

UNIVERSITY OF MINNESOTA

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

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

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

### Rhode Island

By

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### 1. Background; Sentencing System

#### a. Sentencing Framework

Rhode Island does not have a sentencing commission or statutory sentencing guidelines. The Rhode Island Superior Court, which has jurisdiction over felony crimes and sentences, uses sentencing benchmarks as well as general, statutory authority to sentence offenders to a specific term of imprisonment.<sup>1</sup>

Rhode Island has had conditional release since 1896, and the Parole Board has existed in some form since 1915.<sup>2</sup> In 1993, the legislature passed an act that increased the number of board members from 6 to 7 and added a full-time chairperson.<sup>3</sup>

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

Yes, the Rhode Island Parole Board.<sup>4</sup>

<http://www.paroleboard.ri.gov/index.php>

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

The Department of Corrections Division of Probation and Parole supervises parolees.<sup>5</sup>

<http://www.doc.ri.gov/probation/index.php>

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

The Parole Board has the authority to revoke parole.<sup>6</sup>

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

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

*General rules of release eligibility.* An inmate serving a single sentence that is not a life sentence and who is not classified as a habitual criminal is eligible for parole after serving one-third of the term.<sup>7</sup> Inmates serving multiple terms are eligible for parole after serving one-third of the aggregate time to which they were sentenced, except that inmates serving two or more concurrent terms must serve at least one-third of the maximum term they are required to serve.<sup>8</sup>

Inmates already serving one sentence, whether in confinement or on parole, who reoffend and are sentenced for a new crime, are not eligible for parole until they have served one-third of the new sentence (and will not receive credit for the time they served under their previous sentence). If an inmate is sentenced for multiple subsequent offenses, parole eligibility is calculated in the same manner as described above for an original sentence involving multiple offenses.<sup>9</sup>

*Violent offenders.* Inmates convicted of first- or second-degree murder committed after July 1, 2015 who have not received life sentences will not become parole eligible until serving one-half of their term.<sup>10</sup>

*Sex offenders.* There are no separate release eligibility criteria for sex offenders. However, as noted below, sex offenders earn "good time" at a slower rate than some other inmates.

*Life sentences.* For individuals sentenced to life in prison with parole, future parole eligibility depends on their particular type of conviction and when they were sentenced: If sentenced for first or second degree murder, eligibility begins at 15 years if the crime was committed after July 10, 1989, at 20 years if committed after June 30, 1995, and at 25 years if committed after July 1, 2015.

- If sentenced for any other crime, eligibility begins at 10 years, but at 20 years if the crime was committed after July 1, 2015.
- If sentenced to consecutive life sentences, an inmate must serve 15 years consecutively on each life sentence; if the crimes were committed after July 1, 2015, an inmate must serve 20 years consecutively on each life sentence.
- If sentenced to consecutive life sentences for first or second degree murder committed after July 1, 2015, an inmate must serve 25 years consecutively on each life sentence.<sup>11</sup>

*Recurring eligibility after denial of release.* If the Board votes to deny parole, the Board will afford an inmate an opportunity at reasonable intervals to present evidence of changes in the factors previously used in the determination of the Board's decision. If a majority of the Board sitting as a subcommittee cannot agree on setting a reconsideration hearing or denying parole without reconsideration, the vote shall default to reconsideration and the Chairperson shall be authorized to schedule a reconsideration hearing at an interval proportionate to the time remaining on the inmate's sentence. In no case shall the interval for reconsideration exceed six (6) years.<sup>12</sup>

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

Inmates who have not committed certain violent or sexual crimes are eligible to earn deductions in prison time for good behavior.<sup>13</sup> Inmates serving most sentences that are longer than one month may earn ten days per month of credit for good behavior, two days per month of credit for engagement in institutional industries, and up to five days per month (up to 30 days total) in additional credit for participation in programming. They may also earn up to three days per month for "meritorious service," which may include heroic acts or extraordinary and useful ideas that impact the institution. Inmates serving sentences for sexual offenses may earn credits in the amount of the number of days equal to the number of years in the inmate's term for each month of good behavior to a maximum of ten days per month. One day of good time may be deducted for every day a prisoner is disciplined for bad

conduct; but these credits may be earned back through good behavior.<sup>14</sup>

Rhode Island law establishes an early release mechanism for inmates who are within six months of the "projected good time release date." Inmates who are within six months of their projected release date are eligible to be released to community confinement<sup>15</sup> if they have served at least one-half of their full sentence.<sup>16</sup>

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

*General statutory standard for release decisions.* The Board may not grant parole unless, in the Board's consideration, the factors listed below have been met.<sup>17</sup> The Board is also not required to receive or consider a parole application until it has obtained "in any manner and by any means that it may consider most fitting" all the information the Board feels is necessary to adequately review the inmate's application.<sup>18</sup>

*Statutory factors the board must consider.* The Board is required to consider five statutory factors when making parole release decisions:

- The inmate has substantially observed the rules of the correctional institution;
- Parole does not depreciate the seriousness of the prisoner's offense or promote disrespect for the law;
- It is probable that the inmate would remain at liberty without violating the law;
- The inmate can "properly assume a role" in the place of release (e.g., secure employment, access housing and special services)
- Restitution has been paid in full, or other arrangements have been made with the court if the inmate has the ability to pay.<sup>19</sup>

*Sex offenders.* There is no separate statutory standard for sex offenders; however, the guidelines (discussed below) address successful completion of a sex offender treatment program.

