



A Handbook for New Parole Board Members

**Part of a Resource Kit
for New Parole Board Members**

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Editor
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Authors are fond of pointing out the fact that producing a document is rarely the work of one person. In the case of this *Resource Kit for New Parole Board Members*, nothing could be more accurate. This *Handbook*, the *Resource Kit* of which it is a part, and the two editions that preceded it, were made possible through the generous financial and professional support of the National Institute of Corrections (NIC). The author would like to thank Cranston Mitchell of NIC, who shepherded this grant to completion, and Kermit Humphries, whose support for parole practitioners over the years has generated many of the resources included in this *Kit*.

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ADDITIONAL RESOURCES INCLUDED IN THE KIT

- 1: *Abolishing Parole: Why the Emperor Has No Clothes*
- 2: *Beyond the Prison Gates: The State of Parole in America*
- 3: *2001 Paroling Authorities Survey*
- 4: *Prisoners in 2001*
- 5: *Probation and Parole in the United States, 2001*
- 6: *Trends in State Parole, 1990-2000*
- 7: *State Sentencing and Corrections Policy in an Era of Fiscal Restraint*
- 8: *Victim Issues for Parole Boards – Discussion Guide*
- 9: *Responding to Parole and Probation Violations: A Handbook to Guide Local Policy Development*
- 10: *Policy-Driven Responses to Probation and Parole Violations.*
- 11: *"When Prisoners Return to the Community: Political, Economic, and Social Consequences"*
- 12: *"Reforming Sentencing and Corrections for Just Punishment and Public Safety"*
- 13: *"The Fragmentation of Sentencing and Corrections in America"*
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Introduction

As a newly-appointed member of a paroling authority in the United States, you are a member of a very select group. According to the latest survey by the Association of Paroling Authorities International, there are only 212 individuals in the nation serving full-time as paroling authority members, with another 94 serving on a part-time basis. While paroling authorities (state, federal, and military) are creatures of state or federal law or constitution, and thus vary in terms of specific responsibilities, there are many things you have in common. You are key leaders and decisionmakers in the criminal justice system, many of you deciding when and under what conditions individuals will be released from prison. Most of you decide when and for how long and with what expectations individuals who violate the conditions of release will be returned to prison. In some states, paroling authorities make more decisions that result in prison admissions than do all the criminal court judges in the state. Either directly or indirectly, you influence the supervision of individuals after their release from prison. You are key stakeholders in managing the reentry of offenders from prison to the community – deciding the timing of release, establishing conditions of supervision, approving parole plans, encouraging employment, and so forth. Indeed, the practices and policies you adopt have a major impact on the operation of the entire criminal justice system. Some paroling authorities also handle petitions for pardons and commutations, including death penalty matters.

Some boards have made provision for the training of new members that includes briefings on statutes and rules pertinent in their state; observation of parole hearings; and briefings on legal and ethical matters. Such training is particularly important in familiarizing new board members with how parole specifically operates in his or her own state or jurisdiction.

But it is also important for you to get a

sense of parole as a profession and a sense of the kinds of issues and challenges you share with your colleagues in other states. This Resource Kit has been developed to assist you in becoming oriented to your new position from that broader perspective. As mentioned already, the differences across states and other jurisdictions are significant. You will have much to learn that cannot possibly be captured in this resource manual developed for a national audience. But there are still many issues that are relevant, no matter what your particular state or jurisdiction, and with which you will need to be conversant in order to carry out your responsibilities fully. It contains an introduction to most of the issues that will be important as you undertake your new job. It also provides a roadmap to other resources – literature, organizations, web sites, etc. – that may be helpful to you.

Key Themes

Before you begin using this “kit,” it might be helpful to consider four key themes that you will see throughout the following materials. The first relates to parole’s role in the criminal justice system at the beginning of the twenty-first century; the second relates to your own personal and professional contribution; the third relates to the collaborative nature of the work; and a fourth key theme is the impact this work will have upon you as a person.

First, regarding the role of parole, you should be aware that discretionary parole release and the work of paroling authorities has taken on a new importance in the early part of the twenty-first century. Although parole is still legally a “privilege” which not everyone will or should enjoy, we are beginning to understand the work of

paroling authorities in a new light. It is overly simplistic to think of a parole decision as WHETHER or not someone will be released from prison. In fact, the vast majority of those in state and federal prisons today (well over 95%) will be released at some point. The real task of paroling authorities is to decide WHEN and UNDER WHAT CONDITIONS someone will be released from prison. Will it be during a period of parole eligibility when the parole board can exercise some leverage over preparation for and conditions of release and transition? Or, will it be at a mandatory release date? The job, then, is one of collaborating in the management of that transition. Paroling authorities – with their fellow criminal justice agencies in institutional and community corrections – are key leaders in assuring the safe transition and reentry of offenders into the community. Yours is a key role in public safety – not because you can deny release, but because you can choose to manage transition when the time is right.

The way in which the basic responsibilities of parole are carried out varies widely from state to state. You should not assume that because a practice occurs in one way in your state that it will occur in the same way in other states. We hope this kit will help you begin to appreciate the diversity of parole practices in the United States and the reasons for specific choices about practices in your own state.

The second key theme is about your own personal and professional contribution to the work of a paroling authority.

Contrary to what you might be expecting, being a paroling authority member is more than exercising good, individual judgment about individual cases based upon your own personal values. The role that paroling authority chairs and members play in their decisionmaking requires them to be knowledgeable about:

- their own legislative mandate and history;
- the broader history and role of parole within the criminal justice system;
- the philosophical purposes of sentencing and your role in carrying out sentences;
- progress emerging from the social

sciences on the development of research-based decisionmaking tools and about effective, evidence-based interventions with offenders; legal and ethical issues that will shape your decisionmaking practices; practical skills that allow you to navigate through the challenge of personal interactions with offenders, victims, and staff who may be assisting you; and current thinking among your professional colleagues regarding what constitutes “best practice.”

The myth that any well-educated citizen can step into the role of a parole decisionmaker and operate effectively is just that – a myth. The job requires familiarity with research, policy, history, philosophy, sentencing, offender supervision, changing offender behavior, and the context of the criminal justice system.

A third key theme is that the nature of your work as a paroling authority member requires you to be part of a team and to engage in collaborative work, both within your own board and with other stakeholders.

At one time, parole decisionmaking was thought of as essentially an individual endeavor. Before the advent of parole guidelines and research-based decision tools, parole board members typically made decisions based exclusively on their own individual judgment. That has changed dramatically. A paroling authority has an enormous impact upon community safety and upon the use of resources in the criminal justice system. It has an obligation to work together to assure its decisions support its goals, use resources wisely, protect the public, and manage the transition of offenders back into the community as successfully as possible. Those are not matters to be left to individuals working in isolation. Rather, these challenges require a willingness to be part of a team that shapes policy to guide individual decisions – both about release and about revocation. It requires a willingness to interact productively with offenders and their victims, and to build bridges with the community at large and with

other agencies and professions involved in criminal justice. It requires individuals who can be good consumers of research and management information. It is, in short, a demanding profession. As daunting as that may sound, of course, the work offers many rewards in terms of contributing to public safety and a more effective criminal justice system for yourself, your family and your fellow citizens.

Throughout this *Handbook* you will be encouraged to begin your collaborative work in a number of ways: 1) by raising questions with your chair, 2) by meeting with your colleagues to discuss other questions, and 3) by informing yourself so that you will be prepared to participate in the development of policy to guide your work as a board.

The fourth theme relates to the influence of this work on you as an individual. If you have come to your job from another line of work – even if it is within the criminal justice system – you will suddenly find yourself in a completely different position. You may feel that you have to rethink assumptions, stretch yourself into new fields of knowledge, and develop a different frame of reference. Much of the “conventional wisdom” held by the general public about parole, about corrections, and about offenders is fraught with misconceptions. It will be important for you to shed those misconceptions and replace them with a clearer understanding of the system and of what we know about interventions with offenders. It is also important for you to think about how to anticipate and deal with the impact this work may have upon you personally.

What's in this *Resource Kit*?

This *Resource Kit* contains three types of material: a *Handbook for New Parole Board Members*, two video cassettes that, together, have 5 video segments that supplement various parts of the *Handbook*, and a number of documents provided as reference material for users.

Handbook for New Parole Board Members

The *Handbook* is organized into nine chapters, each addressing a key topic area.

Chapter 1: Parole in Context explores the origins of parole, the move to abolish parole in the 1970's and 1980's, and the re-emergence of confidence in the possibility of changing offender behavior as the twenty-first century begins.

Chapter 2: An Overview of Corrections and Criminal Justice provides some basic information about how the policies and choices made over the last 25 years in the corrections field have shaped where we are today and suggests directions for the future.

Chapter 3: Parole as Part of the Criminal Justice System outlines the process through which offenders move, highlighting the responsibilities of key stakeholders – including paroling authorities – as partners in the broader process. This chapter also highlights the importance of engaging in collaborative endeavors, both with fellow paroling authority members, as well as with other agencies of the criminal justice system and with the community at large.

Chapter 4: Parole Decisionmaking focuses on the day-to-day challenge of making individual decisions. It highlights some of the emerging knowledge about decision-making tools and familiarizes readers with the need to create policy to guide decisionmaking in order to achieve your goals.

Chapter 5: The Parole Interview focuses on one strategy for interviewing offenders that draws on the lessons of research regarding techniques for encouraging positive change among offenders.

Chapter 6: Legal and Ethical Issues highlights important case law and ethical standards that are relevant to your role as a paroling authority member.

Chapter 7: Victim Issues discusses the growing role of victims in the criminal justice system and how parole has risen to the challenge of insuring their rights to be informed, to have the opportunity for input, and to have their safety needs carefully considered.

Chapter 8: Transition, Violation, and Revocation highlights the new interest in offender transition and reentry and the ways that parole boards can and do work toward more policy-driven responses to violations of parole.

Chapter 9: Parole as a Profession provides information on opportunities for professional development through membership in professional associations, and a discussion of emerging best practices that provide a sense of what it means to be a parole professional. Part of this chapter is a section on the impact this work can have on decisionmakers and ways in which to anticipate and address what is referred to as "secondary trauma."

Each chapter contains several types of information. The first is text that serves as a self-study guide summarizing the key content under each topic. A number of chapters also direct you to the specific segment or segments of the videotapes included in the *Resource Kit*. Each chapter also provides a set of suggested questions and topics for you to discuss with

your Board Chair. This will provide the Chair with an opportunity to assist in your orientation and for you to have a window on these issues in your particular state or jurisdiction through the experience of the Chair. Each chapter also provides a suggested set of discussion questions and issues to discuss with your colleagues on the board and that can be used as the agenda for a full-board meeting. Because you work, not as an individual, but as a member of a board, it is important that your colleagues participate in your orientation. They will benefit from your new perspectives and insights, and you will benefit from their experience.

If you are a newly-appointed chair, you should find the information in this *Handbook* and the *Resource Kit* of which it is a part to be helpful in taking on your new responsibilities – since you are a member as well as the chair. Those questions which are identified as *QUESTIONS TO DISCUSS WITH YOUR CHAIR* might well be discussed with current members or senior staff who have some longevity with the board, or might be taken up with your predecessor if that is practical.

A number of the chapters also provide suggestions about other resources that you may want to pursue.

We recommend that you follow the chapters in sequence, beginning each by covering the self-study material, including reviewing the video material where appropriate, meeting with your board Chair, and then meeting with the entire board. Because schedules vary so much from state to state, the time required to cover this material will also vary. If you are part of a full-time board that meets frequently, you may be able to cover a chapter every week or so. On the other hand, if you are a member of a part-time board that meets only infrequently, it may take a period of months to complete. Whatever your pace, the Kit will probably be most helpful if you cover the chapters in sequence.

Videotapes

Included in the *Kit* are two videotape cassettes. The footage on these cassettes was culled from materials developed by parole boards themselves, by the Association of Paroling Authorities International, by the National Institute of Corrections Academy, and by the Office for Victims of Crime. It has been edited into a series of five segments that supplement the *Handbook*. They are: 1) Paroling Authorities Introduce Themselves to the Public and to Victims, 2) What Works and What Doesn't in Correctional Practice, 3) Parole Responds to the "Abolish Parole Movement," 4) Challenges of Parole Decisionmaking, and 5) Victim Issues for Parole Boards. Each chapter will point out connections between the material in the *Handbook* and the tapes, suggesting when they should be viewed.

Additional Resources

The *Resource Kit* includes a number of additional documents that might be considered the core of a new parole board member's library. You will also find suggestions about further readings, informative web sites, and other sources of information that you may find helpful.

Video Supplement to the Introduction

Once you have finished reading the Introduction to this Handbook, we would recommend that you view *Video Segment #1: Paroling Authorities Introduce Themselves to the Public and to Victims*. It is becoming more and more common for paroling authorities to produce information videos about their role and operations – both for victims of crime and for the general public. In most states, victims are now entitled to receive information about the cases of individuals who have offended against them or their families, and to provide input as parole boards are making their decisions. Videos developed specifically for that purpose provide one way of respectfully

providing information to victims about how the process works and how they can receive information and provide input. Parole boards are also feeling the need to inform the public of their role and value in protecting the community, to counter criticisms of parole and attempts to abolish parole as part of the criminal justice system.

This first segment is a sampling of the work of three paroling authorities – the Connecticut Board of Parole, the Georgia Board of Pardons and Paroles, and the Rhode Island Parole Board. In the case of Connecticut and Georgia, the videos are geared to an audience of the general public, outlining the mission and role of the boards and how they go about the work of making release decisions and encouraging successful transition to the community. The Rhode Island video is geared more specifically to victims of crime, outlining the parole process for them and providing information about how to provide input to the board about parole decisions. They are included here as a general introduction to:

the differences and similarities among paroling authorities and how they operate;

the fact that paroling authorities in the twenty-first century are finding it imperative to reach out to both the general public and victims to make their work more meaningful and accessible to the community at large; and

the way in which paroling authorities present themselves to a general audience, emphasizing their primary concern for public safety and their essential role in an orderly and supervised transition back to the community.

In the instances of Connecticut and Georgia, the supervision of the parolee – in addition to release decisionmaking – is a direct responsibility of their respective parole boards. In Rhode Island, as is typical in most states in the country, the parole board has responsibility for release decisionmaking, but is supported by the Rhode Island Department of Corrections which is responsible for parole supervision.

QUESTIONS TO DISCUSS WITH YOUR CHAIR

After reading this introductory material and reviewing the video, you will likely have many issues you would like to discuss with your chair and other colleagues. Here are a few questions to start your discussions:

1. Has our board ever developed public information such as this – either video or print? If so, when? What were some of the reasons for developing it, some of the issues addressed, and some of the uses to which it was put? (Be sure to review the material.) If not, has this ever been considered? Why or why not?
2. How would you differentiate the general outline of our responsibilities and procedures in comparison with these three paroling authorities?
3. Is the mission of parole – as part of a public safety approach – one that is clearly understood by the public and victims in our state?

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. Do board members become involved in outreach to the public? What are some examples?
2. What can a new board member expect in terms of inquiries from the public? Who should respond? What is the best way to respond?
3. In the experience of individual board members – how is parole viewed in our state? What are some of the issues or questions a new board member might expect from colleagues in the criminal justice system or other public officials?

THINGS TO ASK FOR

1. Video materials for training or for public information developed by or for your board.
2. Training/orientation materials or curricula developed by or for your board.

Chapter 1

Parole in Context

At Century's Beginning

At the beginning of the twenty-first century, parole occupies a somewhat ambiguous place within criminal justice systems in the United States. For the first three-quarters of the twentieth century, parole was an integral part of indeterminate sentencing which was the dominant sentencing structure in both the federal and state systems. It was the chief means of prisoner release from prison, and was central to the generally accepted "rehabilitative ideal" that guided sentencing and corrections.

Beginning in the 1970s this sentencing structure – and parole with it – came under attack. Major changes, emphasizing punishment and deterrence, moved the federal system and many states toward a more determinate sentencing system. This radically reduced the importance of parole as a releasing mechanism. In 1980, over 55 percent of all releases from state prisons were as a result of a discretionary decision by a paroling authority. In 1999, only about 25 percent of such releases were made by paroling authorities, while over 40 percent were as a result of mandatory parole.¹

Despite this change, parole boards remain in the large majority of states, in the federal system, and within the U.S. military, albeit with somewhat limited discretion in some. *Figure 1: DOES YOUR PAROLE BOARD HAVE DISCRETION IN PAROLE RELEASE?* (page 2) is drawn from an annual survey of paroling authorities conducted by the Association of

Paroling Authorities International and provides an overview of parole's status among the states, the federal system, and the military services.² Note that the responses to this survey differ slightly from the data presented in the following chapter about which states still have indeterminate sentencing systems. This is a result of varying definitions and continually changing statutes. The boards in seven states have virtually no responsibility in discretionary release. However, the vast majority of boards retain some or all of that discretion, along with responsibility for setting conditions of release and responding to parole violations.

The U.S. Parole Commission retains parole authority over federal inmates who committed crimes prior to 1987, for military inmates housed in federal correctional facilities, and for District of Columbia felony sentences. Also at the federal level, each military service – Army, Navy, and Air Force – has parole authority over those sentenced by courts-martial and serving confinement in military correctional facilities. Such military inmates are typically eligible for parole after service of one-third of their sentence. The Federal Probation Service provides post-release supervision for both federal and military parolees.

Looking Ahead

As more attention is focused upon the massive numbers of offenders exiting prison during the first decade of the twenty first century, attention is also focused once again on parole. Discretionary releasing authorities arguably have a unique contribution to make in assuring the safe and successful transition of offenders into the community.

**Figure 1
Does Your Parole Board Have Discretion in
Parole Release?¹**

**Responses of State, Federal,
and Military Parole Boards, 2001**

State	Yes ²	Yes Limited ³	Yes Very Limited ⁴	No ⁵	State	Yes ²	Yes Limited ³	Yes Very Limited ⁴	No ⁵
AI	X				NJ	X			
AL	X				NM			X	
AZ			X		NY		X		
AK			X		OH			X	
CA				X	OK			X	
CO	X				OR			X	
CT	X				PA	X			
DE			X		RI	X			
DC				X	SC		X		
FL				X	SD			X	
GA	X				TN		X		
HI	X				TX	X			
ID	X				UT	X			
IL				X	VA			X	
IN				X	VT	X			
IA	X				WA			X	
KS			X		WV	X			
KY	X				WI			X	
LA	X				WY	X			
ME				X					
MA	X								
MD	X								
MI	X				FEDERAL				
MN				X	US		X		
MO		X							
MS			X		U.S. MILITARY				
MT	X				Army	X			
NE	X				AF	X			
NV	X				Navy	X			
NC			X						
ND	X								
NH	X								

¹ 2001 Paroling Authorities Survey, Association of Paroling Authorities, International, pp. 2-7. Note that the responses to this survey differ slightly from the data presented in the following chapter about which states still have indeterminate sentencing systems. This is a result of varying definitions and continually changing statutes.

² Yes – full discretion with some statutory limits.

³ Yes, limited – discretion except in dealing with certain type of offenders.

⁴ Yes, very limited – discretion in a number of old code cases, but little discretion with new cases.

⁵ No – discretion remains only in setting of conditions, revocation... or none at all.

The future of parole will depend, in large part, on the willingness of parole board members to take a leadership role in a broader dialogue about role of parole in the system and to embrace knowledge emerging from research on risk assessment and effective offender interventions. For any parole board member who hopes to carry out his or her existing responsibilities and to shape the future of parole – it will be extremely important to have some context within which to engage the issues. It will be important, for instance, to understand where parole came from, how it has evolved over time, and what its role and function in the system have been. As context for the users of this *Resource Kit*, this chapter will outline the statutory, philosophical, and practical role that parole plays in the system, and how that has changed over time.

Parole: A Definition

The term "parole"³ refers to three separate sets of activities and responsibilities.

Parole release refers to the discretionary authority vested in parole boards⁴ to release offenders from prison at a time prior to the expiration of their sentences. In very broad terms, this discretionary release function grew out of an interest in an offender's rehabilitation and assuring that his reentry into the community would not endanger public safety.

Parole supervision refers to the responsibility vested in a specific public agency – usually a state department of corrections – for the supervision of offenders during some period of conditional release following incarceration. In general, such supervision is geared toward ensuring compliance of the parolee with the law and conditions set by the paroling authority upon release, toward assisting in the reintegration of the offender, and toward protecting the community.

Parole revocation refers to the action which parole boards are empowered to take in revoking the conditional release of an offender and returning him or her to custody for all or part of the remainder of his or her sentence. Revocation is permitted for non-compliance with any conditions of release or for new criminal conduct. It is generally considered to be a tool to assure compliance with conditions, to intervene when an offender is experiencing difficulties on supervision, and to protect the community by removing an individual who is at risk of re-offending.

Determinate vs. Indeterminate Sentences

The following paragraphs will define and explain the differences between determinate and indeterminate sentences. This discussion may seem, at first blush, to be somewhat theoretical. However, the issue is a life-altering one for parole as an institution. In a determinate sentencing structure, there is no role for a paroling authority in making release decisions.

The authority of a parole board to grant discretionary release to a prisoner before the expiration date of the maximum term varies from state to state and is a creature of the state's sentencing structure. Such structures are broadly categorized as determinate and indeterminate. These categories must be characterized as broad because relatively few states have what might be termed "pure" determinate or indeterminate systems.

An indeterminate sentencing structure divides the responsibility for the actual term of incarceration among the legislature, the judge, and the parole board. The legislature sets a broad range of time, expressed as minimum and maximum sentences, for a particular offense or category of offenses. The judge imposes a term of confinement within that

range. The judge's sentence is also made in terms of a minimum and maximum term. The parole board determines the actual release date. The board typically has a formula for determining earliest parole eligibility. Parole eligibility (but not necessarily release) may occur after a percentage of the minimum, after a percentage of the maximum, or after the entire minimum has been served, depending on the state.

States with indeterminate structures vary in terms of the breadth of the legislated sentence ranges and the discretion afforded to the judges and parole boards. Some states have placed restrictions on the range of terms that a judge may impose: the range may be no greater than one-third of the maximum sentence, for example. The parole board in some jurisdictions has the discretion to set its own formula for release eligibility, while in others the legislature determines it.

Determinate sentencing can take two forms: legislatively determined or judicially determined. In either case, the offender is sentenced to a specific term of incarceration. He or she is released at the expiration of the term, minus good time credits if they are available. There is no discretionary parole release, although there may be a period of supervision in the community. Under a legislatively determined structure, the legislature fixes by law the penalty for specific offenses or offense categories. In a judicially determined system, the judge has broad discretion to choose a sanction, but, once imposed, it is not normally subject to change.

The Origin of Parole

Determinate sentencing was the norm in the United States prior to the introduction of parole at the turn of the 20th century. Parole was proposed at the time as a means of strengthening the rehabilitative intent of incarceration. The authority to release a prisoner before the completion of the judicially imposed term, however, required a new kind of sentencing structure. Indeterminate sentencing was created to meet that need.

There is some dispute about when parole was introduced in the United States, but most

authorities cite New York's Elmira Reformatory, in 1877, as containing the first American parole system. The Elmira system was similar in many respects to current parole practices. Sentences to the reformatory were indeterminate; release was determined by a board of institutional officials and was based on "marks" earned by good behavior and participating in institutional programs. The released prisoner remained under supervision for six months and was required to report to volunteers or, in some areas, to police officials. Later, parole officers paid with public funds were used to supervise releasees.⁵

The Elmira system was modeled after the "ticket of leave" and the "mark" system originally developed in Australia by Macanochie and elaborated upon in Ireland by Crofton. That system was characterized by:

...a series of progressive states by which a prisoner could earn marks to advance to the important intermediate stage of virtual freedom; upon successful completion of the stage, he was granted a ticket of leave, which specified rather restrictive conditions of liberty. The releasee was required to report periodically to police officials and the ticket of leave could be revoked for violation of the conditions of liberty.⁶

Interestingly enough, indeterminate sentences were conceived of – at least in part – as a remedy for the serious shortcomings of the determinate model that preceded them. In the words of Alexander Maconochie, governor of a penal colony in Australia, and considered by some as the originator of parole:

I think that time sentences are the root of very nearly all the demoralization which exists in prisons. A man under a time sentence thinks only how he is to cheat that time, and while it away; he evades labor, because he has no desire to please the officers under whom he is placed, because they cannot serve him essentially; they cannot in any way promote his liberation.⁷

Once introduced in the United States, parole spread fairly rapidly. In doing so, it survived an early series of constitutional challenges.⁸ A 1939 survey reported that, by 1922, parole existed in 44 states, the federal system, and Hawaii.⁹ Mississippi adopted a

parole law in 1944, becoming the last state to do so.

Many reasons have been advanced for the relatively rapid spread of parole legislation. There was general dissatisfaction with the determinate sentencing provisions of the time, and parole was seen as a response to some of the criticisms:

Parole would promote reformation of prisoners by providing an incentive to change; at the same time, it would serve as a means of equalizing disparate judicial sentences.¹⁰

Release before sentence expiration was already an aspect of most prison systems – through good time deductions which began in New York in 1817, and through gubernatorial clemency, which was used far more extensively than today.

Parole was believed useful for enforcing prison discipline and for controlling prison population levels.¹¹

In its early phase, parole was administered by institutional officials, or occasionally by a pardon board or the governor. The emphasis at the time was on parole release; supervision, and presumably revocation, received less attention. All this changed in the period following World War I.

Parole became controversial; critics asserted that release was based more often on good conduct and institutional convenience than on evidence of reformation of the prisoner. Parole emerged from this crisis in a somewhat different form, its independence came to be seen as an essential condition for it to be effective. Parole boards, independent of correctional institutions and with statewide jurisdiction, were created. Rehabilitation of the prisoner became the primary consideration in the parole release decision, and supervision was given a larger role in the parole process.¹² Unfortunately, the breadth of discretion given to paroling authorities became so broad in some jurisdictions that parole was opened to criticism on that basis. The charge was that the parole board was usurping the role of the judge in establishing the limits of punishment, and that parole's unfettered discretion was

exercised in arbitrary and capricious ways. For instance, in California, at one point, judges were required to impose sentence at the statutory maximum. The California Board of Prison Terms then decided when release was appropriate – which could be anywhere from the first day of the sentence to the last, with no standards guiding the decision.

The Push For Parole Abolition

Parole came under attack again in the 1960s and 1970s, this time as part of a larger political debate about crime, the purposes of criminal sanctions, and the appropriateness of the broad discretion afforded to various sectors of the criminal justice system. Rehabilitation as the primary justification of incarceration, indeterminate sentencing, and parole were the subjects of criticism by scholars and policymakers from a variety of political perspectives.¹³

The debate of the 1960s and 1970s focused on two factors:

First, there was a great deal of criticism about rehabilitation as a goal: then-current research seemed to question the effectiveness of rehabilitation efforts. A growing body of research, summarized by Lipton, Martinson, and Wilks in their 1975 publication, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies*, seemed to demonstrate few benefits from rehabilitatively oriented programs in prison.¹⁴ These findings were well received by those who were convinced that prisons were simply coddling dangerous criminals, and by those who questioned the ethics of coercing offenders into submitting to treatment they did not want as a condition of release. The popular sound-bite regarding this school of thought was that "nothing works".

Second, criticism of indeterminate sentencing continued to grow. The typically open-ended sentence of an indeterminate structure gives parole boards enormous discretion in determining the term of incarceration. Because few parole boards had explicit criteria or policies for their release decisions, those decisions were criticized as arbitrary and capricious. It was asserted that these decisions were driven more by the individual prejudices and idiosyncrasies of board members than by research-based predictions of parole success.¹⁵ A further criticism was that inmates, facing potentially lengthy terms of imprisonment without board action, were subjected to continuing uncertainty. This undermined whatever rehabilitative benefits prison programs might offer and contributed to the inmate unrest that characterized the period.

This debate was taking place in an environment of dramatically increasing crime rates. The discrediting of rehabilitation as the primary purpose of incarceration was accompanied by increasing support for "just deserts"¹⁶ to take its place. "Just deserts", also called retribution, emphasizes the moral imperative of "balancing the scales" after an offender has taken advantage of the community by committing a crime. The major focus is on appropriate punishment – to right the balance. Therefore, equity in sentencing and the scaling of sentences to the severity and harm of the crime and culpability of the criminal becomes paramount. Penalties are determined legislatively according to the nature of the crime and the specific behavior of the offender in its commission. Supporters pointed out that, under this type of sentencing philosophy, decisions are based on establishing the observable facts surrounding the offense rather than on making assumptions or predictions about future offender behavior.

To many, the most appealing feature of a "just deserts" philosophy was the determinate sentencing structure which typically accompanies it. The broad discretion to set prison terms given to judges and parole boards

under an indeterminate system is eliminated. To some, this meant an end to the cruel uncertainty of indefinite sentences. To many others, it represented an opportunity to move the setting of sentences from the relative privacy of individual court and hearing rooms to the very public legislative chambers. Sanctions were to be determined by legislative debate, carried on in the glare of television cameras and open to the full weight of public scrutiny and pressure.

