

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

MARYLAND



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Maryland

By

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The authors wish to thank David R. Blumberg, Chair, Maryland Parole Commission and Ruth Ann Ogle, Program Manager, Maryland Parole Commission.

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Suggested citation: Alexis Lee Watts, Brendan Delaney, Edward E. Rhine, Robina Inst. of Crim. Law & Crim. Just., *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Maryland* (2018).

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	3
b. Good Time, Earned Time, and Other Discounts.....	4
c. Principles and Criteria for Parole Release Decisions.....	4
d. Parole Release Guidelines.....	5
e. Risk and Needs Assessment Tools	5
f. Medical or Compassionate Release.....	5
g. Executive Clemency Power	5
h. Emergency Release for Prison Crowding	6

3. Parole Release Hearing Process

a. Format of Release Hearings.....	6
b. Information Before the Board; Factors the Board May Consider	6
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.....	7
d. Conditions of Supervision.....	8
e. Fees and Other Financial Sanctions	8

CONTENTS

5. Parole Revocation

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

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction.....	10
b. Location in Government	10
c. Purpose (Vision/Principles/Rationale).....	10
d. Appointment and Qualifications of Board Members.....	11
e. Tenure of Board Members, Ease of Removal.....	11
f. Training and Continuing Education	11
g. Workload	11
h. Reporting and Accountability of Parole Board	11

End Notes.....	12
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1. Background; Sentencing System

a. Sentencing Framework

The Maryland Parole Commission (MPC) was created in 1976 to replace the Board of Parole, which had been established in 1968.¹ The first Advisory Board of Parole was founded in 1914.²

Maryland has had advisory sentencing guidelines since 1983. A sentence pronounced under the guidelines represents the maximum time an offender may serve and the parole commission then determines when an inmate will be considered for release.³

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

Yes, the Maryland Parole Commission.⁴

<http://dpscs.maryland.gov/agencies/mpc.shtml>

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

The Maryland Department of Public Safety and Correctional Service's Division of Parole and Probation is responsible for the supervision of released prisoners.⁵

http://dpscs.maryland.gov/parole_and_probation/

d. Which Agency Has Authority Over Parole Revocation?

The Maryland Parole Commission has authority over parole revocation.⁶

2. Parole Release and Other Prison-Release Mechanisms

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

Maryland's advisory sentencing guidelines give each crime an offense seriousness score and each offender a criminal history score to determine a specific punishment range. There are three separate punishment grids, one for person offenses, one for property offenses, and one for drug offenses.⁷

General rules of release eligibility. Parole is available to certain inmates who are serving 6-month or longer sentences and have served more than one-fourth of their aggregate sentence. However, an inmate not serving a sentence for a crime of violence or for certain drug crimes may be released on parole at any time to undergo drug or alcohol treatment, mental health treatment, or to participate in a residential program in the best interest of an expected or newborn child.⁸

If serving an aggregate sentence where there is a period of no parole eligibility related to one of the sentences, a parolee can be released when they have completed the greater of one-fourth of the aggregate sentence or the period of no parole eligibility. For example, if a person is sentenced to 20 years with standard parole eligibility and another 10 year sentence with parole eligibility after 4 years, they will have to wait five years ($20 \text{ years} \times 1/4 = 5 \text{ years}$) to be eligible for release.⁹

Administrative release. In 2016, Maryland passed justice reinvestment legislation that creates administrative release for certain inmates and is effective in October 2017. Eligible inmates are those serving six months or more for certain controlled substance offenses or property crimes for which the value is under \$1,500. Inmates cannot have prior convictions for violent crimes, sex crimes that would require registration, or multiple violations of controlled substance distribution or manufacturing.¹⁰

The Commission will calculate an eligible inmate's tentative parole release date at one-fourth of the term of confinement and create an individual case plan that contains criteria under which the inmate may be released. Inmates may be released on their tentative date without a hearing if:

- The inmate has complied with the case plan;
- The inmate has not committed a serious ("Category 1") rule violation;
- The victim has not requested a hearing; and
- The Commission finds a hearing unnecessary considering the inmate's history, progress, and compliance.¹¹

Predetermined parole release. By statute, the Commission, an inmate, and the Commissioner of Corrections can enter into a tripartite agreement or contract for parole release of the inmate at a future date. This type of release was part of a boot camp style program for first time offenders that was discontinued in 2015; the predetermined parole release statute is not currently utilized.¹²

Mandatory release. Inmates must be released to supervision when they are serving a term of more than 18 months and have served the term less diminution credit (discussed below). For non-violent offenders, mandatory release can occur after roughly 60% of the sentence is complete if they earn all possible release credits. For violent offenders, release can occur after approximately two-thirds of their sentence is complete.¹³

Violent offenders. Inmates convicted of violent crimes are not eligible for parole until they have served the greater of one-half of their sentence for the violent crime, one-fourth of the aggregate sentence, or the entirety of the period for which they are not eligible for parole.¹⁴ The sentencing judge is required to state the statutory minimum period that must be served in open court.¹⁵ However, a person convicted of a violent crime may petition for parole if they are at least 65 years old and have served at least 15 years of their sentence.¹⁶

Life sentences. An inmate serving any type of life sentence is eligible for parole with the approval of the Governor. An inmate serving a life sentence may also be eligible for parole after serving 25 years (without diminution credits) if the Commission decides to grant release and the Governor does not disapprove of the decision within 180 days. An inmate convicted of first-degree murder under older legal provisions (which provided for the death penalty and for life without parole) is eligible for parole after 25 years. Finally, an inmate convicted under newer first-degree murder statutes to a life without parole sentence is not eligible for parole.

