months prior to the completion date of their sentence. No hearing is required for mandatory reentry release.<sup>65</sup>

*Post-incarceration supervision.* Offenders convicted of sexual offenses, human trafficking involving commercial sexual activities, incest, illegal sexual activity as an unlawful transaction with a minor, use of a minor in a sexual performance, or promoting a sexual performance by a minor are subject to an additional five-year period of supervision that begins either after the entire prison sentence has been served or after parole ends.<sup>66</sup>

*Early termination.* Upon recommendation of a parole officer, the Board may release parolees who are not classified as violent offenders from parole supervision at any time after they have performed the obligations of their parole.<sup>67</sup> However, generally the parole officer must recommend “inactive supervision” only after a minimum supervision term has been served (see table below).<sup>68</sup> Note that this is not a complete termination of parole; a parolee may be placed on active supervision again if violations occur.<sup>69</sup>

| Length of Original Imposed Sentence | Minimum Period of Supervision |
|-------------------------------------|-------------------------------|
| 1 year through 2 years              | 6 months                      |
| 3 years through 5 years             | 1 year                        |
| 6 years through 14 years            | 1 year and 6 months           |
| 15 years through Life               | 2 years                       |

*Extension of supervision term.* One exception to the rule stated above is that the Board may not discharge a parolee from parole supervision until restitution has been paid in full. The length of parole can exceed not only the length of the court-imposed sentence, but the length of the statutory maximum penalty for the crime.<sup>70</sup>

*Incentives; “goal parole.”* If a parolee complies with the conditions of supervision, they may become eligible for early termination of parole.<sup>71</sup>

#### d. Conditions of Supervision

General conditions of release include that the parolee shall:<sup>72</sup>

- (a) Report to his Parole Officer immediately upon arrival at his destination and submit a report in writing once a month, or more if directed by the officer;
- (b) Permit his Parole Officer to visit his home and place of employment at any time;
- (c) Not indulge in the use of a nonprescribed controlled substance or alcohol;
- (d) When directed to do so by the Parole Officer, submit to random tests of blood, breath, saliva, or urine to determine the existence of any illegal substances in his system;
- (e) Work regularly and support his legal dependents; if unemployed, he shall report this fact to his officer and make every attempt to obtain other employment;
- (f) Not associate with a convicted felon except for a legitimate purpose, including family, residential, occupational, or treatment;
- (g) Not visit with an inmate of a penal institution without permission of his Parole Officer;
- (h) Not leave the state, district, or residence, or change employment without written permission of his Parole Officer;
- (i) Not be permitted to purchase, own, or have in his possession a firearm or other weapon;
- (j) Not violate any law or city ordinance of this state, any other state or the United States;
- (k) Not falsify any report to his Parole Officer;
- (l) Not have the right to register for voting purposes and may not hold office; if he registers or reregisters prior to restoration of his civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison;
- (m) Comply with 501 KAR Chapter 1 [i.e. Board policies and procedures] and special instructions of his Parole Officer;
- (n) Pay a supervision fee unless expressly waived by the Board;
- (o) Pay the balance of the restitution ordered; and
- (p) Pay the balance of the sum payable to the Crime Victims Compensation Fund.

The Board may order a parolee to observe special, discretionary conditions of release which it deems necessary based on the individual’s level of risk to public safety, criminal risk factors, and need for treatment and other interventions. Conditions may include prohibitions on entering certain counties, prohibitions on contacting victims or their families, geographical restrictions on driving, or conditions mandated by the sentencing court (rather than the Board).<sup>73</sup>

As a general policy, “the Board shall avoid unnecessary conditions of parole to reduce or minimize the potential for failure by the offender based on technical violation of conditions that are not substantially related to public safety or reduction of recidivism. Certain conditions may be imposed to fulfill a court order, a correctional program recommendation or a statutory mandate, or as protection to the community or victim.”<sup>74</sup>

*Sex offenders.* Special conditions related to sex offenses may be imposed.<sup>75</sup> This may include, for example, that an offender attend a sex offender treatment program.<sup>76</sup>

*Modification of conditions.* Offenders must have the opportunity to present their views regarding any condition of parole. An offender may request a modification or removal of a condition or fee through his assigned parole officer or, if not yet released on parole, through the pre-release coordinator. Any modification or removal of a con-

dition or fee must be decided by a full vote of the Board and the decision must be given to the offender in writing; these decisions are final.<sup>77</sup>

*Incentives; lighter conditions.* The Department of Corrections may allow reduced reporting requirements, lower levels of supervision, or removal of supervision conditions like home detention or curfew in exchange for compliance with parole conditions.<sup>78</sup> These positive incentives appear to be an exception to the above rule requiring Board hearings prior to modification of conditions.