The backdrop for this debate on the purposes and methods of sanctioning was an extraordinary rise in the nation's crime rate that had begun in the mid-1960s and showed no sign of dropping by the mid-1970s. See Figures 2 and 3 and note the upturn in rates in the latter half of the 1970s. Policymakers were growing anxious. Once the challenge to rehabilitation and indeterminate sentencing was taken up, legislatures moved quickly. Between 1976 and 1984, twelve states adopted a completely determinate sentencing scheme, including the abolition of discretionary parole release.^{17,18} In 1987, the federal government followed suit. In many other states, legislatures left intact their indeterminate structure, but created categories of crimes (Class X crimes, drunk driving offenses, or crimes committed with a weapon, for example), or classifications of criminals (typically a "habitual offender" statute) for which a mandatory period of incarceration was specified. The number and scope of such laws continued to grow in most jurisdictions through the 1980s.

Originally, the move to determinate sentences was focused on appropriate punishment. However, the rationale for mandatory and lengthy terms of imprisonment has grown to be based on the idea that these stiffer penalties will discourage criminals (this is a sentencing goal known as "general deterrence") and will simply keep them off the streets longer. In practice, then, the philosophical clarity of a "just deserts" philosophy has become somewhat confused

with an acceptance of punishment as a deterrent.

Ironically, as the nation approached the end of the 1980s, the impact of these changes in sentencing laws on institutional populations was credited with spurring a new appreciation for an interest in parole. Although crime rates across the country leveled or declined (refer again to Figures 2 and 3 for victimization rates during the 1980s), the number of person confined in jails and prisons rose dramatically during this period. It was not until the beginning of the new century that those numbers showed signs of leveling off.¹⁹ (*Figure 4: U.S. Prison Population 1980-2001* illustrates the growth in U.S. prison population beginning in 1980.)

There is little question that changes in sentencing law played a major role in this population growth because crime rates during the period remained stable. With this growth came widespread litigation and court intervention concerning conditions of confinement²⁰ and swelling corrections budgets to support both new construction and operations of an expanding prison capacity. States and counties alike were caught up in the overcrowding crisis.

In the midst of this crisis, parole assumed new importance to relieve crowding in some states. Some reinstated parole (Colorado, Connecticut), while other states, where there were sentencing commissions considering the abolition of parole, concluded by maintaining parole discretion as part of the system. Contrary to what some expected, however, there was no wholesale rush to reinstate parole during the 1990s. Rather, there was something of a slowing of the rush to abolish parole. However, some states moved inexorably toward "truth in sentencing" which was the new catchword for sentencing reform in the 1990s. Virginia and Wisconsin were among them. Three-strikes legislation remained popular, and a general move toward more harshness in sentencing continued.

Figure 2 Violent Crime Victimization 1973-1990

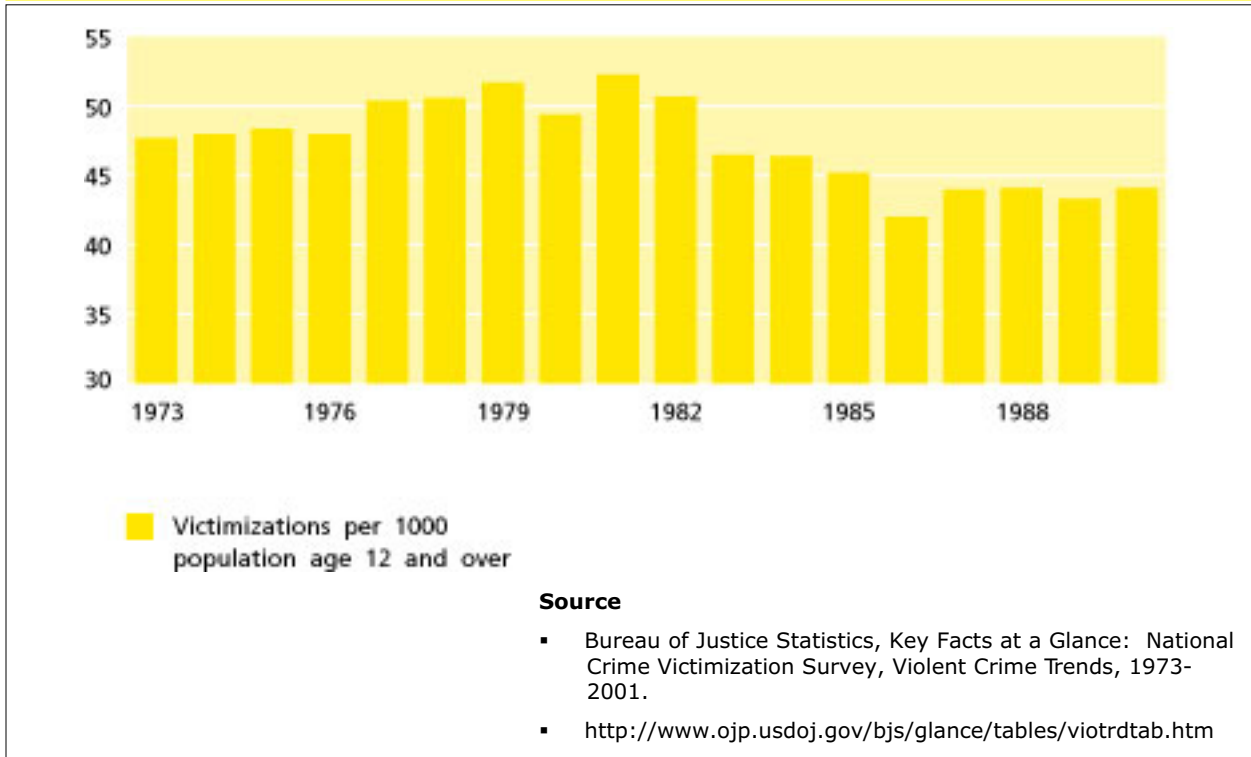


Figure 3 Property Crime Victimization 1973-1990

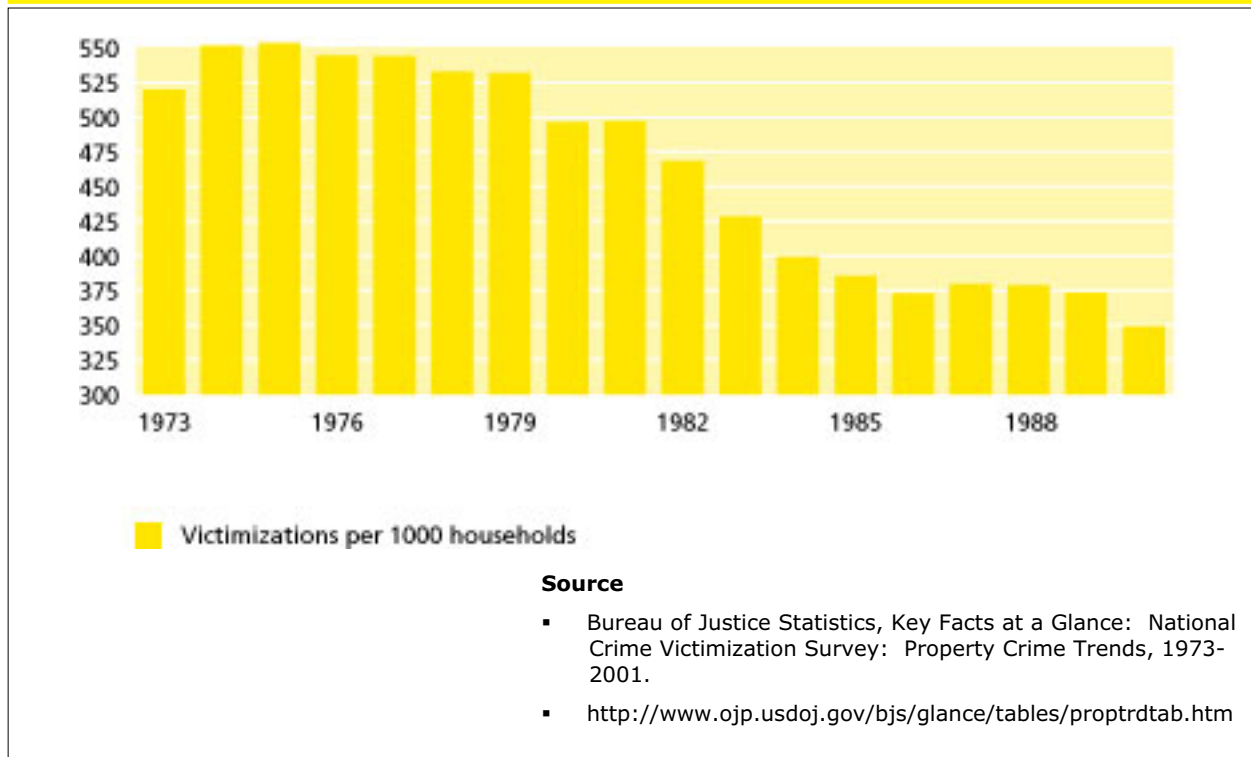
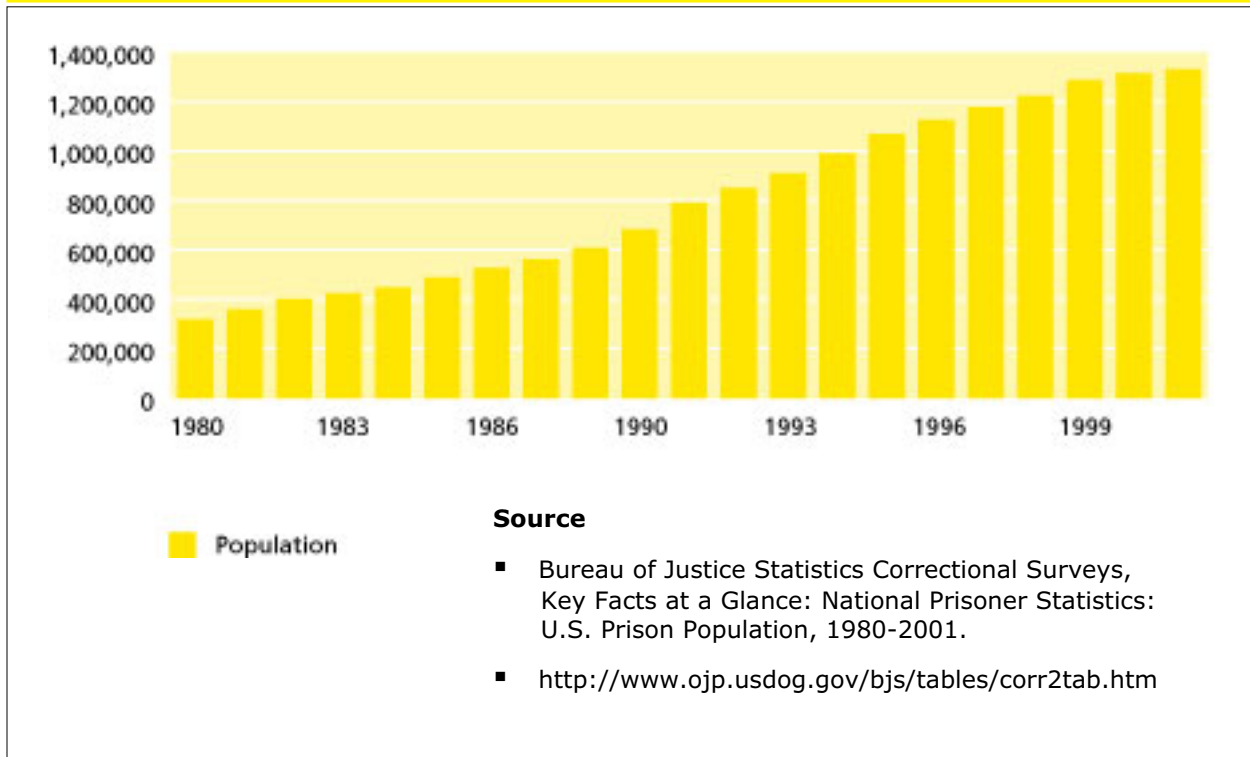


Figure 4 U.S. Prison Population 1980-2001



Parole Revisited And "What Works"

The first years of the new century have seen another page in our collective experience with crime and punishment. Not surprisingly, the staggering increase in the use of incarceration is now generating a staggering increase in the number of offenders completing their sentences and returning to their communities. It is hard to avoid the fact that the management of release is a critical issue. The spotlight is once again on parole.

At the same time, there has been a radical reevaluation of the notion that "nothing works." Recall that this was a central tenet underlying the move to abolish parole and establish punishment and deterrence as the central reasons for criminal sentences. With decades of hearing the cry that "nothing works" from the lips of virtually everyone in criminal justice, most observers might be forgiven if they find the notion of rehabilitation somewhat quaint. But, in fact, the re-

evaluation of that premise has been underway for over a decade, and at the hands of a broad range of respected researchers. In the words of Francis Cullen:

...it is time for criminologists – and others concerned about corrections – to move beyond Martinson's view of rehabilitation. His study's exalted status was never deserved and has served to stifle debate and scientific progress in the study of treatment effectiveness. If we have learned anything over the past quarter-century, it is that rehabilitating offenders, while a daunting challenge, is feasible. Revisionist scholars engaged in the study of correctional rehabilitation have rejected the "nothing works" doctrine and are hard at work in discerning "what works" to change offenders.²¹

Cullen goes on to review the research on effectiveness of specific types of interventions such as education and work programs, drug treatment, and sex offender programs – highlighting their promise in some detail. Other researchers echo Cullen's conclusions, pointing out that the linkages between official

community sanctions – such as supervision, electronic monitoring, intensive supervision – and treatment interventions seems to offer promise in terms of reducing recidivism. This seems a particularly salient issue for paroling authority members. Through setting treatment stipulations that must be met for release, and by setting conditions and expectations for participation in supportive services, paroling authorities have the leverage to connect offenders with just the interventions that seem promising in reducing their likelihood of reoffending.

One of the video resources (*Video Segment #2: What Works and What Doesn't in Correctional Practice*) in this *Kit* is the tape of a video conference sponsored by the National Institute of Corrections which summarized the findings coming out of the "what works" research. Although the conference was broadcast in 1996, it remains an excellent introduction and synthesis of the findings of that research.

To some, the notion of parole moving to the forefront of the sentencing system may seem a step backward. There have been scholars and reformers, after all, trying to abolish parole since the 1970s. Others will view parole as a flexible and common-sense tool that will be of immense value as the U.S. copes with waves of offenders returning from prison to their communities – the legacy of a later sentencing system that is now being called into question.

As the public and its political leaders begin to realize the challenges posed by over 600,000 offenders returning from prison to the community every year, great interest is emerging in the concept of offender "reentry." Some are beginning to recognize that paroling authorities are well-positioned to participate in managing this transition.

Therein lies the uncertainty. If the trends of the past toward determinacy and the loss of parole discretion continue, then parole will continue to decline in its importance in many states. If, on the other hand, this renewed interest in offender reentry, along with increasing evidence that appropriate correctional intervention in a community setting can be effective in reducing offender recidivism, then parole may once again be the ascendancy. At last, there may be a

recognition that parole is a powerful tool is protecting community safety. *Figure 5: OVERVIEW OF SENTENCING TRENDS AND PAROLE DISCRETION* summarizes the trends over the last century in terms of the primary purpose of criminal sentences and the level of accompanying discretion according to paroling authorities. The question is whether the promising focus on reentry and a greater confidence in the ability of correctional interventions will continue to grow.

Figure 5
Overview of Sentencing Trends And Parole Discretion

Sanctioning/ Correctional Emphasis	1920 - 1970	1970 - 1980	1980 - 2000	2000 - 2003
Rehabilitation	X			
Desert		X		
Incapacitation/ Deterrence			X	
Evidence-Based Interventions				X
Parole Discretion	extensive	reduced or eliminated	some increase but with high structure	increasing in some states

In fact, more than 95 percent of prison inmates will one day walk out of prison. Without a parole release process, which is a planned and supervised reentry of an offender into the community, an offender may simply leave prison with little more than a bus ticket and a few dollars in his or her pocket. A parole board can be a key part of the process of assuring that an offender is as prepared as

possible for reentry into the community, that he or she agrees to certain conditions of release, that adherence to those conditions is carefully supervised, that appropriate resources and responses are put in place if the offender encounters difficulties, and – should the offender present an immediate danger to the community – that he/she can be quickly returned to custody.

Such an approach, in essence, revisits the advantages of an indeterminate sentencing system.

It allows the sentencing court to focus on the issue of guilt or innocence, and upon establishing the limits of punishment for the crime of conviction – something the court is uniquely situated to understand having been involved in adjudicating the case;

It allows issues of risk assessment and management of transition back into the community at a time close to the time of possible release. This allows the issue of release to be considered by an independent entity which has the benefit of information gathered during the period of incarceration relating to program participation, disciplinary performance, victim impact over time, and support systems available to the offender in the community should he or she be released;

It provides an incentive for the offender to participate in programs geared to addressing the causes of his or her criminal conduct by allowing efforts in prison to influence the timing of the release; and

It allows for the development of a set of special conditions and a case plan prior to release from prison and at a point where the parole board has some leverage over the offender to agree to certain stipulations in order to secure his release.

Ironically, while a major concern of the 1980s and 1990s has been the seemingly unrelenting pressure of prison overcrowding, we may be witnessing a leveling off of such pressure in some states. There is great debate

about the reasons for this change. It is most likely a combination of complex factors, including the aging of the population, the softening of some of the harsh mandatory minimums and three-strikes provisions of the recent past, the decreasing crime rate, and what was, until mid-2002, a healthy economy. Criminal justice concern has focused more recently on the impact of 600,000 individuals returning from state and federal prison to their communities.

Parole Boards Have A Range Of Responsibilities

We have been focusing primarily upon the traditional functions of parole – discretionary release, setting of conditions, and responding to parole violations. However, many paroling authorities have other responsibilities that, though less frequent than routine parole matters, are of great import and demand careful consideration. *Figure 6: What Responsibilities Do Paroling Authorities Have Beyond "Parole"?* lists the state boards and their responsibility for executive clemency in general or specifically for pardons and commutations, as reported in a directory published by the American Correctional Association. In most instances, a paroling authority's role in this arena is to provide a recommendation to the Governor or to a body such as a pardons board. The recommendation is usually not binding. The specific definitions of these terms vary from state to state, and overlap to some degree. In general, they have to do with the lessening or lifting of some punishment – commutation of a death penalty, commutation of a prison sentence, restoration of rights, and the like. Guidance in these matters arises from the particular statutory authority in a given state. Since, in general terms, these matters are considered a privilege or grace, rather than a right, there is no definitive source of guidance on these matters except from the particular procedures and statutes in each state.

Figure 6
What Responsibilities Do Paroling Authorities
Have Beyond Parole?¹

STATE	Recommendations or action on			STATE	Recommendations or action on		
	Executive Clemency ²	Pardons ³	Commutations ⁴		Executive Clemency ²	Pardons ³	Commutations ⁴
AI		X		MT		X	X
AL				NE		X	X
AZ	X			NV			
AK				NC			
CA	X			ND		X	
CO				NH			
CT		X		NJ	X		
DE				NM	X	X	
DC				NY	X		
FL	X			OH	X		
GA	X	X	X	OK		X	X
HI	X	X		OR	X		
ID	X	X		PA			
IL	X			RI			
IN	X			SC		X	
IA				SD	X	X	
KS	X			TN	X		
KY				TX	X	X	
LA				UT		X	X
ME				VA	X		
MA		X		VT			
MD	X			WA			
MI				WV	X		
MN				WI			
MO	X	X	X	WY			X
MS				US			

¹ *Probation and Parole Directory 1998-2000*, American Correctional Association, Lanham, MD

² Executive clemency, pardon, and commutation are terms that vary somewhat from state to state and overlap to some degree. In general they refer to the responsibility a paroling authority may have to provide recommendations to the Governor, or to another Board, regarding the lessening of some sentence or punishment. Many Boards with such responsibilities are involved in death penalty consideration. In at least one case (Utah), the Board of Pardons and Paroles is listed as having full authority regarding pardons and commutations.

³ See 2 above.

⁴ See 2 above.

⁵ The Nebraska Board is also listed as having responsibility for providing recommendations on remission, respite, and reprieve.

Video Supplement to Chapter 1

Video Segment #2: What Works and What Doesn't in Correctional Practice is comprised of excerpts from a national video conference sponsored by the National Institute of Corrections in 1996. A panel of researchers and practitioners reviews the lessons emerging from the research about what works in correctional treatment.

Video Segment #3: Parole Responds to the Abolish Parole Movement – Why the Emperor Has No Clothes provides excerpts from a press conference held at the time that the document, *Abolishing Parole: Why the Emperor Has No Clothes*, was released to the public. It highlights some of the questions and controversies to which the document responds, and illustrates the kinds of questions parole boards often receive from the press and public about the work that they do. It is also an interesting record of how parole, as a profession, marshaled its resources to respond to some of the criticisms leveled at paroling authorities during the 1980s and 1990s. Although conditions alluded to in the press conference have change in some instances (e.g., both Oklahoma and Wisconsin have passed sunset legislation for parole, and parole has been abolished in Florida), many of the issues discussed are still current and valid.

QUESTIONS TO DISCUSS WITH YOUR CHAIR

1. How has the attack on parole played out in this state, and where would you say we are with respect to the following:
 - a. Prison crowding – is there pressure on the board to assist in managing prison population?
 - b. Exercise of discretion – over what percent of inmates does the parole board have releasing authority? Are there discussions underway to change the role that the board plays? If so, what are they?
 - c. Is parole specifically under attack now? Has there been a sentencing commission or other body that has proposed (or will propose) sentencing changes that may affect the board? What happened?
2. Are there efforts underway in the state to focus more attention on "reentry"? If so, is the board part of those discussions and efforts? In what way? Does reentry play a part in the board's mission?
3. Does our board have responsibilities for clemency, pardons, commutations, etc.? If so, what are they and what guidance is there about these matters? What can I expect in terms of responsibilities in this area?

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. What were some of the things that were most surprising to members of the board when they were first appointed? What were some of the most important early lessons that you learned after you were appointed?
2. Do you, as board members, feel the need to defend parole – with the public, with the legislature, the governor, other parts of the criminal justice system? If so, why – and how do you do that?
3. What do you feel are the major contributions of the board to the criminal justice system and to the community?
4. Before you were appointed to the board, what was your impression about the "state of the art" with respect to our ability to have an impact on the likelihood that offenders would reoffend? Has that impression changed? If so, why? If not, why not?

THINGS TO ASK FOR

1. The statute or constitutional language that creates parole and describes its responsibilities in this state.
2. An organizational chart of the board and staff.
3. Statistical reports about the activities of the board – hearings, decisions, violations, revocations, terminations, etc.
4. Statistical reports about prison and community supervision populations.
5. Budget information about the Board.

ADDITIONAL RESOURCES

(Materials included in the Resource Kit are marked with an asterisk. *)

**Abolishing Parole: Why the Emperor Has No Clothes*

This is a document commissioned by the Association of Paroling Authorities International and the American Probation and Parole Association in 1995. It was designed to make the case for parole, and to respond to critics who argue that abolition of parole is somehow consistent with being "tough on crime" and that it will benefit public safety. It highlights some of the myths and facts about parole and suggests helpful vocabulary to use when communicating the role and importance of parole in the system.

**Beyond the Prison Gates: The State of Parole in America*

This paper, written by Jeremy Travis and Sarah Lawrence of the Urban Institute, is a recent review of the statistics available on parole release and supervision. It provides important context within which to view your own state's experience and practice regarding parole release and supervision.

**2001 Paroling Authorities Survey*

This survey, completed annually by the Association of Paroling Authorities International, provides an overview of the responsibilities, structure, funding, and other information about your fellow paroling authorities at the state and federal level, among the military, and internationally.

References and Sources

- ¹ U.S. Department of Justice, Bureau of Justice Statistics, *Trends in State Parole, 1990-2000* (Washington, DC: U.S. Department of Justice, October 2001), p.4.
- ² Note that the responses to this survey differ slightly from the data presented in the previous chapter about which states still have indeterminate sentencing systems. This is a result of varying definitions and continually changing statutes.
- ³ A bit later on we will discuss the other responsibilities that paroling authorities often carry having to do with pardons, commutations, and clemency surrounding the death penalty.
- ⁴ The terms "parole board" and "paroling authority" will be used interchangeably in this *Handbook*. They both refer to the governmental entity established by law or constitution to carry out the functions described in this chapter. Some jurisdictions refer to their paroling authority as a parole board, some as a parole commission, some as a board of pardons and paroles, etc.
- ⁵ Lawrence F. Travis and Vincent O'Leary, *Changes in Sentencing and Parole Decision Making: 1976-78* (Hackensack, NJ: National Council on Crime and Delinquency, 1979), pp. 4-5; Willa J. Dawson, *On the Abolition of Parole*, in Roy R. Roberg and Vincent J. Webb, eds., *Critical Issues in Corrections: Problems, Trends and Prospects* (St. Paul, MN: West, 1981), p. 81.
- ⁶ Sol Rubin, *The Law of Criminal Correction*, 2nd ed. (St. Paul, MN: West, 1973), p. 621.
- ⁷ Quoted by Sheldon G. Glueck in his Foreword to Barry, *Alexander Maconochie of Norfolk Island* (1958).
- ⁸ The issues concerned whether parole (1) infringed on the power of the judiciary to sentence, the governor to pardon, or the legislature to determine penalty levels; (2) denied prisoners due process; or (3) constituted cruel and unusual punishment.
- ⁹ U.S. Attorney General's Survey of Release Procedures, *Parole*, Vol. 4, 1939; rep. Ed., (New York: Arno Press, 1974), p. 20.
- ¹⁰ Sheldon L. Messinger, "Introduction: to Andrew von Hirsch and Kathleen J. Hanrahan, *The Question of Parole: Retention, Reform, or Abolition?* (Cambridge, MA: Ballinger, 1970), pp. xviii-xix.
- ¹¹ Attorney General's Survey, *Parole*, p. 34.
- ¹² Travis and O'Leary, *Changes in Sentencing and Parole Decision Making: 1976-78*, p. 6.
- ¹³ Some key publications of this period include: Jessica Mitford, *Kind and Usual Punishment* (New York: Alfred A. Knopf, 1973); American Friends Service Committee, *Struggle for Justice* (New York: Hill and Wang, 1971); John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); David Fogel, *We are the Living Proof...: The Justice Model for Corrections* (Cincinnati: Anderson, 1975); Marvin E. Frankel, *Criminal Sentences: Law Without Order* (New York: Hill and Wang, 1972).
- ¹⁴ New York, Praeger.
- ¹⁵ A.F.S.C., *Struggle for Justice*, pp. 42-43.
- ¹⁶ Please note that the word desert is spelled with one "s." This is from the root word "deserve." Just deserts refers to the punishment an offender deserves for his or her crime. The word dessert refers to the final course of a meal.
- ¹⁷ These states are: Maine, California, Indiana, Illinois, Minnesota, Connecticut, Colorado, North Carolina, Washington, Florida, New Mexico, and Idaho.
- ¹⁸ Colorado passed legislation in 1985 reauthorizing parole.

- ¹⁹ In 1976, state and federal prisoners numbered 262,800; in 1987, that figure reached 580,000. A survey of the nation's jails in 1978 found 158,400 inmates housed in those institutions, while one conducted in 1984 found 234,500 inmates. (Sources: Bureau of Justice Statistics *Bulletin*: May 1986; November 1984; October 1986; BJS news release, May 1988.)
- ²⁰ As of January 1986, some 40 states had all or part of their corrections system operating under court orders or consent decrees.
- ²¹ Francis T. Cullen, "Rehabilitation and Treatment Programs," in James Q. Wilson and Joan Petersilia, eds.; *Crime: Public Policies for Crime Control* (Oakland, CA: ICS Press, 2000).

Chapter 2

An Overview Of Corrections And Criminal Justice – Reshaping Parole

*By James Austin, Ph.D.
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A System In Need Of Reform

At the time of this writing, there is a growing fiscal crisis that is forcing state governments to re-examine their correctional policies for the narrow purpose of reducing costs. Although correctional expenditures make up a relatively small proportion of an entire state's budget, over the past two decades, they have been among the fastest growing areas of government spending. These costs have coincided with the largest increases in not only the prison population but also the three other forms of correctional supervision and control – probation, parole, and jails. At the end of 2001, there were 6.6 million adults under some form of correctional supervision.¹

More than at any other time in the history of American corrections, the decisions being made by parole boards either to grant release or revoke a parolee's supervision status are having and will have a dramatic impact on correctional budgets and, to a certain but lesser degree, on public safety. We know that there is a large, identifiable proportion of the prison population that present low or moderate risk of reoffending once released. These offenders can safely be released, freeing significant correctional resources. At the same time, we know that there is a smaller, high-risk proportion of the population that warrant

incarceration followed by close supervision and surveillance to protect the public. Unfortunately, many parole boards are ill-equipped to meet the challenge of distinguishing these groups as they make their parole decisions, because they lack reliable and valid risk assessment criteria to help them make such decisions. Without these tools, parole boards are highly likely to make decisions that result in high risk prisoners being released too early, low risk prisoners being incarcerated too long, and the unnecessary expenditure of public funds on corrections which could be used for other purposes that have more to do with reducing crime in selected communities.

More significantly, parole boards lack a mandate from the public and thus our elected officials to reform parole decisionmaking. The neverending and insatiable demand for higher incarceration rates and longer prison terms diverts any attempt to introduce more reasonable and cost-effective correctional policies and legislation. Only the fiscal crisis that is affecting all levels of government, coupled with a reduced crime rate, has created a window of opportunity to re-examine our sentencing and parole policies.