Recurring eligibility after denial of release. The three primary results of a parole hearing are parole refusal, a rehearing at a specified time in the future, or parole approval. Offenders who are refused parole are not entitled to any more hearings. In practice, the parole board generally rehears the cases of offenders with up to 10 years to serve annually and the cases of offenders with over 10 years to serve every two years.¹⁷

b. Good Time, Earned Time, and Other Discounts

Most inmates may accrue a deduction of ten days per calendar month for good conduct. Inmates serving a sentence for a crime of violence or certain drug crimes accrue a deduction of five days per calendar month for good conduct.²⁰ Good conduct credits may be revoked in part or in whole for violations of disciplinary rules.²¹ Additional deductions of five days each are available for satisfactory performance of work tasks or in vocational/educational coursework.²² Finally, an additional deduction of ten days per calendar month may be taken for a special work project or other special program.²³

Deductions are taken from the total length of the sentence and so do not affect parole release except where an inmate is serving a life sentence.²⁴ An inmate cannot receive more than twenty days of deductions per calendar month; an inmate convicted of a crime of violence cannot receive more than fifteen days of deductions.²⁵ Inmates convicted of certain sex crimes against child victims are not eligible for any type of deductions.²⁶

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. Rather than one statutory standard for parole release, the Commission must consider several factors (listed below) for each case.

Statutory factors the commission must consider. Each hearing examiner and commissioner determining whether an inmate is suitable for parole, and the Commission before entering into a predetermined parole release agreement, must consider:²⁷

- (1) the circumstances surrounding the crime;
- (2) the physical, mental, and moral qualifications of the inmate;
- (3) the progress of the inmate during confinement, including the academic progress of the inmate in the mandatory education program required by statute;

- (4) a report on a drug or alcohol evaluation that has been conducted on the inmate, including any recommendations concerning the inmate's amenability for treatment and the availability of an appropriate treatment program;
- (5) whether there is reasonable probability that the inmate, if released on parole, will remain at liberty without violating the law;
- (6) whether release of the inmate on parole is compatible with the welfare of society;
- (7) an updated victim impact statement or recommendation prepared as per statute;
- (8) any recommendation made by the sentencing judge at the time of sentencing;
- (9) any information that is presented to a commissioner at a meeting with the victim; and
- (10) any testimony presented to the Commission by the victim or the victim's designated representative as per statute.

Special standard for sex offenders. There are no additional standards for release of sex offenders.²⁸

d. Parole Release Guidelines

Maryland utilizes a release guidelines system that considers the length of the sentence being served and an offender's risk. The components of the offender risk assessment are discussed in §2e. To determine the guideline release date, the Commission employs one matrix for violent crimes and another for non-violent crimes. Along the horizontal axis of the matrix are risk assessment scores running from "low risk" to "high risk," and on the vertical axis is the aggregate sentence in months (e.g. 105-108 months). At the intersection of the two axes, commissioners can find a range of potential release dates. For example, a violent offender sentenced to 82 months with a "low-moderate" risk score could be released after serving between 43 and 46 months. A non-violent offender sentenced to 82 months with the same risk score could be released after serving between 22 and 28 months.

Note that guideline parole release sentences of 6 months to 48 months are not addressed by the matrix; the "guideline" is simply between 25% served (the minimum parole release date) and the mandatory release date. Note also that the guideline range for high-risk offenders is always up to the mandatory release date.

e. Risk and Needs Assessment Tools

Statutory mandate. There is no statute requiring risk assessment as part of the parole release decision.

Risk instruments utilized. The Commission uses an instrument that was most recently revised in 2010, called the Standardized Public Safety Risk Assessment. Factors considered in the risk assessment include offense information, whether the inmate was on supervision at the time of the offense, prior record, and static and dynamic risk levels. The Board then adjusts the overall level of inmate risk based on the dynamic score provided.

Sex offenders. The Commission employs the Static-99 to evaluate sex offenders.²⁹

f. Medical or Compassionate Release

An inmate who is eligible for parole and is so debilitated or incapacitated by a medical or mental health condition, disease, or syndrome as to be physically incapable of presenting a danger to society may be released on medical parole at any time during the term of that inmate's sentence. The inmate, an attorney, a prison official or employee, a medical professional, a family member, or any other person may file a request for medical parole with the Commission.³⁰

If the Commission finds that the request is in the best interest of public safety, it will hold a formal hearing prior to release. The Commission may require that (1) the parolee agree to placement for a definite or indefinite period of time in a hospital or hospice or other housing accommodation suitable to the parolee's medical condition, including the family home of the parolee, as specified by the MPC or the supervising agent; and (2) the parolee forward authentic copies of applicable medical records to indicate that the particular medical condition giving rise to the release continues to exist. If the medical condition no longer exists, another hearing will be held and medical parole may be revoked.³¹

g. Executive Clemency Power

The Governor has the power to grant reprieves and pardons, except in cases of impeachment or where otherwise barred by the state constitution.³² Offenders must apply for a pardon through the Commission, which reviews each case and makes a recommendation to the Governor.³³ The Governor may also:

- (1) change a sentence of death into a sentence of life without the possibility of parole;
- (2) pardon an individual convicted of a crime subject to any conditions the Governor requires; or
- (3) remit any part of a sentence of imprisonment subject to any conditions the Governor requires, without the remission operating as a full pardon.³⁴

h. Emergency Release for Prison Crowding

There is no system of emergency release in response to correctional overcrowding.