### e. Fees and Other Financial Sanctions

*Parole supervision fees.* Payment of parole supervision fees is a standard condition of parole.<sup>79</sup> Felons must pay no less than ten dollars per month while on active supervision, and no more than \$2,500 per year. The Board may order the fee paid in a lump sum or in installments. If the fee is to be paid in a lump sum, the person shall not be released from incarceration until the fee is fully paid. The Board must hold a hearing to determine the ability of the parolee to make payments and must take into account fines and restitution already imposed.<sup>80</sup> The fee may be postponed through a petition by the Department of Corrections if an offender is a student; it may be waived entirely if the offender has an employment disability.<sup>81</sup>

*Payments for drug and alcohol testing and treatment.* Parolees are required to submit to random blood, breath, saliva, or urine tests to determine the existence of any illegal substances in their systems.<sup>82</sup> Parolees must pay a \$10 per month drug testing fee.<sup>83</sup>

*Restitution.* Restitution must be a condition of parole in any case where it has been ordered but has not yet been fully paid. The Board must set the amount of restitution to be paid if it has not already been set by the court and determine the frequency and amount of restitution payments. Sanctions may be instituted against the parolee if restitution is not paid and good cause is not shown for nonpayment. As mentioned above, the parole term can be extended until restitution is fully paid.<sup>84</sup>

*Child support.* Parolees are required to “support legal dependents.”<sup>85</sup>

*Other financial obligations.* Parolees are required to pay monies owed to the Crime Victims Compensation Fund.<sup>86</sup>

*Incentives; reduction of economic sanctions.* One incentive that the Department of Corrections may offer for compliance with the terms of parole is deferment of a monthly supervision fee payment.<sup>87</sup>

## 5. Parole Revocation

*Parole revocation proceedings.* In 2015, an estimated 558 parolees exited parole due to a new sentence, and 2,049 parolees exited through parole revocation. The Bureau of Justice Statistics also reports an estimated 2,889 individuals exited parole for “other/unknown” reasons but did not successfully complete parole.<sup>88</sup>

*Absconders.* There is no data on absconders from parole in Kentucky.

### a. Principles and Criteria of “When to Revoke”

*Policy considerations.* In 2011, the state legislature passed the Offender Accountability Act, which addressed systemic problems that were occurring in part due to the volume of revocations based on technical violations of parole. Since that time, the Department of Corrections has implemented informal responses and graduated sanctions for parolees who commit lower-level violations of parole.<sup>90</sup>

*Legal predicates.* The Board may revoke parole if a parolee has violated any condition of release.<sup>91</sup> However, parole officers can trigger the revocation process itself based on “failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community.”<sup>92</sup>

*Statutorily enumerated factors.* While there are factors that parole officers must consider before triggering the revocation process, there do not appear to be other statutorily enumerated factors that must be considered at a revocation hearing.

### b. Revocation Guidelines

Parole officers are now required to adhere to a graduated sanctions scheme based on the offender’s risk level and the severity of the violation. The Department of Corrections has developed a parole violation matrix, which is also used in probation violation cases. This matrix assists the parole officer in selecting a sanction from the appropriate “response range” based on the offender’s risk and conduct.<sup>93</sup>

### c. Risk and Needs Assessment Tools

Risk and needs assessment is an integral part of the parole violation matrix described in §5b. As the Division of Probation and Parole Offender Handbook states:

“Either when you first reported [to the parole officer] or shortly thereafter, your officer completed a risk/needs assessment on you. This risk/needs assessment tells Division of Probation and Parole staff exactly what level of supervision you need to be given. It also lets us know how well you are responding to treatment and adjustment in the community. The officer will reassess you periodically to update your risks and needs. This score determines how often you must make contact with your officer and what privileges the officer may decide to give you. The score takes into account many things including: employment, new crimes, criminal history, who you associate with, how well you do in treatment, and whether you use drugs or alcohol during supervision. The best way to make sure your score is correct is by being honest and open with your officer and keeping him informed of changes as they occur.”<sup>94</sup>

According to Kentucky’s in-state contacts, the Board is implementing a new risk and needs assessment; however, as of this writing, the Level of Service/Case Management Inventory (“LS/CMI”) is used for supervision.<sup>95</sup>

### d. Preliminary and Final Revocation Procedures

**Arrest.** Any parole officer having reason to believe that a parolee or a person on post-incarceration supervision has violated the conditions of supervision may arrest the parolee. The Board may also issue a warrant for arrest on the basis of a parole violation or an officer’s written report of a parole violation.<sup>96</sup>