Most states (36 as of 1999) have retained at least some significant indeterminate sentencing.² This allows parole boards to exercise considerable discretion in determining when a prisoner will be released and under what conditions. These states can easily and safely reduce prison population growth by

simply doing a better job of determining when to release prisoners. The most current research shows that a significant number of prisoners eligible for release pose little danger to public safety, and to further extend their prison terms would have no impact on a state's crime rate.

It can also be argued that parole and probation supervision has gradually evolved into a system that is designed to catch ex-felons who are engaged in disreputable behavior for which one cannot be sentenced to prison. But by virtue of their parole status, they are imprisoned and occupy a sizeable portion of the nation's prison beds. Conversely, there is a small but identifiable ex-convict population who pose a significant risk to the public – primarily the communities and neighborhoods in which they live. However, since many of these individuals are released to heavily over-burdened parole agencies, or without any supervision at all, they are free to inflict their violent and destructive lifestyle on others.

Trends and Facts

In order to set a context for careful consideration of appropriate changes in parole decisionmaking, it is important to have a grasp of the following major trends as they impact crime rates, prison populations, criminal justice costs and recidivism rates.

1. Prison Population Growth Has Stabilized or Is Declining in Most States. After two decades of consistent growth in the nation's prison population, that rate of growth has declined since 1999.³ The lack of growth is being driven by a reduced number of new court commitments and/or modest increases in the grant rate of prisoners eligible for parole. There have been some states that have experienced substantial declines including Massachusetts, Texas, New York, New Jersey, Ohio, and Kansas. It remains to be seen, however, whether this pattern will persist. But, there are some states that are continuing to experience substantial increases largely due to increasing numbers of parole violators being revoked to prison and/or to the long-term effect of

longer sentences for certain types of prisoners.

- 2. The Number of Admissions to Prison for Technical Parole Violations Has Increased Substantially.** Prison populations would decline substantially were it not for a significant increase in the number of parolees being returned to prison for technical violations. There is a tremendous amount of variation among states in revocation rates and policies. California has, by far, the highest revocation rate with nearly 80 percent of its parolees being returned. Conversely, states like Mississippi, North Carolina, North Dakota and Massachusetts have an 80 percent success rate.⁴
- 3. There Have Been Major Increases in the Length of Imprisonment.** The massive increases in the nation's prison system over the past two decades were driven by longer sentences, mandatory sentencing, truth in sentencing (TIS), and lower parole grant rates. Collectively, these trends have resulted in a longer average length of stay (LOS). The average length of stay in prisons used to be approximately 22 months. It has now increased to nearly 30 months reflecting a 33 percent increase.⁵ When the time spent in jail awaiting trial and transfer to state prison is included in these statistics, the total length of incarceration before one is released is 34 months.
- 4. Despite Higher Incarceration Rates and Longer Prison Terms, Recidivism Rates Are Unchanged.** Despite people spending longer periods in jail and prison and lower parole grant rates, there has been no improvement in the recidivism rates. This rate has been constant over the past decade.⁶ This rate of recidivism is significantly influenced by the inclusion of California with its high recidivism rate. When California is excluded, for most states, the three-year return to prison rate for initial parole releases is in the 25-35 percent range.
- 5. Most Prisoners Do Not Return to Prison.** Approximately 60 percent of prisoners released on parole do not return to prison while under supervision. As

mentioned in the preceding section, this rate has been constant over the past decade. While there is a large pool of low-risk offenders who can be safely released from prison and who require minimal supervision and services; conversely, there is a small but highly visible pool of prisoners who are high risk and will require high levels of supervision and services.

- 6. Ex-Prisoners Have Little Impact on State Crime Rates.** Studies by the U.S. Department of Justice and others have consistently shown that less than five percent of all arrests occurring in a given year can be traced to parolees being arrested for new crimes.⁷ The vast majority of crimes for which parolees are arrested are property or drug-related crimes. Based on a recent study of Texas prison releases, about half are misdemeanor crimes. This is not to say that this population is unimportant in reducing crime rates. As a group, ex-prisoners tend to have higher crime rates than persons who have not been incarcerated. However, because they tend to reside in concentrated communities within our major cities, they can have a substantial impact on crime within those communities.
- 7. Length of Imprisonment Has No Impact on Recidivism Rates.** Changing the length of stay (either increasing it or reducing it) by a few months has no impact on recidivism rates or aggregate level crime rates within a state. The most recent study on recidivism by the U.S. Department of Justice cited earlier found no relationship between length of stay and recidivism. Similar findings have emerged from studies in Illinois, Texas and Kentucky to name a few.⁸ However, as noted above, increases in the length of stay have had a major impact on the growth in the nation's prison population. If we had the same length of stay today as we had in 1990 (22 months), the nation's prison population would be reduced by one-third or about 400,000 fewer prisoners.
- 8. Prisoner Behavior Is Related to Recidivism.** Well-administered and targeted treatment programs provided to offenders while they are in prison – and

during community supervision – can have an impact on recidivism. For example, reviews of treatment programs using sound correctional practices show reductions in recidivism in the range of 5-10 percent. Furthermore, a prisoner's conduct record and classification level have also been shown to be related to recidivism. Such "dynamic" factors, when properly validated, need to be incorporated in risk assessment instruments being used by parole boards to decide who should be released on parole.

- 9. There Is a Strong Positive Relationship Between Crime Rates and Incarceration Rates.** States that have the highest crime rates have the highest incarceration rates. Put differently, increasing the incarceration rate, by itself, will not lead to lower crime rates.⁹ What does explain differences in crime rates both among and within a state are a number of demographic, social and economic factors. For example states with low crime rates have lower unemployment claims, illegitimate births, high school drop-outs, persons on welfare and less population mobility. States with higher crime rates score higher on these same factors even though they have much higher incarceration rates.¹⁰
- 10. High Crime Rates Are Located in Concentrated Urban Communities.** Only small geographic areas within large urban areas are plagued by high crime rates. These communities have the same demographic, social, and economic attributes that explain why some states have higher or lower crime rates. Yet, most areas within a state or city are relatively safe from crime. The communities with the highest crime rates also have high concentrations of people who are either in prison, or on parole or probation. Unfortunately, they are ill-equipped to handle this population in terms of having reasonable housing, job opportunities, and other basic services.

Recommended Reforms In Parole Decisionmaking And Supervision

These trends suggest that the “back end” of the prison system can be reformed to enhance the credibility of the parole system and to help reduce the costs of incarceration without jeopardizing public safety. Indeed, a strong argument can be made that whatever benefits the “incarceration binge” has had on public safety, it has reached its limits and needs to be re-assessed. It is also clear that there is a large pool of low risk prisoners who can and should be released at their earliest parole eligibility dates as further incarceration will serve no further public safety value.

There will continue to be increased pressures to reduce the costs of states' prison system operations. Several states have already passed legislation designed to repeal mandatory sentencing provisions in an effort to reduce prison terms to more reasonable levels (Mississippi, Alabama, and Louisiana). However, an increasing number of states are re-examining their parole decisionmaking process. They are discovering that one of the most direct ways to lower prison population is for paroling authorities to develop guidelines that call for reduced lengths of stay for “low risk” prisoners and to refrain from re-incarcerating low risk parole violators.

The best example of the impact of guidelines is the Texas experience where the parole grant rate has increased from about 15 percent to 28 percent. This was accomplished by the Board adopting risk-based guidelines. In so doing, the projected prison population has been reduced by approximately 15,000 prisoners with no associated increase in crime rates. A recent study for Kentucky shows that if low risk prisoners were released at their minimum parole eligibility date and moderate risk prisoners were released at their second review date, the state's prison population would decline by about ten percent.

States also need to address the revocation process especially as it relates to technical violations. In Pennsylvania, Texas, and Kentucky, prisoners who “max out” with no parole supervision have significantly lower return to prison rates, as they cannot be returned to prison for misdemeanor crimes or technical violations. Conversely, in these same states persons placed on parole have much higher recidivism rates. These results suggest that some parole supervision that overreacts to low severity, low-risk violations can be harmful rather than helpful to parolees struggling to “get off” parole successfully.

What follows are some suggested recommendations for state parole officials to consider in reforming their current practices and policies.

1. The most effective and practical reforms that can be easily implemented under current state laws will focus on reducing the lengths of stay for low risk prisoners as well as the nature of parole supervision. Those states that have abolished discretionary release should re-examine that decision and seek to reinstate indeterminate sentencing with discretionary release – especially for long-term prisoners.
2. The first priority for any state is to design and implement “risk based” guidelines that will help parole boards determine who should be released and when. These guidelines should include so called “dynamic factors” that take into account the prisoner's behavior and accomplishments while incarcerated which have been shown to suppress future criminal behavior.
3. Parole boards must ensure that prisoners released on parole who are judged to be high risk receive close supervision and services. Conversely, low risk parolees should be paroled at their initial eligibility dates and have a reduced period of minimal supervision so that parole supervision caseloads can be reduced.
4. The nature and length of parole supervision needs to be re-examined. In many jurisdictions, the length of supervision is excessive which often

results in parolees requiring high levels of supervision and services not receiving them.

5. The parole revocation process should be limited so that parolees cannot easily be returned to prison for misdemeanor level crimes or non-criminal behavior. Prisons are intended for persons convicted of serious felony crimes.
6. Parole boards should also ensure that parole decisionmaking criteria and the revocation process are applied uniformly by the board. In other words, they must reduce arbitrary and capricious decisionmaking which in turn reduces the credibility of the board.

These reforms, if adopted, are likely to increase the rate of release for low risk prisoners, which in turn will lower prison populations and their costs. The averted costs can then be translated into investments (both public and private) that will help those residing in “at risk” communities to address those

factors that are associated with high crime rates. Unless these investments are made, we are unlikely to impact those few but highly visible communities that suffer from high crime rates, and social and economic inequities, which in turn result in high incarceration rates.¹¹

Perhaps one of the most promising areas in which parole boards can undertake efforts to achieve the progress described in this chapter is to begin focusing more explicitly upon their role in supporting transition to the community for those offenders who are released on parole. Collaborative initiatives with institutional corrections, community supervision, and community resources particularly in those high crime communities to which offenders are returning from prison offer opportunities to reduce costs and increase the social capital so badly needed by these communities. Chapter 8 of this *Handbook* will highlight this topic further and provide illustrations of how some paroling authorities are focusing more directly upon transition to the community.

QUESTIONS TO DISCUSS WITH YOUR CHAIR

1. What have been the trends in crime and prison population in this state?
2. What have you been observing in terms of the return to prison rate as a result of technical violations of parole? Is it dropping or rising? What proportion of admissions results from revocations?
3. Do we use a risk instrument in making release and revocation decisions? Was it developed based upon empirical research? Has it been validated for use in our state? How long ago was it validated? (Researchers recommend that such instruments should be re-validated periodically, perhaps as often as every few years.)

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. Has the presence or absence of prison crowding created pressure for the board around parole release or revocation?
2. If it has, how has the board traditionally responded?
3. If we have a risk assessment instrument, how do members use it?
4. If we do not have such an instrument, how do you make judgments about risk?

THINGS TO ASK FOR

1. Assessment instruments used by the board
2. Research reports or studies conducted on offender populations in our state.

ADDITIONAL RESOURCES

(Materials included in the Resource Kit are marked with an asterisk. *)

**Prisoners in 2001*

**Probation and Parole in the United States, 2001*

**Trends in State Parole, 1990-2000*

The documents listed above are statistical reports produced by the U.S. Department of Justice, Bureau of Justice Statistics. They provide a concise, quantitative overview of prison and community supervision populations, as well as some interesting information about changes observed among paroling authorities and parole populations during the last decade of the twentieth century.

**State Sentencing and Corrections Policy in an Era of Fiscal Restraint*

This report by Ryan S. King and Marc Mauer of the Sentencing Project, summarizes some of the changes in sentencing legislation in recent years that have restored some measure of discretion to paroling authorities and retreated somewhat from some types of mandatory sentencing provisions.

References and Sources

- ¹ U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States, 2001* (Washington, DC: U.S. Department of Justice, August 2002).
- ² U.S. Department of Justice, Bureau of Justice Statistics, *Truth in Sentencing in State Prisons* (Washington, DC: U.S. Department of Justice, January 1999).
- ³ U.S. Department of Justice, Bureau of Justice Statistics, *Prison and Jail Inmates at Mid-year 2001* (Washington, DC: U.S. Department of Justice, April 2002).
- ⁴ U.S. Department of Justice, Bureau of Justice Statistics, *Trends in State Parole, 1990-2000* (Washington, DC: U.S. Department of Justice, October 2001).
- ⁵ U.S. Department of Justice, Bureau of Justice Statistics, *Truth in Sentencing in State Prisons* (Washington, DC: U.S. Department of Justice, January 1999).
- ⁶ U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983* (Washington, DC: U.S. Department of Justice, April 1989) and, U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994* (Washington, DC: U.S. Department of Justice, June 2002).
- ⁷ U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983* (Washington, DC: U.S. Department of Justice, April 1989) and; *Recidivism of Prisoners Released in 1994*. and, James Austin, "Using Early Release to Relieve Prison Crowding: A Dilemma in Public Policy," *Crime and Delinquency* (1986) 32:404-502.
- ⁸ Kenneth McGinnis and James Austin, *Texas Board of Pardons and Paroles Guidelines Project*. Austin (Texas: Texas Board of Pardons and Paroles, 2001), and Kentucky Department of Corrections, *Recidivism in 1996-1998* (Frankfort, KY: Kentucky Department of Corrections, 2001).
- ⁹ James Austin and John Irwin, *It's About Time. America's Imprisonment Binge* (3rd ed.) (Palo Alto, CA: Wadsworth, 2000).
- ¹⁰ Arnold S. Linsky and Murray A. Straus, *Social Stress in the United States* (Dover, MA: Auburn House, 1986). James P. Lynch and William J. Sabol, *Prisoner Re-Entry in Perspective* (Washington, DC: The Urban Institute, 2001).
- ¹¹ Robert Sampson, "How Do Communities Undergird or Undermine Human Development? Relevant Contexts and Social Mechanisms," *Does it take a Village? Community Effects on Children, Adolescents, and Families*, eds A. Booth and A. Crouter (Mahwah, NJ: Lawrence Erlbaum Associates 2001). Robert J. Sampson and John H. Laub, *Crime in the Making: Pathways and Turning Points Through Life*, (Cambridge, MA: Harvard University Press, 1993).

Chapter 3

Parole As Part Of The Criminal Justice System And The Community

As a newly-appointed member of a paroling authority, you may find your position, at first, to be a solitary pursuit. Much of your time is spent reviewing and making decisions about individual cases. You probably don't have a staff unless you happen to be the chair, and your boss—usually the governor—is not present in your day-to-day work. Despite this situation, it is important to realize that you are part of the larger criminal justice system (See *Figure 7: SEQUENCE OF EVENTS IN THE CRIMINAL JUSTICE SYSTEM*) and that your board is most effective when it operates as a team rather than as a group of individual decision makers.

On a day-to-day basis you will depend upon the efforts of other agencies and individuals to provide information for your decisions and to carry out those decisions. Usually these are individuals from correctional institutions or field supervision staff.

On a broader basis, you need to understand where your responsibility and authority come from, and how it complements the responsibilities and work of law enforcement, prosecution, the courts, and corrections.

From a political point of view—and likely you are a gubernatorial appointee, since most paroling authority members in the United States are chosen in this way—you need to understand how elected officials in your state influence your work.

Lastly, you will find that the various perspectives and experiences of the members of a parole board do make

the board “greater than the sum of its parts.” If you can find ways to work together in terms of developing clear policy, using sound decision tools, and supporting one another in your work, you will be a stronger board.

The Governor

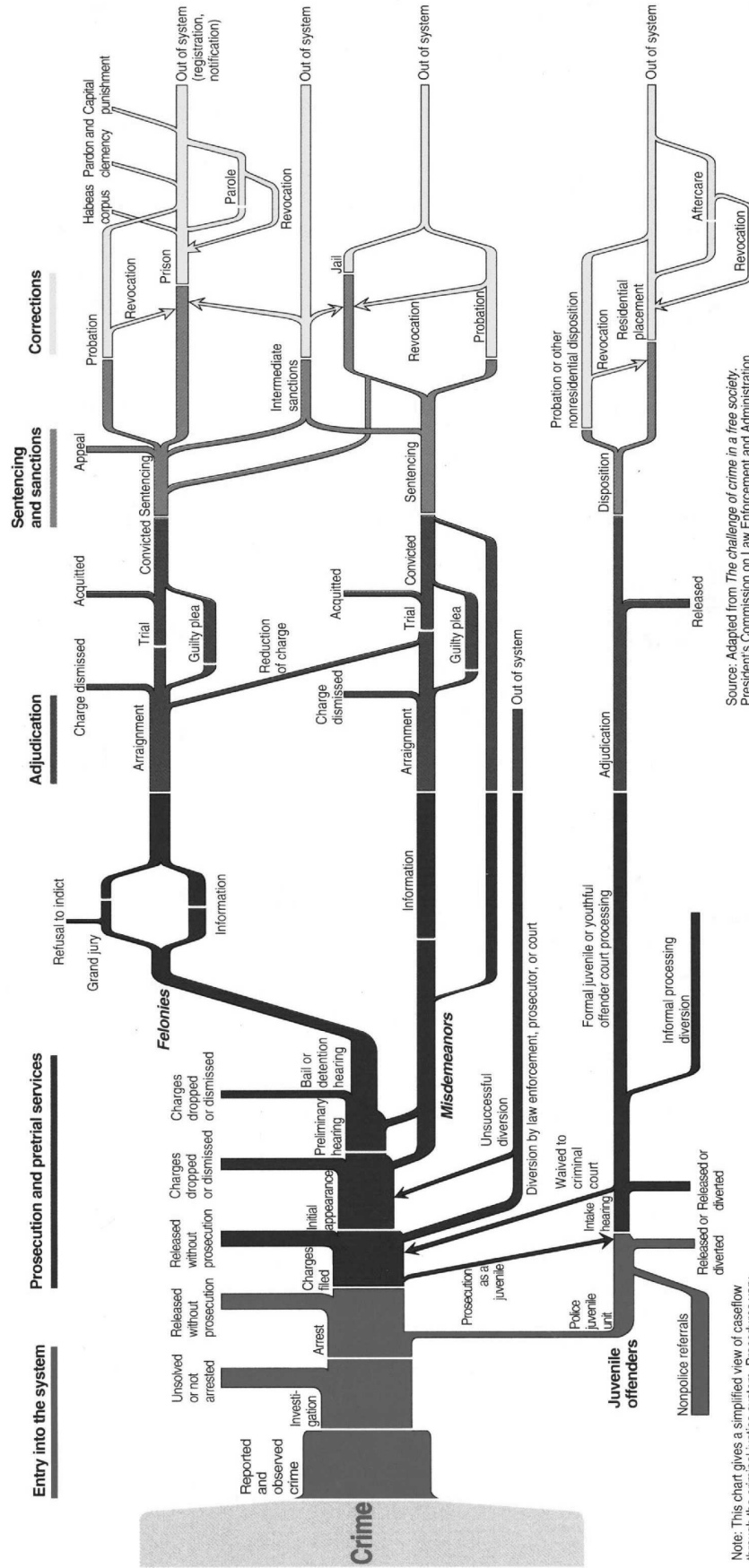
The paroling authority is an executive branch agency. In 44 states, the governor appoints all or some board members,¹ and in a few states it is the governor who actually grants parole, upon recommendation of the board. In some states the parole board also carries responsibility for making recommendations to the governor around executive clemency—pardons, commutations and reprieves. In some states, this function includes review of death penalty cases.

The Legislature

With the exception of a few jurisdictions where parole is authorized by the state constitution, parole is established by statute. As such, the parole function can be changed, eliminated, and/or reinstated by statute—as has been the case in a number of states. Another key legislative impact upon parole is the budget approval process. Ultimately, the resources available to the parole board for its decisionmaking and its supervision functions (where supervision falls within the purview of the board) will come from the legislature. The parole board, therefore, has a clear stake in keeping legislators well informed about parole, its operations, its value to the total corrections

Figure 7 Sequence of Events In The Criminal Justice System

What is the sequence of events in the criminal justice system?



Source: Adapted from *The challenge of crime in a free society*, President's Commission on Law Enforcement and Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.

Note: This chart gives a simplified view of caseload through the criminal justice system. Procedures vary among jurisdictions. The weights of the lines are not intended to show actual size of caseloads.

system, and its needs. Some boards accomplish this by establishing a liaison with the appropriate legislative committees. Other boards have used briefing sessions for new legislators at the beginning of each term; invited key legislative staff to meet with board members to be informed about paroling procedures; used staff counsel to aid legislative staff in drafting bills; and prepared regular statistical and programmatic summaries for distribution to legislators and staff. These measures may be in addition to serving with legislative leaders on joint policymaking bodies such as sentencing commissions and the like.

These efforts are important – not just to keep the legislature informed of your activities and worth – but to keep informed about legislative proposals that may be brewing that would impact parole.

The Public

When parole came under attack during the 1970s and 80s, one of the accusations leveled against it was that paroling authorities made inexplicable decisions, without standards, in secrecy. And, of course, that criticism was well-deserved. Since that time, paroling authorities have sought to address that criticism and others by opening their decisionmaking and their day-to-day operations more directly to the public. In some states, parole boards allow the public to attend hearings about individual cases. Victims are invited to come and provide input to parole boards in person. Many boards have developed parole policies and guidelines that are available to inmates and to the public. Paroling authority members routinely reach out to civic organizations and others to explain what it is that they do. Of course, these efforts must be balanced by appropriate concerns for confidential mental health information, information that might represent a risk to victims if generally released, etc. But, in general, paroling authorities today recognize the need to be more visible and accountable to the public, and to make known the valuable role that they play within the criminal justice system.

As with the legislature, a parole board may want to create a plan for its dealings with the public. Although the media is one vehicle for public education, and a critical one, the board has other options. Many parole boards publish an informational pamphlet. Others have developed a video-taped introduction to the board that can be used at public meetings and gatherings such as those included in this kit. Many civic organizations welcome speakers, and boards often take advantage of those opportunities to become more visible in a positive way. Some boards take a more active approach, holding public meetings around the state to respond to public concerns.

As a member of a parole board, you may be called upon to reach out and establish communication with organizations, neighborhoods, and the like. In preparation for such activities, it will be important to seek advice from your chair and colleagues on the board, and to familiarize yourself with any printed or video material your board may have produced, along with your policies and procedures. At the end of this chapter is a list of suggested materials for you to assemble regarding your own board.

Victims

One of the most important groups of individuals that you will come in contact with is victims of crime. While at one time, victims were not typically involved with the parole process in this country, thankfully, that has changed. Through strong victim advocacy, crime victims have begun to be recognized as key stakeholders in the criminal justice process. To its credit, parole was one of the first parts of the system to provide information, access, and services to victims. Today, it is typical that paroling authorities make provision for crime victims to receive information about any activity in their offender's case, provide opportunities for input to the board – in person and/or in writing – and take into account the needs and dangers to victims as part of their decisionmaking procedures. A number of states now appoint victims of crime or victim advocates as members of their paroling authorities.

Your board likely has policies and procedures governing how and when victims may provide input, as well as procedures for informing victims about parole board hearings and decisions. You should familiarize yourselves with those policies and procedures. You will also want to seek guidance from your chair and other colleagues on the board about how to best respond to the emotional experience of meeting with a victim or victims of serious crime.

Victim advocates emphasize the most important needs of victims in the criminal justice process – all of which paroling board members can and do address in their work. They include:

- The need for information about what is happening and what they can expect;

- The opportunity to be heard as a human being;

- The opportunity to be believed about their victimization – and not to be blamed; and

- The need for safety and security. If victims have concerns about their safety and security – or that of their families – it will be important to make provision for that in any release plan and to alert supervision staff and local law enforcement.

The Media

The media is an important influence on the criminal justice system because of its ability to influence the direction of policymaking. The stories it chooses to cover, the accuracy of the information it imparts, and its editorial positions, all affect the public's perception of crime and the criminal justice system. From the point of view of policymakers, media coverage of these issues is both an important gauge of public opinion and public concern as well as a key shaper of public opinion and public concern.

Often boards are unhappy with the way they are treated in the media, which usually seems to involve extensive coverage when a parolee commits a high profile crime. Most

experienced parole professionals advise that it is important to reach out to the media **before** there is a sensational case at hand. They advise that providing clear, useable, and accurate information about parole and its place in the system is a good way to educate the media about the positive aspects of parole. It is best to do that with editorial boards and specialized reporters who are attempting to build their understanding and knowledge of public policy issues. You do not want to wait until a sensational case comes to light to begin to build a relationship with the media. When the bad case breaks, you want to be able to call upon an already-established, credible relationship with responsible media representatives so that they will listen and report accurate information. Most boards agree on a single person – perhaps the chair or the board's counsel – as a spokesperson for the board to the media. It can be counterproductive to have more than one voice speaking for the board.

Once again, good print and video materials that provide an orientation to the board and what it does are helpful resources when reaching out to the media.

The Courts

Although the courts – within the judicial branch of government – and parole boards – as executive branch agencies – have quite different areas of responsibility and separate powers, their functions and interests are closely related. In states with indeterminate sentencing structures, the court will establish guilt or innocence and then, in the penalty phase of the court process, it will determine whether an adjudicated offender will be imprisoned or not. If imprisonment is imposed, the court will establish – within the framework of permissible sentencing – the maximum length of the sentence, and sometimes a minimum time to be served. The parole board becomes an important partner in sentencing by determining when, within the constraints of the law and the offender's particular sentence, and under what conditions, an offender may be released to serve the remainder of his or her sentence in the community.

Although the critics of parole sometimes portray these complementary functions as the parole board circumventing the will of the court and “letting the offender out early,” it is safe to say that judges are familiar with the law and that they certainly impose sentences in anticipation of the options open to the parole board. In fact, in some states, paroling authorities are reaching out to the bench to ensure the bench's familiarity with their policies regarding release. For instance, the Maryland Parole Commission has developed what it calls “bench cards” specifically for judges that outline the Commission's release guidelines for various combinations of offense type and risk level. The Maryland Parole Commission has also developed a newsletter called *The Back Bench*, published semiannually by the Commission with articles of interest and material useful to the Maryland Judiciary.

At the beginning of the twenty-first century, criminal justice policymakers are beginning to understand ever more clearly, that collaboration across the traditional boundaries of agency, branch, and level of government is essential. More and more, parole boards are reaching out to the courts to explain their role, to highlight the kinds of tools they use in making their decisions, and to emphasize the importance they assign to community safety. Indeed, parole boards are often eager to understand the intent of the sentencing court in making its decisions and may seek input from the sentencing judge at the time that parole is considered.

The Department of Corrections

The department of corrections is the agency with which the paroling authority has the most contact. In some instances, you as a parole board will be administratively located within the department of corrections, even though – from a substantive point of view – you are an independent and autonomous agency. In the day-to-day work of a parole board, the corrections agency often will maintain the files and information that the

board reviews and schedule hearings. Corrections staff may interview offenders prior to board hearings, help prepare release plans, and may counsel inmates when they are denied parole. (Some parole agencies have their own staff who perform some of these functions. This will depend upon how large the parole board is as an organization and the size of its support and ancillary staff.) Whatever that relationship, however, the board and the department of corrections are inextricably linked in the substance of their work. Building good collaborative relationships with the department of corrections is critical for any parole board. These relationships will be helpful in working through tensions that inevitably develop between prisons and releasing authorities and help the two agree on common interests and goals – particularly around successful offender transition and reentry.

Essentially, as a parole board is considering a case for possible release, its members are focusing in on how the offender has performed within the context of his or her period of incarceration. Therefore, any assessments done by the department of corrections, any programming and its impact, any work experience, any disciplinary problems, etc., are of great importance to the parole board. The policies and practices of the department will greatly influence the kinds of programming an offender has the opportunity to participate in. What does the department offer? Is that available in the institution or institutions where the inmate has been residing? What is the recommendation of the warden or counseling staff regarding this inmate's readiness for parole? On the other side of the equation, if the department also provides supervision of parolees when they are released, their practices in the community will greatly impact parole board members' decisions on individual cases. What type of supervision would this inmate receive if he were released? Are there adequate services, such as drug abuse treatment, mental health services, job readiness training, etc.? If the parole board feels that an inmate might do well in the community with a transitional time in a half-way house, will the department's criteria for half-way house residents allow him or her to go there?

Often, when parole board members review an offender for parole, they are interested in the types of programming the offender has completed, what the assessments completed by DOC staff reveal, and what his or her disciplinary record has been. It is impossible to over-emphasize the importance of good communication and collaboration between the board and the department of corrections.

Community Services and Resources

As parole boards become more consciously involved in planning for the transition of offenders from prison to the community, they are quickly reminded of the range of services and supports that are required for offenders returning home. Assistance with housing, with employment, with drug and alcohol abuse treatment, with re-connecting with families,

with mental health services, and the like, are all necessary and in seemingly short supply. It is easy to become discouraged and to conclude that you have no way of even thinking about all of those needs – and the resources to address them. This is particularly true if you are a member of a board with a small staff and no operational responsibility for supervision. However, many boards are becoming active in working with community organizations and non-profits to encourage the growth of community-based services, with both public and private funding. Work force development boards, substance abuse services, and other services, funded by federal and state agencies with mandates in these areas are likely sources of help. In some states, specific efforts are being made to create “one-stop” centers in neighborhoods where particularly large numbers of offenders are returning from prison. One example is the Family Life Center in Providence, Rhode Island, where a non-profit corporation, with a board of directors that includes the state director of corrections and other public officials, is specifically working with offenders and their families both before and after they are released on parole.