3. Parole Release Hearing Process

a. Format of Release Hearings

A hearing examiner appointed by the Commission conducts most hearings. At the end of each hearing, the examiner will inform the inmate of their recommendation. The Commission then has the authority to either allow the examiner's decision to stand or to review the decision in a panel in a separate hearing. A Commission panel hearing is conducted by at least two commissioners.³⁵ However, Commission members conduct hearings on cases involving life imprisonment, convictions for homicide, or open parole hearings as requested by victims.³⁶ The two commissioners must determine whether an inmate is suitable for parole by a unanimous vote. If they cannot agree, a three-commissioner panel will rehear the case and a decision will be made by majority vote.³⁷

Closed hearings, the majority of hearings, consist of an interview with the inmate. Attendance is restricted to parole personnel and a representative of the institution. The hearings are private and must be held in an informal manner, allowing the prisoner the opportunity to give free expression to his views and feelings relating to his case.³⁸

The Commission must hold an open parole hearing for a violent offender, however, if the victim requests it. These hearings are open to the victim and to members of the public preapproved by the Chairman of the Commission.³⁹

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

To make a parole decision, the Commission examines:

- (a) The offender's prior criminal and juvenile record and the offender's response to prior incarceration, parole or probation, or both;
- (b) The offender's behavior and adjustment and the offender's participation in institutional and self-help programs;
- (c) The offender's vocational, educational, and other training;
- (d) The offender's current attitude toward society, discipline, and other authority;

- (e) The offender's past use of narcotics, alcohol, or dangerous controlled substances;
- (f) Whether the offender has demonstrated emotional maturity and insight into his problems;
- (g) Any reports or recommendations made by the sentencing judge, the institutional staff, or by a professional consultant such as a physician, psychologist, or psychiatrist;
- (h) The offender's employment plans, his occupational skills, and his job potential;
- (i) The offender's family status and stability;
- (j) The offender's ability and readiness to assume obligations and undertake responsibilities;
- (k) The adequacy of the offender's parole plan and the availability of resources to assist him;
- (l) Any other factors or information which the Commission may find relevant to the individual offender's consideration for parole.⁴⁰

c. Prisoners' Procedural Rights

Inmates must receive notice of a hearing that includes both the date, time, and place of the hearing and the factors that will be considered by the Commission.⁴¹ The notice must also indicate that, before the hearing, the inmate or the inmate's representative⁴² may, on request, examine any document (that can legally be disclosed) that the MPC or hearing examiner will use in determining whether the inmate is suitable for parole.⁴³

Formal presentations by attorneys, relatives, or other interested parties are not permitted at parole hearings. Attorneys, relatives, and others interested may discuss the relative merits or other factors of the case with the MPC at its executive offices, any time before or after a parole hearing (but before the final decision is made).⁴⁴

d. Victims and Other Participants

A victim who requests notification of a parole release hearing must receive written notification of the tentative hearing date from the Commission at least 120 days prior to that date.⁴⁵ At least 90 days prior to the parole hearing date, the victim may request an open parole hearing.⁴⁶ The Chairman of the Commission may grant or deny a public hearing based on a victim request.⁴⁷

A member of the general public must make written application to the Commission to attend an open parole release hearing. Applications must be considered in the order that they are received, subject to available seating at the designated regional open hearing center, local jail, or

detention center. The Chairman may consider the applications in some other order if the interest of the victim or the general public requires discretion. A member of the general public must be at least 18 years old in order to attend an open parole release hearing.⁴⁸

e. Burden of Proof or Standards of Persuasion

There is no single standard of persuasion for parole release, rather there are many factors that must be considered and given weight in each case.

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

The Commission panel or hearing examiner running the meeting may grant or deny parole, and hearing officials may also defer a decision pending the receipt of additional information.⁴⁹ The Commission may, when it deems it necessary for the safety and welfare of the individual or the safety of the public, impose reasonable special conditions to be complied with before release on parole or from time to time during the period of parole supervision. These conditions must be such that compliance can be accomplished by the exercise of reasonable effort by the parolee.⁵⁰

A hearing official will announce their recommendation to the Commission (or their choice to defer the decision) at the end of a parole hearing. After a hearing conducted by a panel of commissioners, the vote of each member (or a decision to defer pending further information) must be announced.⁵¹

g. Administrative or Judicial Review of Parole Denial

Administrative appeal of a hearing examiner's recommendation is available to the commissioner of corrections, the inmate, or the Commission itself. A written exception to the recommendation must be filed within five days after receipt of the written decision. A panel of at least two commissioners must decide the appeal. The panel may affirm the examiner's decision, reverse the decision and render a new one, modify the examiner's decision, or remand the case to the examiner for further consideration and a new decision. A remand will be made when the panel feels that additional information should be considered before making a parole decision.⁵²