In weighing whether engaging in a revocation process is necessary in the first place, a parole officer must make a determination based on the offender’s risk and needs, adjustment on supervision, the severity of the violation, the offender’s previous criminal record, previous supervision violations, and the extent to which sanctions were imposed for previous violations. If an officer determines that an administrative response is not appropriate, the violation will be reported to the Board; this will trigger revocation proceedings.<sup>97</sup>

Some violations must be reported to the Board; these include absconding, a new felony conviction,<sup>98</sup> certain new misdemeanor convictions, possession or use of a firearm, failure to complete sex offender treatment, a “demonstrated pattern of failure to comply with conditions of supervision,” or violations “of an assaultive nature.”<sup>99</sup>

Note that new criminal conduct that does not also constitute a technical violation of parole is not treated as a basis for revocation unless the offender has received a conviction, has made a judicial admission (i.e. a guilty plea), or has committed all or part of the criminal act in the presence of a parole officer.<sup>100</sup> If a parolee is recommitted to prison for a new crime, parole status is automatically terminated without a hearing.<sup>101</sup>

**Good cause hearing.** If revocation is based on nonpayment of a supervision fee, a “Good Cause Hearing” must be held prior to a preliminary hearing in which the Administrative Law Judge must determine whether good cause exists for nonpayment of the supervision fee. If the Judge finds good cause for nonpayment, the charges must be dismissed and the parolee returned to supervision with the previously imposed supervision fee. If good cause does not exist, the parole officer may request that the hearing be continued *sine die* (indefinitely) with the condition that the offender pay the arrears and the current supervision fee on a monthly basis. If the parole officer does not request this, the hearing must immediately continue as a preliminary revocation hearing.<sup>102</sup>

**Preliminary hearing.** Preliminary hearings must be held in or near the community where one or more of the alleged violations occurred, or at the location the offender was taken into custody. Offenders may waive a preliminary hearing in writing. Offenders are entitled to at least five days’ notice before a hearing occurs. However, the hearing must be held within fourteen days of arrest.<sup>103</sup>

An Administrative Law Judge presides over the hearing and must make a determination about whether there exists probable cause to believe that the offender committed any of the violations alleged. This determination must be made in writing within 21 days after the hearing, unless good cause exists for a continuation. An Administrative Law Judge may also choose to recommend that an offender’s parole be reinstated based on substantial mitigating factors.<sup>104</sup>



The preliminary hearing is also the offender's opportunity to present any evidence in defense or mitigation and to confront adverse witnesses (as permitted). Note that the final hearing on parole revocation is *not* an opportunity for the offender to present additional evidence; after the preliminary hearing, the offender must request a special hearing to do so (which may be denied).<sup>105</sup>

*Final hearing.* The final hearing must be held within 30 days after the return of an offender to a state institution. The hearing is held by the Board or a panel of the Board (as described in endnote 37 of this report). The evidence in the final hearing is limited to the administrative record that was made before the Administrative Law Judge.<sup>106</sup>

The offender must have the opportunity at the final hearing to demonstrate (based on the administrative record) that even if the parole conditions have been violated, mitigating circumstances may exist which suggest the violations do not warrant revocation or, if parole is revoked, do not warrant return to prison. At the end of the final hearing, the Board must determine the disposition of the case.<sup>107</sup>

*Special hearing.* An offender who wishes to present new or different evidence after the preliminary revocation hearing must request a special hearing at the beginning of the final hearing. Offenders who have waived the preliminary hearing may also request a special hearing to present mitigating evidence. The Board has discretion to grant or deny any special hearing request.<sup>108</sup>

The offender, the parole officer, and the Board must participate in a special hearing. The Board must present a summary of the charges against the offender, and the parole officer must present proof of the violation subject to cross-examination by the offender. The offender may also present proof subject to rebuttal evidence and testimony by the parole officer. The Board may question the offender, parole officer, and any witnesses. At the end of this hearing, much like at the end of a final hearing, the Board must determine the disposition of the case.<sup>109</sup>

### **e. Offenders' Procedural Rights**

Offenders have the right to notice of alleged violations, as well as notice of the time and place of preliminary revocation hearings. They have the right to request postponement of the hearing for good cause. They must be able to present evidence in person and to present witnesses and documentary evidence. The Board must also

disclose evidence to the offender. The offender has the right to confront and cross-examine witnesses; however, the Administrative Law Judge has the discretion to disallow the confrontation of adverse witnesses. The offender also has the right to a timely written decision. Finally, the offender has the right to have counsel of choice present. Indigent offenders who request assistance to adequately present their case may have counsel appointed. As of this writing, the right to appointed counsel at parole revocation hearings is under consideration by the Kentucky Supreme Court.<sup>110</sup>