QUESTIONS TO DISCUSS WITH YOUR CHAIR

1. What are the key agencies with which we work most closely in the criminal justice system in our state? How do we interact?
2. What are some of the ways in which we connect with prison administration regarding programming for parole candidates, information on their readiness for parole, etc.?
3. How do supervision staff work to implement the conditions of supervision that we set? Do we have a way of knowing what resources might be available in the community that would help us gauge how well an offender may respond to supervision?
4. Are there other agencies – executive, judicial, legislative – where we need to develop better and closer collaborations?

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. Do other members of the board have experience working in other agencies of the criminal justice system? If so, what are they? What was your perspective on parole before you were named to the board?
2. If you did not have previous experience with the criminal justice system prior to coming onto the board, how did you begin to learn about the rest of the system? What would your advice be about how to orient oneself to the complexities of the system?

THINGS TO ASK FOR

1. A Department of Corrections organization chart.
2. Public information materials, presentation materials, handouts, that can be used in speaking with community groups.
3. Recent media articles about the board.
4. Procedures for contacting the court for more information or clarification on a particular case.

ADDITIONAL RESOURCES

(Materials included in the Resource Kit are marked with an asterisk. *)

Reflections on the Crime Decline: Proceedings from the Urban Institute Crime Decline Forum

This document summarizes discussions of a panel of experts assembled by the Urban Institute in the fall of 2000. It discusses many of the complex factors that are associated with crime rates. It is a thoughtful consideration of many of the issues confronted by paroling authority members as they carry out their decisionmaking. It can be obtained from the Urban Institute at www.urban.org.

References and Sources

- ¹ Association of Paroling Authorities International, *2001 Paroling Authorities Survey* (California, MO: Association of Paroling Authorities International, 2002), Table III.

Chapter 4

Parole Decisionmaking

Having completed the preceding chapter of this document covering the complex and unwieldy criminal justice system of which you are a part, you may be asking yourself how you will ever make decisions.

Decisionmaking Procedures

Boards have widely varied procedures when it comes to making parole decisions. In some instances, a panel comprised of board members will interview an offender, discuss the case while the offender steps out of the room for a brief time, and then announce the decision to the offender on the spot. In other instances, individual board members may review the case on the record, note their vote in writing or electronically, and pass the case on to a colleague. The votes are tallied and then, if the minimum degree of consensus is achieved, the inmate will be notified in writing at some later date. In other instances, parole staff – in some states known as hearing examiners – will interview the inmate, gather information, and forward the case to the board for action. A good way to gain an appreciation for the variety of these procedures – along with many other aspects of how parole boards do their work – is to become familiar with the annual survey conducted by the Association of Paroling Authorities International. The current copy of that survey is included in this *Resource Kit*, but updates will become available on the APAI web site at www.apaintl.org.

Dimensions Of Parole Decisionmaking – What Should You Consider?

Parole statutes are usually fairly broad when providing guidance about what is to be considered in making a parole decision – including general language about public safety and not “depreciating the severity of the offense.” In practice, parole boards typically consider factors in six areas – 1) time served, 2) risk of reoffense, 3) institutional adjustment, 4) victim input, 5) program participation and treatment, and 6) release and transition planning. In addition, boards often also consider such factors as input from the prosecutor or from the sentencing judge.

Time served. A very basic question that many parole board members consider when an offender is eligible for parole is whether they have served enough time. This is a basic issue of whether the severity of the crime – and the culpability of the offender – have been adequately punished by the amount of time the offender will have served prior to parole release.

Some boards accept the minimum sentence as imposed by the judge as the point at which the punishment interests of the sentence have been served. In other instances, the decisionmaker will compare the amount of time that this offender has or will serve to that of

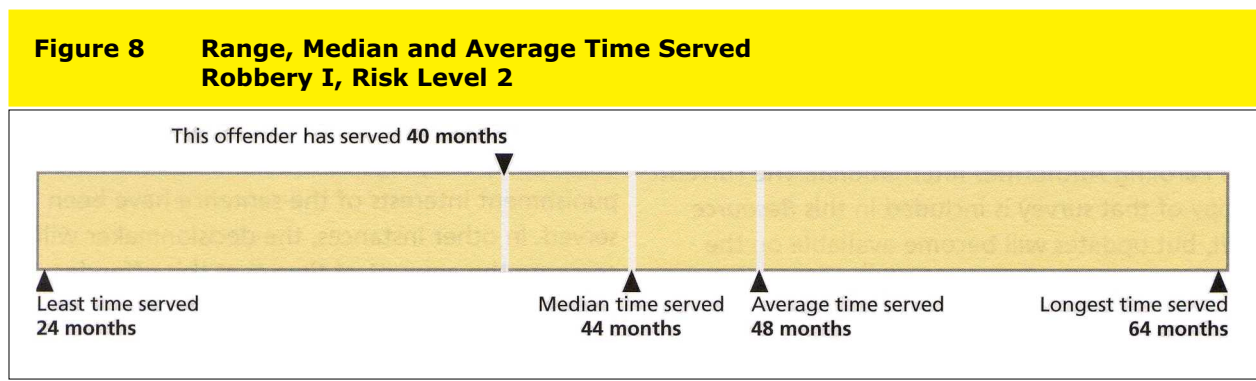
other offenders with similar crimes and levels of risk. Of course, because parole boards are permitted to consider a broad range of information, they may consider aggravating or mitigating circumstances that might not have been explicitly reflected in the charge of conviction. This kind of comparison is very difficult to make without good information about the amount of time offenders in similar circumstances typically serve. This is one dimension of decisionmaking that benefits greatly from a decision tool of some sort that would array for the decisionmaker the range of time served for a particular type of offense.

One good example of such a tool is the guideline system implemented by the Virginia Parole Board in the mid 1990s. An automated guideline case review was put into place as part of the guideline system. Parole board members could call up case information on their computer screen and, based on the guideline rating system, see the severity ranking of the offense of conviction and the risk assessment of the offender. In addition, the system would provide information as to how that candidate for parole stood in terms of time served in comparison with other offenders with similar offenses of conviction and risk levels. See *Figure 8: Range, Median and Average Time Served; Robbery 1, Risk Level 2* for an approximation of how such a "rating" tool would appear to the decisionmakers. This was important to the members of the Virginia Parole Board at that time because, as part of developing their guidelines, they had concluded that they wanted to assure a degree of equity of punishment among offenders who were similarly situated with respect to severity of crime and risk.

Because there are, inevitably, many interests to be served with a criminal sentence, some decisionmakers have found that thinking of punishment as a limiting principal is a way to integrate punishment and other concerns, such as risk. One way to utilize punishment as a *limiting* principle is to think of there being a minimum punishment, below which an offender has not adequately repaid his debt...and a ceiling, above which an offender will have served too much time for the crime itself. Within that range, other considerations will assist in determining the exact amount of time to be served.

Risk. Every parole board member is concerned about public safety. The thing that keeps parole board members awake at night is the fear that they will release someone and that person will commit a serious crime. Most parole decisionmakers will tell you that this is an inevitable consequence of the work that you have been asked to do. When the bad case happens – and it will – you want to be secure in the knowledge that you have done the best job possible in making a release decision and in putting in place a reasonable supervision strategy. One way to do that is to use the best tools available to help you assess the risk that offenders present.

The cliché in the parole field is that a good decisionmaker can "look a parole candidate in the eye" and know whether the person is a good or a bad risk. Fortunately, most parole professionals are aware that the cliché is ill-founded in fact and research. Indeed, there is a great deal of research on human decisionmaking and on risk assessment. We know that simple statistical tools consistently



outperform human decisionmakers using experience and judgment. Validated, actuarial risk assessment tools can significantly increase your ability to assess risk more accurately.¹ The tradition of good risk assessment tools goes back a long way. In fact, some of the first parole risk scores and “base expectancy tables” go back into the early part of the twentieth century.² Indeed, the technology grows from the same techniques that have been used with great success in the insurance industry for years, and in many other industries that are placing increasing focus on empirical risk analysis. When you buy an insurance policy, your rates are determined by empirically verifiable factors – age, health history, occupation, smoking status, etc. – that have been carefully researched, not on what your agent thinks when he interviews you. When a bank offers different interest rates on loans secured by different collateral, it's because it has a very clear idea of the risk it is taking. In this day and age, making parole decisions without benefit of a good, research-based risk assessment instrument clearly falls short of accepted best practice.

Most good risk assessment instruments will allow you to place an offender into a group that has a specific probability of failure or success on parole. That instrument should also define what it means by success or failure. For instance, you may know that the offender you are considering for parole is part of a group in which 60 percent of the group members are expected to be convicted of a new felony within one year. That is considerably more specific than a general idea of whether this offender is “risky” or not.

The types of factors that show up on these instruments have traditionally been static or historical factors – age at first conviction, number and seriousness of previous arrests or convictions, prior incarcerations, prior supervision failures, etc. Some of the instruments that you may have heard of that include static factors are the Salient Factor Score, developed by the U.S. Parole Commission, but which has been validated for other populations; the Wisconsin model which was designed originally as a field classification instrument; or the RRASOR which assesses risk of reoffense for sex offenders. Increasingly, the research is identifying more

“dynamic” factors – such as current drug use, attitudes, employment, current associates, etc. These factors are particularly useful as risk assessment indicators, because they can be changed – so they can help us target interventions with offenders to actually reduce the risk they present. One such instrument which is drawing wide attention and is being adapted and tested for use in release decisionmaking is the Level of Services Inventory – Revised (LSI-R) developed by Canadian researchers, and the screening version of that same instrument (LSI-SV).

One of the implications of this research is that decisionmakers must maintain a healthy skepticism about the usefulness of their own pet “factors” that they feel are predictive of risk to fail. Demeanor in a hearing, for instance, or a disciplinary record while in prison may or may not be predictive of success or failure on parole. Until your jurisdiction has acquired and validated a risk instrument – and tested the predictive power of those factors – you cannot know whether they are truly predictive.

Institutional Adjustment. Many parole board members feel that behavior in prison is a key factor in parole decisionmaking. There are two typical reasons for attaching importance to such behavior. First, some believe that institutional behavior is predictive of success or failure upon release. The fact is that the research is somewhat mixed on this point. In some research, institutional infractions have been found to be unrelated to success or failure on parole. In other instances (referenced by James Austin in an earlier chapter), some institutional behavior does appear to be associated with differential performance. The bottom line, of course, is that if you are concerned about institutional adjustment as a predictor of success or failure, the question can and should be tested empirically and incorporated in a risk assessment.

However, another reason to be concerned about institutional behavior is simply to reinforce the department of corrections needs for order in its institutions. Some boards have made it a matter of policy that no offender will be given favorable consideration for parole if he or she has had a serious infraction within

some time period prior to his or her parole consideration hearing or potential release. This serves to avoid the appearance of “rewarding” an offender with parole, if he or she has had an infraction. It also emphasizes for offenders collaboration and coherence that an offender should perceive while moving through the system.

Victim Input. You will find a subsequent chapter of this *Resource Kit* on victim issues. With respect to the release decision itself, the victim perspective is quite important. Most boards now solicit input from the victims of crime, or their family members. This serves to provide insight into the true severity and impact of the crime on the victim – something necessary to gauge appropriate punishment. In addition, if the offender represents a danger to the victim – the family of a domestic violence offender or the family of an intrafamilial sex offender are two good examples – then input from the victim would alert the board to that danger and give members the opportunity to delay parole, or if release is appropriate, to participate in release planning, setting of conditions, and transition supervision to assure the safety of that victim or potential victims.

Another reason that parole boards seek input from victims – even where it may not add appreciably to the information available to the board – is to afford that victim the dignity of being heard by the human face of the system. It validates the experience that the victim has had and recognizes that this was a crime against another human being, not simply against the state.

Program participation and treatment. Parole boards routinely review information in the institutional file about the types of programming the offender has participated in, his or her success and accomplishments in those programs, and the degree of completion.

Work and school are also important components of this picture. In essence, decisionmakers here are looking for indications that the factors that brought the offender into prison, often referred to as criminogenic needs, have been addressed. Offenders certainly can indicate a willingness to address their problems and become involved in pro-social activities and networks, things we know are associated with lower rates of reoffense. However, the best vehicle for measuring the importance of these activities – in terms of genuine reductions in risk – is a reassessment of risk later in the period of incarceration to document reductions in the level of risk for such offenders.

Release and transition plan. It's important for parole decisionmakers to know that they are not only in the business of assessing risk, but also in the business of managing risk. Of course, one traditional way that parole boards manage risk is to deny parole. However, because virtually all inmates will walk out of prison one day, under supervision if they are paroled, or possibly without supervision if they “max out,” then it is important to think about other tools for managing risk.

Today, there is more and more emphasis upon offender reentry, and parole boards are uniquely situated to be a key part of managing that process. They can exercise leverage in encouraging offenders to prepare for release – coordinating with corrections officials in terms of sequenced programming as a parole release date approaches. They can further exercise leverage over the willingness of offenders to agree to certain conditions of release and certain plans for their transition to the community. Close collaboration with supervision agencies is important – targeting higher risk offenders for closer supervision and more intensive interventions.

Information And Reviewing The Case File

One of the most daunting experiences of a new parole board member is the first encounter with that huge pile of files or “jackets” that must be reviewed in order to make a parole decision. The volume, organization, and quality of the paper files varies greatly from state to state, and there are no easy or standard rules for how to navigate a file or how to identify and assimilate the important information. Your fellow board members with longer experience on the board have probably developed their own protocols for getting through the files, and they are probably your best resource to help you develop your skills in this arena. A few suggestions of ways to prepare for making case decisions include:

Review a number of files to develop a general sense of how the files are organized and what types of documents are typically found in the file. These probably include a criminal history, sentencing information, an official version of the offense, a pre-sentence investigation, reports from program participation while incarcerated, assessments of various kinds, a victim impact statement, and recommendations from staff. If you have guidelines in your state, you will want to locate the guideline rating information to determine what the guidelines suggest about this offender's likelihood for parole.

Seek the advice of your colleagues about what documents are particularly important, where they are usually found, and where to find the critical information on those documents. In particular, you should determine if there are necessary components of a file, without which you should probably not make a decision.

Seek the advice of your colleagues, also, about particular methods they've developed for moving through the files efficiently and extracting relevant information.

Determine what information you are expected to add to the file – notes, ratings, votes, and so forth.

Basic Approaches To Parole Decisionmaking

Parole board members have for many years been facing the challenges of integrating all of these concerns into good parole decisions. There are basically three strategies from which you can select.

The Individual, Clinical Approach. Using this approach, parole board members operate as individual decisionmakers, without regard to colleagues' views or decisions, using their own best judgment, and coming to each case as a fresh and individual decision. The principles upon which decisions are made are largely implicit rather than explicit. They grow from the individual values and philosophy about what we are trying to achieve with the criminal justice system. This is the approach that characterized parole decisionmaking almost exclusively up through the 1970s.

The Individual, Evidence-Based Approach. This approach, is also based on members operating as individual decisionmakers. A member may utilize research-based tools that are available, including risk assessment instruments. Individual members are clear about the major interests they have as board members (e.g., assuring that offenders serve an amount of time that is commensurate with the severity of their crimes, and that they represent a reasonable risk before they are released). Although you are fairly explicit about your own groundrules for decisionmaking, they are not shared in any formal way with other board members. This is the approach that characterizes much of parole

decisionmaking today. It draws upon the use of decision tools such as risk assessment tools – which became more widespread in the 1980s and 1990s.

The Policy-Driven, Evidence-Based Approach. Using this approach, you and your colleagues on the board begin by coming to some consensus on the goals you are trying to achieve in making your release and revocation decisions. You should consider sentencing goals such as retribution or punishment, rehabilitation, specific and general deterrence, incapacitation, and restoration. (Definitions for these terms are included in the Glossary.) You should also consider your “normative” goals about “how” you will do your work. Typically these include such goals as evenhandedness, fundamental fairness, equity, parsimony, and proportionality. You will also need to consider what “system” goals you have such as making effective and efficient use of resources, reducing system crowding, timeliness, and enhancing the system's credibility. And you should periodically return to this discussion to review your goals as a paroling authority because they may change over time, particularly as membership of the board changes over time.

This approach requires a comprehensive discussion of the values each member brings to the work, and provides an opportunity for an approach that is greater than the sum of its parts. Working together, board members agree on the board's philosophy and goals held in common. From there you will identify the tools you will use to assist in decisionmaking, and develop a policy framework to guide decisions so that there is rough consistency and faithfulness to agreed-upon goals – such as community safety – in the weight of your decisions taken together. The weight of empirical research is discussed and integrated into practice wherever possible. Discretion in individual cases is preserved, and board members are always free to depart from shared policy, if they feel it is appropriate. This is the approach that was first implemented by the U.S. Parole Commission. This practice spread more widely among paroling authorities during the 1980s and 1990s as parole guidelines. Advances in the science of risk assessment and prediction – along with emerging research about “what works” to

reduce the likelihood of reoffense on the part of offenders over the last two decades – have enhanced the power and effectiveness of a guidelines approach. Unfortunately, because of an incorrect impression that parole guidelines take away individual discretion – and because they are difficult and challenging to implement – many boards have never adopted such an approach. Parole guidelines are used by some boards today, and are arguably the most effective way to base practice on research, achieve stated goals, and assure evenhandedness. They are also an excellent tool to orient new parole board members, especially in light of the inevitable turnover on boards deriving from the set terms of board members.

Policy-Driven, Evidence-Based Parole Decisionmaking

Parole boards have adopted two basic types of policy frameworks, also known as guideline models, to integrate the basic considerations that come into play when a parole decision is to be made. The first is the most well-known, and was first adopted by the U.S. Parole Commission in the 1970s, and is referred to as a matrix. The matrix format has the advantage of integrating severity and risk in establishing a range of time to be served within each “cell” of a matrix. *Figure 9a&b: MARYLAND PAROLE COMMISSION GUIDELINES MATRIX AND RISK ASSESSMENT* is an example of a matrix structure currently in use in Maryland. Other considerations, such as institutional behavior may affect the placement within the range of time within a specific cell of the matrix, or may be grounds for a departure from the guidelines.

The second model is referred to as a decision tree or sequential model. While appearing to be a bit more complex than the matrix, it has the advantage of being able to incorporate more factors, and to mimic the actual decision process that a decisionmaker

might follow in arriving at a choice. See *Figure 10: PENNSYLVANIA BOARD OF PROBATION AND PAROLE – PAROLE DECISION MAKING GUIDELINES*, adopted (with some minor modifications) recently by the Pennsylvania Board of Probation and Parole, for an example of such a model. A parole applicant is assessed as “likely to parole” or “unlikely to parole” based upon offense, risk/needs, institutional programming and institutional behavior. Then the guidelines also include consideration of countervailing factors such as input from the judge, prosecutor, and corrections.

Both of these models, or others that boards may devise are designed to “structure” parole decisions so that most decisions are consistent with the board's philosophy and goals. Although a board member is still free to depart from those guidelines in an individual case, in general, the board decides to establish these guidelines to “structure” that discretion. Therefore, we call decisionmaking that takes place in the context of guidelines or policy “structured decisionmaking.” This approach is critically important to assure that you as a board can achieve the goals you have set out for yourself.

Figure 9a Maryland Parole Commission Guidelines Matrix and Risk Assessment

Parole Eligibility of 50% for Violent Crimes

Pursuant to the *Correctional Services Article, § 7-301 and 7-101(m)*, applicable for an inmate who has been sentenced to the Division of Correction after being convicted of a violent crime committed on or after October 1, 1994.

Risk Assessment Instrument

I. The commission of, or attempt to commit, any of the following offenses :

<ul style="list-style-type: none"> • Abduction • Arson in the first degree • Carjacking and armed carjacking • Kidnapping • Manslaughter (except involuntary manslaughter) • Mayhem and maiming 	<ul style="list-style-type: none"> • Murder • Rape • Robbery and robbery with a deadly weapon • Sexual offense in the first and second degrees • Use of a handgun in the commission of a felony or other crimes of violence, or
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II. The commission of :

<ul style="list-style-type: none"> • Assault in the first degree • Assault with intent to murder • Assault with intent to rape • Assault with intent to rob 	<ul style="list-style-type: none"> • Assault with intent to commit a sexual offense in the first degree • Assault with intent to commit a sexual offense in the second degree • Burglary in the first, second, or third degree.
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Maryland Parole Commission
Stuart O. Simms, Secretary
Patricia K. Cushwa, Chairperson

6776 Reisterstown Rd., Suite 307
Baltimore, MD 21215
410-585-3200 fax: 410-764-4355

A. Prior convictions/adjudications (adult and/or juvenile)
None = 3 One = 2 Two or Three = 1 Four or more = 0

B. Prior commitment(s) of more than thirty days (adult and/or juvenile)
None = 2 One or Two = 1 Three or more = 0

C. Age at current offense/prior commitments
26 or older = 2* 20-25 = 1* 19 or younger = 0
* exceptions: If five or more prior commitments of more than 30 days (adult and/or juvenile), place "x" here ____ and score item = 0

D. Recent commitment-free period (three years)
No prior commitment of more than thirty days (adult and/or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense = 1 Otherwise = 0

E. Probation/parole/confinement/escape status violator this time
Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time = 1 Otherwise = 0

F. Substance abuse
No history of substance abuse = 1 Otherwise = 0

Total Score _____

Offender Category / Risk Rating	6 - 10 points	Good Risk	Category I
	3 - 5 points	Fair Risk	Category II
	0 - 2 points	Poor Risk	Category III

Figure 9b Maryland Parole Commission Guidelines Matrix and Risk Assessment

	Sentence in Months	Category I 25% - 36%	Category II 37% - 48%	Category III 49% - 60%		Sentence in Months	Category I 50% - 58%	Category II 59% - 67%	Category III 68% - 75%
<p>Other Crimes</p> <p>This table applies to inmates who are eligible for parole after serving twenty-five percent (25%) of their term of confinement. (Nonviolent crimes and violent crimes committed before October 1994)</p> <p>The parole decision range for terms of confinement of less than 4 years is from parole eligibility to mandatory supervision release or release via expiration of sentence.</p> <p>* Mandatory Supervision Release</p>	48-53	12-17	18-23	24-MSR*	<p>Violent Crimes</p> <p>This table applies to inmates who are eligible for parole after serving fifty percent (50%) of their term of confinement (Article 27, Section 643B Crimes or Burglary in the first, second, or third degree committed on or after October 1, 1994).</p> <p>The parole decision range for terms of confinement of less than 4 years is from parole eligibility to mandatory supervision release or release via expiration of sentence.</p> <p>* Mandatory Supervision Release</p>	48-53	24-28	29-32	33-MSR*
	54-59	13-20	21-26	27-MSR		54-59	27-31	32-36	37-MSR
	60-65	15-22	23-29	30-MSR		60-65	30-35	36-40	41-MSR
	66-71	16-24	25-32	33-MSR		66-71	33-38	39-44	45-MSR
	72-77	18-26	27-35	36-MSR		72-77	36-42	43-48	49-MSR
	78-83	19-28	29-37	38-MSR		78-83	39-45	46-52	53-MSR
	84-89	21-30	31-40	41-MSR		84-89	42-49	50-56	57-MSR
	90-95	22-32	33-43	44-MSR		90-95	45-52	53-60	61-MSR
	96-101	24-35	36-46	47-MSR		96-101	48-56	57-64	65-MSR
	102-107	25-37	38-49	50-MSR		102-107	51-59	60-68	69-MSR
	108-113	27-39	40-52	53-MSR		108-113	54-63	64-72	73-MSR
	114-119	28-41	42-55	56-MSR		114-119	57-66	67-76	77-MSR
	120-125	30-43	44-58	59-MSR		120-125	60-70	71-80	81-MSR
	126-131	31-45	46-60	61-MSR		126-131	63-73	74-84	85-MSR
	132-137	33-48	49-63	64-MSR		132-137	66-77	78-88	89-MSR
	138-143	34-50	51-66	67-MSR		138-143	69-80	81-92	93-MSR
	144-149	36-52	53-69	70-MSR		144-149	72-84	85-96	97-MSR
	150-155	37-54	55-72	73-MSR		150-155	75-87	88-100	101-MSR
	156-161	39-56	57-75	76-MSR		156-161	78-90	91-105	106-MSR
	162-167	40-58	59-78	79-MSR		162-167	81-94	95-109	110-MSR
168-173	42-60	61-81	82-MSR	168-173	84-97	98-113	114-MSR		
174-179	43-63	64-84	85-MSR	174-179	87-101	102-117	118-MSR		
180-185	45-65	66-86	87-MSR	180-185	90-104	105-121	122-MSR		
186-191	46-67	68-89	90-MSR	186-191	93-108	109-125	126-MSR		
192-197	48-69	70-92	93-MSR	192-197	96-111	112-129	130-MSR		
198-203	49-71	72-95	96-MSR	198-203	99-115	116-133	134-MSR		
204-209	51-73	74-98	99-MSR	204-209	102-118	119-137	138-MSR		
210-215	52-76	77-101	102-MSR	210-215	105-122	123-141	142-MSR		
216-221	54-78	79-104	105-MSR	216-221	108-125	126-145	146-MSR		
222-227	55-80	81-107	108-MSR	222-227	111-129	130-149	150-MSR		
228-233	57-82	83-109	110-MSR	228-233	114-132	133-153	154-MSR		
234-239	58-84	85-112	113-MSR	234-239	117-136	137-157	158-MSR		
240-245	60-86	87-115	116-MSR	240-245	120-139	140-161	162-MSR		

Figure 10 Pennsylvania Board of Probation and Parole – Parole Decision Making Guidelines



PENNSYLVANIA BOARD OF PROBATION AND PAROLE

PAROLE DECISION MAKING GUIDELINES

Name _____

Parole No. _____ SID No. _____ Institution No. _____

Date of Interview _____ Institution _____

Interview Type ___ Minimum ___ Review ___ Reparole Review ___ Parole Application

Violence Indicator

1. Instant Offense

Violent +3
 Non-Violent +1

(1) Murder, Voluntary Manslaughter, Aggravated Assault, Robbery, Arson, Burglary (Residential), Assault by Prisoner, Assault by Life Prisoner, Kidnapping, Extortion Accompanied by Threats of Violence, all Sex Crimes, and criminal attempt, criminal conspiracy, and/or criminal solicitation to commit any of the above-noted offenses.

Risk/Needs Assessment

2. Level of Service Inventory - Revised

Raw Score: _____

High Risk +3
 Medium Risk +2
 Low Risk +1

Sex Offender Risk Assessment (Static 99)

Raw Score: _____

High Risk +3
 Medium Risk +2
 Low Risk +1

*(All offenders considered for parole shall be assessed using the Level of Service Inventory - Revised ("LSI-R"). Offenders convicted of a sex offense shall be assessed using the LSI-R as well as the Sex Offender Risk Assessment Instrument. **The higher level of risk shall be used for all sex offenders.***

Institution Adjustment

3. Institutional Programming

Unacceptable Program Compliance +3
 Reasonable Efforts (2) +2
 Currently Involved +1
 Completion of Required Programs (3) +0

- (2) No access or on waiting list.
- (3) Includes offenders who are currently involved and will complete prior to release

Figure 10 Pennsylvania Board of Probation and Parole –
continued Parole Decision Making Guidelines

4. Institutional Behavior

Any of the following acts which occurred: while incarcerated on the instant offense; and, within one year of the parole interview date or since the date of last review.

- 1. Crimes Code Violation - *Criminal charges pending in which probable cause has been established or a conviction has occurred from an offense that was committed while serving sentence currently under consideration for parole; and/or* +5
- 2. Drug/alcohol offense - *Determined to be in possession of any controlled substance and/or positive test result of drugs or alcohol; and/or*
- 3. Assaultive behavior - *Verbal or physical aggression which is documented by the Department of Corrections or the Board of Probation and Parole; and/or*
- 4. CCC failure - *Return to institution as a result of inappropriate behavior occurring while in prerelease status; and/or*
- 5. Pattern of institutional misconducts - *Three or more class II, two class II and one class I, or two or more class I misconducts.*

No occurrence within one year of the parole interview date or since date of last review.

+0

Notate cumulative score
 from first four components _____

Likely to Parole
 Unlikely to Parole

2 to 6
 7 or greater

Video Supplement to Chapter 4

Video Segment #4: Challenges of Parole Decisionmaking is a compilation of segments from a video series produced recently on U.S. parole boards. The compilation is interesting and useful from a number of perspectives.

First, for newly-appointed parole board members, it is an interesting introduction to a wide variety of characteristics of parole boards – from the size of the prison populations that they review, to the number of hearings they hold in a day, to the number of board members and panel members typically involved in a hearing, to the style of the parole interview itself. The compilation certainly underlines the fact that parole is implemented in many different ways in the United States.

Second, it emphasizes the diversity of backgrounds that parole board members bring to their work. Law enforcement, business, civilian government service, and prosecution are some of the experiences that the boards chronicled in the video bring to their work. This diversity underlines the importance of orienting oneself to a

new profession once appointed to a paroling authority.

