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Parole Board

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INSTITUTIONAL PAROLE OFFICERS HANDBOOK

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MASSACHUSETTS PAROLE BOARD

I The Massachusetts Parole Board is the primary decisional authority in the Commonwealth for matters of Parole Granting and Parole Revocation. The Parole Board has jurisdiction over all individuals committed to state or county facilities for a term of 60 days or more. Parole is a procedure for the release of prisoners prior to the expiration of a sentence, permitting them to serve the remainder of their sentence under parole supervision in the community and in compliance with specified conditions.

Under provisions of the General Laws, (G.L., Chapter 27, S.5) The Parole Board has as its principal functions the duty to:

A) Determine whether and under what conditions an individual should be released to the community.

B) Supervise the individual in the community, monitoring the implementation of Parole Conditions and determining whether any imposed conditions have not been observed. (G.L. Chapter 27, S. 5)

In its capacity as the Governor as Advisory Board of Pardons, it makes recommendations to the Governor on the merits of all petitions for executive clemency which consist of pardons and commutations.

In addition, under Chapter 496 of the Acts of 1976, the Parole Board is empowered to review and remove court-imposed restrictions relating to movement within the Treatment Center of those confined as sexually dangerous persons.

The Parole Board is also invested with authority to terminate sentences for individuals completing at least one year of satisfactory parole adjustment (Chapter 127, S. 130 A).

In fulfilling its statutory obligations, the Parole Board is also called upon to make preliminary decisions such as: the establishment of hearing dates and basic parole eligibility; the granting of public hearings on petitions for pardons and commutation; detention of clients; and revocation of parole permits.

II PAROLE ELIGIBILITY

Aside from the area of mandatory sentences (gun law, lifers, etc) the legislature has provided six basic types of sentences, two of which place the sole responsibility of setting parole eligibility with the Board, three of which place the setting of parole eligibility with the courts through the sentence structure, and one of which grants the authority to advance a court set eligibility through a multi-step administrative procedure. The Parole Board has established a network of parole eligibilities consistent with the sentencing structures mandated by the legislature.

PAROLE ELIGIBILITY - STATE PRISONS

Prior to February 15, 1966, those serving sentences containing a minimum and maximum term (i.e., 3-5 years) could not receive a parole permit until they had served two-thirds of their minimum sentence, less good conduct credits. Blood time and camp time would further reduce the parole eligibility date and loss of good time could extend it.

Effective in 1966 the Massachusetts Legislature expanded the two-thirds law to allow parole eligibility at the expiration of one-third of a person's minimum sentence, but under no circumstances at less than one year, unless convicted of any of 26 crimes as specified in Chapter 127, S. 133, or attempts to commit such crimes. In these cases, two-thirds of the minimum term must be served but under no circumstances, less than two years. Anyone who receives a sentence for an offense committed while on adult parole from a Massachusetts sentence (County or State) must serve two-thirds (2/3) of his minimum term, but not less than two years except in the circumstances in which a single sentence of multiple concurrent sentences are imposed in which case eligibility is based on two-thirds (2/3) of the minimum. If a concurrent "B" sentence were imposed, it could be less than the two years.

TWO-THIRDS OFFENSES ARE AS FOLLOWS:

Manslaughter	Indecent A&B child under 14 yrs
Mayhem	Assault w/int murder or maim
Assault w/dangerous weapon	A&B by means of dangerous weapon
Attempt to murder	Armed Robbery
Assault dwelling house w/D.W.	Assault to rob or murder armed w/D.W.
Unarmed Robbery	Assault w/intent to rob or steal
Rape	Stealing by confining or putting in fear
Rape of child	Rape and abuse of a child
Assault on child w/intent rape	Attempted Extortion
Kidnapping	Incestuous marriage or intercourse
Unnatural and lascivious acts	Unnatural and lascivious acts with child under 16
Sodomy	Arson (meeting place)
Arson (dwelling house)	Arson for profit

Those sentenced for what are called "Crimes against property" (non-violent crimes) must serve one-third (1/3) of their minimum sentence or at least one year before they are eligible for parole.