Parole denial has received judicial review through writ of habeas corpus in some cases.⁵³

h. Rescission of Parole Release Dates

When an effective release date has been set by the Commission, release on that date is conditioned upon the continuance of good prison conduct. If the Commission receives information about serious misbehavior, it may cancel the parole order, delay release, or grant parole.⁵⁴ The Commission may also rescind parole release if an inmate obtains it by means of fraud or lack of candor.⁵⁵

4. Supervision Practices

Parole supervision rate. As of December 31, 2015, there were 233 parolees per 100,000 adult residents in Maryland. This is lower than the 50-state average of 304 parolees per 100,000 adult residents.⁵⁶

a. Purposes of Supervision

The Parole and Probation Division of the Department of Public Safety and Correctional Services is responsible for supervising parolees and describes preventing recidivism and promoting public safety as their primary objectives.⁵⁷

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

All parolees must follow general conditions that include reporting to a parole agent as directed. All parolees are initially placed on supervision.⁵⁸

c. Length of Supervision Term

Maximum supervision terms. A parolee remains in legal custody of the Commission until the expiration of the parolee's full, undiminished term.⁵⁹

Early termination. After two years of uninterrupted crime-free behavior, a parole agent may certify that further supervision is not deemed necessary for the protection of society. Upon filing this certificate, the Director of the Division of Parole and Probation may issue an order of abatement of supervision. This order closes the case for supervision purposes. Alternately, an agent may file a report recommending continued supervision. A parolee may apply for abatement of supervision at any time before completion of three years of uninterrupted crime-free behavior.⁶⁰ Note that the parolee is still in legal custody of the Commission until the end of the statutory parole term.

Extension of supervision term. The Commission cannot extend supervision beyond the length of the sentence imposed.

Incentives; “goal parole”. There are no incentives (other than release from supervision) related to length of parole.

d. Conditions of Supervision

Mandatory conditions of supervision include:

- (1) Report to your parole agent as directed and follow his instructions;
- (2) Work regularly;
- (3) Get permission from your parole agent before:
 - (a) Changing your home,
 - (b) Changing your job,
 - (c) Leaving the State;
- (4) Obey all laws;
- (5) Notify your parole agent immediately if you are arrested;
- (6) You may not illegally possess, use, or sell any narcotic drug, controlled dangerous substance, or related paraphernalia;
- (7) You may not own, possess, use, sell, or have under your control, any dangerous weapon or firearms of any description without approval of the Parole Commission;
- (8) You shall conduct yourself as not to present a danger to yourself or others.⁶¹

In addition to the general conditions, the Commission, in its discretion, may impose such special conditions as it deems appropriate to the individual.⁶² According to an older Commission report, “typical special conditions include requirements to attend programs, curfews, restrictions on driving, not coming into contact with a victim, home detention, or electronic monitoring.”⁶³

Sex offenders. There are many potential conditions related to supervision of sex offenders depending on the details of the offense. Examples may include regular polygraph examinations and restrictions on internet use.⁶⁴

Modification of conditions. The Commission may from time to time, in its discretion, and upon good cause shown, change or modify the conditions of an individual’s parole. In case of modification, the parolee must be given opportunity to show cause why a condition should not be changed, added, or modified. The inmate may request a hearing before not less than two commissioners before the modification, change, or addition.⁶⁵

Incentives; lighter conditions. There are no incentives related to lighter conditions.

e. Fees and Other Financial Sanctions

Parole supervision fees. Parolees must pay a \$50 fee as a condition of supervision. However, the Commission may exempt a parolee from all or part of the supervision fees if:

- (1) the parolee has diligently attempted but has been unable to obtain employment that provides sufficient income for the supervisee to pay the fee;
- (2) (i) the parolee is a student in a school, college, or university or is enrolled in a course of vocational or technical training designed to prepare the supervisee for gainful employment; and (ii) the institution in which the parolee is enrolled supplies certification of student status to the Commission;
- (3) the parolee has a disability that limits possible employment, as determined by a physical or psychological examination that the Commission accepts or orders;
- (4) the parolee is responsible for the support of dependents and the payment of the fee constitutes an undue hardship on the parolee; or
- (5) other extenuating circumstances exist.⁶⁶

Payments for drug and alcohol testing and treatment. The Division of Parole and Probation may require a parolee to pay for drug or alcohol abuse testing that the Commission orders. If a parolee fails to pay for a test, parole may be revoked. However, the Division may exempt a parolee from all or part of these fees using the same criteria as for supervision fees.⁶⁷ The current fee for each test is \$10.⁶⁸

Restitution. The Commission must require an inmate to make restitution payments while on parole as a condition of parole, where a court has ordered restitution as a part of the sentence.⁶⁹

Child support. There is no mandatory condition of parole related to child support.

Other financial obligations. Parolees must also pay court costs and fines, though it is unclear whether this is a condition of parole.⁷⁰

Incentives; reduction of economic sanctions. There are no incentives related to reduction of economic sanctions.