Third, the tape gives a sense of the diversity of offenders – their crimes, their backgrounds, their attitudes, and their demeanor in hearings – that parole board members are likely to encounter. One can see everything from total acceptance of responsibility to denial, from sheer terror on the part of victims to forgiveness, from offenders with limited prior criminal records to individuals who are clearly committed to a criminal lifestyle. Some offenders have served a relatively brief time in prison; others have spent significant portions of their adult lives behind bars.

Of course, because parole board members serve specific terms and there is a great deal of turnover among the membership of board, many of the chairs and members you will see on the tape are no longer in the positions they held at the time of the taping.

It is suggested that you view this tape as a way to stimulate your thinking about the challenge of parole decisionmaking and how decisionmaking is typically carried out in your jurisdiction. We will return to some of the issues raised by this tape during subsequent chapters of the *Handbook*. For now, please consider the tape a sampler of the issues that you will be addressing as a new parole board member.

QUESTIONS TO DISCUSS WITH YOUR CHAIR

After you've had a chance to view this video for the first time, please discuss the following questions and issues with the chair of your paroling authority:

1. Will I be expected to review an inmate's file prior to my voting on a case – or conducting a hearing? When will I receive the file – how far in advance of my decision or the hearing? What type of information is typically included in an inmate's file? How is it organized? Are there any particularly critical documents, such as summaries, that you would recommend I review first and/or that will help me navigate the information? What other documents may I expect to see: e.g., official sentencing documents, guideline ratings, official version of the offense, pre-sentence investigation, risk assessment, psychological assessment, institutional recommendations, reports of program performance, disciplinary reports? Are there any documents that are so critical that a decision should not be made in their absence?
2. How does the hearing process – if there is one in this state – compare with the hearings depicted in the tape? What can I expect in terms of numbers of hearings per month, in what locations, with what other board members present? Is there a standard format for hearings?
3. Am I likely to encounter the full range of offenders and offense backgrounds such as those depicted? If not, what is the likely profile of offenders and offenses I will be seeing?
4. During the first vignette on the state of Nevada, the chair of the parole board reveals the fact that prior to his appointment to the board, he really had no use for the parole system, because he didn't understand it. What was your own attitude toward parole prior to your appointment? Have other members of the board had reservations about parole prior to their appointments? If so, how does that affect the environment in which the board conducts its work?
5. How much weight do you give to the information gained during an interview?
6. What are the possible decisions to be made by the board? E.g., parole, deny, set a hearing at a later date, etc.

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. Do any of the vignettes depicted in the video compilation remind you of actual experiences you have had with offenders in a hearing setting? How would you handle a defiant or belligerent offender?
2. What types of questions do you typically ask during a hearing? Is that left up to the choice of the individual board members, or are there suggested areas of inquiry?
3. During the Nevada hearing, one of the panel members indicates that she feels the offender is not a good risk. How does this board attempt to evaluate risk of offenders? For instance, in the Iowa hearing, the chair alludes to a "score of 8" on a risk instrument. Does your board have anything similar that provides a standard way of assessing risk and giving it a quantitative measure?

THINGS TO ASK FOR

1. Any decision tools that your board may currently use, e.g., risk assessment forms, assessment tools addressing drug use, violence, domestic violence, alcohol abuse, etc. Any research or analysis relating to these tools and the population of offenders in your state.
2. Guidelines currently or formerly in use by our board.
3. Written – or unwritten – policies about how institutional behavior, program participation, recommendations of institutional staff, parole plan, etc., are to be used in making parole decisions.
4. How do you prepare for a hearing?
5. What kinds of programs are available to inmates in prison? How much leverage does the board exercise over getting inmates into programs while in prison?
6. What programs are available to parolees after release? How much leverage does the board exercise over getting parolees into programs in the community?
7. How will I know how well I'm doing as a parole board member?

References and Sources

- ¹ Stephen D. Gottfredson, "Prediction: An Overview of Selected Methodological Issues," *Prediction and Classification: Criminal Justice Decision Making*, Don M. Gottfredson and Michael Tonry eds. In *Crime and Justice: A Review of Research Volume 9*, Chicago: University of Chicago Press, 1987, p.37.
- ² Ibid, p. 39, and Michael Tonry, "Legal and Ethical Issues" p. 369.

Chapter 5

The Parole Interview

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Most parole boards interview offenders as part of their decisionmaking process. Some boards interview offenders face-to-face, while others have their staff conduct the interviews. In any case, that personal interaction with offenders is of great concern. New parole board members often are interested in guidance about generally accepted and effective interviewing methods.

Most experienced parole board members will advise that it is important to foster an atmosphere of appropriate, professional decorum in the interview setting as befits an official, quasi-judicial forum. Unfortunately, beyond this, there is no authoritative source of guidance regarding parole interview techniques. Boards have developed a wide variety of practice, and most policy and procedure speaks to the mechanics of a parole interview – who will be present, at what point during a sentence it will occur, whether the interview will be recorded, who will speak first, what official statement will be made at the beginning of the interview informing the offender of its purpose, etc. Policy does not typically speak to methods or protocols for interviews. Indeed, because this is not a court proceeding, the rules for examination and cross-examination of witnesses do not apply, and parole boards are typically given broad latitude in terms of the topics to be covered (see Chapter 6, following).

If one examines the literature on interviewing with offenders generally, however, there is some guidance for officials who are interested in supporting positive offender change. Whatever other interests parole board members may have regarding the parole interview, it is generally accepted that such interviews can serve at least two functions. First, interviews can be used to gather information about offenders for making release, supervision, and revocation decisions. Second, interviews can be used to motivate offenders. This chapter will examine the lessons and principles that emerge from the research on an approach known as “motivational interviewing.” Where paroling authorities are interested in playing a part in the process of positive change for offenders, motivational interviewing offers techniques that have been demonstrated as effective in supporting change.

Before we proceed to a discussion of this approach, it is important to note that the goal of motivational interviewing is to support and encourage positive change in offenders. It is not a decisionmaking tool for parole board members. The genuine assessment of readiness for parole is best left to the types of empirically-based risk assessment instruments described earlier in this handbook.

Motivational Interviewing

Motivational interviews are designed to help offenders recognize and do something about their problems. This section of the handbook highlights several motivational interviewing strategies and principles that can be used by parole board members to help offenders change.

Motivational Interviewing Principles. Whether a parole board will want to use motivational interviewing approaches will depend on the boards' mission and philosophy as well as on workload. Motivational interviewing is best suited to parole boards who view offender rehabilitation as part of their mission and believe that offenders can change. Although there is no absolute "right way" to interview offenders, recent research about how offenders and other people change suggests several promising strategies.¹ Six principles are highlighted here for those interested in implementing motivational interviewing.

- 1. Get information from several sources.** Information obtained from offender interviews has limitations. It is based on what the offenders say. Our greatest concern should be what offenders do. For this reason, information obtained from offenders should be corroborated with information from background records, caseworkers, treatment staff, and other reliable sources. It is also helpful for board members to convey to the offender that they have thoroughly reviewed available background information in the case. This communicates to the offender that his or her case is important. Additionally, by being well-informed and letting the offender know this, the board decreases the chances that an offender will attempt to distort the facts of the case during the interview.
- 2. Be firm, fair, direct, and respectful.** There is considerable research indicating that offenders who are supervised and treated by staff in a respectful, direct, firm, and fair manner have lower rates of

reoffense than those who are not.² Unfortunately, there is no research about how the interactional style of parole board members influences offender reoffense rates. However, it is arguably good practice for board members to model the way that they hope offenders will interact with others.

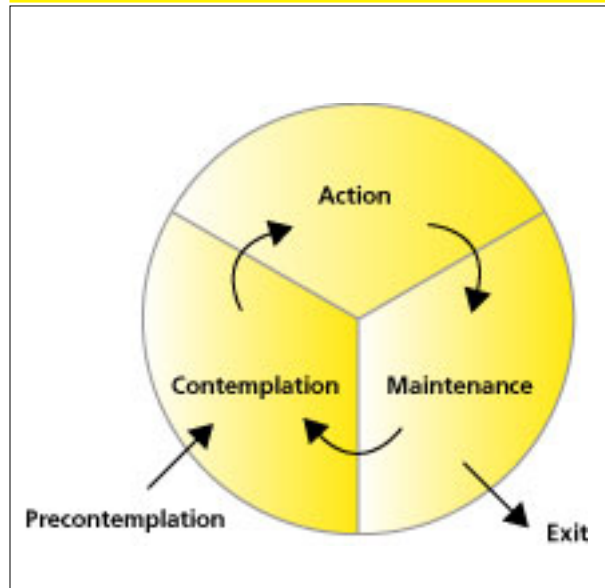
- 3. Ask open-ended questions.** Avoid focusing on questions that an offender can answer with a "yes" or "no". It is best to ask open-ended questions. Open-ended questions help draw out and encourage the offender to become more engaged in the interview. This type of questioning is also more likely to provide parole board members with more information about what an offender is thinking about and doing to solve his or her problems.
- 4. Avoid arguments.** Motivational interviewing should persuade offenders to examine their problems and do something about them, but not in an argumentative manner. When one person argues a position, the natural reaction of the other person is to argue the opposite position. This is generally counterproductive. The more an offender argues in favor of a counterproductive position, the more he or she will become committed to that position. Encourage offenders to present their own arguments for change. For example, help offenders examine the discrepancies between their current behavior and how this may be interfering with their goals.
- 5. Reinforce positive behavior.** Offenders who appear before the parole board have broken the law and are being punished. Indeed, punishment can be a meaningful response to antisocial behavior. However, positive reinforcement is also a very powerful motivator.³ Express approval about an offender's progress. Encourage involvement in and express support for quality treatment programs. Communicate your expectations that an offender can change.
- 6. Be realistic.** Lastly, it is important to be realistic about the effectiveness of offender rehabilitation efforts. Different types of offenders have different levels of success in

living pro-social lives upon release from prison.⁴ Low-risk offenders often do well with minimal or no correctional intervention. It is offenders in the broad moderate and high risk range for reoffense that, as a group, are most likely to positively respond to interventions by a parole board and other change agents. It is with these offenders that we can most often make an important difference. Of course, some offenders are difficult to change even with intensive intervention. Those most resistant to change are the relatively small percentage of offenders who are classified as extremely high risk.

Motivational Interviewing and Stages of Change. Offenders, as do other people who succeed in making changes in their lives, typically move through several distinct stages of change: precontemplation, contemplation, action, and maintenance. These stages are based on the work of psychologists Prochaska, DeClemente, and Norcross.⁵ They make common sense and are supported by considerable research. Of most importance for this discussion is the fact that different types of interview strategies can be used to help offenders move through the different stages of change.

These stages of change are best illustrated in a wheel as shown in *Figure 11: Stages of Change Cycle*. **Precontemplation** is the earliest stage. It is outside the wheel - the entry point for the process of change. In this stage, offenders either deny their offending behavior and problems, don't recognize the problems, or are unwilling to change. Offenders in the second stage, the **contemplation** stage, recognize that they have a problem and are thinking about how to solve it. They are in the process of seeking information and considering options about how to address their problem. In the **action** stage, offenders are actively making changes. Changes in an offender's behavior should be obvious to others in this stage. Lastly, offenders in the **maintenance** stage are in the process of maintaining and solidifying the changes that they have made.

Figure 11 Stages of Change Cycle



The wheel is a useful way to think about the change process because most offenders are not successful the first time around. They may make some progress, slip back a bit, have a major relapse, make more progress, and repeat this process again. This pattern of change is not unlike how other people make changes in their lives. For example, smokers typically go around the wheel an average of four times before finally quitting for good. Periodic failure is part of the process of change. The ultimate goals, however, are to help offenders change and assess whether the changes offenders make reduce their risk to a tolerable level for community placement.

Even though parole boards typically meet with offenders on an infrequent basis, a board's influence can be very powerful. Obviously, parole boards have a big carrot and stick. They have broad discretion over release and return decisions. Most offenders know this and want to please the parole board. This desire to please can be used by the board to point offenders in the right direction. Ideally, offenders so directed will take advantage of available opportunities for personal improvement.

By identifying the offender's current stage of change, a parole board can use a variety of interviewing strategies to move him or her to the next stage of change. The use of this

model is ideally suited to situations in which change agents, in this case a parole board, see an individual for infrequent and brief interviews. This is because the purpose of the interview strategies described here are not “therapy” per se, but designed to simply push the offender in the right direction. The major goals of offender interviews at each state of change, along with a summary description of the stages, are outlined in *Figure 12: Stages of Change and Parole Board Interview Goals*.

risk of physical assault by other inmates if they admit to their offense.

Determining whether an offender is in the precontemplation stage is often a simple matter. If correctional caseworker reports are available, they often make it clear that the offender is in denial or refusing to enroll in rehabilitation programs. Many parole boards also ask the offender to briefly describe the offenses that are at issue. This should be done in a manner that does not make it easy for the

Figure 12 Stages of Change and Parole Board Interview Goals

Stage	Offender's Description	Motivational Goal of Interview*
Precontemplation	I didn't do it. I do not have any problems.	Raise consciousness about problem. Clarify board's expectations of offender.
Contemplation	I know I have a problem. I'm thinking about what to do.	Explore consequences of not changing. Help offender develop an initial plan.
Action	I'm active in treatment. I'm addressing my problems.	Support treatment involvement and other positive rehabilitation efforts.
Maintenance	I've completed treatment. My changes seem solid.	Reinforce efforts to stabilize change. Recognize offender's success.

*Parole interviews clearly have other goals as well, such as gathering information, formulating the basis for a parole decision, etc.

Precontemplation Stage. Some offenders admit that they are guilty but deny that they have a current problem or they are unwilling to change their problem. Some offenders outright deny that they have committed the offense for which they were convicted. Setting aside the rare individual who was unjustly convicted, an offender can express denial for a variety of other reasons. Prison culture does not support offenders being honest. Some offenders believe it is in their best interest to convince people, including parole board members, that they are not guilty. They may be appealing their case, hope to avoid being held accountable for their offending behavior, or believe that they are at

offender to deny his or her responsibility for the offenses.

The board interviewer can begin by stating something such as, “We have taken time to review your file and read about your offense. We are very interested in your willingness to be honest about your offense, so want to give you a chance to tell us in your own words, what you did.” Asking an open-ended question in this or a similar manner communicates that the board knows about the offense, believes that the offender is guilty, and values offender honesty. All of these factors place pressure on the offender to be truthful about his offense behavior. Because some offenders will give

If the offender denies committing the offense, does not recognize evident problems, or expresses an unwillingness to change, then the person is likely in the precontemplation stage of change. The motivational goal of an interview with precontemplators is to motivate them to move to the contemplation stage of change. This can be done by clearly stating the stake the offender has in accepting responsibility for his actions and working toward change in his life.

Of course, there are a number of key factors that parole boards will consider in determining how to deal with an offender whether or not he or she is in denial. For example, a common position taken by many parole boards at this stage of change is that violent offenders and those at high risk for reoffense who do not successfully address their problems are not considered good candidates for parole. Taking this position, the board interviewers may say something like this:

We know that there may be understandable reasons why you say that you did not do it. However, we want you to be clear about the board's position. The court has already found you guilty. We are not going to retry your case. We accept the court's verdict that you are guilty. If you did not commit the offense, then this is a matter for you to take up with your lawyer, not us. As far as we are concerned, we want you to know that we consider individuals who we believe recognize and have successfully dealt with their problems as good candidates for parole. We also know that such individuals have a much greater chance at succeeding on parole. It is really up to you at this point to decide what you want to do about it. You can talk to your caseworker about your options. We wish you good luck in sorting out what you want to do.

With relatively low-risk and non-violent offenders, parole board members may encourage them to admit and address their problem, but not consider them non-parolable if they fail to do so. The research on "what works" in correctional treatment and the objective assessment instruments discussed in the previous chapters provide useful information for determining how high a bar to

set in setting expectations concerning treatment readiness and completion for particular types of offenders.

In general, interviews with precontemplators can be relatively brief. The goal is simply to provide information to raise the offender's awareness of the problem and the board's position. This should be done in a direct, matter-of-fact, and respectful manner. Giving advice at this stage is usually counterproductive as it often elicits or magnifies offender resistance and resentment. Rather, this is a time to "plant a seed" and leave the door open for change.

Contemplation Stage. In the contemplation stage, the offender recognizes the problem and is considering change. It is a time that is marked by ambivalence. The offender may vacillate in his or her view about the seriousness of the problem. Similarly, the offender may understand the potential positive reasons for tackling the problem, but is conflicted about giving up benefits associated with the behavior. For example, a substance abuser may realize that abstinence will help keep him out of jail but focuses primarily on how drugs make him feel good.

The goal of interviews with offenders in the contemplation stage is to tip the balance in the direction of change. Questioning should help the offender weigh the risks of the status quo and the potential benefits of change. Perhaps the most important strategy with contemplators is to emphasize the positive. Because of their tendency to focus on their problems and the difficulties of change, contemplators often become overwhelmed at the thought of making movement. For this reason, this is a particularly important time for parole board members to communicate their belief that change is possible. Board members can encourage offenders to take one step at a time. To help tip the balance, parole board members can encourage offenders to meet with prison staff to get accurate information about available programs. They can ask offenders to undergo evaluations so that the offender can get an accurate assessment of his or her problem and recommended treatment options. Parole board members can draw on their experience with offenders who have been successful in various programs and boost

the offender's confidence that he or she can benefit from these programs as well. In short, parole board members can help offenders develop a concrete plan for change and put their seal of approval on it.

Action Stage. Offenders in the action stage are actively making changes in their lives. Interviewing efforts at this stage should focus on encouraging offenders to continue their good efforts. Parole board members can encourage an offender by positively reinforcing the progress they may have observed in the individual over the course of their meetings. Additionally, they may highlight an offender's progress that is noted in caseworker and treatment reports. Lastly, if an offender is making the type of progress that may eventually lead to the granting of parole, the board can provide further encouragement by letting the individual know that he or she is on the right path.

Maintenance Stage. Offenders who have reached this stage have made significant changes in their attitude and behavior. These changes should be obvious to others. This is a time for stabilizing new behaviors and preventing any type of relapse.

The offender may have made changes in part through successfully completing a formal rehabilitation program or, if programs were not available, through other methods. Ideally, the board will have access to official reports that detail the offender's progress. Regardless, some boards want to conduct their own assessment of the offender's progress. Several sample questions for this task, based on the work of Beckett and his associates⁶ and Cumming and Buell,⁷ are listed below. As an introduction to asking these questions, the board should tell the offender something like, "We are interested in finding out how aware you are of the factors that put you at risk to reoffend and what ways you have worked out for controlling them."

1. What feelings or moods (also ask about thoughts, situations, and behaviors) put you at risk for offending again?
2. How will you deal with such feelings and moods (also ask about thoughts, situations, and behaviors) in the future? Please give us some examples.
3. What impact do you think your offense has had on the victim? What have you done or what are you willing to do to make restitution to your victim?
4. What excuses or justifications did you use to give yourself permission to offend? Please give us some examples. How would you deal with such thoughts in the future?
5. What is your plan for work and housing when you return to the community?
6. Who will give you support when you return to the community? Do they know fully about your offending behavior?

Answers to these questions can be evaluated by determining how well the offender can identify relevant risk factors and describe a plan for addressing them in a well thought-out, realistic, and workable manner. Most offenders who have made significant positive changes in their lives will be able to do this. Offenders who have begun to stabilize changes can be congratulated on their successes.

Lastly, the path of change is not an unwavering and straightforward one. Even very motivated offenders slip up at some point, returning to a previous stage before renewing their efforts. Encouraging an offender to analyze and learn from his or her mistakes is an important intervention when backsliding occurs.

Video Supplement to Chapter 5

Video Segment #4: Challenges of Parole Decisionmaking, which was recommended for viewing with Chapter 4, provides a number of vignettes of different paroling authorities conducting interviews with offenders. You may want to view this segment again with your colleagues after reading this chapter and discuss the various approaches depicted in the tape. Do these vignettes provide examples of motivational interviewing? Why or why not?

QUESTIONS TO DISCUSS WITH YOUR CHAIR

1. How does the board gather information about specific offenders? Is an interview involved? If so, what is the usual setting, format, and protocol for such an interview? Who will be present? How long do such interviews typically take?
2. If the board routinely interviews offenders, is there a prevailing philosophy about the tone or approach to adopt in an interview setting? If so, what is it? Are there disagreements among board members about this?
3. Are offenders allowed to be accompanied to an interview – by whom, under what circumstances?
4. What are procedures for providing feedback to the offenders – about your decision, about advice or guidance?

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. When each of you first came on to the board, how did you prepare yourselves to conduct interviews with offenders?
2. Now that you are experienced in doing interviews with inmates, what do you try to accomplish in the interview?
3. What do you find most difficult, interesting, frustrating, or important about the interview?
4. How do you prepare for an interview? What questions do you ask? Is the order important? Is it possible to verify an offender's response through other sources?

THINGS TO ASK FOR

1. Any written guidance or protocol for an interview.
2. The opportunity to observe fellow board members conduct parole interviews before you are expected to do so.
3. If parole interviews are conducted in correctional facilities, a map of where you are expected to be; any rules/regulations of specific institutions about access procedures, dress code, what you can and cannot bring into the facility with you.

References and Sources

- ¹ R.J. McGrath, "Assessment of Sexual Aggressors: Practical Clinical Interviewing Strategies," *Journal of Interpersonal Violence* (1990): 5, 507-519, and W.R. Miller and S.E. Rollnick, *Motivational Interviewing: Preparing People for Change*, Second Edition, (New York: Guilford Press, 2002).
- ² D.A. Andrews and James Bonta, *The Psychology of Criminal Conduct*, Second Edition (Cincinnati, OH: Anderson, 1998).
- ³ Ibid.
- ⁴ Ibid.
- ⁵ J.O. Prochaska, C.C. DiClemente, and J.C. Norcross, J. C., "In Search of How People Change: Applications to Addictive Behaviors, *American Psychologist*, (1992) 49, 1102-1114.
- ⁶ R.C. Beckett, D.Fisher, R.E. Mann, and D.Thornton, *Relapse prevention questionnaire and interview* (Unpublished manuscript,1996).
- ⁷ Georgia Cumming and Maureen Buell, *Supervision of the Sex Offender* (Brandon, VT: Safer Society, 1997).

Chapter 6

Legal and Ethical Issues

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Introduction

It is natural and understandable for a new parole board member to be somewhat apprehensive about the assumption of your parole duties. Legal and ethical issues, and the possibility that someone might sue you because of a parole decision that you made, might be areas of particular concern. Given the nature of your responsibilities, and the ease with which legal challenges can be brought, it is the rare parole board member who does not become a defendant in numerous legal actions. Having an appreciation of some of the basic legal and ethical rules that exist in your work is an important part of your preparation to serve on a parole board. The more clearly you understand the legal framework and procedural rules that you operate under, the less likely that you will unintentionally create an unpleasant result for yourself. The purpose of this chapter is to help you to understand some of the more important legal and ethical concepts associated with the parole area, and to encourage you to learn more about parole laws and procedures that exist within your jurisdiction.

Understanding “The Law” That Applies To Your Parole Board Duties

When we talk about “the law,” it sounds as if it is a single thing, coming from one source. In fact, our laws are derived from numerous sources. The United States Constitution is the supreme law of our country. There are several significant portions of the Constitution that apply to individuals who are carrying out some of the powers of a state (such as the 14th Amendment to the Constitution, which requires that no state shall deprive a person of life, liberty or property without first providing “due process” of the law to that person). Each state also has a constitution, which is the highest source of state law within that jurisdiction. There are statutes that have been created by our federal congress, and statutes passed by the legislatures of your state, that can have a bearing on your obligations or responsibilities. We also have administrative law, which is composed of rules or regulations created by executive branch entities or agencies (such as parole boards). “Common law” refers to legal rules or rights that are not defined by a statute, but have been so embraced by the

people that they are accepted as legal principles. Finally, we have “case law,” which refers to the decisions of appellate courts concerning some particular legal issue that may be subsequently followed by other courts.

The law is ever-changing and evolving, and new statutes or court rulings can significantly affect the duties or responsibilities of a parole board member. Because you will be expected to know and follow the laws that apply to your parole board duties, it is important that you identify the person in your jurisdiction who will assist you with knowing and carrying out your legal responsibilities. This person may be an attorney employed on a full-time basis by your parole board, or a private attorney retained specially by your parole board, or someone employed by another department of your government such as your Attorney General's Office. This attorney should be able to help you to understand the specific legal requirements that exist concerning the discharge of your particular responsibilities. As a wise person once observed, “ignorance of the law is no excuse,” and failing to carry out your duties in a manner that is consistent with your legal obligations can lead to a very unfortunate result.

In your capacity as a parole board member you may be sent or served with a summons, complaint, subpoena or other type of legal document. Any correspondence or document that you receive that appears to initiate a lawsuit, or contain other legal materials should be given immediately to the attorney who represents you. Specific time frames exist for responding to lawsuits and other types of legal matters, and that time starts to run once you receive the legal documents. Sometimes, the material may be from an inmate, and might not look like a legal document. If you have any question about whether or not something is a legal document, it is better to be conservative and assume that it is a legal document and give it to your attorney immediately. The amount of time allowed to respond to new lawsuits or other types of legal issues is quite brief, and by delaying the transmission of legal materials to your attorney you may give that attorney less time to respond. In the worst case scenario, you may lose a lawsuit by being in default if you do not respond to the lawsuit

within the proper amount of time. Therefore, giving prompt attention to all legal material is very important.

Appreciating The Range Of Your Potential Liabilities

Parole boards are given specific authorities, under the laws of their state, to discharge some of the powers of that state. These powers include the ability to grant a criminal offender the opportunity to be released from incarceration, and to determine whether an individual should be allowed to remain in the community once released. These are considerable powers that significantly affect many persons. Individuals who have been given the power to act on behalf of their state must also understand the limitations that exist concerning the use of their power and appreciate the ways that they may be held accountable for the exercise of their authority. Our state and federal constitutions, our statutes, and other sources of the law help to establish a framework within which a parole board member should operate. Individuals who are displeased with the actions of a parole board member can challenge actions or decisions in a variety of ways, most notably by bringing a lawsuit.

A parole board member makes decisions that are extremely important to a wide-ranging group of individuals. In addition to the individual inmate, these other individuals may include the inmate's family, the victim and the victim's family, law enforcement officials, prosecutors, judges, or members of the community who may have a distinct interest in the outcome of your decision. Every decision that you make will probably please some individuals and displease others, and in our litigious society this can lead to the initiation of lawsuits to try and alter the outcome of the matter.

Individuals who sue you because of your actions or decisions as a parole board member

initiate what is called a "civil" lawsuit. A civil lawsuit is very different from a criminal case. A criminal case involves an offense against the public or society in general, the offense is generally prosecuted by a governmental entity, and the result of the prosecution could be imprisonment, placement on probation, or the payment of a fine. In a civil lawsuit there is one or more persons that initiate the action (a "plaintiff") and the lawsuit attempts to describe how the plaintiff has been harmed, treated unfairly, wronged or is otherwise entitled to some relief by the court. The person who is alleged to have caused this past, present or future harm, and the person who will be expected to pay for that harm or take some other action to cure the problem that is identified by the plaintiff is called the defendant. When you are sued in a civil action, you will be the defendant in that case.

In civil suits, the plaintiff may seek several different types of relief. The plaintiff may seek damages (*i.e.*, money) for harm that has allegedly been done, seek an injunction to require that something be done or not be done, seek some type of "equitable" relief (for instance, to place the plaintiff back under parole supervision) or seek to compel the board to take some action (like ordering that the board consider a person for parole). Money to pay attorney fees or for the costs of bringing the action might be sought with any of the civil actions mentioned above.

A civil suit can be brought in either state or federal court, depending upon the nature of the allegations. If a person asserts that you have acted contrary to some federal law or violated a federal right, then the case can be brought in a Federal District Court. There are 94 Federal District Courts in the United States. If the case does not involve a "federal question" or issue concerning federal laws, then it can be brought in your state courts.

The plaintiff will name some number of individuals as defendants and will assert that either these individuals caused his harm, will cause some future harm if their actions continue, or are otherwise acting in ways that are contrary to their duties under the law. The plaintiff has the burden of proving his case by a "preponderance of the evidence," which would mean that the greater weight of credible

evidence is on his side of the case. The burden of proof in a civil lawsuit is lower than the burden of proof which must be met in a criminal case, which is proof "beyond a reasonable doubt."

A member of a parole board might be sued for what was done (*e.g.*, denying parole to an inmate who believes he should have been paroled), or for what was not done (*e.g.*, failing to consider a person for parole who believes he was eligible for consideration). Being sued does not mean that you have acted improperly; it means someone believes that you acted improperly. The court (and the jury, if a jury trial is appropriate and is requested) will ultimately determine if you have violated any laws or done anything wrong in discharging your duties. While inmates are not the only individuals who can bring a lawsuit against you, they will initiate most of the cases in which you will be a defendant. It is easy for an inmate to bring a lawsuit in state or federal court. This usually involves filling out a form, or writing something about the nature of the matter and sending it to the appropriate court.