### **f. Victims and Other Participants**

There is no formal victim input during the revocation process. However, if victims submit a written statement the Board can take it into consideration during the final hearing.<sup>111</sup>

### **g. Burden of Proof or Standards of Persuasion**

There is no specific standard of persuasion for parole revocation; the Board must find that the offender violated the terms or conditions of supervision.<sup>112</sup>

### **h. Revocation and Other Sanctions**

At the conclusion of a revocation hearing, the Board must decide whether or not to revoke the offender's parole. It must also decide, if parole is revoked, whether to reinstate the offender to parole supervision or to re-incarcerate the offender for any amount of time up to the remainder of the imposed sentence. The Board may utilize alternatives to incarceration including return to parole supervision with additional conditions.<sup>113</sup>

If a parole officer has decided to handle a violation in an administrative manner, they have a variety of options depending on how serious the violation is and the risk the parolee presents. If more than two serious sanctions (sanctions from range 3 or higher) are required, the officer must get supervisor approval. They must also get supervisor approval if they wish to intervene in a manner not listed in the guidelines, or believe that the parolee should receive a more severe sanction, or face revocation despite the results of the guidelines.<sup>114</sup>

An officer wishing to impose intermediate sanctions must make sure that the offender understands the intermediate sanctions report. Offenders have a right to a violation

hearing before the court before administrative sanctions are imposed. Offenders have a right to counsel at this hearing, and can be appointed an attorney at state expense if they cannot afford one. An offender may waive this hearing and choose to participate in the graduated sanctioning process. In the Probation and Parole Violation Matrix, sanctions may range from a verbal or written warning to 180 days of curfew. The officer may also impose 30 to 60 days in jail without full revocation, but these sanctions require a Board hearing.<sup>115</sup>

### **i. Issuing Parole Revocation Decisions**

Within 21 days of a final hearing, the Board must provide the offender with written notice of their determination and a brief statement identifying the reasons for the determination and the evidence relied upon. As Board policy notes, the “determination and a brief statement identifying the reasons for the determination and the evidence relied upon are normally communicated verbally to the offender immediately following the conclusion of the Final Hearing or special hearing, unless a vote of the full Board is required, or unless it would present a risk to safety or security of the hearing participants, staff, or any other person.”<sup>116</sup>

### **j. Administrative or Judicial Review of Parole Revocation Decisions**

If parole or other supervision is revoked, the offender may request reconsideration under the process described in § 3g of this report. No other type of administrative review of parole revocation decisions is available.<sup>117</sup>

By statute, Board decisions are not reviewable except for evaluation of compliance with state laws on sentencing and parole.<sup>118</sup> Most recent cases involving judicial review of parole revocation are not published in the official case reporter. However, it appears that offenders may seek judicial review through writ of mandamus in some cases.<sup>119</sup>

### **k. Re-Release Following Revocation**

As Board policy states, “future parole possibilities on the original charges shall not be forfeited if incarceration is determined necessary after the Final Hearing or a special hearing.” After a final hearing in which parole is revoked, the Board must immediately inform the offender of their next tentative release date. If this date is more than one year after the final revocation hearing or final disposition, the Board must set a date for review within one year and advise the offender of that date.<sup>120</sup>

## **6. Parole Board; Institutional Attributes**

### **a. Source of Authority and Jurisdiction**

The Board has statutory authority over parole release and revocation.<sup>121</sup>

### **b. Location in Government**

The Board is an independent agency attached to the Justice and Public Safety Cabinet for administrative purposes only. The Department of Corrections provides any clerical, stenographic, administrative, or expert staff assistance the Board deems necessary to carry out its duties.<sup>122</sup>

### **c. Purpose (Vision/Principles/Rationale)**

The stated mission of the Kentucky Parole Board is “to make decisions that maintain a delicate balance between public safety, victim rights, reintegration of the offender and recidivism. We will achieve this important balance by application of our core values of knowledge, experience and integrity.”<sup>123</sup>

### **d. Appointment and Qualifications of Board Members**

The Board has nine full-time members who are appointed by the governor and confirmed by the senate. Each member is selected from a list of three names given to the governor by the Kentucky State Corrections Commission. The governor designates one member as the chairperson of the Board.<sup>124</sup>

*Qualifications.* Each member of the Board must have at least five years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof; or have served at least five years previously on the Board. No more than six Board members may be from the same political party.<sup>125</sup>

### **e. Tenure of Board Members, Ease of Removal**

Board members serve for four year terms. The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he or she shall give the member a written copy of the charges against him or her and shall fix the time when he or she can be heard in his or her defense,



which shall not be less than ten days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.<sup>126</sup>