Those sentenced for what are called "Crimes against the person" (violent crimes) must serve two-thirds (2/3) of their minimum sentence, or at least two years before they are eligible for parole.

Anyone who commits any crime while on parole and who is sentenced for it must serve two-thirds (2/3) of their minimum sentence, or at least two years before they are eligible for parole. The exception is when concurrent sentences to M.C.I. Walpole are imposed; the Attorney-General ruled that individuals could become eligible for parole in less than one or two years in this case.

For example, if the judge sentenced you to M.C.I. Walpole for a term of not more than eight (8) years and not less than six (6) years, your sentence would be 6-8 years. Six years is your minimum sentence.

(A) If you were sentenced to 6-8 years for a violent crime, you must serve four (4) years before you are eligible for parole. (Two thirds of six years = four years).

(B) If you were sentenced to 6-8 years for a non-violent crime, you must serve two (2) years before you are eligible for parole. (One-third of six years = two years).

(C) If you were on parole and received a six to eight year sentence for any crime, violent or non-violent, you must serve four years before you are eligible for parole (Two-thirds).

Certain offenses carry a mandatory number of years before an individual is eligible for parole. A partial list is as follows:

Offenses	Mandatory Term of Years
Murder in the first degree	No Parole
Murder in the second degree	15 Years
Life sentence for crime other than murder	15 Years
A&B for the purpose of collecting a loan second or subsequent offense	5 Years
Armed assault in a dwelling w/D.W. w/intent to commit a felony	5 Years
Unlawfully carry a D.W., second or subsequent offense	1 Year on first, no G.C.D on second
Bartley-Fox Mandatory Gun Law Chapter 269 S.10 Subsection A.C.D.	1 Year without parole or any other type of release; no good time on first yr of sentence.
Commitment as "Sexually Dangerous Person:	Eligible to see the Parole Board once during the first 12 months (provided such person is otherwise eligible for parole) at least once during each three (3) year period thereafter, or at any time when recommended by two psychiatrists, (appointed) by the Commissioner of Mental Health)
Habitual Criminals	One half of the maximum sentence

PAROLE ELIGIBILITY-CONCORD/FRAMINGHAM

Parole eligibility for Concord/Framingham sentences are established by Parole Board Policy. The current policy is determined by the number of years an individual is sentenced to serve and whether or not the individual has had a previous adult commitment that occurred before the present sentence was imposed.

A GUIDE FOR COMPUTATION IS AS FOLLOWS:

	*6 years	6-12*yrs	12-18*yrs	18 yrs or more
No prior adult incarceration when crime was committed.	Halftime or 6 mos; whichever is less	12 mos.	18 mos.	24 mos.
Prior adult incarceration when crime was committed	Halftime or 12 mos; whichever is less	18 mos.	24 mos.	24 mos.

* Up to, but not including

The term "prior commitment" includes any adult commitment, regardless of whether it was in Massachusetts or any other state. Exceptions to this rule are commitments which occured in the Armed Services, unless they resulted from a General Court Martial and incarceration in a military prison.

PAROLE ELIGIBILITY-HOUSE OF CORRECTION

Parole eligibility for House of Correction sentences is established by Parole Board Policy. The current policy is halftime, up to a maximum of two years (2) if there are aggregate (from and after) sentences.

The following examples show the method to be used in calculating House of Correction sentences:

(1) 2 year House of Correction sentence. Eligibility would be 1 year (1/2 time)

(2) 2 years, 2 yrs, F&A, 2 yrs, F&A, (6 yrs aggregate) Regular eligibility at 1/2 time would be three years. However, under present Parole Board Policy a person would be eligible in two (2) years.

Please note that the Bartley-Fox Mandatory Gun Law, Chapter 269, S. 10, Subsection A.C.D. is an exception to this policy. Should you be sentenced to the House of Correction for a term of one year (1) under this law a person would not be eligible for parole, nor would they receive any good time or any type of release (furloughs, work release etc.) until they have served the mandatory 1 year.