Other individuals (a victim, some member of the community, etc.) might also bring a legal action against you concerning one of your decisions if that person feels that they have been harmed by your action or that you have acted contrary to your duty or the law. You might also be sued by other individuals depending upon the nature of your board's responsibilities. If you employ some staff, these individuals could bring an action against you for a wide range of employment issues (employment discrimination, sexual harassment, unlawful termination, etc.). You might also be sued by other persons because of contract disputes, or a variety of other reasons. But in order to keep this chapter to a manageable size, and to focus on the issues that are most likely to occur, the following information will primarily address actions that challenge your parole decisions, processes and procedures.

Insurance Coverage And Immunities

In carrying out your official duties, a parole board member is discharging a part of the official business of his or her state. When someone brings a lawsuit or otherwise challenges some action that you have taken as a parole board member, then this is called a lawsuit in your "official" capacity. When someone sues you for reasons that are unrelated to your official position, then this is called a lawsuit in your "individual" capacity. The importance of this distinction is that, in your official capacity, you will probably have some insurance policies that would cover judgments against you and damages that may be assessed as a part of a lawsuit. In your "official" capacity you may have many additional defenses to certain lawsuits.

Lawsuits that involve an alleged harm done to a person, and for which money damages are sought, are usually brought forward as "tort" lawsuits. In a tort suit, a person asks for money to compensate them for damages they have suffered as a result of another person's failure to carry out a duty or follow a law. To protect you against having to pay out monies as a result of such a suit, your jurisdiction probably has named you as a covered person under a tort liability policy. Such a liability policy would provide payment for you, up to a certain limit, in the event that a person prevailed against you in a lawsuit related to your official actions. These policies may not cover actions that you undertook outside of the scope of your responsibilities, and may contain several other limitations or exclusions.

Some special defenses available to a person acting in an official state capacity include absolute immunity, qualified immunity and sovereign immunity. Absolute immunity means that you cannot be held liable in tort for a decision that you made. When a judge makes a decision in a case, the judge has "judicial immunity" which is a type of absolute immunity. This immunity is necessary so that

judges can make what they believe to be the best possible decision without worrying about someone suing them if they are, in some sense, wrong in their judgment. For similar reasons, in some jurisdictions parole board members have absolute immunity regarding their parole release decisions. (See, *e.g.*, *Martinez v. California*, 444 U.S. 277, 1980.)

Qualified immunity means that you will not be held liable for some act undertaken in your official capacity unless you knew, or reasonably should have known, that your actions would violate someone's constitutional or federal rights. (See, *e.g.*, *Harlow v. Fitzgerald*, 457 U.S. 800, 1982.) This is an important defense for a parole board member, as it would shield you from liability. However, in order to make certain that you prevail with such a defense, it is important for you to conduct yourself in a manner that is consistent with the Constitution and applicable federal laws. Sovereign immunity means that a sovereign entity (*i.e.*, the state) cannot be sued unless it has consented to be sued. When you are acting in your official capacity you are carrying out the duties of the sovereign state, and are therefore acting for the state. Thus, the state's sovereign immunity would extend to you. Some states have limited waivers of sovereign immunity (which means that they have consented to be sued about certain matters, and/ or only up to a certain dollar limit) while other states have done away with their sovereign immunities.

Understanding these immunities will help you to better appreciate the defenses that can be available to you in a lawsuit. You may want to discuss the existence of these immunities in your jurisdiction, and the availability of insurance coverage, with the attorney who represents you as a parole board member.

Decisions Versus Procedures: Know The Operating Rules Of Your Parole Board

Parole boards and their members derive their basic authority from the parole statutes that have been enacted in their jurisdictions. Most of these statutes afford parole board members great latitude in determining who should or should not be paroled. The United States Supreme Court has made it quite clear that the Constitution does not require that states have a parole system at all (see, e.g., Board of Pardons v. Allen, 482 U.S. 369, 1987). The vast majority of state statutes that create and empower parole boards to act are usually quite specific in indicating that the inmate has no “right” to be paroled, and that the decision to parole or not parole the inmate is left to the discretion of the parole board members.

Even so, a state might create a “right” to parole if, in its own state laws, it indicates that parole must be granted if certain factors are present, or unless certain factors are found to exist (Greenholtz v. Nebraska, 442 U.S. 1, 1979; Board of Pardons v. Allen, *supra*). If your state has indicated that an inmate has a “right” to be paroled if certain circumstances are present, then the Supreme Court has told us that the inmate would have a particular “liberty” interest at stake. As mentioned above, the Fourteenth Amendment to the U.S. Constitution requires that no person may be deprived of their “liberty” without first applying the due process of the law. In parole cases, due process would include providing adequate notice of the hearing, an opportunity for the inmate to be heard and present information, and many other considerations. Specifically it would mean that, if your jurisdiction indicates that parole *shall* be granted unless certain factors are present, you *must* determine

whether or not those factors are present. You should inquire about the nature of the statutes that exist in your jurisdiction to determine whether an inmate has a “right” to be paroled should certain circumstances be present.

Courts appreciate the fact that parole board members do not have a “crystal ball,” and that some decisions, upon reflection, are bad ones. Generally, parole board members have not been found liable for the actions of individuals that they have paroled (see, e.g., Martinez v. California, *supra*; Fox v. Custis, 712 F.2d 84, C.A.4, Va., 1983). An exception to this rule may exist where the parole board member has special knowledge of a person's intent to harm another known and specific person, and takes no steps to inform that known person of the potential harm (see, e.g., Estate of Gilmore v. Buckley, 787 F.2d 714 (C.A. 1, Mass., 1986).

A matter that is often litigated is the denial of parole. An inmate may claim that the board's decision had no basis, or that one of the factors relied upon by the board was untrue. In the case of McGowan v. New Jersey Parole Board (790 A.2d 974, N.J., 2002), the state court there noted that the board's decision to deny parole should not be disturbed unless it is arbitrary, and that a decision is not arbitrary where there is a rational basis for the decision. This approach has been reflected in the decisions of several other state courts (see, e.g., Epperson v. Missouri Board of Probation and Parole, 2002 WL 214998, Mo., 2002; Ramahlo v. Travis, 737 N.Y.S.2d 160, N.Y., 2002). In Ramahlo, *supra*, the court found that the parole board was not required to expressly discuss each statutory parole factor, or to give each factor the same weight. The thrust of these rulings appears to be that, as long as the parole board can demonstrate the connection between the basis of its decision and the factors present in the individual inmate's case, then the decision will not be viewed as arbitrary. Some courts have ruled that there must be some indicia of reliability concerning the factors considered by the board, and that such reliability may be found where the inmate had the opportunity to appear and present information to the board. Cuevas v. Ayers, 28 Fed. Appx. 643 (C.A.9, Cal., 2001).

While parole board members may be granted broad discretion to make a parole decision, the

process that you follow and the manner in which you conduct yourself can be the subject of considerable scrutiny. In order to make certain that parole board members operate in a way that is consistent with the law in their jurisdiction, many parole boards have adopted rules, procedures or regulations that outline what a parole board member should or may do. These rules help to ensure that different parole board members operate in substantially the same ways, and that their general actions are consistent with legal requirements. It is absolutely critical that you know and understand the rules that apply to your parole board process and that you follow these procedural rules. Whether your parole procedures conform to applicable laws, or whether you follow these procedures are matters that courts are quite capable of exploring and addressing (see, e.g., Armstrong v. Davis, 275 F.3d 849, 9 C.A., Cal., 2001). When you follow your internal rules, courts tend to be very supportive of your need for particular procedures (see, e.g., Franciosi v. Michigan Parole Board, 586 N.W.2d 542, Mich., 1998). When you don't follow your own internal rules or procedures, you are inviting litigation that you may have difficulty winning. (See, e.g., Beveridge v. Johnson, 976 P.2d 1238, Ore., 1998). Knowing and following your own procedures is probably the greatest single thing that a parole board member can do to limit legal exposure and liability.

The *Ex Post Facto* Clause

Article 1, Sections 9 and 10 of the United States Constitution indicates that it would be improper to make something a crime that was not a crime at the time it was committed, or to increase the punishment for a crime after it has been committed. Caulder v. Bull 3 U.S. Dall. 386, 1798. As a general rule, the parole laws that are in place at the time that a crime is committed will be applied to that person. Thus, if at the time a crime is committed the opportunity exists for a person to be paroled at some time during the service of the criminal sentence, then this opportunity for parole will

continue in the future even if parole was abolished by some future law. Changes in the law or procedures that are focused on future events are called "prospective," and changes in the law or procedures that affect events that occurred in the past are called "retroactive." The *ex post facto* clause deals with "retroactive" changes in the law. This part of the Constitution can become an issue when a jurisdiction makes changes to its parole laws or parole consideration procedures, and makes these changes apply retroactively.

Not all retroactive changes to parole rules will violate the *ex post facto* clause. The issue becomes whether the change has increased the punishment for the crime that was previously committed. This issue has most often come up when a parole statute or parole procedure has been created that allows the board to hear a parole case later in time than under a previous statute or procedure. In California Department of Corrections v. Morales, 514 U.S. 499 (1995), the U.S. Supreme Court indicated that changing the number of years between parole reconsiderations for a person who had committed more than one homicide did not "increase the punishment" for his offenses after the fact. In Morales, a state statute was passed that allowed the California Board of Prison Terms to defer parole reconsideration of persons who had committed more than one homicide from every year to up to three years. The Board would have to review each case individually, determine that release on parole sooner than three years would be unlikely, give reasons for its decision, and consider subsequent information and allow for the case to be heard sooner if there was a change of circumstances. The Court found that the statute was not an *ex post facto* application of the law. Several other jurisdictions have made changes to their parole laws or parole consideration practices which allow for longer periods of time between parole consideration hearings. Where these statutes have followed the Morales prescription, they have been upheld. [See, e.g., Garner v. Jones, 529 U.S. 244 (2000); Hill v. Jackson, 64 F.3d 163 (C.A.4, Va.,1995); Johnson v. Commissioner of Corrections, 786 A.2d 1091 (Conn., 2002)].

Whenever you are changing a statute or procedure that affects the opportunity for parole consideration, it is important to determine whether the change will be prospective or retroactive, and if it is retroactive, to identify whether or not applying it in that manner may be contrary to the *ex post facto* clause.

Parole Conditions

Generally speaking, inmates who receive favorable consideration by a parole board are only granted a parole if they are willing to accept, and agree to abide by, a variety of conditions. One area that has been litigated with some frequency involves the conditions that have been created by parole boards. Courts usually allow parole boards considerable flexibility regarding the imposition of conditions. (See, *e.g.*, Arciniega v. Freeman, 404 U.S. 4, 1971). The questions regarding the imposition of particular conditions usually focus on whether the condition has any connection, or “nexus,” to the particular person involved, whether the condition is overly broad or too vague to be understood by the parolee, or whether it is impossible for the parolee to meet the requirement of the condition. You should also determine if there is a statute or policy in your jurisdiction that specifically addresses, creates limits or outlines expectations concerning the imposition of parole conditions. Many jurisdictions have “standard” conditions that are applied in all cases in which an inmate is paroled, and “special” conditions that are imposed based on the particular circumstances of the individual offender.

Courts have noted that an inmate or parolee may not possess some rights (such as a right to “travel”) that a private citizen might ordinarily enjoy. [See, *e.g.*, Bagley v. Harvey, 718 F.2d 921 (C.A.9, Wash., 1983)]. However, courts can find that a condition infringes upon a parolee's fundamental rights. An example of a condition that was found to violate the Constitution was one that required the parolee to attend certain religious activities or establish a religious affiliation (State v. Evans, 796 P.2d 178, Kan., 1990).

A parole condition may be found to be defective if it does not provide adequate guidance to the offender so that he would know the conduct that was impermissible. An example of this can be found in Knight v. Pennsylvania Board of Probation and Parole, 510 A.2d 402, Pa., 1986, where the inmate was instructed not to go to “malls in the evening.” The court found that it might be difficult for a person to know when “evening” actually occurred. A court may find a condition to be “overly broad” if a more limited condition would adequately accomplish the board's purpose. An example of this might be found in the probation case of Montana v. Muhammed, 43 P.2d 318, Mont., 2002, where the offender was “banned” from living or working in the county where he had lived for many years. The court found that the board had a proper interest in prohibiting contact between the parolee and the victim of his crime, but that a narrower condition (such as avoiding all contact with the victim) would have served the board's purpose.

In Arciniega v. Freeman, *supra*, the Supreme Court dealt with a parole condition that required the parolee to refrain from associating with ex-convicts. The Court found that the board had wide latitude in creating conditions, and that there were valid reasons to support the creation of this condition. Even so, the Court found that the condition should not be read to forbid incidental contact with all ex-convicts when the parolee was in a place that he was otherwise expected to be (*e.g.*, at work). This indicates that courts will not only require that the condition be stated with sufficient clarity, but that the interpretation and enforcement of the condition should also be reasonable. The case of Hudak v. Pennsylvania Board of Probation and Parole, 757 A.2d.439, Pa., 2000, involved a situation where the parolee was ordered to be placed at a community corrections center for six months. He was discharged from the center early for medical reasons, and because he was discharged before the expiration of six months, the board revoked his parole. The court found that the revocation was not appropriate because the parolee had made a good faith effort to comply with the condition. The conclusion that we might draw from the Arciniega and Hudak cases is that, in order

to find a violation of a condition, the parolee must have willfully or intentionally violated that condition.

In imposing any condition, a parole board member may need to consider the purpose of the condition, its relationship to the purpose of parole, and its connection to the individual offender. (See, e.g., State v. Schwartz, 615 N.W. 2d 85, Minn.; Monroe v. Travis, 721 N.Y.S.2d 377, N.Y. 2001.) Considering factors or issues in the inmate's past, or that arise from criminal charges that were not adjudicated, may be appropriate if the parole board can demonstrate the connection between the inmate's pattern of behavior, the purpose of parole, and the reason for the condition. (See, e.g., Robinson v. Hadden, 723 F.2d.59, 1983; Christopher v. U.S. Board of Parole, 509 F.2d.924, C.A.7, 1978.) In examining the purpose to be served by particular conditions, some states have seen challenges to conditions where the offender has been required to wear or place a sign indicating some particular thing about the offender or his offense. These cases have generally arisen in the probation field, and are often referred to as "shaming" conditions. Some of the courts that have dealt with this type of condition have found various faults with them, including finding them overly broad. (See, e.g., People v. Moyer, 680 N.E.2d 315, Ill., 1997; State v. Burdin, 924 S.W.2d 82, Tenn., 1996.)

Finally, you should review your statutes, policies and conditions to determine the authority of parole officers to impose additional conditions after parole supervision begins. For instance, in Dickman v. Trietly, 702 N.Y.S.2d 449, A.D.3, N.Y., 2000, the parole officer imposed a special restriction concerning the parolee's residence. The court found that the officer had the authority to impose additional conditions under applicable state statutes. In many jurisdictions, the authority of the parole officer to impose additional conditions is established by the parole board in its conditions. However, in the case of Hamm v. Ray, 531 S.E.2d 91, Ga., 2000, the court there found that the parole officer had no authority to impose additional conditions, as only the parole board had the power to impose parole conditions.

You may wish to spend some time becoming familiar with the conditions that can be imposed by your parole board, gain information about what these conditions mean and how they are implemented, and discuss the use of standard and special conditions with your fellow board members.

Parole Revocation

Once an individual has been granted a parole, the United States Supreme Court has found that an individual has a conditional liberty interest associated with continuing to serve their sentence in the community. Morrissey v. Brewer, 408 U.S. 471 (1972). In light of this conditional liberty interest in remaining on parole, certain due process rights must be respected before an inmate's parole can be revoked. Since the Morrissey decision, each jurisdiction has taken steps to make certain that their parole revocation procedures afford an offender all of the due process protections outlined by the Supreme Court. The process outlined by the Court in Morrissey envisioned a two-tiered review of a violation before a parole could be revoked.

The first stage of the parole violation review is generally called a preliminary hearing. At this hearing, an initial determination is made as to whether or not probable cause exists to believe that the offender has violated one or more of the conditions of his parole. In conducting this preliminary hearing, a number of protections must be afforded to the parolee in order to satisfy the Constitution's due process clause. These protections include:

Appropriate notice of the purpose of the preliminary hearing, a description of the alleged violations, and an indication of when and where the hearing will take place;

The preliminary hearing must be held near the place of the violation and within a reasonable time;

The parolee can appear at the preliminary hearing, present information concerning the alleged violation, and cross-examine adverse witnesses;

The individual who conducts the preliminary hearing must be "neutral," that is, must be a person who was not involved in making the decision to prosecute the violation;

If there is probable cause to believe that a violation has occurred, then a summary of the hearing must be prepared, reasons must be given for the decision rendered, and the facts or evidence relied upon by the decisionmaker must be indicated.

If the hearing officer finds probable cause to believe that a violation has occurred, then a second stage review must occur before a parole can be revoked.

This second stage review is sometimes referred to as a final hearing. This final hearing "must be the basis for determining more than probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation." Morrissey, 408 U.S. at 487-88. The specific protections afforded a parolee at a final hearing include:

Written notice of the hearing, notice of the alleged violations, and disclosure of the evidence against the parolee;

At the final hearing the inmate has the right to appear, to present evidence and witnesses, and to cross-examine witnesses;

The final hearing must be held within a reasonable time, and conducted before a neutral and detached body such as a parole board;

The body which conducts the final hearing must provide written statements of the evidence relied upon and give its reasons for any revocation of parole.

Parole board members should pay particular attention to their parole violation and revocation procedures to make certain that the parolee's constitutional entitlements in this area are properly protected.

The Supreme Court has also found that a

conditional liberty interest and corresponding due process requirements may exist in other situations that are similar to parole. For instance, the Court found that an inmate who had been placed in a pre-parole conditional release program (and was living in the community) must be afforded the due process rights outlined in Morrissey before the inmate could be removed from the program. Young v. Harper, 520 U.S. 143 (1998).

Generally, a parole revocation hearing has more relaxed rules of evidence than a court hearing would require. Hearsay evidence, or information gained through a search that might not be admissible in a court, may be admissible before the parole board. [See, e.g., Pennsylvania Board of Probation and Parole v. Scott, 118 S.Ct. 2014 (1998), Morrissey v. Brewer, *supra*; and Williams v. Lawrence, 540 S.E. 2d 599 (Ga., 2001)]. The purpose of the hearing is to gather the pertinent and relevant information that is available, and for the board to make its best determination as to whether a condition of parole has been violated. The final reviewing authority must determine whether it is more probable than not that the cited violation occurred.

Beyond the issue of the specific violation is the question of what to do in response to the violation. The Supreme Court in the Morrissey case appeared to appreciate the fact that two different decisions have to be made before a parole is revoked. In discussing the final hearing for a violation, the Court noted that "the parolee must have the opportunity to show, if he can, that he did not violate the conditions or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation." Morrissey, 408 U.S. at 488. In other words, determining whether or not a violation has been committed is the first part of the final hearing body's responsibility. The second part of that responsibility, if a violation is found, is determining whether the circumstances of the case warrant the revocation of the parole. In your jurisdiction, the parole board may have many options that can be utilized to respond to a parole violation other than the revocation of the parole. You may wish to spend some time becoming familiar with the options and alternatives to revocation that are available to you when a parole violation is found.

Ethical And Professional Considerations

In addition to the legal areas noted above, parole board members may also need to be aware of specific ethical duties or responsibilities. These ethical considerations may be divided into those actions addressed in a state ethics law, and those that may pertain more uniquely to the difficult task of considering parole cases.

A state ethics law may apply to all or particular types of state employees or officials, and would outline activities or conduct that would not be consistent with the state's expectations of these personnel. An example of a state's ethical rules might include circumstances under which a parole board member may receive compensation for work, or requirements concerning the reporting of campaign contributions, loans or income.

Other ethical issues may arise in the consideration of a particular parole case. For instance, if a parole board member has a personal interest in a case (involving a relative, for example) then a parole board member may have an ethical duty to avoid making a decision in that case. When such an issue presents itself, a parole board member can ask to be excused from the consideration of the case. Given the fact that your parole decisions often make someone unhappy, it is wise to avoid any potential conflicts of interest concerning your finances, your family, or other matters of a personal nature.

Beyond matters of ethical conduct are issues of professionalism. As a significant official of your state's government, you are expected to conduct yourself in a way that would make your government proud. While it is difficult to always maintain your poise when you are faced with the emotionally charged issues surrounding a parole decision, it is always desirable to try and maintain a professional dignity and presence during the conduct of a parole hearing. If you act in an agitated, emotional or animated way, then

your conduct may become the basis of future litigation by inmates or others who are dissatisfied with the result of the hearing. While you may not lose such a lawsuit, it is smart to try and avoid giving people additional reasons to initiate such actions. Therefore, you may wish to spend some particular time reflecting upon the way in which you conduct yourself, interact with the public, or ask questions of individuals who may appear before you during a parole consideration or revocation hearing.

Conclusion

Given the unique nature of your responsibilities, and the significant interest that many people will have concerning your parole decisions, you should expect to face some legal challenges during your tenure on your board. So that you will be prepared to meet these challenges, it is important for you to understand the basis and limitations of your authority. Spend as much time as necessary becoming familiar with the statutes, policies, procedures and constitutional requirements associated with your work on the parole board. While courts and others may allow you considerable discretion regarding the parole decision that you make, you may find that these same entities will afford you much less flexibility when it comes to analyzing the procedures that you followed in carrying out your work. Be sensitive to the ethical and professional considerations that face all parole board members. Finally, in order to appreciate the full range of legal issues that you will face as a parole board member, you may wish to spend some time with the attorney who has been employed or designated to assist you with legal matters.

QUESTIONS TO DISCUSS WITH YOUR CHAIR

1. What are the principal statutes that exist concerning the duties and responsibilities of the parole board and its members in our state?
2. Is there any statute in our jurisdiction that makes parole a matter of "right?" Is there a guideline or tool that we use when making a parole decision?
3. Who is allowed to attend a parole board meeting? What laws or policies outline issues concerning attendance? Are these meetings open to the public? Does the victim have the right to attend the parole board meeting?
4. Is there a policy or procedure manual that I could review, and does it outline all of the procedures that we follow when considering parole cases? How do we adopt or change our policies and procedures?
5. Who represents me if I am sued as a member of this parole board, and how can I go about talking with this person?
6. What does our liability insurance policy cover, what are the policy limits, and who oversees this policy?
7. Are there any significant lawsuits currently pending concerning our parole board, and if so, what do they involve?
8. Has the Board ever lost a case? If so, what case was it, what issues were involved, and why did the court find in favor of the plaintiff?
9. What standard conditions do we impose in parole cases, what special conditions are available, and who carries out and enforces these conditions? Can restitution be imposed as a parole condition?
10. What rules do we follow concerning parole revocations, and what is my role in these cases? What are steps in our parole violation system and how does it work?
11. What state ethics laws apply to me as a member of this parole board? What expectations do you have of me concerning my conduct, and my behavior as a member of this board?
12. What laws or policies exist concerning access to our records by other persons? What type of information can inmates request from our records?

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. How often do you refer to your policy and procedure manual? Is it a helpful tool for you? Is it clearly written?
2. Do you have any concerns about any of our policies or procedures? If so, which ones, and why?
3. Have you ever been sued while you were a member of this board, and if so, what was that experience like?
4. How do you evaluate parole violation cases? What options or alternatives do you use if a violation is found?
5. Do you have some specific style that you use when you are conducting a parole hearing, and if so, what advice could you give to me?

THINGS TO ASK FOR

1. Materials produced by our state that provide guidance on ethical standards for parole board members, or for executive branch appointees.
2. Recent court decisions specifically relating to our board.
3. Policy and procedure manual.

Chapter 7

Victim Issues

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The 1982 *Final Report* of the President's Task Force on Victims of Crime identified key issues relevant to parole boards and crime victims. The report, issued over 20 years ago, included four key recommendations for paroling authorities:

Parole boards should notify victims and their families in advance of parole hearings, if names and addresses have been previously provided by these individuals.

Parole boards should allow victims of crime, their families, or their representatives to attend parole hearings and make known the effect of the offender's crime on them.

Parole boards should take whatever steps are necessary to ensure that parolees charged with a crime while on parole are immediately returned to custody, and kept there until the case is adjudicated.

Parole boards should not apply the exclusionary rule to parole revocation hearings.

These recommendations have provided the foundation for parole-based victim services in the United States. Today, paroling authorities in nearly 30 states have designated staff and programs to provide services and support to victims of crime. Services usually include basic victim notification, but may also extend to victim participation in hearings, efforts to

assure victim safety, restitution, and information/referrals to other services.

Victim Involvement In The Parole Process

Notification of parole proceedings can be very traumatic to the victims of crime. The thought of again facing his or her offender for the first time in years; of having to share highly personal and sometimes emotional information with parole board members; of navigating a process that is often confusing; and of paying the costs to be involved in parole proceedings can be very intimidating for many victims. However, victims are more likely to participate in parole proceedings if:

They are provided with comprehensive information about the process and their role therein;

Their actual and perceived fears are *identified* and *addressed*;

The process is "victim-sensitive" and attentive to their needs and concerns;

Staff are designated to guide them through the process, and provide information and assistance, as needed.

Organizational Parole Resources For Victims

If paroling authorities do not have a designated victim assistance program, a staff member should be assigned to provide victims with assistance, accompaniment to parole hearings, as well as information and referrals to other supportive services. At a minimum, parole-based victim assistance staff should:

Create a Victim Advisory Council to provide input on program and policy development and implementation;

Develop policies and procedures that clarify roles and responsibilities for victim assistance (see *Resources* for information about the policy manual developed by the Association of State Correctional Administrators);

Provide basic information for victims about the parole process, and their rights and role (see *Resources* for additional references);

Develop programs for victim notification, victim protection, victim participation in parole hearings (including staff accompaniment), and victim referrals to community-based victim assistance programs; and

Provide training to all parole staff, including board members, about victims' rights and needs relevant to the parole process.

Victims' Rights

Many states have amended their constitutions and/or enacted state laws to establish and recognize rights of victims. A number of these relate directly to parole and, in many states, include:

The right to victim compensation;

The right to restitution;

The right to submit a victim impact statement to paroling authorities;

The right for victim protection to be considered in paroling authorities' decisions;

The right to information about how to exercise victims' rights; and

The right to the name and telephone number of an appropriate contact person within a paroling authority.

But paroling authorities can establish these protections without a constitutional guarantee by making them parole board policies.

Successful parole-based victim notification programs require close coordination with allied justice agencies and officials, including:

Prosecution and courts to inform victims of their right to post-conviction notification of parole proceedings and other hearings and events, and provide information about enrollment in victim notification programs;

Correctional authorities (which may or may not share jurisdiction over offenders with parole), to share information about victim notification requests, and provide accompaniment and support to victims at parole hearings held on-site in institutions; and

Parole agents, who must keep victims informed of parole revocations.

Crime victims should be aware of *when* they will receive advance notification of parole hearings (usually 30 to 60 days in advance

of the hearing), and *how* they will be notified. Some states provide written notification and pre-parole hearing information, while others utilize automated systems that place calls to victims from a centralized call center to provide them with information about parole proceedings. (See *Resources* for additional information about automated notification.) Suggestions about where additional information can be obtained as part of any automated system are helpful to victims, who may have questions or concerns about parole hearings.

Victim Participation In Parole Proceedings

Victims of crime are more likely to participate in parole proceedings if they have detailed information about the process and their role therein. For example, the South Carolina Department of Probation, Parole and Pardons Services Office of Victim Services provides victims with the following information specific to participation both on its web site, and in its advance package sent to victims prior to parole proceedings:

Information about their rights to notification (including their role in keeping the Department informed of their current address, and the 30-day advance notification they will receive);

How victim impact statements can be submitted;

Where the meetings are held (including parking information);

The fact that offenders will not be physically present, but communicated with via video conferencing;

Contact information for Office of Victim Services staff;

Who can attend hearings;

Availability of victim services staff accompaniment of victims at hearings, as well as on-site explanation of the process;

The fact that parole hearings are *public hearings*;

How to communicate with parole board members at hearings; and

How victims are notified of the board's decision.

In addition to providing this information by mail or on a web site, it is extremely helpful to have knowledgeable staff (either victim assistance personnel or designated victim service representatives at institutions) to answer any questions that victims might have, or provide additional information upon request prior to a hearing, or at the time of a hearing. If parole hearings are held in institutions, it is particularly important to provide accompaniment to victims as they enter and leave the facility.

Victim Impact Statements

Victim impact statements (VIS) provide victims with the opportunity to inform parole board members about the emotional, physical, financial and spiritual impact the crime has had on them and their loved ones. When a VIS is viewed by parole board members as an *opportunity*, and not just an *obligation*, it can offer very useful information for decisionmaking.

There are currently eight forms of VIS utilized by parole boards across the nation:

1. Oral VIS (also called "allocation") involving in-person statements before the parole board.
2. Written VIS (with confidentiality of the VIS provided to victims who request it).
3. Audio taped VIS.
4. Video taped VIS.
5. Closed circuit VIS (with the victim in a room separate from the offender).

6. Satellite or teleconferenced VIS (from a location geographically close to the victim's home).
7. Personal meetings with a parole board member (who then shares VIS information with other parole board members).
8. Child-friendly VIS, which allow input from children in a form and a setting that are commensurate with their age and cognitive development.