#### **f. Training and Continuing Education**

The chairperson of the Board must assure that Board members have access to training to assure competency in carrying out the mission of the Board. New members must attend a 40-hour orientation prior to assuming their assigned duties. In addition, all members must receive 40 hours of annual training and education.<sup>127</sup>

#### **g. Workload**

In the 2013-2014 fiscal year, the Board conducted 15,773 hearings and reviews related to parole. This included 953 interviews and 9,646 file reviews on initial cases, and 893 interviews and 4,142 file reviews on deferred cases. This resulted in a 52% parole approval rate that year. There were 5,641 hearings related to re-release of offenders whose parole was revoked. These hearings resulted in a 4% re-parole approval rate (and a 60% serve-out rate). There were 238 hearings held by victim request (see §§ 3a, 3d of this report for more information).<sup>128</sup>

In that same year, there were 6,203 revocation warrants issued. There were 5,304 waivers of preliminary hearings and 664 preliminary hearings.<sup>129</sup> There were also 998 reconsideration reviews.<sup>130</sup>

The Bureau of Justice Statistics reports that in 2015, 11,429 people were estimated to have been released on parole in Kentucky. Of these offenders, an estimated 7,805 were released on discretionary parole and 3,444 were released on mandatory parole.<sup>131</sup>

#### **h. Reporting and Accountability of Parole Board**

The Board must submit an annual report to the Governor that details the “statistical and other data of its work” at the close of each fiscal year. As of this writing, the latest year available to the public is fiscal year 2013-2014.<sup>132</sup>

By law, the Board must keep records of its acts, an electronic record of its meetings, a written record of the votes of individual members, and the reasons for denying parole to inmates. These records are public in accordance with the state’s public records laws.<sup>133</sup> However, some records of law enforcement agencies related to criminal investigations are exempted from public disclosure without a court order.<sup>134</sup>