### **d. Parole Release Guidelines**

*Parole release guidelines used for most offenders (other than sex offenders)* The Board is required to develop release guidelines to assist in parole determinations and to better evaluate the risk of recidivism for each offender. After developing guidelines, the Board is allowed to depart from them only when "warranted by individualized factors," including the statutory factors listed above. If the

Board issues a decision “at variance” with the guidelines, it must provide a written description of its rationale.<sup>20</sup>

The 2015 parole guidelines consist of two evaluative tools: (1) a “Risk Assessment Instrument,” and (2) the inmate’s “Offense Severity Class.” The latter is measured by the Department of Corrections’ Offense Severity Scale, which ranks the seriousness of all criminal offenses from “low” to “highest.” The two components of the guidelines are combined in a matrix called the “Severity Risk Matrix.”<sup>21</sup>

By regulation, the Board will also take into account the following factors:

- 1) Seriousness of the offense (including various narratives of the events that occurred, and aggravating/mitigating circumstances surrounding them)
- 2) Prior parole revocations or a pattern of continual arrests
- 3) Institutional adjustment, including good behavior and participation in programming. Parole eligibility may be limited for several months following some disciplinary action.
- 4) Negative termination from home confinement, which creates ineligibility for parole
- 5) Success or failure in a work release program
- 6) History of escape/attempted escape, which creates six months of parole ineligibility upon return to confinement
- 7) Psychosocial characteristics such as employment history, educational level, mental health status and any history of psychiatric treatment and/or hospitalizations, and any addiction history. The Board will “look unfavorably” on a parole request from an inmate whose offense was drug, alcohol, or domestic violence-related and who has not participated in any recommended treatment programs.
- 8) Police, judicial, and community information, including hostility from the community
- 9) A solid parole plan, including housing and return to a non-criminogenic environment
- 10) Prior parole revocations during the current sentence
- 11) Public and community safety: the Board must “determine that the release of an individual will not constitute a risk or threat to the physical safety and welfare of the community.”<sup>22</sup>

*Parole release guidelines for sex offenders.* In addition to the criteria above, an individual convicted of a sex offense will “not generally be seriously considered for parole until he or she has successfully taken part in the Sex Offender Treatment Program. The Board will take

the recommendation of the Sex Offender Treatment Program into consideration when evaluating an inmate for potential release on parole. Additionally, the Board will consider the recommended conditions for release and post-release counseling.”<sup>23</sup> Statute also mandates that any sex offender convicted of child molestation be “examined prior to parole by one independent psychiatrist to determine whether the person is a continued danger to children.”<sup>24</sup>

### e. Risk and Needs Assessment Tools

*Statutory Mandate.* The Board is mandated to establish, “within the range of parole eligibility set by statute, the portion of a sentence which should be served depending on the likelihood of recidivism as determined by a risk assessment.”<sup>25</sup>

*Transparency.* Though the criteria for risk assessment are available, the offense severity rankings or the severity risk matrix cannot be reviewed online. In addition, the Board produces an annual report and statistics to the Department of Corrections, but does not include statistics on risk assessment.<sup>26</sup>

*Main risk instrument.* One component of the parole guidelines is a Risk Assessment Instrument. Static factors incorporated into the instrument include the inmate’s history of “violent or assaultive convictions,” the inmate’s parole or probation status when incarcerated for their underlying conviction, the inmate’s history (if any) of felony convictions, and the offense for which the inmate is currently incarcerated. Dynamic factors include the inmate’s age at the time of consideration for parole, any educational, substance abuse, and/or vocational training programs the inmate has completed during his/her current incarceration, the inmate’s disciplinary conduct severity over the prior 24 months, and the inmate’s scored custody level. Inmates are assigned a score for each set of factors, ranging from 0-8 for static and 0-6 for dynamic factors. The 2015 guidelines classify 0-4 as low risk, 5-9 as moderate risk, and 10+ as high risk.<sup>27</sup>

*Sex offenders.* In addition to the above, sex offenders may be subject to risk assessment through the Sex Offender Board of Review to determine a proper level of community notification.<sup>28</sup>

### f. Medical or Compassionate Release

According to the governing statutes, medical parole is intended to serve humanitarian purposes and “to alleviate exorbitant medical expenses associated with inmates

whose chronic and incurable illness render their incarceration non-punitive and non-rehabilitative.” Only inmates serving a sentence of life without parole are ineligible for medical parole.<sup>29</sup>

Inmates are eligible for medical parole if they are “permanently physically incapacitated,”<sup>30</sup> “terminally ill,”<sup>31</sup> or “severely ill.”<sup>32</sup> In addition, the Board must be satisfied that “there is a reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the release is compatible with the welfare of society and will not so depreciate the seriousness of the crime as to undermine respect for the law.”<sup>33</sup> In the case of a severely ill inmate, medical parole will only be considered “when their treatment causes the state to incur exorbitant expenses as a result of continued and frequent medical treatment during incarceration.”<sup>34</sup>

At any time after discharge on parole, if the Board finds that the inmate’s “condition or circumstances [have changed] so that he or she would not then be eligible for medical parole,” the Board may have the inmate returned to custody, pending a revocation hearing.<sup>35</sup>

### g. Executive Clemency Power

The governor, by and with the advice and consent of the senate, can exclusively exercise the power to pardon, except in cases of impeachment.<sup>36</sup>

### h. Emergency Release for Prison Crowding

Prison overcrowding statutes are triggered when the population of the adult correctional institutions is over 95% annual capacity for at least 30 days, or over 100% of capacity for at least 5 days. At this point, the Director of Corrections must hold a committee meeting to determine whether to accelerate bail for pre-trial detainees and parole/probation violators, resolve pending cases for sentenced inmates, and/or implement systemic improvements that could expedite the process.