Every parole board should consider implementing a set of basic policies relevant to VIS that will benefit victims, encourage victim participation, and inform the decisions of the board. Such policies would:

Require all agency personnel with direct contact with crime victims to participate in victim assistance training programs that address the needs, rights and legal interests of victims;

Notify and inform victims of their right to submit or update VIS's and/or to attend and speak at release hearings;

Postpone parole or other early release considerations, especially in cases involving a violent act, until such a time that the victim has been notified and provided an opportunity to submit a VIS;

Identify agency and individual personnel to have responsibility for administration of victim assistance program services, including the implementation, distribution and collection of impact statements;

Require the inclusion of the VIS in a confidential section of the offender's correctional file;

Provide clearly defined agency disciplinary procedures for noncompliance with policies and procedures for the implementation, distribution and collection of impact statements;

Require personnel with impact statement responsibilities and duties to

exercise due diligence in notifying victims of their right to submit or update impact statements for the correctional file. Due diligence may include contacting court personnel to determine if a change of address has been filed and/or contacting the US Postal Service to learn of any change of address which victims may have filed;

Provide for interagency cooperative agreements in coordinating victim impact statement dissemination, collection and application with all key criminal justice agencies, especially between correctional and paroling authorities.¹ Additionally, guidelines for a comprehensive agency policy in the application of VIS for paroling authorities should include specific policies addressing the dissemination, collection and application of VIS. The board should implement policies and procedures should be implemented that mandate that victims receive notice of the parole or other release considerations in writing at least 30 - 90 days prior to the hearing date about his or her right to submit or update an existing VIS or to attend and speak at the hearing.

As part of the notification package, victims should be provided with a copy of the VIS form, along with a written explanation which includes: information about the victim's right to be notified of parole or early release decisions, conditions of release, along with instructions explaining how to exercise or decline these rights; the purpose and use of the VIS in the parole process; the date, time and location of the release hearing; information that explains how VIS should be submitted for consideration, i.e., written, oral, videotaped, audio taped, or any other state-specific acceptable forms of submission; eligibility requirements about who may submit a VIS, i.e., victim only, other family members, community representative, and/or designated victim representative; information about the confidentiality of the statement; the amount of time given to complete and submit a VIS prior to any release considerations, along with an agency contact name, address and phone

number for additional assistance; procedures victims must follow to request to attend or speak at parole or other release hearings, where required; procedures victims must follow to request a “no contact order” as a condition of release; and information about the victim’s right to be notified of parole or early release decisions, conditions of release, along with instructions to exercise these rights.²

Enhancing the Usefulness of Victim Impact Statements for Parole Board Members

It is not unusual for parole board members to experience some frustration that VIS information provided by victims is not always helpful or relevant to decisionmaking. Appropriate advice and suggestions to victims as they prepare a VIS may address this issue. It may be helpful to recommend to victims that they review a copy of their original VIS provided at the time of sentencing to determine if their feelings and concerns have changed, and to provide a copy of their original VIS to the paroling authority *prior* to the hearing. Victims might then reflect on the following questions:

Do you have any concerns about presenting information to the paroling authority that you do not want your offender to hear?

Does the crime still affect you emotionally? If so, how?

Do you have any long-term mental health trauma resulting from the crime that has been clinically diagnosed, such as:

Post-traumatic stress disorder?

Depression?

Thoughts of suicide, or suicide attempts?

Alcohol and other drug abuse?

Problems with relationships?

Changing view of the world as a “safe place?”

Trust issues?

Has this crime affected your family and loved ones? If so, how?

Have you incurred expenses resulting from the crime for which you have not been compensated (such as counseling or other mental health costs, physical rehabilitation, funeral expenses, relocation, time lost from work, etc.)?

Would you like an order of restitution to compensate you for these costs?

Has your offender (or his/her family or colleagues) attempted to contact you in any way that poses intimidation, harassment or potential harm?

Do you have any specific fears related to the possibility of your offender being released?

If “yes,” do you have any recommendations that can make you feel more safe or secure if the offender is released to the community?

Do you have any specific suggestions regarding how the department of corrections and/or paroling authority can hold the offender accountable for the harm he or she has caused, such as:

Victim restitution or other legal/financial obligations?

Community service based upon your recommendation?

Alcohol or other drug treatment?

Offender-specific treatment (such as sex offender, batterer, etc.)?

In the event that the offender will be released to community supervision, do you have any suggestions for special conditions of release?

Would you like to limit the offender's capacity to respond to your victim impact statement, or to you personally in the parole hearing?

Would you like the opportunity to receive an apology?

Do you have any desire to meet with your offender face-to-face in a safe and secure environment, facilitated by a trained mediator, in a victim/offender dialogue session either prior to or following the parole hearing?

Would you like to be informed of the paroling authority's decision, and how that decision was made?

Is there any other information you feel would help the parole board make its decision, or any information you need to facilitate your victim impact statement preparation and delivery?³

When these questions are incorporated into the VIS advance information provided to victims, the likelihood of receiving structured, relevant and helpful information increases. Please see *Resources* for information about how to obtain the national model *Victim Impact Statement Resource Package*.

Victim Protection

An important measure of victim protection is to ensure that victims' requests to be notified and to participate in parole proceedings are kept *confidential* from the offender and his/her counsel. In addition, if victims choose to submit VIS's because they do not want the offender to hear them, this information should also be kept confidential.

Parole board members and victim service staff should focus on identifying and addressing any fears a victim may have for his or her personal safety. Such fears may be *perceived* (due to the trauma of victimization or lack of understanding about parole processes) or *actual* (based upon real threats or others forms of intimidation they have been subjected to by the offender or his/her colleagues). Information about victims' fears and safety concerns can be helpful to parole

board members in both decisionmaking and determining conditions of supervision for paroled offenders.

Options for victim participation in parole proceedings, as noted above, can also contribute to victim protection. If a victim does not want to face his or her offender, parole boards should provide alternative measures for providing victim input.

Parole board members can specifically ask victims "what will make you feel safer?" in the event that their offender is paroled. Sample conditions of parole supervision specific to victim safety and security are highlighted in Figures 13 and 14.

Victim Restitution

Many victims endure significant financial losses as a result of the crime. Victim restitution and other legal/financial obligations (such as child support) are important not only to help the victim recover financially, but also to hold offenders accountable for their actions. Depending upon state law, opportunities for restitution may lie with the criminal sentencing court, within a civil order of restitution, or by order of the paroling authority. At the time of parole consideration, it is important to review court documents to determine if restitution or other legal/financial obligations have been ordered. If they have been so ordered, and the board has authority to do so, then compliance with such orders can be encouraged by restitution as a condition of parole. Often, judges fail to include restitution orders when an offender is sentenced to a period of incarceration. But, if the victim identifies pecuniary losses through the VIS, even if restitution was never ordered, parole boards should consider including restitution payments to the victim as a condition of supervision on their own authority, in states where that is legally permitted. In some states, this authority is provided by state law; in others, it is mandated by agency policy.

Training For Parole Board Members

It is helpful for parole board members to be aware of, and involved in, victim assistance activities in their respective states. There are over 10,000 community- and system-based victim service programs nationwide, most of which share significant interest in parole-related programs and activities. State victim assistance networks and local victim service providers offer excellent resources for training and technical assistance for parole board members specific to victims' rights, needs, and services.

Video Supplement to Chapter 7

Once you have completed this chapter of the *Handbook*, we recommend that you view *Video Segment #5: Victim Issues for Parole Boards*. This is a short videotape produced by the Office for Victims of Crime (OVC), U.S. Department of Justice, directed specifically at the concerns of parole board members and allied professionals. It highlights the efforts of some parole boards to make sure that victims' interests are at the forefront of parole board considerations. A discussion guide developed for use with this video is included in the Kit. Other copies of this segment are available at no cost from OVC by calling (800) 627-6872 and requesting Document Number *NCJ 180108*.

Figure 13 Sample Conditions Of Supervision Relevant To Crime Victims

- Release of information relevant to conditions of supervision and/or violations of such conditions to the victim, upon request from the victim.
 - Obey all laws.
 - Cannot possess weapons.
 - Participate in any offense-specific treatment program deemed appropriate by the supervising agency, with victim input (i.e., substance abuse treatment, sex offender treatment, etc.)
 - Participate in victim/offender programming that reinforces offender accountability, such as victim awareness classes.
 - Consider participation in victim/offender programming, upon request from the victim, that involves direct contact with the victim, such as dialogue or family group conferencing (this condition should always be voluntary on the part of the offender).
 - Upon request from the victim, no contact with the victim, his or her family, and others designated by the victim.
 - Restrictions on movement and location (specifically those that involve contact with potentially vulnerable populations, such as children, elderly persons, or persons with disabilities).
 - Make full restitution to the victim(s).
 - If there is no restitution order, be provided with the opportunity to make voluntary restitution to the victim(s) or a victim assistance program designated by the victim.
 - Pay fines and fees that support victim assistance programs, including victim compensation.
 - Submit to warrantless search and seizure.
 - Do not use alcohol and/or other drugs.
 - Submit to random alcohol and other drug tests.
 - Pay for the cost of urinalysis.
 - Submit to polygraphs.
 - Perform restorative community service as recommended by the victim or victim surrogate (such as a victim assistance agency).
 - No Internet access (or agreement to intensive monitoring of computer activities)
 - Electronic monitoring.
 - Intensive supervision.
- *American Probation and Parole Association, *Intervening in Family Violence* (Lexington, KY: American Probation and Parole Association, 1996) p 204.

**Figure 14 Additional Conditions Of Supervision
For Intra-Familial/Family Violence Cases****

- No further abuse.
- Pay child support and restitution.
- Pay attorney fees for victims.
- Abide by all court restrictions and directives.
- Supervised child visitation and/or public drop-off/pick-up point.
- Cooperation with child/adult protective services.
- Release of information to third parties, as appropriate.

** Anne Seymour, *The Victim Role in Offender Reentry: A Community Response Manual* (Lexington, KY: American Probation and Parole Association and Office for Victims of Crime, U.S. Department of Justice, 2001).

QUESTIONS TO DISCUSS WITH YOUR CHAIR

1. Do we have a victims' representative on the board or on staff?
2. What initiatives has our board taken to accommodate the needs and rights of victims? What responsibilities does the parole board in our state have regarding victims? Do these come from a constitutional amendment, from state statute, from regulations?
3. Does our board have access to staff resources to provide assistance and/or services to victims of crime? If so, what kind of assistance is provided?
4. Do victims attend parole board hearings in our state? If so, how is this handled? If not, has this ever been considered?

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. As board members, if you routinely interact with victims of crime, please describe the circumstances – at a hearing, an interview, through face-to-face contact, phone contact, letters, etc.
2. What key lessons have you learned over your time on the board regarding interactions with victims?
3. Do we usually have victim impact statements available to consider as part of a case review? If so, are they statements given at the time of trial or plea? Are more recent statements available? What form does each take?

THINGS TO ASK FOR

1. Any official documents – constitutional amendment, statutes, regulations, etc. – pertaining to the board's responsibilities to or interactions with victims.
2. Protocols for interactions with victims.
3. Materials that are provided to victims about your board, its procedures, and its services.
4. Samples of victim impact statements typical in your jurisdiction.
5. A briefing from staff who provide victim services regarding their roles and responsibilities.

ADDITIONAL RESOURCES

(Materials included in the Resource Kit are marked with an asterisk. *)

Association of State Correctional Administrators "Policy Manual for Corrections-Based Victim Services":
www.asca.org

South Carolina Department of Probation, Parole and Pardons Services information for crime victims
about the parole process: www.state.sc.us/ppp/victim.htm

Information about automated victim notification programs and services: www.appriss.com

Free "Victim Impact Statement Resource Package": e-mail annesey@erols.com

Information about national trends and resources available for victim assistance through the Office for
Victims of Crime, U.S. Department of Justice: www.ojp.usdoj.gov/ovc

*Discussion Guide accompanying Video Segment 5: Victim Issues for Parole Boards

References and Sources

- ¹ Seymour, "Promising Practices and Strategies for Victim Services in Corrections," Section 5: Victim Impact Statements (Washington, DC: Office for Victims of Crime, U.S. Department of Justice, 1997).
- ² Ibid.
- ³ Anne Seymour, A., Suggestions for Providing Victim Impact Information to the Parole Board (Washington, DC: Justice Solutions, 2000).

Chapter 8

Transition, Violation and Revocation

As it enters the first decade of a new century, the field of corrections is on the cusp of a major reexamination of offender reentry. The sentencing reform movement that spawned “truth-in-sentencing,” mandatory penalties, and an ever-escalating reliance on incapacitation, has created in its wake dramatic prison population growth. This has contributed to a largely unrecognized corollary: an unprecedented number of ex-offenders who are returning to communities having served their time. All too frequently, they are reentering society ill-equipped, ill-prepared, and with only a modicum of support to make this transition successfully. (Rhine, 2001)¹

As we enter the twenty-first century, this “unrecognized corollary” of which Dr. Rhine speaks is finally attracting the attention and interest of practitioners, policy makers, and even legislators. We are hearing more discussion about the flood of federal and state prisoners who are returning to communities (roughly 600,000 in 2002, and comparable numbers projected yearly for some time beyond that). The federal government has funded a major “Going Home” initiative to assist states to undertake collaborative efforts to work toward the successful reintegration of these offenders while still protecting public safety.

Another indicator of the growing interest on the topic of transition is its growing visibility in the literature. The quotation that begins this chapter is drawn from a special edition of *Corrections Management Quarterly*, published in 2001, on Rethinking Prisoner Reentry: Implications for Corrections. The authors who

have contributed to this *Journal* include those who believe that parole should take on an important and increasing role in supporting transition. Others feel that parole – once again – should be abolished or at least excluded from this arena in favor of the courts or in favor of simply releasing offenders at their maximum dates with a voucher to purchase the services they need. This journal is illustrative of the very debates you will likely experience in your own jurisdiction. The opening article from this special issue, *When Prisoners Return to the Community: Political, Economic, and Social Consequences* by Joan Petersilia is included in this *Resource Kit*.

A Model For Transition/Reentry

Practitioners and policy leaders are beginning to recognize that we can no longer think about the individual responsibilities of prisons, parole boards, and supervision agencies as independent activities that can be carried out effectively in isolation. The National Institute of Corrections is working to develop and test a new, comprehensive model of “transition” that conceives of all the activities that take place in prison (assessment, programming, release planning) as the beginning of a coherent process of offender transition, to be followed by managed release and community management. This model anticipates the parole board playing a key role in transition – evaluating the information provided, supporting and reinforcing release planning, setting conditions that support

reentry, and responding to violations in a similarly coordinated fashion. The supervision agency, working prior to release with institutions and the parole board, prepares the appropriate resources and supervision and works closely with the offender and with other stakeholders to assure successful completion of a period of supervision and reintegration.

The obstacles to this coherent vision of offender transition and reentry are considerable. However, paroling authority members can anticipate a growing expectation that they will participate in efforts to make this approach to transition and reentry a reality.

The Role Of Paroling Authorities: Partners In Transition

What does this mean for paroling authorities? It means that paroling authorities are considering how they can best support the transition of offenders to the community. They are looking carefully at all aspects of parole decisionmaking that directly affect offenders in the community – the release decision, the setting of conditions of release, and the handling of violations of parole once an offender has been released to the community.

The Release Decision. In fact, paroling authorities have always been focused on the issue of reentry and transition. In release decisionmaking, the big question to be answered is whether an offender is ready for transition – can he or she be released without undue risk? Parole boards consider many factors. A common one is the appropriateness of punishment – has the offender served “enough time” given the seriousness of the crime? But it is the issue of public safety that seems to weigh most heavily upon parole decisionmakers.

Traditionally, paroling authorities have

focused on their independent responsibility for making release decisions. Indeed, the way that parole is currently structured in most states – as independent from institutional corrections – emphasizes the importance of its independence. However, criminal justice decisionmakers are recognizing that independence in individual decisionmaking does not preclude key stakeholders from working together toward broad system goals. Clearly, if we want offenders to begin preparing for their eventual reentry into the community – from the moment they enter the system – parole boards hold significant leverage in encouraging offender cooperation. Parole boards can clearly set expectations for what offenders must do to prepare themselves for transition to the community, and can serve to link the efforts of prison officials and community supervision.

Parole boards are in a position to demand participation in drug treatment...They can also require an adequate plan for a job and residence in the community – and that has the added benefit of refocusing prison staff and corrections budgets on transition planning.²

In essence, the parole board has an opportunity to encourage offenders to do their best to prepare for their release from prison through the incentive of parole release.

Setting Release Conditions

One of the least noted responsibilities exercised by parole boards is that of setting conditions³ of release. Conditions are the requirements placed on parolees as a condition of their release. In fact, most boards have “standard conditions” that are imposed routinely upon all individuals when they are granted parole. These may be supplemented by “special” conditions, more directly targeted to that individual. In practice, it seems that much more attention is focused on whether and when an offender will be released than is focused upon the conditions of release. However, the imposition of conditions deserves at least as much attention as the release

decision. It is one of a paroling authority's most powerful tools in supporting successful transition to the community.

Indeed, conditions of supervision are extremely important, and require careful consideration – both on the policy level and on the individual case level. First, non-compliance with any condition can be grounds for revocation of parole and return to prison – even in the absence of new criminal behavior. This means that the stakes involved are high – both for the individual parolee and for the criminal justice system. In fact, a growing proportion of admissions to prison are as a result of technical parole violations. This means that violation of parole board conditions is claiming significant prison bed space and correctional budgets. Second, conditions provide guidance to supervision officers about what you think is important; they represent a vehicle for communicating with the field. Third, they should be realistic and not simply a prescription for failure. Lastly, where special conditions prescribe participation in some sort of program, it is important for the board to know the availability of such programs and whether or not it is realistic for parolees to access those programs.

Not surprisingly, the first impulse of many parole board members is to assume that “more is better.” The notion seems to be that if the board puts every imaginable condition on an offender, he or she will be so well-constrained that there won't be a danger to the public. Or, at a minimum, if the offender does re-offend, the board will appear to have been vigilant by establishing these extensive conditions.

Current thinking among some parole boards and supervision agencies is just the opposite. They have concluded that piling on extensive conditions simply sets an offender up to fail. It can become so burdensome to comply with the conditions that many offenders will fail – not because they have committed a new crime, or even because they represent a risk to the community, but simply because there are too many hurdles.

Parole boards are beginning to think about conditions of parole in a new light. First, they are a scarce resource and should be targeted to higher risk offenders, specifically to manage

risk. Ultimately, conditions are only as good as your ability to enforce them and respond in problem-solving ways when there is a technical violation. Unnecessary conditions, or conditions unrelated to an offender's risk or criminogenic needs are being eliminated.

Another way to think of conditions is that they are your way of communicating with supervision staff. When you impose a high number of conditions on every offender, there is little guidance available for field staff about what you think is important and what you feel would warrant special efforts to support. In fact, parole boards are beginning to use conditions as resources to support successful transition, rather than as a way to monitor offenders. They are attempting to target resources that will assist parolees to transition successfully. Even in those states where discretionary parole release no longer exists – or has been significantly curtailed – paroling authorities often have responsibility for setting such conditions of release and for responding to violations of those conditions

Responding To Parole Violations

A major way in which offenders “fail” and transition back to prison is through the parole violation and revocation process, as we have just discussed.

Beyond A Surveillance and Enforcement Approach to Technical Violations. During the 1970s and 1980s parole and probation supervision assumed much more of an enforcement and surveillance posture than had been the case in earlier decades. Increasing case loads and more of an emphasis upon desert and punishment overall seemed to push supervision practices in this direction. The notion was that when an individual is released on parole – which is a privilege, after all – he or she has certain conditions of supervision regarding living, working, paying certain financial obligations, reporting to a parole officer and the like. If he or she does not comply with those conditions then two things

are likely. First, technical violations are simply precursors to new criminal behavior. Second, since parole is a privilege, offenders who don't comply with conditions simply don't deserve the privilege of parole. In either case, the appropriate response is to revoke parole and bring the offender back to prison to serve all or part of the sentence. This approach to technical violations is being re-evaluated.

An Outcome-Driven Approach to Supervision and Technical Violations. During both the 1990s and the early years of the twenty-first century, the huge population of offenders who were sentenced to prison during the period of dramatically increased incarceration rates of the late twentieth century began to be released from prison. Criminal justice policymakers are beginning to debate what **outcomes** are desired with respect to this flood of returning offenders. Clearly, the optimal outcome for any such offender – both for the community and for the offender himself or herself – is successful completion of parole. Successful completion means no new crimes, no new victims, and no additional criminal justice system costs. It may even mean an individual paying taxes, supporting a family, and contributing to the community. Simply waiting for offenders to violate conditions of their parole and then revoking them does not help us achieve the goal of successful completion of parole for as many offenders as possible.

At the same time, a number of researchers are calling attention to the fact that there is little empirical evidence that technical violations are precursors to criminal behavior. In addition, they are documenting the daunting obstacles that face offenders returning from prison. Many offenders are returning – as mentioned in Chapter 2 – to communities with high crime rates, low employment rates, and limited housing options. They are also bringing with them many of the deficits they took with them into prison – low levels of literacy, lack of employment skills, substance abuse and addiction, as well as mental and physical health problems.

This is a challenging mix of conditions: huge numbers of offenders leaving prison, many with significant deficits and needs for service; and daunting obstacles awaiting them

upon their return to the community. In response, supervision agencies are shifting their focus away from simple surveillance, enforcement, and revocation in the face of technical violations. Instead, they are beginning to define the success of parolees as their goal. They are reshaping their supervision strategies to intervene with problem-solving approaches. They are building alliances with service providers in the community to try to link their parolees with the services they need – employment, substance abuse, mental health, housing, and the like. They are beginning to focus upon creating incentives and recognition for parolee successes. When technical violations occur, they are much more likely to assess the risk of the offender and consider intermediate responses for low or moderate risk offenders before moving immediately to revocation. At the same time, this focus on risk assessment allows supervision agencies to move quickly to remove from the community those offenders who are a risk to public safety.

Paroling authorities are considering how conditions of release can be made less onerous and more directed toward supporting offenders in their transition. In Georgia, for instance, the State Board of Pardons and Paroles is considering reducing the number of their standard conditions of supervision and focusing more upon how to encourage positive behavior.

Innovations in Responding to Violations. Paroling authorities have been focusing on the violation issue and have developed significant innovations including careful assessment of an offender's risk and the severity of violations, a range of graduated sanctions as responses to violations, and explicit policy to guide staff handling of such behavior. It is important for new parole board members to appreciate how very important the violation and revocation process can be as a window on the broader issue of transition and reentry. There are several resources included in this *Kit* that have been developed by NIC to assist practitioners such as yourselves to become familiar with the issues and to help you and your colleagues consider the implication of these issues for your own practices. The first is a monograph outlining some of the work done during the 1990's on developing policy to respond to

violations (*Policy-Driven Responses to Probation and Parole Violations*). The second is more of a “how-to” document entitled *Responding to Parole Violations and Revocations: A Handbook to Guide Local Policy Development*. These documents are also available from the National Institute of Corrections on their web site (www.nicic.org).

The National Institute of Corrections has been working with paroling authorities to develop further innovative ways of responding to technical violations.⁴ Innovations include:

- Assessing the risk that technical violators present;

- Developing more intermediate responses – particularly for low-risk technical violators;

- Developing clear policy to guide line agents so that responses are consistent and more in line with agency goals and priorities; and

- Putting more discretion and options in the hands of line agents so that they can handle responses to technical violators more quickly.

In fact, many supervision agencies are beginning to view the violation and revocation

process as an integral part of supervision – rather than something separate from it. They are working with staff involved in supervision to craft responses to technical violations, in particular, that will tend to solve problems, change behavior, and contribute to successful completion of parole – rather than bring parolees back into prison. They are attempting to focus the use of revocation and return to prison on high-risk offenders and those involved in new felony behavior. In sum, they are building policy to guide the work of supervision around problem-solving responses to technical violations. The upshot of this approach is the handling of a greater percentage of technical violators by field supervision agents, with fewer technical violators being brought into the formal revocation process, and fewer returns to prison as a result of technical violations.

Where paroling authorities carry the responsibility for supervision, as well as for release, they must clearly be integrally involved in such efforts as the leaders and policy makers they are. Where paroling authorities are independent of the supervision agency, it is still important that the two entities work collaboratively on improving practices in this arena.

QUESTIONS TO DISCUSS WITH YOUR CHAIR

1. Does our board actively work with other agencies in the system toward a comprehensive view of transition?
2. Do we typically set expectations for offenders at a parole hearing regarding what we want them to accomplish while incarcerated in order to be a good candidate for parole?
3. Do we have clear policy about technical violations, i.e., under what circumstances do we consider a technical violation grounds for revocation?
4. Does our field supervision agency have policy about handling technical violations?

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. Do you (and will I) conduct violation/revocation hearings? What type of information is usually available? What decision options are available? (E.g., if revocation is warranted, do you have to decide the length of time a person will spend in prison as a result, or are offenders automatically returned for the balance of their sentences?)
2. Describe the format of a revocation hearing and how it differs from a release hearing.

THINGS TO ASK FOR

1. Policies and/or procedures regarding the requirements of violation hearings – preliminary or final. Violations policy documents.
2. Data on violations, e.g, how many hearings per year, for what types of violations, how many offenders are revoked to prison, etc.

ADDITIONAL RESOURCES

(Materials included in the Resource Kit are marked with an asterisk. *)

**Responding to Parole and Probation Violations: A Handbook to Guide Local Policy Development.* Edited by Madeline M. Carter, Washington, DC: National Institute of Corrections, U.S. Department of Justice, April 2001.

**Policy-Driven Responses to Probation and Parole Violations.* Peggy B. Burke, Washington, DC: National Institute of Corrections, U.S. Department of Justice, March 1997.

**When Prisoners Return to the Community: Political, Economic, and Social Consequences* by Joan Petersilia.

References and Sources

- ¹ Edward E. Rhine, "Revisiting Reentry Again for the First Time," *Corrections Management Quarterly*, Volume 5, Issue 3 (Summer 2001), p. v.
- ² Joan Petersilia, "When Prisoners Return to the Community: Political, Economic, and Social Consequences," *Corrections Management Quarterly*, Volume 5, Issue 3 (Summer 2001), p. 8.
- ³ The term "conditions" is used in this Handbook to denote the requirements placed on parolees as a condition of their parole release. Some jurisdictions use other terms (e.g., stipulations) for these requirements.
- ⁴ Peggy B. Burke, *Policy-Driven Responses to Probation and Parole Violations* (Washington, DC: National Institute of Corrections, U.S. Department of Justice, March 1997), pp 1-5.

Chapter 9

Parole as a Profession

The idea that the work of paroling authorities and their members is a professional enterprise is a relatively new one. Indeed, the legislative requirements that exist in some states, specifying the qualifications of paroling authority members, actually require that other professions, such as law, law enforcement, medicine, and social work be represented on the board – or that there be equitable balance according to political party.

Professional Associations

Perhaps one of the most important things that a new parole board member can do to become acclimated to his or her new responsibilities is to become affiliated with professional associations where current issues, standards, and practices are discussed, debated, and disseminated. The Association of Paroling Authorities International (APAI) – the only professional association devoted exclusively to the concerns of paroling authority members – was formed during the mid-1970's and has grown dramatically since then, with individuals from 38 nations attending the year 2000 meeting of APAI in Ottawa, Canada. The Association sponsors annual conferences, maintains an informative web site, conducts an annual survey of paroling authorities, and generally supports the work of the profession. Your paroling authority can be a member of APAI, as can individuals. Other important professional organizations include the American Probation and Parole Association (APPA) – which is geared to the supervision of offenders in the community – and the American Correctional Association

(ACA) – which addresses the full breadth of correctional issues, including all aspects of the management of correctional institutions. Information on the web sites of these organizations, all of which include membership information, is included at the end of this chapter.

Training

Many paroling authorities provide an introduction to your responsibilities through formal training sessions or through in-service training. It is essential, of course, for you to take advantage of whatever is offered in your state, and to seek out advice and support from the chair of your paroling authority and your colleague members.

The National Institute of Corrections has been offering an annual "Orientation for New Parole Board Members" at its National Institute of Corrections Academy, usually in early summer. Individuals who have served for 18 months or less are eligible to apply for this training, which has openings for about 25 participants each year. This training comes highly recommended. There is no cost for participants, as long as their participation is supported by the chair of their paroling authority.

Once again, professional associations can be a help in this arena. Their annual conferences provide many opportunities for training in a setting that allows networking with colleagues in the parole field.

Literature

As is the case with any profession, it's important for practitioners to become familiar with the literature that provides a philosophical and conceptual basis for your work, that outlines the implications of research, and that frames the key issues relevant to parole. A list of suggested readings is provided at the end of this chapter. Copies of some of the more basic and relevant works are included in this *Resource Kit*.

Web Sites and the Internet

The multitude of web sites and material accessible via the internet are a potential goldmine for individuals entering a new field. They can also be incredibly confusing and overwhelming. A few of the sites (in addition to the professional association sites mentioned above) that you will want to become familiar with are the web site for the National Institute of Corrections, sites maintained by other paroling authorities, the National Criminal Justice Reference Service for new literature in the field, and the Bureau of Justice Statistics that periodically publishes summaries of key indicators in criminal justice. All of these have related links which you might want to explore as you become more familiar with using the Web. (Web site addresses, names, and a brief description of their contents is found at the end of this chapter.)