## END NOTES

- <sup>1</sup> Ky. Rev. Stat. Ann. § 532.030 (West).
- <sup>2</sup> Ky. Parole Bd., *History*, <http://paroleboard.ky.gov/about/Pages/history.aspx> (last visited Jan. 4, 2017).
- <sup>3</sup> 2011 Ky. H.B. 463.
- <sup>4</sup> 2012 Ky. H.B. 54.
- <sup>5</sup> 2015 Ky. S.B. 192.
- <sup>6</sup> Ky. Rev. Stat. Ann. § 439.330(1)(d) (West).
- <sup>7</sup> Ky. Rev. Stat. Ann. § 439.348 (West).
- <sup>8</sup> See, e.g. Ky. Rev. Stat. Ann. § 439.341 (West).
- <sup>9</sup> 501 Ky. Admin. Regs. 1:030(c).
- <sup>10</sup> See 501 Ky. Admin. Regs. 1:030 (e)(1) – (3) (listing “truth in sentencing” eligible crimes after July 15, 1998, July 15, 2002, and July 12, 2006).
- <sup>11</sup> 501 Ky. Admin. Regs. 1:030(e)(4).
- <sup>12</sup> This includes all sexual offenses listed in that section of the Kentucky Penal Code, Ky. Rev. Stat. Ann. ch. 510.
- <sup>13</sup> Where the transaction involves sexual activity under Ky. Rev. Stat. Ann. § 530.064(1)(a) (West).
- <sup>14</sup> Where the human trafficking involves commercial sexual activity under Ky. Rev. Stat. Ann. § 529.010(5)(b) (West).
- <sup>15</sup> This may be a first or second-degree assault, an assault of a family member or member of unmarried couple, or first-degree wanton endangerment.
- <sup>16</sup> Ky. Rev. Stat. Ann. § 197.045 (West).
- <sup>17</sup> Ky. Rev. Stat. Ann. § 218A.142 (West).
- <sup>18</sup> Ky. Rev. Stat. Ann. § 532.030 (West).
- <sup>19</sup> Ky. Rev. Stat. Ann. § 532.060 (West).
- <sup>20</sup> 501 Ky. Admin. Regs. 1:030(e)(4).
- <sup>21</sup> Ky. Rev. Stat. Ann. § 439.340 (West).
- <sup>22</sup> 501 Ky. Admin. Regs. 1:030.
- <sup>23</sup> Ky. Rev. Stat. Ann. § 197.045 (West).
- <sup>24</sup> *Id.*
- <sup>25</sup> Ky. Rev. Stat. Ann. § 197.047 (West). Inmates who have been sentenced to life without the possibility of parole, violent offenses, escape or attempted escape, or sex crimes are not eligible for this type of credit.
- <sup>26</sup> Ky. Rev. Stat. Ann. § 197.045 (West).
- <sup>27</sup> Ky. Dep’t of Corr. Policy 15.3 (Feb. 3, 2006).
- <sup>28</sup> Correspondence with Lelia VanHoose, Chair, Ky. Parole Board & Melissa Chandler, Ky. Parole Board Member (Mar. 23, 2017).
- <sup>29</sup> Ky. Rev. Stat. Ann. § 439.340(2) (West).
- <sup>30</sup> *Id.*
- <sup>31</sup> Ky. Rev. Stat. Ann. § 439.340(11) (West).
- <sup>32</sup> Ky. Rev. Stat. Ann. § 439.340(1) (West); 2011 Ky. H.B. 463.
- <sup>33</sup> Ky. Parole Bd., *FY 2013-2014*, <https://justice.ky.gov/Documents/Parole%20Board/Reports/FY13-14.pdf>.
- <sup>34</sup> Ky. Parole Bd., *Preparing for a Hearing*, <https://paroleboard.ky.gov/offenders/Pages/preparing.aspx> (last visited Jan. 9, 2018).
- <sup>35</sup> Ky. Parole Bd., *Risk & Needs Assessment*, <http://paroleboard.ky.gov/paroleprocess/Pages/riskassessment.aspx> (last visited Sept. 20, 2016).
- <sup>36</sup> Correspondence with Melissa Chandler, Ky. Parole Board Member (May 30, 2017).
- <sup>37</sup> Ky. Rev. Stat. Ann. § 439.3405 (West). If the inmate is a class A- or B-felon, or a class C-felon sentenced for a violent or sex offense, the Board must hold a hearing after giving notice victims or deceased victims’ next of kin and the Commonwealth’s attorney. The Commonwealth’s attorney must in turn give notice to the sheriff of every county and the chief of police of every city and county in which the prisoner committed any class A, B, or C felony for which he or she is imprisoned.
- <sup>38</sup> Ky. Const. § 77.
- <sup>39</sup> Ky. Rev. Stat. Ann. § 439.450 (West).
- <sup>40</sup> See, e.g., Ryland Barton, *County Officials, Jailers Ask Bevin to Veto Private Prisons Provision*, Ky. Ctr. for Investigative Reporting (Apr. 27, 2016), <http://kycir.org/2016/04/27/county-officials-jailers-ask-bevin-to-veto-private-prisons-provision/>.