If these measures do not reduce overcrowding within 60 days, intermediate punishments, expedited release of inmates approved for parole, increased eligibility for release on parole, or application of earned time credits may be used to release non-violent offenders within thirty days of the end of their sentence. If this second round of measures fails to adequately reduce the population within sixty days, the committee may “direct the parole board to consider the good time earned by nonviolent offenders . . . for the purpose of expediting the parole eligibility of the minimum number of nonviolent offenders needed to meet mandated population levels.”<sup>37</sup>

Finally, if this third round of measures fails to reduce the population adequately within sixty days of implementation, the chairperson of the committee must notify the governor and “recommend the grant of sufficient emergency good time [in ten day increments] to nonviolent offenders to meet the mandated population caps.”<sup>38</sup>

## 3. Parole Release Hearing Process

### a. Format of Release Hearings

The Board conducts in-person hearings for each inmate serving in Rhode Island. Private attorneys are allowed to be present at the hearing upon request by the inmate, and all attorneys must send a written Entry of Appearance to the Board in advance of the hearing date. Hearings are conducted by telephone or video conference (when available) for offenders serving out-of-state on a Rhode Island sentence. The chairperson has the authority to create subcommittees of at least three (3) members of the parole board to hear and review cases. A majority vote is required for parole, except in the case of life sentences, which require unanimity.<sup>39</sup>

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

The parole package must include an “appropriate home and job plan, a personal letter written by the inmate, letters of support from family members and friends in the community, certificates from any completed programs, and any plans for treatment in the community,” as well as medical records if the inmate feels these records would be helpful to the Board.<sup>40</sup> Inmates have access to counselors within the Department of Corrections who can help them prepare their parole packages.<sup>41</sup>

By statute, clerks of court, sheriffs and sheriffs’ deputies, police officers, probation officers, officers of correctional institutions, “and every person having charge of any other place where prisoners are confined or detained” are required to “furnish to the board and to any member of the board, whenever requested by the board or by any member of it, any and all information they may have relating to the character and history” of the inmate. Information requested by the Board includes “official records and reports, including recommendations concerning the prisoners.”<sup>42</sup> The department of corrections is also required to submit a copy of the inmate’s criminal record, “including the date of offenses, nature of offenses, and the disposition of each,” “a copy of the pre-sentence investigation,” and a statement summarizing the department’s interactions with the prisoner “during any prior period under supervision, either probation or parole or both.”<sup>43</sup>



### c. Prisoners' Procedural Rights

Inmates are not entitled to appointed counsel for initial parole release hearings. Inmates are permitted to retain counsel on their own, and have counsel with them at the hearing, but the Board "does not allow attorneys to speak for the inmate": inmates must be prepared to answer the Board's questions on their own. The Board uses the inmate's responses to "access the inmate's honesty, insight and remorse."<sup>44</sup>

### d. Victims and Other Participants

Rhode Island law requires the Parole Board to attempt to notify the victim of an inmate's underlying crime before the Board acts on the inmate's petition for parole.<sup>45</sup> If the Board is unable to locate the victim on its own, it must "seek the assistance of the local police department of the city or town where the victim was last known to have resided." The police are required by statute to make "every effort" to locate the victim, and must submit a written report to the Board at least thirty days from the date the Board requested assistance detailing the department's efforts to contact the victim. Until this written report is received, the Board may not "act upon the inmate's petition." Additionally, at least thirty days prior to the parole hearing, the Board must make "a reasonable effort" to notify the victim of his/her right to provide a "victim impact statement."<sup>46</sup> Under the parole guidelines, victims may meet with the Board privately and "must feel free to express their opinions and feelings about the inmate's application for parole and possible release from prison."<sup>47</sup>

The Attorney General's Office is required to submit recommendations on granting or denying parole, which must include detailed accounts of their reasoning. The Office must also ask the trial judge who supervised the inmate's trial for comments or recommendations. Additionally, the Board may require the attorney general's office to have one of its attorneys present at the parole hearing "to elaborate on the attorney general's recommendation." The Director of the Department of Corrections must also obtain and submit to the Board reports on parole eligible inmates from prison officials and personnel who had direct contact with the inmate. The Department of Corrections must also make a recommendation about whether or not parole should be granted.<sup>48</sup>

For the public, the Board provides a list of inmates being considered, re-considered, or continued for parole release in the upcoming month. Inmates are listed by full name and date of birth.<sup>49</sup> All "individuals, members

of the family, friends, legal counsel, agencies, or other interested persons" who wish to make a statement with respect to a parole application may submit it in writing.<sup>50</sup> "All submissions to the Parole Board by an inmate or on behalf of an inmate from a person or party outside of the Department of Corrections, including submissions by attorneys, must be in writing and must be received by the Parole Board Office prior to the first day of the month of the inmate's scheduled parole hearing."<sup>51</sup>

### e. Burden of Proof or Standard of Persuasion

There is no formal burden of proof in parole release.