5. Parole Revocation

Parole revocation proceedings. In 2015, 615 parolees were returned to incarceration due to a new crime and 716 were returned due to revocation.⁷¹

Absconders. There is no data available on the number of absconders from parole in 2015.

a. Principles and Criteria of “When to Revoke”

Policy considerations. Maryland legislation that went into effect in October 2017 changes the penalties for technical parole violations.⁷² This is part of Maryland’s Justice Reinvestment Act, signed into law in May 2016.⁷³

Legal predicates. Any violation of the conditions of parole may result in revocation.⁷⁴

Statutorily enumerated factors. After October 2017, there is a rebuttable presumption that most technical violations will result in short-term incarceration. However, longer-term (or permanent) parole revocation may occur if continuation on parole would create a risk to public safety, a victim, or a witness based on the nature of the violation, the facts and circumstances of the crime of conviction, and the parolee’s history.⁷⁵

b. Revocation Guidelines

The Commission is in the process of implementing a more structured approach to revocation that will consist of graduated sanctions based on the number of past violations.⁷⁶ See § 5h.

c. Risk and Needs Assessment Tools

Risk assessment is not used at the parole revocation phase, but may form part of an argument to depart from imposition of a specific graduated sanctions.⁷⁷ See § 5h.

d. Preliminary and Final Revocation Procedures

Arrest or summons. If a parole officer knows of a violation of parole, they can either apply for an arrest warrant or submit a report to the Commission to allow a decision about whether a warrant is appropriate. The Commission can issue a warrant for a parolee’s arrest if there is satisfactory information alleging a violation of release conditions.⁷⁸

Preliminary hearing. A parolee in custody solely as an alleged parole violator must receive a prompt preliminary hearing before a hearing examiner.⁷⁹ The hearing must be informal without resorting to strict adherence to rules of evidence. The hearing officer must make a summary of what transpired at the hearing, and make a determination of whether there is probable cause to hold the parolee for a revocation hearing. The officer may also allow a parolee to be released pending a final hearing by withdrawing the warrant and substituting it for a subpoena.⁸⁰

Final hearing. A parole revocation hearing is an adversarial proceeding subject to judicial review. A commissioner must hold the hearing within 60 days after the apprehension of the parolee.⁸¹ The supervising agent must be present at the hearing and is subject to cross-examination, unless absent for good cause. Both the state and the parolee may call witnesses relevant to the parolee’s adjustment to parole supervision or the circumstances of the violation.⁸²

e. Offenders’ Procedural Rights

Before the preliminary hearing, the parolee must be given written notice stating the date and place of the hearing, the purpose of the hearing, fully disclosing the charges alleged as parole violations and informing him of the following:

- (a) He must be allowed to testify in his behalf;
- (b) He must be allowed to call witnesses on his behalf; and
- (c) He must be allowed to cross-examine his accuser or accusers unless disclosure of the identity of the accuser might subject the accuser to risk or harm.

The hearing must be informal without resorting to strict adherence to rules of evidence. The parolee may waive the formality of a preliminary hearing and request a prompt revocation hearing. Parolees are entitled to counsel at the final revocation hearing.⁸³ The Commission must make an effort to obtain, without cost, counsel to represent indigent parolees desiring representation.⁸⁴

f. Victims and Other Participants

Victims of violent crime who have requested written notification of parole information must receive a notice if a parole violation occurs. The notice must include: (1) that a warrant or subpoena was issued by the Commission for the individual’s alleged violation of a condition of parole; (2) that the individual has been found guilty or not guilty

of violating a condition of parole; and (3) of the punishment imposed on the individual for violating a condition of parole.⁸⁵

Again, the parole agent must attend a final revocation hearing unless good cause for their absence is shown.⁸⁶

g. Burden of Proof or Standards of Persuasion

A final parole revocation decision must be based on the preponderance of the evidence.⁸⁷

h. Revocation and Other Sanctions

At the end of a hearing, a commissioner may revoke the order of parole and remand the parolee to the prison or jail from which they were paroled. At that time, the commissioner may also set a future hearing date to consider re-parole.⁸⁸ Alternatively, a commissioner may continue parole with or without modification of conditions. Conditions may include some time (up to the remainder of parole) spent in a home detention program.⁸⁹

As of October 2017, a new system of graduated sanctions for technical violations will create a rebuttable presumption that there is a specific amount of time the Board will impose for technical violations of parole or mandatory supervision. The presumption may be rebutted based on the nature of the circumstances, the facts and circumstances of the crime of conviction, and the parolee's history.⁹⁰

Technical Violation	Penalty
First	Not more than 15 days of imprisonment
Second	Not more than 30 days of imprisonment
Third	Not more than 45 days of imprisonment
Fourth or subsequent	Up to any unserved portion of the sentence

An inmate may not receive credit for time between release on parole and revocation of parole if the inmate was serving a sentence for a violent crime and parole was revoked due to a finding that the inmate committed another violent crime when on parole. In other cases, the commissioner may require the inmate to serve any unserved portion of the sentence originally imposed.⁹¹

i. Issuing Parole Revocation Decisions

The decision of the commissioner must be announced at the conclusion of the hearing. In addition, a written decision accompanied by a concise statement of the findings of fact and the determinations of contested issues must be prepared as soon as practicable after the hearing.⁹²

j. Administrative or Judicial Review of Parole Revocation Decisions

Some parole or supervised release revocation decisions have been judicially reviewed through writ of habeas corpus.⁹³

k. Re-Release Following Revocation

The commissioner who hears the case may or may not set a future hearing date to consider re-parole.⁹⁴

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Commission is established by statute and has the power to authorize parole, set the terms of parole release agreements, and revoke parole or conditional pardon.⁹⁵

b. Location in Government

The Commission is housed within the Department of Corrections.⁹⁶

c. Purpose (Vision/Principles/Rationale)