III HENSCHEL DECISION

Sentences from different institutions are aggregated for Parole Purposes only under the Henschel decision. From and after sentences to M.C.I.'s Concord, Framingham, Walpole and Houses of Correction may be aggregated, and one (1) parole date is determined by adding all parole eligibilities of the governing and from and after sentences. This enables a person to serve all sentences at one time, rather than to be paroled to another institution to serve a from and after sentence/s.

SENTENCES THAT CANNOT BE AGGREGATED UNDER HENSCHEL:

1) Crimes committed while on adult parole from a Massachusetts sentence (County or State).
2) Murder-first degree
3) Assault on a Correction Officer
4) Mandatory sentences (such as the Bartley-Fox Gun Law)

NEW METHOD FOR COMPUTING PAROLE ELIGIBILITY FOR FROM & AFTER SENTENCES FOR CRIMES WHILE INCARCERATED

The Parole Board voted on 9/26/83 to modify the method of aggregating from and after sentences received for crimes committed while incarcerated, when the new from and after sentence is received after the inmate's parole eligibility date. Henceforth, inmates must serve the parole eligibility period independently produced by the new from and after sentence, as is presently done for concurrent sentences received for crimes committed while incarcerated.

The following points must be kept in mind when calculating parole eligibilities under this policy.

1. The policy only applies to sentences received for crimes committed while incarcerated when the effective date of the from and after sentence or sentences imposed occurs after the inmate's prior parole eligibility date. Otherwise, the present method of aggregation is utilized adding the parole eligibility periods of the component sentences together and running them from the effective date of the earliest sentence.

2. If an escape is involved, any dead time accrued prior to the original p.e. date must be added onto the original p.e. date when determining if the new from and after sentence is effective before the prior p.e. date.

3. Crimes while incarcerated include escape and crimes committed while on escape.

4. This policy is to be effective for all crimes while incarcerated committed on or after November 1, 1983.

This policy rectifies the situation wherein from and after sentences for crimes while incarcerated were more lenient than concurrent sentences, contrary to the expectations of judges, attorneys, and other criminal justice professionals.

If there are any questions unanswered by this, please contact the Parole Board Legal Office.

POLICY FOR CONCURRENT SENTENCES FOR CRIMES WHILE INCARCERATED, CRIMES ON PAROLE

In 1977, the Board revised its policy on concurrent sentences as previously stated. The intent was to remove the "Dead Time" effect which often resulted from the imposition of Concurrent Concord, Framingham, or House of Correction sentences.

The individuals whom the Parole Board sought to benefit from its revised policy were those prisoners with pre-existing charges at the outset of incarceration. (Crimes committed prior to incarceration). It was never the Board's intention to benefit those who commit new crimes while incarcerated or on parole.

In order to resolve any uncertainity, the Board has determined that the benefits of its revised policy on concurrent sentences will not be available to individuals who receive concurrent sentences for crimes committed while incarcerated or on parole. Therefore, an individual who picks up a concurrent sentence for a crime committed while incarcerated, or while on parole will have their parole eligibility computed by the "old method" where a parole eligibility is computed on each sentence and the later date is taken as the overall parole eligibility date.

NOTE: Concurrent sentences to M.C.I. Walpole are also computed by the "Old Method".

Any person serving concurrent sentence received prior to November 1, 1977, and who would have benefited from a retroactive application of this policy, may submit a written request to the Parole Board for early parole consideration in light of this new policy.

The following process will be utilized when a prisoner habed into court returns with a concurrent sentence.

a) If the maximum date of the new sentence is no later than the maximum date of the original sentence, the parole eligibility date is unchanged.

b) If the maximum date of the new concurrent sentence is later than the maximum date of the original sentence, the following method will be used to determine the parole eligibility;

1) Effective date of original sentence:	1-10-76 (1½ yrs)
2) Effective date of new concurrent sentence:	6-10-76 (2 yrs cc)
3) Time served from effective date of original to effective date of new concurrent sentence:	153 days (=5mos. 2days)
4) New concurrent sentence:	2 yrs C.C.
5) Add figure from line 3 to line 4	2 yrs 5 mos 2 days
6) Divide line 5 by 2:	1 yr 2 mos 16 days
7) Add line 6 to line 1 to determine parole eligibility date	3-26-77

The figure on line 5 represents what is referred to in the Parole Board Policy Statement # 77-3 as the effective length of sentence.