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

After reaching its decision, the Board prepares a report, which it sends to the Director of the Department of Corrections. The report must contain: "(1) a summary of the facts and considerations on which the decision was based; (2) the majority decision of the board, including any special conditions to be required of the parolee; and (3) the dissent, if any, and the reasons for that dissent."<sup>52</sup> In addition, the Board must provide inmates notification of their decision and the reasoning behind it.<sup>53</sup>

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

Initial parole release decisions are not considered "contested cases" and therefore are not subject to judicial review.<sup>54</sup> However, statutory due process entitles inmates to know the reasoning behind parole decisions, and some petitioners have successfully contested this aspect of the hearing process under the state's constitutional law.<sup>55</sup>

### h. Rescission of Parole Release Dates

There is no clear statutory law on rescinding parole. However, case law suggests that the Board has the authority to consider additional information and can vote to rescind parole at least until an inmate has been issued a permit to be released from a correctional institution.<sup>56</sup> If the Board later receives new information not presented or available at the time of the initial parole proceeding, the inmate is scheduled for review. At that time, the Board's decision to grant parole may be rescinded, affirmed or otherwise amended.<sup>57</sup>

## 4. Supervision Practices

*Parole supervision rate.* As of December 31, 2015 there were 433 individuals on parole in Rhode Island, for a rate of 51 parolees per 100,000 adult residents.<sup>58</sup>

### a. Purposes of Supervision

On its website, the Probation and Parole Division of the Department of Corrections describes its mission as expending “all effort to provide offenders with comprehensive services, to supervise offenders’ community activities, and monitor compliance of specially ordered conditions; thereby providing for rehabilitation of the offender, reintegration from the institutions, and protection of the community.” The mission statement further states that “[i]t is the belief of Adult Probation and Parole that offenders, by making use of appropriate rehabilitate services and functioning responsibly in the community, have the ability to refrain from further illegal activities and live productive lives in society.”<sup>59</sup>

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

All parolees are placed on supervision and are supervised closely. The parole officer “maintains contact with family members, employers, treatment providers, and others.” Most parolees are initially released to residential treatment or electronic monitoring.<sup>60</sup>

### c. Length of Supervision term

*Maximum supervision terms.* The term of parole is equal to the remaining term of the underlying sentence.<sup>61</sup> However, note that offenders convicted of child molestation offenses are subject to lengthy or lifetime community supervision (under the same conditions as a parolee).<sup>62</sup>

*Early termination.* There are no provisions providing for the early termination of parole, and therefore all parolees must serve the full term.<sup>63</sup>

*Extension of supervision term.* There does not appear to be a means to extend a supervision term beyond the underlying sentence.

## d. Conditions of Supervision

Standard conditions of parole listed on a “sample” permit include:

- 1) I will observe the laws of Rhode Island and the United States and of every jurisdiction where I may be. I will keep the peace and be of good behavior.
- 2) I agree that the Parole Board may revoke this permit at any time before its expiration after a preliminary hearing to determine probable cause has taken place, or the right to such preliminary hearing is waived by me and after a revocation hearing is held by the Parole Board.
- 3) I agree that the violation by the holder of this permit of any of its terms or conditions or the violation of any laws after appropriate hearings have been granted, may make void said permit.
- 4) I agree that when this permit has been revoked as herein provided, or there is probable cause for such revocation, the Parole Board may issue an order authorizing my arrest and my return to the place of confinement pending a hearing, and that I shall be detained therein according to the terms of my original sentence; and in computing the period of my confinement, the time between my release upon said permit and my return to the place of my original confinement shall not be considered as any part of the term of my original sentence.
- 5) I will proceed directly to the place to which I have been paroled, and within twenty-four hours make my arrival report to the Parole Officer located at:
- 6) I will not leave the state of Rhode Island, to which I have been paroled, without the written permission of my Parole Officer.
- 7) I will exert every effort to maintain steady employment and to support those who are dependent upon me.
- 8) I will carry out the instructions of my Parole Officer, report as directed, and permit him/her to visit me at my residence and place of employment whenever he/she deems such visits necessary. I will not change residence or employment without first consulting my Parole Officer. If for any reason I lose my employment, I will immediately report this fact to my Parole Officer.
- 9) I will not associate with persons, male or female, who have criminal records without permission from my parole officer.
- 10) I will immediately inform my Parole Officer if I am arrested or charged with any criminal offense.
- 11) I understand that I must submit to drug/alcohol testing at my expense if the paroling offense is substance abuse related.

- 12) I will not serve as an informant for any law enforcement official without prior consent of my Parole Officer.
- 13) I will secure the approval of my Parole Officer before I apply for a license to drive an automobile in any jurisdiction where I may reside.
- 14) I will not own or otherwise have in my possession firearms or weapons of any description.
- 15) I will not correspond with or visit any inmate of a correctional institution without written consent of my Parole Officer.
- 16) I will reply promptly to any communication from any authorized representative of the Parole Board. I understand that reports either verbal or written, made or submitted by me to my parole officer that are subsequently found to be false may be considered a violation of parole.
- 17) If I should be arrested in another state during my period of parole, I will waive extradition and will not resist being returned by the Parole Board to the State of Rhode Island.
- 18) I will not indulge in the use of narcotics and will abstain from the use of intoxicating beverages; nor will I sell or abet the sale of narcotics in any form. I agree to submit to drug/alcohol testing at the request of my Parole Officer.<sup>64</sup>

Parolees must also agree to any reasonable special conditions of parole that the Board may prescribe.<sup>65</sup>

Finally, although not a condition parolees must fulfill directly, Rhode Island law requires that the Assistant Director of Field Services, for the duration of the parolee's term, report to the Board every six months on "the adjustment of the parolee."<sup>66</sup>

*Sex offenders.* The Board may impose sex offender treatment as one of the special conditions of parole where appropriate.<sup>67</sup>