According to their mission statement, "the Maryland Parole Commission aims to provide offenders with timely parole and revocation hearings, strives to promote safe communities by promptly processing retake warrants, uses sound judgement in conjunction with utilizing validated risk assessment tools during the decision making process, encourages victim input where applicable, maintains strong relationships with other criminal justice agencies, allows access to the general public, and releases those offenders who have the potential to become law abiding citizens."⁹⁷

d. Appointment and Qualifications of Board Members

The commission consists of ten members, appointed by the Secretary of Corrections with the approval of the governor and the advice and consent of the senate. The secretary must designate one of the members as the chairperson of the Commission.⁹⁸

Qualifications? Commissioners must be appointed without regard to political affiliation, and be residents of the state. They must have training and experience in law, sociology, psychology, psychiatry, education, social work, or criminology. They must devote full time to Commission duties, and have no conflicts of interest in employment.⁹⁹

e. Tenure of Board Members, Ease of Removal

The term of a commissioner is six years; at the end of the term, the commissioner will continue to serve until a qualified successor is appointed. With approval from the governor, the secretary may remove a commissioner for disability, neglect of duty, or misconduct in office. This removal process requires written notice to the commissioner in question and a public hearing. If a commissioner is no longer able to perform duties because of sickness, incapacity, or disqualification, the Secretary may appoint a hearing examiner for the duration of the commissioner's absence.¹⁰⁰

f. Training and Continuing Education

Though there is no statutory requirement for training or continuing education, it appears that the commissioners and the chair attend several trainings throughout the year.¹⁰¹

g. Workload

In fiscal year 2015, the Board conducted a total of 8,728 release hearings. It also processed 18 medical paroles.¹⁰² In the same year, it conducted 3,472 revocation hearings and 49 preliminary hearings.¹⁰³

h. Reporting and Accountability of Parole Board

The Commission must maintain a record of its actions, make an annual report to the Governor, and make appropriate recommendations for the improvement of its functions.¹⁰⁴ The Commission's annual reports are available on the Department of Corrections website.¹⁰⁵