IV REGULAR PAROLE PROCEDURES

All dates are computed at the time of commitment by the court to the institution. These dates are calculated by institutional staff from court papers (mittimus) which give the sentence(s) imposed and other pertinent data. The Institutional Parole Officer re-computes the parole date making sure that all laws and policies are followed. A card is then made up which shows when a person is eligibile for parole.

Within one or two months of a person's parole eligibility date, a parole summary is written and a parole hearing list is made. The parole summary is an outline of the individual's past history (prior commitments, arrests, prior paroles, and institutional history (program participation, D-reports etc). The parole summary will also include future plans (Home and Work) and may include the Institutional Parole Officer's recommendation.

V THE PAROLE HEARING

The Parole interview is normally structured to focus on five general areas: 1) the individual's past history and circumstances, which normally includes a description of the present offense and the circumstances that led to its commission; 2) the manner in which the individual has utilized the period of incarceration, including program participation, counseling and therapy if applicable, and other activities; 3) the degree of security in which the sentence has been served; 4) prior parole experience; 5) the conditions and elements of a proposed parole plan.

All Parole Board Panel Members are provided with a parole summary of each case to be heard. One Parole Board Member is assigned responsibility for a particular case, and reviews the case with the other panel members before the individual is called into the hearing room.

The interview may consist of a Board Member or Members questioning the individual or the individual making an opening statement bearing on his/her readiness for parole. However, there is no set format for a parole hearing and the individual is given fair opportunity to make an effective presentation of his case. Ordinarily the interview is followed by a short executive session (at which time the individual will be asked to leave the room) during which time the decision is reached. The individual will then be called back into the room and will be told of the decision of the Board and reasons for it. Normally, a parole hearing lasts approximately twenty minutes although due to circumstances much longer hearings may be held. The hearing may also be shorter if there are outstanding criminal matters of a serious nature.

STANDARD TERMINOLOGY AND DEFINITIONS USED IN COMMUNICATIONS OF PAROLE BOARD DECISIONS

a) Regular Hearings.

The term "Parole" in a Board vote means that the certificate of release will be issued automatically for the date indicated in the vote. This date cannot be changed except by another vote of the Board.

This vote is employed when:

1. At the time of the Board vote, a program has already received approval of the parole officer or a documented guarantee of a program acceptance is at hand, (e.g. written promise of a bed in a halfway house or addiction treatment facility).

2. At the time of vote, the Board decides that a definite program is not necessary (e.g. client has sufficient financial and other resources to establish and maintain himself in the community). In such instances the Board would instruct the client to report to a Board Office at time of release to establish contact and receive information.

3. At the time of vote, the individual is to be committed to a from and after sentence or to be recommitted on a parole violation warrant.

The term "Reserve" in a Board vote means that a certificate of release will be issued on or anytime after the date indicated in the vote provided that certain conditions are satisfied. These conditions will be indicated in the vote itself. There are various forms that such a reserve vote may take, for example.

Reserve July 1, 1978 - Must have Home and Work
This vote would mean that a certificate of release would be issued by the Parole Board on or after July 1, 1978; whenever a suitable home and work placement has been evaluated and approved by an agent of the Board. Variations in basic conditions are often made resulting in the vote of: Reserve July 1, 1978-Waive Home-Must have work.

Open Reserve

This vote is employed to accomplish the referral and transfer (with the agreement and cooperation of the Department of Correction) of a prospective parolee to a pre-release program to judge readiness for release to the community. An acceptable time frame will be indicated in the vote itself, e.g. Open Reserve to six month pre-release program.

In such instance, upon successful completion of the program, a certificate of release will be issued immediately.

In certain circumstances the Board may require a face-to-face interview in which event the vote would be e.g. Open Reserve to six-month pre-release program, Board to interview after five months in program.

Reserve (normally undated). This vote provides for a certificate of release to be issued whenever arrangements have been made for admittance of the client to any designated type of program, e.g. a) Reserve to Residential Alcohol Treatment Program; b) Reserve to Warrant; c) Reserve to out of state program.