*Modification of conditions.* The chair of the Board may act for the Board to amend parole permits and otherwise control the supervision of parolees. These actions are subject to ratification by the Board or a subcommittee thereof at a scheduled Board meeting.<sup>68</sup>

## e. Fees and Other Financial Sanctions

*Parole supervision fees.* The only mandatory condition of parole is a supervision fee of \$20 per month of supervision. This fee applies to all inmates on parole on or after March 17, 2008. Electronic monitoring participants do not have to pay the standard supervision fee, but instead

pay \$6 per day while being monitored. If the parolee is unable to pay supervision fees, he/she must apply to his/her parole officer for a waiver, which the parole officer will review "on a regular basis."<sup>70</sup>

*Payments for drug and alcohol testing and treatment.* While drug and alcohol testing appears to be a common condition of parole, payments are only required for those individuals convicted for certain drug offenses. Inmates convicted of an underlying offense involving the "unlawful sale, distribution, manufacturing, delivery or possession with intent to manufacture, sell, distribute, or deliver any controlled substance" are also required to undergo drug testing at the inmate's expense at least once per month.<sup>71</sup>

*Restitution.* If restitution has not been paid in full, a satisfactory payments arrangement must be made as a precondition of parole release if the parolee has the ability to pay. An "ability to pay hearing" with the sentencing court may be scheduled if a parolee wishes to prove that they do not have the economic means to pay restitution.<sup>72</sup>

*Child support.* The Board may order payment of child support as a condition of parole.<sup>73</sup>

*Incentives; reduction of economic sanctions.* There do not appear to be financial incentives available.

## 5. Parole Revocation

*Parole revocation proceedings.* In 2015, there were 4 parolees that received a new sentence and 38 other parole revocations.<sup>74</sup>

*Absconders.* The number of absconders from the Rhode Island parole system was not reported in 2015.

### a. Principles and Criteria of "When to Revoke"

*Policy considerations.* The legislature has granted the Board the exclusive right to determine if parole should be revoked; and "any such revocation by the Parole Board made within limits of legislative authority given to it cannot be attacked."<sup>75</sup>

*Legal predicates.* Any violation of the conditions of parole may be the basis for revocation.<sup>76</sup> For those serving a life sentence, any conviction of a "crime of violence" "constitute[s] an automatic revocation." Additionally, the inmate will not be eligible for parole consideration going forward. Similarly, an inmate paroled on a sentence for

a “crime of violence” who “while on parole, commit[s] an offense which results in a sentence of imprisonment for life,” will have their parole automatically revoked and will not be considered for parole in the future.<sup>77</sup>

*Statutorily enumerated factors.* There are no factors aside from violation of parole conditions listed in statute. However, to trigger revocation, a violation must be more than “*de minimis* in nature.”<sup>78</sup>

## b. Revocation Guidelines

There are no parole revocation guidelines at this time.

## c. Risk and Needs Assessment Tools

The Board does not use risk assessment tools at the revocation phase.

## d. Preliminary and Final Revocation Procedures

*Arrest or summons.* Evidence of a violation is reported by the Assistant Director of Field Services to the Board, along with a recommendation regarding the action the Board should take.<sup>79</sup> Following notification that a violation may have occurred, the chairperson of the Board will issue a warrant to arrest the parolee and return him/her to detention “until the board shall have the opportunity to determine whether the permit of the prisoner is to be revoked.”<sup>80</sup>

*Preliminary hearing.* Parolees who are detained must be afforded a preliminary parole revocation hearing “[a]s soon as is practicable,” generally within ten days of when a parolee receives notice. This hearing must be conducted by a hearing officer, designated by the Board, who must not “have had any prior supervisory involvement over the alleged violator.” Additionally, the Board must provide the parolee with written notice of the “time, place and purpose of the preliminary hearing” within five days of being returned to detention. This notice must also “state the specific conditions of parole that are alleged to have been violated and in what manner,” and inform the parolee of his/her rights at the preliminary hearing and the mechanism for exercising those rights.<sup>81</sup>

At the hearing, the hearing officer reviews the charges with the parolee, receives evidence, and allows cross-examination of any witnesses in attendance. If the officer

finds that probable cause is lacking or that the violations were *de minimis*, the Board will “rescind the detention warrant and direct that the alleged violator, unless in custody for other reasons, be released and restored to parole supervision.”

*Final hearing.* If there is a finding of probable cause to support the charges and that the violations were not *de minimis* in nature, the parolee will be held in detention pending the final revocation hearing, which must be held “as soon as is practicable, but in no event more than ninety (90) days after the conclusion of the preliminary hearing,” unless continued at the parolee’s request. Parolees are allowed to waive their right to a preliminary hearing, but they must do so in writing. In that event, the final revocation hearing must be held within ninety days of the waiver, unless continued beyond that timeframe at the parolee’s request.<sup>82</sup> Though the main features of revocation are outlined by statute, there are no provisions, statutes, regulations, or information on the Board website describing the final revocation hearing process in detail.

## e. Offenders’ Procedural Rights

As detailed for the parolee in the post-detention notice, the parolee has “(1) the right to appear and speak in his/her own behalf; (2) the right to call witnesses and present evidence; (3) the right to confront and cross-examine the witnesses against him/her, unless the hearing officer finds on the record that a witness may be subjected to risk of harm if his or her identity is revealed, and (4) the right to retain counsel and, if unable to afford counsel, the right under certain circumstances to the appointment of counsel for the preliminary hearing.” If the parolee requests appointed counsel, the determination of whether or not to appoint counsel must be made on the record “and in accordance with all relevant statutory and constitutional provisions.”