END NOTES

- ¹ Md. Parole Comm'n., *Annual Report FY 2002* (2002), <http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/002000/002229/unrestricted/20063193e.pdf>.
- ² Md. Gov't., *Md. Manual Online, Department of Public Safety & Correctional Services Historical Evolution*, <http://msa.maryland.gov/msa/mdmanual/22dpscs/html/dpscsh.html> (last visited Apr. 18, 2017).
- ³ Robina Inst., *Jurisdiction Profile: Maryland* (2016), http://sentencing.umn.edu/sites/sentencing.umn.edu/files/md_profile_in_pdf_-_final_2016.pdf.
- ⁴ Md. Code Ann., Corr. Servs. § 7-205 (West).
- ⁵ Md. Code Ann., Corr. Servs. § 6-104 (West).
- ⁶ Md. Code Ann., Corr. Servs. § 7-205 (West).
- ⁷ Md. State Comm'n. on Criminal Sentencing Policy, *Guidelines Scoring Matrices*, <http://www.msccsp.org/guidelines/Matrices.aspx> (last visited Apr. 18, 2017).
- ⁸ Md. Code Ann., Corr. Servs. § 7-301(a) (West).
- ⁹ *Id.* at (b).
- ¹⁰ Maryland Justice Reinvestment Act, Md. Acts 2016, c. 515 (eff. Oct. 1, 2017) (codified as Md. Code Ann., Corr. Servs. § 7-301.1).
- ¹¹ *Id.*
- ¹² Md. Code Regs. 12.08.01.20; Council of State Govs. Justice Ctr., *Maryland Mutual Agreement Program* (2007), <https://whatworks.csjjusticecenter.org/program/maryland-mutual-agreement-program-map>; Interview with David Blumberg, Chair, Md. Parole Comm'n. (Apr. 25, 2017).
- ¹³ Md. Code Ann., Corr. Servs. § 7-501 (West); *See also* Md. Code Ann., Corr. Servs. § 3, ch. 7 (West).
- ¹⁴ Md. Code Ann., Corr. Servs. § 7-301(c) (West). Violent crimes include abduction; arson in the first degree; kidnapping; manslaughter, except involuntary manslaughter; mayhem; maiming; murder; rape; robbery under carjacking, armed carjacking; sexual offense in the first degree; sexual offense in the second degree; use of a handgun in the commission of a felony or other crime of violence; child abuse in the first degree; sexual abuse of a minor; an attempt to commit any of the aforementioned crimes; continuing course of conduct with a child; assault in the first degree; assault with intent to murder; assault with intent to rape; assault with intent to rob; assault with intent to commit a sexual offense in the first degree; and assault with intent to commit a sexual offense in the second degree. *See* Md. Code Ann., Crim. Law § 14-101 (West).
- ¹⁵ Md. Code Ann., Crim. Proc. § 6-217 (West).
- ¹⁶ Md. Code Ann., Crim. Law § 14-101(f)(1) (West). In October 2017, the age of eligibility will be reduced to 60 pursuant to the Maryland Justice Reinvestment Act, *supra* note 10.
- ¹⁷ Md. Code Ann., Corr. Servs. § 7-301(d) (West).
- ¹⁸ Md. Parole Comm'n., FAQ, <http://dpscs.maryland.gov/about/FAQmpc.shtml> (last visited Apr. 17, 2017).
- ¹⁹ Interview with David Blumberg, *supra* note 12.
- ²⁰ Md. Code Ann., Corr. Servs. § 3-704 (West).
- ²¹ Md. Code Ann., Corr. Servs. § 3-709 (West).
- ²² Md. Code Ann., Corr. Servs. §§ 3-705, 3-706 (West).
- ²³ Md. Code Ann., Corr. Servs. § 3-707 (West).
- ²⁴ Md. Code Ann., Corr. Servs. § 7-301 (West).
- ²⁵ Md. Code Ann., Corr. Servs. § 3-708 (West); Interview with David Blumberg, *supra* note 12.
- ²⁶ Md. Code Ann., Corr. Servs. § 3-702 (West).
- ²⁷ Md. Code Ann., Corr. Servs. § 7-305 (West).
- ²⁸ Interview with David Blumberg, *supra* note 12.
- ²⁹ *Id.*
- ³⁰ Md. Code Ann., Corr. Servs. § 7-309 (West). In October 2017, inmates will need to be chronically ill to qualify for medical parole. *See* 2016 Justice Reinvestment Act, Md. Acts 2016, c. 515 (eff. Oct. 1, 2017).
- ³¹ *Id.* The Commission considers (i) a description of the inmate's condition, disease, or syndrome; (ii) a prognosis concerning the likelihood of recovery from the condition, disease, or syndrome; (iii) a description of the inmate's physical incapacity, and (iv) a mental health evaluation, where relevant. It also considers (i) availability of treatment or professional services within the community; (ii) family support within the community; and (iii) housing availability, including hospital or hospice care. *Id.* at (e).
- ³² Md. Const. art. II, § 20.
- ³³ Md. Code Regs. 12.08.01.16(B).
- ³⁴ Md. Code Ann., Corr. Servs. § 7-601(a) (West).
- ³⁵ Md. Code Ann., Corr. Servs. § 7-307 (West).
- ³⁶ Md. Code Ann., Corr. Servs. § 7-205 (West).
- ³⁷ Md. Code Ann., Corr. Servs. § 7-307 (West).
- ³⁸ Md. Code Regs. 12.08.01.18(C).
- ³⁹ *See* Md. Code Ann., Corr. Servs. § 7-304 (West); Md. Code Regs. 12.08.02.01 - 12.08.02.12 ("Open Parole Release Hearings").
- ⁴⁰ Md. Code Regs. 12.08.01.18(4).
- ⁴¹ Md. Code Ann., Corr. Servs. § 7-303 (West).
- ⁴² Under Md. Code Regs. 12.08.01.17, an inmate representative may be: classification counselors or other members of the professional institutional staff where the inmate is incarcerated; any member of the Bar in good standing; any paralegal working under the supervision of a member of the Bar in good standing; or any agent of the Division of Parole and Probation.
- ⁴³ *Id.* at (b)(1) ("(ii) A document, or a portion of it, is not available for examination, if the Commission determines that: 1. the document or portion contains a diagnostic opinion; 2. the inmate's knowledge of the document or portion would disrupt seriously a program of rehabilitation; 3. the document or portion contains sources of information obtained on a promise of confidentiality; or 4. the document or portion is otherwise privileged. (iii) If the Commission determines that a document or a portion of it is not available for examination, the Commission must notify the inmate that: 1. the document or portion is not available for examination; and 2. on request and if appropriate, the Commission will provide the inmate or the inmate's representative with the substance of any information contained in the document or portion. The Commission must delete the address and phone number of the victim or the victim's designated representative from a document before the inmate or the inmate's representative examines the document.")
- ⁴⁴ Md. Code Regs. 12.08.01.18(C).
- ⁴⁵ Md. Code Regs. 12.08.02.03(A).
- ⁴⁶ Md. Code Regs. 12.08.02.03(A)-(B) ("Inmates under the Jurisdiction of a Local Jail or Detention Center. (1) A victim must apply under Correctional Services Article, §7-801, Annotated Code of Maryland, for notification that a tentative parole release hearing has been scheduled for the inmate convicted of the commission of the violent crime. (2) A victim must request, as set forth in Regulation .03A of this chapter, that the parole release hearing be open to the general public.")
- ⁴⁷ Md. Code Regs. 12.08.02.03(A).
- ⁴⁸ Md. Code Regs. 12.08.02.05(B).
- ⁴⁹ *See* Md. Code Regs. 12.08.02.10(H)-(I); *see also* Md. Code Regs. 12.08.01.18(F) ("(1) A decision to parole does not become effective for release of the inmate until the parole order is presented and accepted by him. An inmate must be released on parole as soon as practicable after a favorable decision unless: (a) The Commission has specified a deferred release date; or (b) The investigation of the community plan of the individual indicates that he would be without means of support, is likely to be unemployed upon his release, or is without a satisfactory home plan. (2) A prisoner may not be released from confinement without an approved parole plan.")
- ⁵⁰ Md. Code Regs. 12.08.01.18(G).
- ⁵¹ Md. Code Regs. 12.08.02.10.
- ⁵² Md. Code Regs. 12.08.01.19.
- ⁵³ *See, e.g., Mateen v. Saar*, 829 A.2d 1007 (Md. 2003).
- ⁵⁴ Md. Code Regs. 12.08.01.18(H).
- ⁵⁵ Patuxent Inst. Bd. of Review v. Hancock, 620 A.2d 917, 928 (Md. 1993).