Secondary Trauma

Most individuals who have been appointed to paroling authorities view themselves as experienced professionals who were chosen for their competence, good judgment, and integrity. Such individuals also, typically, view themselves as fairly seasoned and strong. What many of them may not be prepared for is the fact that the types of information that they are confronted with as they review cases and make decisions may have an impact upon them known as secondary trauma. Because you are repeatedly called upon to familiarize yourselves with criminal, predatory, and violent behavior, you may experience some reactions which are akin to the trauma that crime victims themselves may suffer. You may become hyper-vigilant with yourself and your family. You may begin to wonder what really constitutes normal behavior.

The most important thing to remember is that, should you see yourself experiencing any of the signs of such trauma, that they are the anticipated consequences of your work. Seek out help and counsel from your colleagues, or from other traditional sources of assistance. Remember to take the opportunity for time off, and to participate in creative and energizing activities aside from your work.

Dealing With the Personal Impact of Failure

There is another dimension of parole work that often goes undiscussed – the impact of failure on parole board members themselves. Despite their best efforts to make decisions that are well-reasoned, founded on good information, and that avoid undue risk, most paroling authority members will face a situation where they make a decision to release an offender who then goes on to commit a serious crime – one possibly involving serious harm to another person. Indeed, anyone involved in the criminal justice system – police officer, prosecutor, judge, correctional officer, probation or parole officer, or paroling authority member – accepts that possibility when they accept the job. Some suggestions offered by experienced paroling authority members about how to deal with this include:

1. Prepare yourself from the beginning that this may happen;
2. Be sure that you are doing whatever you cannot only to take great care with your own decisions – but to assist your board to put in place the best decisionmaking tools, the best procedures for securing good information, and the most effective policy possible;
3. Don't carry this burden alone – discuss it with your colleagues and exchange ideas about how to cope with such failures both before and after they happen; and
4. Allow yourself to grieve when and if failure occurs.

QUESTIONS TO DISCUSS WITH YOUR CHAIR

1. Are members of our board involved in professional associations? What is your suggestion about whether and which organizations I should consider joining?
2. Does the board have a library or collection of materials regarding parole? Where is it and how might I review the materials?
3. Are there web sites that you find particularly helpful?
4. Do you have any advice for a new board member regarding the impact of this work on him or her personally?
5. Does the human resource department of our agency have an employee assistance program that provides services that might be relevant to some of the secondary trauma and burn out discussed in this chapter?

QUESTIONS TO DISCUSS WITH YOUR COLLEAGUES ON THE BOARD

1. What organizations do members belong to? Do you find this helpful, and what would you recommend for a new member?
2. Thinking back on when you first came on the board, was there anything difficult or challenging about spending so much time with the information in offender files? If so, how did you cope?
3. Do you have any advice about how to adjust, personally, to the demands of this job?

THINGS TO ASK FOR

1. Copies of journals to which the board might subscribe.
2. Books, papers, reports owned by the board.

ADDITIONAL RESOURCES

(Materials included in the Resource Kit are marked with an asterisk. *)

These three articles synthesize the most significant issues in sentencing and corrections, providing historical context and suggestions for the future.

*Michael E. Smith and Walter J. Dickey. "Sentencing and Corrections, Reforming Sentencing and Corrections for Just Punishment and Public Safety." *Sentencing and Corrections: Issues for the 21st Century Paper from the Executive Sessions on Sentencing and Corrections, (No.4)*. Washington, DC: U.S. Department of Justice, National Institute of Justice, September, 1999

*Michael Tonry. "The Fragmentation of Sentencing and Corrections in America." *Sentencing and Corrections: Issues for the 21st Century Papers from the Executive Sessions on Sentencing and Corrections (No. 1)*, Washington, DC: U.S. Department of Justice, National Institute of Justice, September, 1999.

*Michael Tonry. "Reconsidering Indeterminate and Structured Sentencing." *Sentencing and Corrections: Issues for the 21st Century Papers from the Executive Sessions on Sentencing and Corrections, (No.2)*, September, 1999

This is an excellent synthesis of the state of our knowledge about what works with offenders and the changes in thinking on this issue over time.

Francis T. Cullen. "Rehabilitation and Treatment Programs." In James Q. Wilson and Joan Petersilia, eds., *Crime: Public Policies for Crime Control*. Oakland, CA: ICS Press, 2002.

Web Sites Of Interest

National Institute of Corrections: www.nicic.org

The National Institute of Corrections (NIC) is a federal agency located within the Bureau of Prisons with a mandate to provide technical assistance and training to state and local corrections agencies, including parole boards. They have publications, training opportunities, links to other sites, etc.

National Criminal Justice Reference Service: www.ncjrs.org

The National Criminal Justice Reference Service (NCJRS) is a federal agency within the Office of Justice Programs, U.S. Department of Justice. It is a clearinghouse for a wide range of government-produced and privately-produced literature on all manner of criminal justice topics. It has full-text documents that can be downloaded and offers searchable data bases on a variety of topics.

Bureau of Justice Statistics: www.ojp.usdoj.gov/bjs/

The Bureau of Justice Statistics (BJS) is the federal agency responsible for maintaining routine statistical reporting on justice-related activities. Located in the Office of Justice Programs, U.S. Department of Justice, this agency is a good source to track trends in parole and corrections as well as a broad range of other criminal justice activities.

Association of Paroling Authorities International: www.apaint.org

American Probation and Parole Association: www.appa-net.org

American Correctional Association: www.aca.org

The Corrections Connection (www.corrections.com) came online in February 1996 and characterizes itself as the first weekly news source committed to improving the lives of corrections professionals and their families. "Our intention was to create an open forum where practitioners could exchange ideas and utilize best practices, resources, case studies and new technologies." Although the authors of this document are not in a position to evaluate the site itself, it does provide a doorway through its "Directory/More Links" to "State Links" which lists each state's department of corrections site. Through those corrections sites it is possible to access most of the official web sites of the nation's paroling authorities.

Criminal Justice Glossary

Acquittal – Judicial deliverance from a criminal charge on a verdict or finding of not guilty.

Aftercare – Structured services designed to assist an offender in maintaining the skills and behaviors learned in treatment during and after reentry into the community. Focus is on the prevention of relapse and return to criminal risk behaviors.

Arrest – Hold time in legal custody, either at the scene of a crime or as a result of investigations. Arrest can also be the result of a complaint filed by a third party, an outstanding warrant, or a revocation of probation or parole.

Assessment – Evaluation or appraisal of a candidate's suitability for placement in a specific treatment modality/setting and the relationship to custody and supervision. Results from the assessment are placed in the offender's case plan and include risk/need assessment and secondary assessments that focus on special and/or specific areas related to the individual offender's requirements for successful completion of sentence and reintegration into the community.

Behavioral Programming – The primary tenet of behavioral programming is to increase positive behaviors and decrease negative behaviors by applying consistent reinforcement and appropriate disapproval through methods consistent with correctional program research.

Clemency – The granting of particular relief to an individual concerning their crime. Forms of clemency include pardons, commutations, reprieves, and remitting a debt.

Cognitive Programming – Programs that are designed to change offender thinking and therefore behavior from anti-social to pro-social. Cognitive programs are comprised of two major approaches.

Cognitive restructuring which focuses on; attitudes, beliefs, values, expectations, thinking patterns and other related cognitive structures which maintain their antisocial behavior.

Cognitive skills which include things such as; problem solving, communication, critical reasoning, anger management, and other thought and behavior combinations that are necessary for successful reduction of risk, offender change, and reintegration into the community.

Cognitive Self-Change (CSC) – A specific cognitive behavioral program designed to teach offenders to change the patterns of thinking, feeling, and behaving which lead to criminal behaviors. CSC emphasizes the principles of choice, self risk management, personal accountability, and custody treatment partnerships in offender change programs.

Communication Strategies – Correctional communication techniques that are developed based on correctional research and incorporate cognitive behavioral social learning principles and practices. Communication strategies incorporate the variety of available communication techniques for the specific purpose of integrating custody and treatment practices toward the overall goal of effective offender management and change.

Community Reintegration Planning (CRP) (also known as transition and reentry) – Preparation and strategy for each individual prisoner's release from custody which prepares them for return to the community in a law-abiding role after release. CRP requires developmental interagency and interdisciplinary coordination and includes joint staffing whereby personnel discuss shared data about an offender relative to both treatment and custody. CRP should begin at reception and follow the offender through release and aftercare.

Commutation – the substitution of one punishment for a crime for another punishment for the crime.

Competency Based Performance – A definition of competence for both staff and offender that includes knowledge, skill, and attitude in the measurement of assuring that any individual is properly qualified for a particular task or purpose.

Conditional release – a generic term denoting discretionary release with specific CONDITIONS. In some states (i.e., NY) a term denoting mandatory release by statute/law with specific conditions. Both discretionary and mandatory conditional release cases are under parole supervision.

Continual Interagency Communication – The ongoing cooperative effort among treatment, justice, and public health personnel necessary to successfully treat and supervise the offender. Communication among criminal justice, treatment, and public health systems facilitates optimum results in both offender management and training. It models a “One Voice One Message” approach to staff and offenders.

Continuum of Care – Early, thorough, and substantial treatment delivered in an unbroken manner throughout the entire criminal case-handling process, from arrest through the completion of a sentence. The components of a continuum of care include; custody and program practices from assessment through aftercare as well as documentation of offender progress as they move through the system.

Criminogenic – Relating to characteristics or factors identified by research as predictors of crime and/or related recidivism.

Criminogenic Need – Criminogenic needs are attributes of offenders that are directly linked to criminal behavior. Effective correctional treatment should target criminogenic needs in the development of a comprehensive case plan.

Criminogenic Risk – Those offender characteristics that are directly related to researched causation of crime. Risk factors are also directly related to the probability of reoffending. Risk factors are used in offender management to predict future criminal behavior and to assign levels and types of treatment services.

Cross Discipline Training – Continual interagency communication and training in which custody, administration and treatment staff are trained to understand and in some cases deliver the responsibilities relative to each other's roles. Cross discipline training is designed to facilitate support and the reinforcement of the mutual goals.

Day Reporting Center – A place where select offenders must report while on probation or parole and where the offender receives an increased intensity of services. Day reporting centers may include educational services, vocational training, treatment, and other service deliveries.

Deterrence (General) – The sentencing principal that underlies the notion of “making an example” of someone or of “sending a message” to a particular area or group by the way in which someone they might identify with is treated. The idea is to frighten the population of potential offenders into remaining law abiding. General deterrence uses either the fear of getting caught, the probability of getting caught, or the unpleasant consequences of conviction to prevent crime.

Deterrence (Specific) – The sentencing principal that takes the same fears as general deterrence – of getting caught and the consequences of getting caught – and uses them to induce law-abiding behavior in an individual. The notion is that it is possible to so scare an offender through the consequences of the original act that he or she will not reoffend.

Detoxification – Structured medical or social milieu in which the individual is monitored for withdrawal from the acute physical and psychological effects of addiction.

Developmental Interagency Coordination – Collaboration among in-house, contract, and community criminal justice treatment and public health professionals. Includes fiscal considerations, policy, and joint standards and developmental inter-agency coordination. It is designed to insure appropriate and consistent practices throughout the criminal justice system. It is particularly important that autonomous authority such as the judiciary and paroling authorities are included in this collaboration.

Diversion – Process whereby an offender's disposition is modified or suspended based on levels of custody and intervention appropriate to the offender's level of risk, need, and responsivity. Available resources, attention to just sentencing, and interagency collaboration are essential components of diversion programs.

Drug Testing – Random and targeted technical examination of urine samples to determine the presence or absence of specified drugs or their metabolized traces.

Drug Use Forecasting – Assessment of offender drug use and treatment data used to identify trends for the purpose of more efficient use of resources and program planning.

Executive Clemency – the granting of clemency by the Chief Executive.

Exiting Standards (also referred to as discharge requirements /summaries) – Required completion of specific elements of treatment and education programming in order to be placed on parole or released into the community.

Financial Bail – Amount of money set by the judge that is used to ensure the defendant's appearance at court.

Halfway/Transition House – Transitional facility where the client is involved in school, work, training, etc. The client lives onsite while either stabilizing or reentering society drug free. The client usually receives individual counseling as well as group, family, and marital therapy while working.

Impact Point – An incident or event at a given point in time that has negative or positive emotional significance on the offender such as time of arrest, sentencing, disciplinary action, loss of a loved one, graduation from a program, recognition for good behavior, etc. Every impact point offers the opportunity for the use of therapeutic tools designed to identify dysfunctional or harmful responses to the event and to train the offender in appropriate healthy responses.

Incapacitation – A sentencing philosophy that seeks to reduce the opportunity that offenders have for committing crime in the future. Incarceration is a typical way to incapacitate offenders. However, restrictions on movement in the community may also have incapacitative goals. Ultimately, incapacitation seeks crime prevention and community safety.

Infectious Diseases Risk Assessment – Evaluation of an offender's risk for sexually transmitted diseases, tuberculosis, HIV/AIDS, and other infectious diseases. Testing and referral for treatment are recommended to offenders assessed at high risk for such diseases, and

intermittent reassessment is recommended for offenders assessed at low risk.

Collaboration between criminal justice, treatment, and public health personnel ensures interagency coordination in the assessment and treatment of the high-risk offender at various stages throughout the criminal justice continuum and in the development of referral procedures and reporting policies as well as in understanding each system's definition of success and failure.

Infectious Diseases Screening/Testing – Administration of screening tests that are sensitive and specific for the detection of tuberculosis, sexually transmitted diseases, HIV/AIDS, and other infectious diseases.

Intermediate and Graduated Sanctions – A structured purposeful array of sanctions designed to assign level and type of consequence to violations of supervision/custody and or new crimes. Consequences must be appropriate to the behavior, related to levels of risk and need and integrated with planned interventions. Examples of graduated sanctions include increased surveillance combined with an appropriate intervention, loss of privileges combined with an appropriate intervention. Intermediate and graduated sanctions are designed to facilitate the balance between offender accountability, responsibility, and change. Intermediate and graduated sanctions are directly related to the principle of diversion.

Interventions – Intervention pertains to activities designed to intercede in and address thinking and behavior that leads to or may result from alcohol/drug use and abuse and crime.

Jail – To hold a person in lawful custody, usually while he or she is awaiting trial. In some jurisdictions, jails are used punitively for offenders serving short-term sentences or sentences to work release or weekends in jail. Jails range in size from rural jails having a dozen cells to urban jails having hundreds of cells.

Level of Services Inventory Revised (LSI-R) – One example of an objective, standardized, and validated offender classification instrument combining information on an offender's risk of reoffending and service needs. The LSI-R enables treatment planning and assignment to appropriate levels of treatment, freedom, and supervision.

Life-Skills Programs – A variety of related services designed to teach an offender how to function in society without drinking, using drugs, or committing criminal acts. May include such topics as job seeking skills, personal hygiene, budgeting and financial management, time management, recreation, stress management, and decisionmaking.

Mandatory Programming – Programs required as a condition of the case plan which hold disciplinary consequences for failure to attend or otherwise comply with conditions of treatment. Mandatory programming should **always** be expressed in terms that emphasize the offender's choice. Discipline relative to the offender's decision for non-participation should be simply assignment to locations with fewer amenities and privileges. Consequences for refusal to program should **not** be viewed as punishment.

Mandatory Release – Required release of an inmate from incarceration upon the expiration of a certain period as stipulated by a determinate sentencing law.

Non-Financial Conditions – Requirements for release set by the Judge that does not include monetary payment (e.g. required participation in supporting services, such as substance abuse treatment).

Outcome Evaluation – A measure of whether offenders have changed. Measurement analyzes assessments of intermediate objectives (e.g., reassess dynamic risk factors and criminogenic needs). Recidivism measures and other long-term outcomes such as sustained employment and no signs of substance abuse are then created. Both process and outcome evaluations are needed to effectively evaluate a program.

Own Recognizance – Released on one's own responsibility (i.e. released with an obligation to appear in court, but the release is not secured by financial bail).

Pardon – relief from the legal consequences of a crime. May also mean excusing or forgiving the existence of a crime.

Parole – Process of being granted release from prison by the appointed paroling authority prior to the completion of a sentence. Parole imposes supervision and other stipulations such as prohibitions on

certain activities (varies in different states).

Plea Hearing – Court hearing at which time the defendant answers to the charge or indictment brought against him/her.

Pre-Release Assessment – Criminogenic and infectious diseases risk assessment recommended for all potential parolees that can be used and compared to the offender's original assessments and case plan information. If the individual is paroled, this assessment information should be conveyed to the parole officer for follow-up and evaluation. Recommendations for referral for treatment and other joint staffing decisions can be made at this time.

Pre-Sentence Investigation Report – Document prepared upon completion of an inquiry into the circumstances related to a crime, and the background of an offender, for the primary purpose of providing sanction and interventions recommendations to the court.

Pre-Trial Hearing – Appearance in court before a magistrate at which time bond is set or a determination is made to retain in jail or release the offender.

Prison – Secure institution in which offenders are confined after sentencing for crimes. Prisons are classified as minimum, medium, close, or community security facilities based on need for internal institutional fortification. Inmates are similarly classified by severity of offense and/or other behavior and are usually assigned to prisons having a corresponding level of security.

Probation – Sentence of community-based supervision. Probation includes stipulations and prohibitions on certain activities and often includes fines and other penalties imposed by the court at the time of sentencing. Probation services are also responsible for the integration and delivery of effective interventions.

Process Evaluation – Is an assessment of the human and fiscal resources and efforts required by the design of a particular program. This assessment / evaluation measures the degree to which these resources are allocated and expended as demanded by the program design. The process evaluation includes descriptive

data on program activities, the actual state of the program, the competency and efficacy of services and service providers, program participant involvement, adequacy of program records, and the appropriate expenditure of funds.

Program Audit – Systematic activities designed to assure quality design, implementation, delivery and/or deletion of program services. The program audit structure should be based on elements of the program audited and current correctional research on best practice. Program audits should be regular, targeted, based on data received from the field and interfaced with the process evaluation and performance measures.

Proven Practices – Correctional research and literature has identified common practices that must exist in a correctional system if both public safety and offender change are to be successful. These practices include support and involvement by community and policymaker partnerships, support by qualified and involved leadership who understand the “What Works” objectives, designed and implemented around proven theoretical models beginning with assessment and continuing through aftercare.

Rehabilitation – Rehabilitation, along with incapacitation and specific and general deterrence, is a utilitarian philosophy of sentencing; that is, it rests on the principle that society is justified in inflicting pain and unpleasantness on its members only if some future good for the larger society is realized from the act. The good to be realized in sentencing is to produce by sanctioning better protection for the public by reducing the incidence of crime. Rehabilitation specifically seeks a reduction in the likelihood of an offender to commit crime in the future.

Relapse Prevention – A strategy to train substance abusers and sex offenders to cope more effectively and to overcome the stresses/triggers in their environments that may lead them back into drug use, dependency, or other criminal activity.

Reprieve – delaying the carrying-out of a sentence for a period of time.

Residential Treatment – Treatment in which participants live in a facility and receive a variety of structured educational and

therapeutic services.

Responsivity – The responsivity principle refers to the delivery of treatment programs in a manner that is consistent with the ability and learning style of an offender. Treatment effectiveness (as measured by recidivism) is influenced by the interaction between offender characteristics (relative empathy, cognitive ability, maturity, etc.) and service characteristics (location, structure, skill and interest of providers, etc.) Characteristics such as the gender and ethnicity of an offender also influence responsivity to treatment.

Application of the risk principle helps identify *who should receive treatment*, the criminogenic need principle focuses on *what should be treated*, and the responsivity principle underscores the importance of *how treatment should be delivered*.

Restoration – is a sentencing principal that aims to restore the community to its state before the crime was committed. Like retribution, restoration looks at crime as a disruption of the peace or a rent in the moral fabric of the community, but restoration aims to repair the peace rather than punish the offender in response. Therefore, the community at large, the victim, and the offender are potential concerns of restoration as a sentencing principal.

Retribution or Punishment – This is a sentencing philosophy based on the idea that the sentence is earned punishment for transgressing the law. It is founded on the belief that members of a community have an obligation to obey the laws of that community and that if the law is broken the individual deserves punishment. Unlike all other purposes of sentences, retribution does not aim to use the occasion of sentencing to achieve some future good result for society. Punishment is meted out because a wrong has been committed and the transgressor must pay. A balance has been tipped (by the offense) and must be righted (by the punishment).

Risk/Needs Assessment Comprehensive assessment that includes both dynamic and static criminogenic factors. Static factors include such elements as the client's educational, employment, familial,

medical, criminal, drug abuse, and other history while dynamic factors focus on such things as changing attitudes, beliefs, and thinking patterns. A risk/needs assessment usually includes a recommendation for interventions, supervision levels, and in some cases sentencing if a new crime is involved.

Sentencing Guidelines Standards – usually imposed by legislation, but in some cases by other means – which guide judges in what type and length of sentence is permitted to be imposed for certain types of crimes and certain types of criminal history. The degree to which judges must follow such guidelines varies from state to state. In some instances, guidelines are purely discretionary. In others, judges must provide reasons for departing from guidelines. Sentencing guidelines were a change implemented in large part to structure the discretion of judges because of the perception of unwarranted sentencing disparity or excessive leniency on the part of judges. In more recent times sentencing guidelines have also been aimed at limiting the use of incarceration because of the costs associated with growing prison populations.

Social Learning The primary tenet of social learning theory is that people can learn new behaviors, attitudes and feelings by observing other people and events followed by individual practice of appropriate thoughts and behaviors. Appropriate approval and disapproval, an organized structure of sanctions and rewards, recognition and appreciation of consequences and the use of offenders as peer role models are the primary techniques used in correctional applications of social learning.

Therapeutic Community A program of substance abuse treatment, based on social learning principles, in which participants live together in a residential-correctional environment that is structured to achieve positive changes in their values, conduct, emotion, and insight. Participants learn and practice new skills that allow them to make positive decisions and become self-managing as productive, responsible members of the larger community.

Treatment Any intervention that may change

the behavior that leads to social or health problems. Treatment focuses on one or more specific criminogenic risk factors such as substance abuse and/or criminal thinking and utilizes appropriately integrated therapeutic tools. Optimum treatment outcomes are achieved through proper integration with supervision activities. To qualify as treatment, services must include assessment of the problem, an appropriate case plan, the delivery of appropriate services, and discharge summary.

Trial/Sentencing Court hearing at which a prosecutor presents a case against the defendant to show that he or she is guilty of a crime. The judge or jury decides the verdict. Sentencing is the disposition of a case where penalties are imposed.

Truth In Sentencing A term used to describe both a change in sentencing philosophy, and specific legislation passed at the federal level and in many states based on the central idea that the length of a sentence pronounced in court should be equivalent (or roughly equivalent) to the actual time served in prison. It was, in part, a reaction to indeterminate sentencing where a sentence pronounced in court might be reduced by “good time” and by the decision of a parole board so that the actual time served could be markedly shorter than the actual time served.

“What Works” term used nationally by correctional agencies in reference to principles and practices common to effective public safety and offender programming. “What Works” research had also identified the offender attributes, “Criminogenic Risks and Needs,” that successful correctional programs must target.

“What Works” Environment A principle and evidence-based practice that states that everyone who has anything to do with an offender from entry (into the system) to completion is focused on assisting that person to be successful and is consistent on how they do that.

Work Release Alternative to total incarceration whereby inmates are permitted to work for pay in the free community but must return to the institution during their non-working hours.

About the Authors

James Austin is the Director of the Institute on Crime, Justice, and Corrections at the George Washington University in Washington, D.C. Prior to joining the GWU, he was the Executive Vice President of the National Council on Crime and Delinquency where he was employed for 20 years. He began his career in corrections in 1970 when he was employed by the Illinois Department of Corrections as a correctional sociologist at the Joliet and Stateville prisons.

He has thirty years of experience in criminal justice planning and research. He serves, or has recently served, as director for several U.S. Department of Justice funded research and evaluation programs. Most recently he has assisted the Pennsylvania, Texas and Kentucky parole boards evaluate and/or refine their risk assessment tools. He is also assisting several state prison systems re-validate their prisoner classification and risk assessment systems. Since 1999, he has served as the U.S. Department of Justice's Civil Rights Division Monitor to oversee major reforms in the Georgia juvenile correctional system.

Dr. Austin has authored numerous publications, was named by the American Correctional Association as its 1991 recipient of the Peter P. Lejin's Research Award, and received the Western Society of Criminology Paul Tappin award for outstanding contributions in the field of criminology. He has co-authored three books. He also serves on the American Society of Criminology National Policy Committee.

Peggy Burke is a Principal with the Center for Effective Public Policy and is responsible for project direction, strategic planning, research, and policy development activities in the Center's Silver Spring, Maryland office. She directs projects in the areas of parole, community corrections, pretrial decisionmaking, probation, offender classification, sentencing policy, and strategic planning.

Over the last 15 years, Ms. Burke has directed a series of national technical assistance projects sponsored by the National Institute of Corrections and directed at supporting the work of paroling authorities in developing more effective approaches to decisionmaking. She has authored much of the literature on parole over the last 20 years, beginning with an evaluation of the U.S. Parole Commission's guidelines in 1981. Ms. Burke has been involved in designing and delivering NIC's "Orientation for New Parole Board Members" seminar since its inception. Most recently, Ms. Burke has served as Director of the "Policy-Driven Responses to Parole Violations" Project sponsored by the National Institute of Corrections.

In 1997, she was awarded the Vincent O'Leary award by the Association of Paroling Authorities International. Previously, Ms. Burke was Director of the Justice Institute at COSMOS Corporation and a senior staff consultant with Arthur D. Little, Inc. Ms. Burke holds a Bachelor of Arts degree from Mahattanville College in Purchase, NY, and a Master of Public Administration degree from the George Washington University in Washington, DC.

Robert McGrath is a licensed psychologist-master and Clinical Director of the Vermont Department of Corrections' sex offender treatment programs, an integrated network of programs that provides treatment to sex offenders at two prison and eleven outpatient sites. He continues to direct and provide clinical services at a community-based sex offender treatment program for adult sex offenders that he developed at a community mental health center almost 20 years ago. He serves as a consultant to the Vermont Department of Mental Health and Developmental Disabilities concerning the statewide management of sex offenders with developmental disabilities.

Mr. McGrath has authored over 20 book chapters, journal articles, and monographs in the area of sexual aggression. He has served as a frequent consultant to the National Institute of Corrections and the Center for Sex Offender Management. He has provided training on sex offender assessment, treatment, and program development to corrections, mental health, and judicial groups throughout the United States, Canada, and Taiwan. He has served as a member on the International Sex Offender Program Accreditation Panel for the Correctional Service of Canada and has conducted several program evaluations for governmental agencies throughout the United States. Mr. McGrath is a current member and former President of the Board of Directors of the Safer Society Foundation, Inc.

Anne Seymour is a Washington, DC-based consultant specializing in criminal justice and crime victims' rights and services. Ms. Seymour has been an outspoken advocate for crime victims' rights for many years, developing and implementing training and technical assistance programs to strengthen victims' rights and services in law enforcement, prosecution, the judiciary, and community and institutional corrections. Her extensive research includes co-authoring in 1992 the landmark study *Rape in America: A Report to the Nation*; and serving as the principal author of the American Correctional Association's *Report and Recommendations on Victims of Juvenile Offenders*, published in 1994. Ms. Seymour has also appeared in virtually every news medium as an expert on crime victims' rights including appearances on *Nightline*, *Larry King Live*, *Crossfire*, *The Oprah Winfrey Show*, and *Frontline*.

Ms. Seymour is the Chair of the ACA's Restorative Justice Committee; Sub-chair of APPA's Victim Issues Committee; and a member of the Board of the National Victim's Constitutional Amendment Network. Ms. Seymour has received numerous honors for her efforts, including the 1992 "Outstanding Service to Crime Victims" award from President Bush. She graduated from California State University, Chico, in 1979 with a Bachelor of Arts in Social Work/Corrections, and was valedictorian of her graduating class. Ms. Seymour completed her course work in the CSU, Chico, Masters of Public Administration program.

Richard Stroker has worked in the criminal justice field in South Carolina for 22 years. He currently serves as General Counsel for the South Carolina Department of Corrections, and is responsible for overseeing the legal issues that exist within an organization that employs 7,500 employees, houses 22,000 inmates, and has an annual budget of over \$350 million. Previously, Mr. Stroker was the Deputy Director of the S.C. Department of Probation, Parole, and Pardon Services.

For the past ten years, Mr. Stroker has served as an Adjunct Professor at the University of South Carolina's College of Criminal Justice, and has taught numerous graduate and undergraduate courses. He has also provided technical assistance to a wide variety of federal, state, and local criminal justice agencies and has conducted numerous training sessions and workshops for the National Institute of Corrections, the American Correctional Association, the American Probation and Parole Association, and the Association of Paroling Authorities International.

The American Correctional Association has specially recognized Mr. Stroker for his work in the area of probation and parole violations, and he has received the President's Award from the South Carolina Correctional Association for Contributions to the Criminal Justice Field. Mr. Stroker holds a Bachelor's degree from Cornell University and a Juris Doctor degree from the University of South Carolina School of Law. He has also received legal education at Oxford University, Oxford, England and is admitted to practice before all state and federal courts in S.C., and the U.S. Court of Appeals for the Fourth Circuit.