If the parolee requests that counsel be appointed at least five days before the hearing, the hearing may not proceed without counsel “unless the hearing officer finds on the record. . . that the alleged violator is not entitled to appointed counsel.” If on appeal the court finds that the parolee was entitled to counsel, the charges will be dismissed with prejudice. Additionally, if the parolee misses the deadline for requesting counsel, the deadline for the hearing may be extended for a maximum of five days.<sup>83</sup>

## f. Victims and Other Participants

There is no provision for victim or law enforcement notification or input in the revocation process. The Board tape records all of its meetings. Recordings are retained for three years, but are not considered part of the public record because they contain confidential information.<sup>84</sup>

## g. Burden of Proof or Standard of Persuasion

Probable cause is the standard of proof for a preliminary hearing: the state must establish both that there is probable cause to support the charges and that the “violations were not *de minimis* in nature.” Conviction of a crime committed while on parole constitutes probable cause for these purposes. Parole can be revoked “whenever it shall appear to the board” that a violation has occurred.<sup>85</sup>

## h. Revocation and Other Sanctions

If the Board decides to revoke the parolee, the Board must order the inmate returned to confinement “to serve the remainder of the prisoner’s original sentence according to the terms of that sentence.” However, inmates may be re-released at the discretion of the Board.<sup>86</sup> Inmates are not entitled to credit for time served on parole towards their original sentence.<sup>87</sup> Additionally, if the inmate is already in detention for another offense committed while on parole, it is up to the Board whether the inmate will serve the remainder of the original term concurrently or consecutively with the new term.<sup>88</sup> If offenders’ parole is not revoked, they will be returned to parole supervision “under the terms and conditions of his or her original permit.”<sup>89</sup>

## i. Issuing Parole Revocation Decisions

At the end of an initial hearing, the hearing officer will verbally inform the parolee whether or not there is probable cause to support the charges and whether the charges are *de minimis* in nature. After the hearing, the hearing officer will create a written opinion stating his/her reasoning and the evidence relied upon in reaching the decision. The parolee (and his/her counsel, if applicable) must be sent a copy of the written opinion within fourteen days of the hearing.<sup>90</sup>

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

An inmate who claims that his/her parole was “unlawfully revoked” may appeal the revocation to the courts.<sup>91</sup>

## k. Re-Release Following Revocation

As per current guidelines, the Board “considers any violation of the conditions of parole to be a very serious matter. However, after parole revocation, it will be solely up to the discretion of the Board to determine the length of time the inmate will serve prior to being granted a reconsideration of parole.”<sup>92</sup>

## 6. Parole Board; Institutional Attributes

### a. Source of Authority and Jurisdiction

The Board is created by statute and has releasing authority over any inmate sentenced to a term of imprisonment longer than six months.<sup>93</sup>

### b. Location in Government

The Board is housed within the Department of Corrections.<sup>94</sup>

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

The mission of the Board is “to enhance public safety, contribute to the prudent use of public resources and consider the safe and successful re-entry of offenders through discretionary parole.”<sup>95</sup>

### d. Appointment and Qualifications of Board Members

The Parole Board consists of six members (“electors”) and a chairperson appointed by the governor.<sup>96</sup> The chairperson may appoint subcommittees consisting of at least three members that are empowered to make parole decisions for inmates who are not serving life sentences and/or classified as habitual criminals.<sup>97</sup> By statute, the Board has an administrator, an investigator, a clerk, and at least one psychologist on staff.<sup>98</sup>

*Qualifications.* The electors as a group must include “a psychologist or a physician who is professionally qualified in the field of psychiatry or neurology”; a member of the bar in Rhode Island; an individual “professionally trained in correctional work or in some closely related general field as social work”; and a “law enforcement officer.” As a final requirement, all of the electors must have “shown an interest in social welfare problems.”<sup>99</sup>

By statute, the chair must be “an individual who has experience in the criminal justice system” and possess a baccalaureate degree.<sup>100</sup>

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

Electors are appointed each January to replace members whose terms have expired, and serve for a term of three years (which may be continued until a successor is appointed).<sup>101</sup> The Board chairperson serves a two-year term, which may also be extended until a successor is appointed.<sup>102</sup> There are no statutory conditions set out for removal of a Board member.

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

There is no statutory provision for continuing education of Board members.

#### **g. Workload**

Statistics concerning how many parole release or revocation hearings take place each year are a matter of public information and are available upon request to the Board or the Department of Corrections. However, they are not published online.

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

By law, the Board must create an annual report of its activities for the Director of the Department of Corrections; this information is then incorporated by the Director in a report to the governor. However, reports available to the public do not address many of the activities of the Board. The Board must comply with state law and release documents that are considered public records.<sup>103</sup>