END NOTES

- ⁵⁶ 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>.
- ⁵⁷ DPSCS, *Operations-Parole and Probation*, <https://www.dpscs.state.md.us/agencies/dpp.shtml>.
- ⁵⁸ Md. Code Regs. 12.08.01.21.
- ⁵⁹ Md. Code Ann., Corr. Servs. § 7-308 (West).
- ⁶⁰ Md. Code Regs. 12.08.01.21(H).
- ⁶¹ Md. Code Regs. 12.08.01.21(D).
- ⁶² Md. Code Regs. 12.08.01.21(E).
- ⁶³ Justice Policy Inst., *The Release Valve: Parole in Maryland* 9 (2009), http://www.justicepolicy.org/uploads/justicepolicy/documents/maryland_parole.pdf.
- ⁶⁴ Interview with David Blumberg, *supra* note 12.
- ⁶⁵ Md. Code Regs. 12.08.01.21(F).
- ⁶⁶ Md. Code Ann., Corr. Servs. § 7-702 (b)-(f) (West).
- ⁶⁷ *Id.* at (g).
- ⁶⁸ Interview with David Blumberg, *supra* note 12.
- ⁶⁹ 17 Md. L. Encyclopedia Pardon § 7 (database updated Mar. 2017); Md. Code Ann., Corr. Servs. § 7-701(a) (West).
- ⁷⁰ Md. Code Ann., Corr. Servs. § 7-702(e) (West).
- ⁷¹ Kaeble & Bonzcar, *supra* note 56 at 24 (Appendix Table 6).
- ⁷² The statute currently reads “...if the order of parole is revoked, the commissioner hearing the parole revocation, in the commissioner’s discretion, may require the inmate to serve any unserved portion of the sentence originally imposed.” The new version will read “...if an order of parole is revoked for a technical violation [...] the commissioner hearing the parole revocation may require the individual to serve a period of imprisonment of (i) for a first violation, not more than 15 days; (ii) for a second violation, not more than 30 days; and (iii) for a third violation, not more than 45 days. See Md. Code Ann., Corr. Servs. § 7-401 (West); Maryland Justice Reinvestment Act, *supra* note 10.
- ⁷³ Maryland Justice Reinvestment Act, *supra* note 10.
- ⁷⁴ Md. Code Ann., Corr. Servs. § 7-401(d) (West).
- ⁷⁵ *Id.* at (d)(4).
- ⁷⁶ Maryland Justice Reinvestment Act, *supra* note 10 (codified as Md. Code Ann., Corr. Servs. § 7-401(d)).
- ⁷⁷ *Id.*
- ⁷⁸ Md. Code Regs. 12.08.01.22(A).
- ⁷⁹ *Id.* at (E).
- ⁸⁰ *Id.* Release pending the final revocation hearing can only occur if the officer determines that the alleged violator would not constitute a danger to society if allowed to remain at large until the revocation hearing and that the interests of justice will be served thereby.
- ⁸¹ Md. Code Regs. 12.08.01.22(F). This is not the case if the parole violation warrant is not the sole document under which the parolee is detained or incarcerated. Further, the Commission may postpone a hearing for good cause shown.
- ⁸² *Id.*
- ⁸³ Md. Code Regs. 12.08.01.22(E).
- ⁸⁴ *Id.* at (F).
- ⁸⁵ Md. Code Ann., Corr. Servs. § 7-804 (West).
- ⁸⁶ Md. Code Regs. 12.08.01.22(F).
- ⁸⁷ *Id.*
- ⁸⁸ Md. Code Ann., Corr. Servs. § 7-401(d) (West).
- ⁸⁹ *Id.* at (c).
- ⁹⁰ Maryland Justice Reinvestment Act, *supra* note 10 (codified as Md. Code Ann., Corr. Servs. § 7-401(d)).
- ⁹¹ Md. Code Ann., Corr. Servs. § 7-401(d) (West).
- ⁹² Md. Code Regs. 12.08.01.22(F)(8).
- ⁹³ See, e.g., *Stouffer v. Staton*, 833 A.2d 33 (Md. Ct. App. 2013).
- ⁹⁴ Md. Code Regs. 12.08.01.22(F)(9).
- ⁹⁵ Md. Code Ann., Corr. Servs. §§ 7-201, 7-205 (West).
- ⁹⁶ Md. Code Ann., Corr. Servs. § 7-201 (West).
- ⁹⁷ Md. Parole Comm’n, *Annual Report FY2015*, <https://www.dpscs.state.md.us/publicinfo/publications/pdfs/mpc2015AnnualReport.pdf> at 1 [hereinafter “2015 Annual Report”].
- ⁹⁸ Md. Code Ann., Corr. Servs. § 7-202 (West).
- ⁹⁹ *Id.*
- ¹⁰⁰ *Id.* Hearing examiners must have the same qualifications as commission members, however, they are not required to be full time employees. See Md. Code Ann., Corr. Servs. § 7-204 (West).
- ¹⁰¹ 2015 Annual Report, *supra* note 97 at 3.
- ¹⁰² *Id.* at 4.
- ¹⁰³ *Id.* at 5.
- ¹⁰⁴ Md. Code Ann., Corr. Servs. § 7-208 (West).
- ¹⁰⁵ See, e.g., 2015 Annual Report, *supra* note 97.