- <sup>41</sup> Ky. Rev. Stat. Ann. § 439.320(4) (West). If two members sit on a panel and fail to agree the matter will be referred to the full board. If three or more members sit on a panel, the majority of the panel (i.e. 2 out of 3) must agree or the matter will be referred to the full board.
- <sup>42</sup> Ky. Parole Bd. Policy KYPB 10-01 (Dec. 6, 2011).
- <sup>43</sup> Ky. Rev. Stat. Ann. § 439.340 (7); see also Ky. Parole Bd., *Frequently Asked Questions*, <https://justice.ky.gov/Pages/Parole-Board-FAQ.aspx#8> (last visited Dec. 19, 2017).
- <sup>44</sup> Ky. Rev. Stat. Ann. § 439.340 (West).
- <sup>45</sup> Ky. Parole Bd. Policy KYPB 10-01 (Dec. 6, 2011).
- <sup>46</sup> Ky. Parole Bd. Policy KYPB 10-00 (Oct. 13, 2015).
- <sup>47</sup> Ky. Corr. Policy 6.1 (Aug. 31, 2007).
- <sup>48</sup> Ky. Rev. Stat. Ann. § 439.340(6) (West); see also Ky. Parole Bd., *Parole Victim Services*, <https://justice.ky.gov/Documents/Parole%20Board/Victim%20Services/Parole%20Victim%20Services.pdf>.
- <sup>49</sup> Ky. Rev. Stat. Ann. § 439.340(7); see also Ky. Parole Bd., *Frequently Asked Questions*, <https://justice.ky.gov/Pages/Parole-Board-FAQ.aspx#8> (last visited Dec. 19, 2017).
- <sup>50</sup> Ky. Rev. Stat. Ann. § 439.340(6) (West).
- <sup>51</sup> *Id.*
- <sup>52</sup> Ky. Rev. Stat. Ann. § 439.340(13), (14); See also Ky. Parole Bd. Policy KYPB 10-01 (Dec. 6, 2011).
- <sup>53</sup> Ky. Parole Bd. Policy KYPB 10-01(N) (Feb. 3, 2012).
- <sup>54</sup> Ky. Parole Bd. Policy KYPB 10-00 (Dec. 4, 2015).
- <sup>55</sup> Ky. Rev. Stat. Ann. 13B.020(3)(c)2a (West).
- <sup>56</sup> See *Stewart v. Com.*, 153 S.W. 3d 789 (Ky. 2005); *Seymour v. Colebank*, 179 S.W. 3d 886 (Ky. App. 2005).
- <sup>57</sup> See *Land v. Com.*, 986 S.W. 2d 440 (Ky. 1999).
- <sup>58</sup> See *Belcher v. Ky. Parole Bd.*, 917 S.W. 2d 584 (Ky. App. 1996).
- <sup>59</sup> Ky. Rev. Stat. Ann. § 439.330(3) (West).
- <sup>60</sup> Ky. Parole Bd. Policy KYPB 10-01(O), (Q) (Dec. 6, 2011).
- <sup>61</sup> 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>.
- <sup>62</sup> Ky. Dep’t of Corr., *Division of Probation and Parole*, <http://corrections.ky.gov/depts/Probation%20and%20Parole/Pages/default.aspx> (last visited Sept. 23, 2016).
- <sup>63</sup> Ky. Rev. Stat. Ann. § 439.348 (West).
- <sup>64</sup> Ky. Rev. Stat. Ann. § 439.354 (West).
- <sup>65</sup> Ky. Rev. Stat. Ann. § 439.3406 (West). Exceptions to this rule include: inmates who are not parole eligible; have been convicted of capital offenses or Class A felonies; have a maximum or close security classification; have been sentenced to two years or less of incarceration; are required to serve longer post-incarceration supervision sentences; or have six months or less to be served on a court recommitment for some type of probation or conditional release violation.
- <sup>66</sup> Ky. Rev. Stat. Ann. § 532.043 (West).
- <sup>67</sup> Ky. Rev. Stat. Ann. § 439.354 (West).
- <sup>68</sup> Ky. Dep’t of Corr. Policy 27-24-01 (Dec. 16, 2011).
- <sup>69</sup> Ky. Dep’t of Corr. Policy 27-24-02 (Jul. 11, 2011).
- <sup>70</sup> Ky. Rev. Stat. Ann. § 439.563 (West).
- <sup>71</sup> Ky. Dep’t of Corr. Policy 27-15-03 (Oct. 2, 2015).
- <sup>72</sup> Ky. Parole Bd. Policy KYPB 11-00 (C)(1) (Dec. 4, 2015).
- <sup>73</sup> *Id.* at (C)(2).
- <sup>74</sup> *Id.* at (A).
- <sup>75</sup> *Id.* at (C)(2).
- <sup>76</sup> See, e.g., *Stewart v. Com.*, 152 S.W.3d 789 (Ky. 2005).
- <sup>77</sup> Ky. Parole Bd. Policy KYPB 11-00 (D) (Dec. 4, 2015).
- <sup>78</sup> Ky. Dep’t of Corr. Policy 27-15-03 (Oct. 2, 2015).
- <sup>79</sup> Ky. Parole Bd. Policy KYPB 11-00(C)(1) (Dec. 4, 2015).
- <sup>80</sup> 501 Ky. Admin. Regs. 1:040.
- <sup>81</sup> Ky. Rev. Stat. Ann. § 439.315 (West).
- <sup>82</sup> Ky. Parole Bd. Policy KYPB 11-00 (C)(1) (Dec. 4, 2015).
- <sup>83</sup> See Ky. Dep’t of Corr. Policy 27-13-01 (Jun. 4, 2015); Correspondence with VanHoose & Chandler, *supra* note 28.