## END NOTES

- <sup>1</sup> R.I. Gen. Laws § 12-19-2;
- <sup>2</sup> R.I. P.L. 1915, c. 1186. See also James Vincent McGovern, *The Parole System in Rhode Island: A Study of the Statute and Methods of Selection and Supervision* (1946), [https://archive.org/stream/parolesysteminrh00macg/parolesysteminrh-00macg\\_djvu.txt](https://archive.org/stream/parolesysteminrh00macg/parolesysteminrh-00macg_djvu.txt).
- <sup>3</sup> Rhode Island P.L. 1993, ch. 262 § 1.
- <sup>4</sup> R.I. Gen. Laws § 13-8-1.
- <sup>5</sup> R.I. Dep't of Corr., *Probation & Parole: General Information*, <http://www.doc.ri.gov/probation/info.php> (last visited Oct. 5, 2016).
- <sup>6</sup> R.I. Gen. Laws § 13-8-18.
- <sup>7</sup> R.I. Gen. Laws § 13-8-9.
- <sup>8</sup> R.I. Gen. Laws § 13-8-10.
- <sup>9</sup> *Id.*
- <sup>10</sup> R.I. Gen. Laws § 13-8-9.
- <sup>11</sup> R.I. Gen. Laws § 13-8-13.
- <sup>12</sup> R.I. Parole Board, *2015 Guidelines* § 1.03 (Dec. 5, 2015), <http://www.paroleboard.ri.gov/documents/Accepted%20changes.%202015%20Proposed%20PB%20Guidelines.pdf> [hereinafter *2015 Guidelines*].
- <sup>13</sup> Ineligible underlying offenses include assault with intent to commit murder, kidnapping of a minor, first degree sexual assault, and/or first or second degree child molestation sexual assault. Additionally, no inmate serving a life sentence may receive earned time credits. R.I. Gen. Laws § 42-56-24.
- <sup>14</sup> *Id.*; R.I. Gen. Laws § 42-56-26.
- <sup>15</sup> R.I. Gen. Laws § 42-56-20.2. Community confinement is confinement within a specific, approved residence with permission to travel for specific reasons (i.e. work, religious observation, counseling). While those in community confinement are intensively supervised, this is not done through electronic monitoring unless specifically ordered. To be eligible for community confinement, the inmate must not be serving a sentence for murder, first-degree sexual assault, or first-degree child molestation.
- <sup>16</sup> *Id.*
- <sup>17</sup> R.I. Gen. Laws § 13-8-14.
- <sup>18</sup> R.I. Gen. Laws § 13-8-22.
- <sup>19</sup> R.I. Gen. Laws § 13-8-14.
- <sup>20</sup> R.I. Gen. Laws § 13-8-14.1.
- <sup>21</sup> 2015 Guidelines, *supra* note 12 § 2.01.
- <sup>22</sup> Code R.I. Reg. 49-1-1:1.
- <sup>23</sup> 2015 Guidelines, *supra* note 12 § 2.02(J).
- <sup>24</sup> R.I. Gen. Laws § 11-37.1-7.
- <sup>25</sup> R.I. Gen. Laws § 13-8-14.1.
- <sup>26</sup> Correspondence with Laura Pisaturo, Chairperson, Rhode Island Parole Bd. (Nov. 1, 2016).
- <sup>27</sup> 2015 Guidelines, *supra* note 12 § 2.01.
- <sup>28</sup> R.I. Gen. Laws § 11-37.1-6.
- <sup>29</sup> R.I. Gen. Laws § 13-8-1-2.
- <sup>30</sup> "Permanently physically incapacitated" is defined as "suffering from a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, permanently and irreversibly physically incapacitates the individual to the extent that no significant physical activity is possible, and the individual is confined to bed or a wheelchair." R.I. Gen. Laws § 13-8.1-3(a).
- <sup>31</sup> "Terminally ill" is defined as "suffering from a condition caused by injury (except self-inflicted injury), disease, or illness which to a reasonable degree of medical certainty will result in death within six (6) months." R.I. Gen. Laws § 13-8.1-3(b).
- <sup>32</sup> "Severely ill" is defined as "suffering from a significant and permanent or chronic physical and/or mental condition that: (1) Requires extensive medical and/or psychiatric treatment with little to no possibility of recovery; and (2) Precludes significant rehabilitation from further incarceration." R.I. Gen. Laws § 13-8.1-3(c).
- <sup>33</sup> R.I. Gen. Laws § 13-8-1-4.
- <sup>34</sup> *Id.*
- <sup>35</sup> *Id.* The Director of Corrections must also prepare, both for the Board and for the Rhode Island legislature, an annual report covering the number of applicants for medical parole, the number of inmates granted medical parole, the applicants' illnesses and placement, "[t]he categories of reasons for denial," and the number of inmates who were granted medical parole and then returned to custody, including the reasons for return.
- <sup>36</sup> R.I. Const. art. 9, § 5.
- <sup>37</sup> R.I. Gen. Laws § 13-8-11.
- <sup>38</sup> R.I. Gen. Laws § 42-26-13.3.
- <sup>39</sup> R.I. Gen. Laws § 13-8-3.
- <sup>40</sup> If the inmate is unable to mail the package to the Board in time, the Board will consider the documents at the hearing. R.I. Gen. Laws § 13-8-26; R.I. Parole Bd., *Parole Process for Victims*, <http://www.paroleboard.ri.gov/parole/> (last visited May 10, 2017).
- <sup>41</sup> R.I. Dep't Corr., *Inmate Handbook* at 38 (2007), <http://www.doc.ri.gov/documents/Inmate%20Handbook%20507.pdf>.
- <sup>42</sup> R.I. Gen. Laws § 13-8-22.
- <sup>43</sup> R.I. Gen. Laws § 13-8-23.
- <sup>44</sup> R.I. Parole Bd., *Frequently Asked Questions*, <https://web.archive.org/web/20160322064818/http://www.paroleboard.ri.gov/80/faq/> (last visited May 11, 2017). This content was removed but is presently available through the above link.
- <sup>45</sup> In the event the underlying crime was homicide, the Board will attempt to notify an immediate family member of the victim. R.I. Gen. Laws § 13-8-9.1.
- <sup>46</sup> A victim impact statement is "a statement providing information about the financial, emotional, and physical effects of a crime on the victim and the victim's family, and specific information about the victim, the circumstances surrounding the crime, and the manner in which it was perpetrated." 12 R.I. Gen. Laws § 12-28-6.
- <sup>47</sup> 2015 Guidelines, *supra* note 12 § 2.09.
- <sup>48</sup> R.I. Gen. Laws § 13-8-23.
- <sup>49</sup> R.I. Parole Bd. & Sex Offender Cmty. Notification Unit, *Parole Eligibility List*, <http://www.paroleboard.ri.gov/eligibility/> (last visited Oct. 5, 2016).
- <sup>50</sup> R.I. Gen. Laws § 13-8-26.
- <sup>51</sup> 2015 Guidelines, *supra* note 12 § 1.01.
- <sup>52</sup> R.I. Gen. Laws § 13-8-24.
- <sup>53</sup> *State v. Ouimette*, 367 A.2d 704 (R.I. 1976).
- <sup>54</sup> *Pine v. Clark*, 636 A.2d 1319, 1325 (R.I. 1994).
- <sup>55</sup> See, e.g. *Ouimette*, 367 A.2d 704; *State v. Tillinghast*, 609 A.2d 217 (R.I. 1976).
- <sup>56</sup> *Yang v. State*, 703 A.2d 754 (R.I. 1997).
- <sup>57</sup> Correspondence with Laura Pisaturo, *supra* note 26.
- <sup>58</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>59</sup> Dep't of Corr., *Probation and Parole: Mission Statement*, <http://www.doc.ri.gov/probation/Mission.php> (last visited Oct. 5, 2016).
- <sup>60</sup> Dep't of Corr., *Probation & Parole FAQ*, <http://www.doc.ri.gov/probation/faq.php> (last visited Oct. 5, 2016).
- <sup>61</sup> R.I. Gen. Laws § 13-8-16.
- <sup>62</sup> R.I. Gen. Laws § 13-8-30 *et seq.*
- <sup>63</sup> Frequently Asked Questions, *supra* note 44.
- <sup>64</sup> R.I. Parole Bd., *Sample Parole Permit* (see addendum to this report).
- <sup>65</sup> *Id.*; See also *Curtis v. State*, 996 A.2d 601, 605-606 (R.I. 2010).
- <sup>66</sup> R.I. Gen. Laws § 13-8-17.
- <sup>67</sup> Parole Process for Victims, *supra* note 40.
- <sup>68</sup> 2015 Guidelines, *supra* note 12 § 2.04.
- <sup>69</sup> Code R.I. Reg. 17-1-17:1.
- <sup>70</sup> *Id.*
- <sup>71</sup> R.I. Gen. Laws § 13-8-16.1.

## END NOTES

<sup>72</sup> R.I. Gen. Laws § 13-8-14.

<sup>73</sup> Correspondence with Laura Pisaturo, *supra* note 26.

<sup>74</sup> Kaeble & Bonzcar, *supra* note 58 at 24 (Appendix Table 6).

<sup>75</sup> *State v. Fazzano*, 194 A. 2d 680, 684 (R.I. 1963), citing *Zerbst v. Kidwell*, 304 U.S. 359 (1938).

<sup>76</sup> R.I. Gen. Laws § 13-8-17.

<sup>77</sup> R.I. Gen. Laws § 13-8-14.

<sup>78</sup> R.I. Gen. Laws § 13-8-18.1.

<sup>79</sup> R.I. Gen. Laws § 13-8-17.

<sup>80</sup> R.I. Gen. Laws § 13-8-18.

<sup>81</sup> "Upon a specific demand made by either party to a preliminary or final parole revocation, the parole board is authorized and empowered to summon witnesses and to compel the production and examination of papers, books, accounts, documents, records, certificates and other legal evidence that may be necessary or proper for the determination and decision of any question before the board at the hearing." R.I. Gen. Laws § 13-8-3.1.

<sup>82</sup> R.I. Gen. Laws § 13-8-18.1.

<sup>83</sup> R.I. Gen. Laws § 13-8-3.1.

<sup>84</sup> Code R.I. Reg. 49-1-1:1.

<sup>85</sup> R.I. Gen. Laws § 13-8-18.1.

<sup>86</sup> Code R.I. Reg. 49-1-1:1.

<sup>87</sup> R.I. Gen. Laws § 13-8-19.

<sup>88</sup> R.I. Gen. Laws § 13-8-20.

<sup>89</sup> R.I. Gen. Laws § 13-8-18.

<sup>90</sup> R.I. Gen. Laws § 13-8-18.1.

<sup>91</sup> R.I. Gen. Laws § 10-9-1-1.

<sup>92</sup> Code R.I. Reg. 49-1-1.1.

<sup>93</sup> R.I. Gen. Laws §§ 13-8-1, 13-8-8.

<sup>94</sup> R.I. Gen. Laws § 13-8-1.

<sup>95</sup> 2015 Guidelines, *supra* note 12.

<sup>96</sup> R.I. Gen. Laws § 13-8-1.

<sup>97</sup> R.I. Gen. Laws § 13-8-3.

<sup>98</sup> R.I. Gen. Laws § 13-8-5.

<sup>99</sup> R.I. Gen. Laws § 13-8-2.

<sup>100</sup> R.I. Gen. Laws § 13-8-3.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> R.I. Gen. Laws § 38-2-2; *See also* 2015 Guidelines, *supra* note 12 § 2.05.