## END NOTES

- <sup>84</sup> Ky. Rev. Stat. Ann. § 439.563 (West).
- <sup>85</sup> Ky. Parole Bd. Policy KYPB 11-00(C)(1) (Dec. 4, 2015).
- <sup>86</sup> *Id.* This amount, if any, would vary from case to case based on the total monetary damages involved.
- <sup>87</sup> Ky. Dep't of Corr. Policy 27-15-03 (Oct. 2, 2015).
- <sup>88</sup> Kaeble & Bonzcar, *supra* note 60 at 24 (Appendix Table 6).
- <sup>89</sup> Pew Ctr. on the States, Public Safety Performance Project, *2011 Kentucky Reforms Cut Recidivism, Costs* (2011), [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_asets/2011/2011kentuckyreformscutrecidivismpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_asets/2011/2011kentuckyreformscutrecidivismpdf.pdf).
- <sup>90</sup> Ky. Dep't of Corr. Policy 27-15-03 (Oct. 2, 2015).
- <sup>91</sup> Ky. Rev. Stat. Ann. § 439.430 (West).
- <sup>92</sup> Ky. Rev. Stat. Ann. § 439.3106 (West).
- <sup>93</sup> Ky. Dep't of Corr. Policy 27-15-03 (Oct. 2, 2015).
- <sup>94</sup> Ky. Div. of Probation & Parole, *Offender Handbook* (2014), <http://corrections.ky.gov/depts/Probation%20and%20Parole/Documents/Offender%20Handbook%20revised%205-14.pdf>.
- <sup>95</sup> Correspondence with VanHoose & Chandler, *supra* note 28.
- <sup>96</sup> Ky. Rev. Stat. Ann. § 439.430 (West).
- <sup>97</sup> Ky. Dep't of Corr. Policy 27-15-03 (II. F) (Oct. 2, 2015).
- <sup>98</sup> Misdemeanor convictions for assault, violation of an emergency protective or domestic violence order, sexual offenses, or driving under the influence must be reported.
- <sup>99</sup> Ky. Dep't of Corr. Policy 27-15-03 (II. E) (Oct. 2, 2015).
- <sup>100</sup> Ky. Parole Bd. Policy KYPB 13-01 (H) (Dec. 4, 2015).
- <sup>101</sup> Ky. Rev. Stat. Ann. § 439.352.
- <sup>102</sup> Ky. Parole Bd. Policy KYPB 13-04 (Feb. 3, 2012).
- <sup>103</sup> Ky. Parole Bd. Policy KYPB 13-01 (Dec. 4, 2015).
- <sup>104</sup> *Id.*
- <sup>105</sup> *Id.*
- <sup>106</sup> Ky. Parole Bd. Policy KYPB 13-02 (Dec. 4, 2015). If an offender who has waived a preliminary hearing is not allowed to present mitigating evidence at the final hearing, they must be allowed to do so in writing.
- <sup>107</sup> *Id.*
- <sup>108</sup> *Id.*
- <sup>109</sup> *Id.* Note that if an offender who has waived their preliminary hearing is not allowed a special hearing to present mitigating evidence, they must be allowed to submit that evidence in writing.
- <sup>110</sup> Ky. Dep't of Corr. Policy 27-19-01 (II)(C) (Oct. 2, 2015); *Bailey v. Jones*, 2017 WL 1193173 (Ky. Ct. App., Mar. 31, 2017) held that there is a right to counsel for indigent defendants at both the preliminary and final phases of the revocation process. Discretionary review of this case has been granted by the Kentucky Supreme Court. See Ky. Court of Justice Case 2017-SC-000203, [http://apps.courts.ky.gov/supreme/sc\\_dockets.shtm](http://apps.courts.ky.gov/supreme/sc_dockets.shtm).
- <sup>111</sup> Correspondence with VanHoose & Chandler, *supra* note 28.
- <sup>112</sup> *Id.*
- <sup>113</sup> Ky. Parole Bd. Policy KYPB 13-02 (Dec. 4, 2015).
- <sup>114</sup> Ky. Dep't of Corr. Policy 27-15-03 (Oct. 2, 2015).
- <sup>115</sup> *Id.*
- <sup>116</sup> Ky. Parole Bd. Policy KYPB 13-02 (C)(4) (Dec. 4, 2015).
- <sup>117</sup> Ky. Rev. Stat. Ann. § 13B.020(3)(c)2a (West).
- <sup>118</sup> Ky. Rev. Stat. Ann. § 439.330(3) (West).
- <sup>119</sup> See, e.g., *Shields v. Ky. State Parole Bd.*, 2013 WL 1351131 (Ky. Ct. App., Apr. 5, 2013), *Newcomb v. Ky. Parole Bd.* 2008 WL 399290 (Ky. App., Feb. 15, 2008).
- <sup>120</sup> Ky. Parole Bd. Policy 13-02 (E), (G).
- <sup>121</sup> Ky. Rev. Stat. Ann. § 439.330 (West).
- <sup>122</sup> Ky. Rev. Stat. Ann. § 439.320(1) (West).
- <sup>123</sup> Ky. Parole Board, <http://justice.ky.gov/Pages/Parole-Board.aspx> (last visited May 31, 2017).
- <sup>124</sup> Ky. Rev. Stat. Ann. § 439.320.
- <sup>125</sup> *Id.*
- <sup>126</sup> *Id.*
- <sup>127</sup> Ky. Parole Bd. Policy KYPB 04-00 (Apr. 1, 2011).
- <sup>128</sup> FY 2013-2014, *supra* note 33.
- <sup>129</sup> *Id.*
- <sup>130</sup> *Id.*
- <sup>131</sup> Kaeble & Bonzcar, *supra* note 60 at 22 (Appendix Table 5).
- <sup>132</sup> *Id.*, Ky. Rev. Stat. Ann. § 439.330 (4) (West).
- <sup>133</sup> Ky. Rev. Stat. Ann. § 439.330 (4).
- <sup>134</sup> Ky. Rev. Stat. Ann. § 61.878(1)(h) (West).