Special Conditions:

Supervise for liquor. This condition will be qualified by one of two expressions which will be inserted in parentheses following the term itself. The two expressions (excessive use) and (abstinence) are self-explanatory and clearly deliver the intent of the Board.

Supervise for drugs. The placing of such a condition in a Board vote indicates that supervisory emphasis is to be placed on the client's behavior patterns or cluster of items which might suggest release into drug usage. This condition also automatically implies that subject submit to urinalysis at any time when requested by an agent of the Board.

Mandatory Mental Health Counseling. This condition requires involvement with an accredited mental health treatment agency (private or public)

Must Not Associate With.....(an individual's name or relation to the parolee will be inserted): This would be a person whose relationship is viewed as contributing to the client's difficulties. This condition is rarely imposed.

Must Avoid the Environs of.....(Geographic area which has contributed to the client's difficulties will be inserted). The latter condition is rarely imposed.

The term "Action Pending" in a Board vote signifies a deferment of decision for purposes of clarification of facts, further input from interested parties, resolution of legal problems, or any other consideration which would require a delay.

The term "Postpone" in a Board vote delays a decision to subsequent hearing but prior to the expiration of one year, e.g. two months, six months. Normally, a postponement will not exceed six months. Principally, the reasons for postponement are twofold:

Punitive: To match the gravity of offense (e.g. drug-trafficking).

Programming: To allow for involvement in or completion of programs which address the individual's specific needs, such as alcoholic or drug treatment, or vocational training.

The term "Parole Denied" in a Board vote closes out release consideration for a period of one year. However, the Board may consider, upon request, a rehearing on the merits prior to the expiration of one year.

The reasons for "Parole Denied" are:

On the merits of the case, e.g. gravity of offense, or insufficient attention to problems causing the offense, or identifiable evidence of lack of readiness of release.

Where there are outstanding legal complications (e.g.) unresolved court cases) the resolution of which might well change the sentence structure and parole eligibility. The Board may consider a new hearing on the merits upon request whenever such outstanding legal complications are disposed of.

The term "Refer to the Full Board"
Any panel member may stay any vote of the panel by voting that the matter be referred to the Full Board for resolution at an executive session. A disposition of this nature is termed Action Pending for Full Board Review, and ordinarily the case will be resolved at the next executive session where a majority vote of those present will govern.

VI 2 Reasons for Adverse Decisions

Where parole is not granted after a full hearing, the Board will explain orally to the individual the reasons for the adverse decision and makes suggestions as to the type of accomplishments, if any, which should be achieved to maximize the chances of release at the next hearing.

In the case of an adverse decision (a vote of postponement, denial, rescission, or revocation) the institutional parole officer shall ensure that the inmate understands the decision and advise regarding the process available for appeal.

The officer shall be available to meet with the inmate to explain the decision and reasons, and to discuss suggested activities which will enhance the inmate's opportunity for parole in the future.

The officer shall prepare and deliver written notice and reasons of the decision within two weeks of the hearing.

3. Appeals from Adverse Decisions

In instances where the inmate feels that the decision of the panel was unfair, he may appeal in writing within thirty (30) days of the decision of the original panel. Thereafter, in the event that the original decision is reaffirmed, the inmate may appeal in writing to the Full Board within an additional thirty (30) days.

4. Reconsideration

If the original panel has voted "Parole Denied" and has established fulfillment of certain specific requirements as a condition for reconsideration, (e.g. removal of a warrant, or a specified period of successful pre-release or work release experience) and those conditions have been met, an individual may petition the panel that heard him at any time for reconsideration. In these circumstances the Board will normally schedule a hearing. Any subsequent request for reconsiderations will be circulated randomly to any Board Member.

If the individual asserts that compelling personal circumstances such as a transfer, program involvement, or family problems not previously addressed by the Board warrant a review, he may petition the original hearing panel following the elapse of ninety(90) days from the date of decision.

VII Institutional Revocation Hearing

When an individual is returned to the institution of commitment and held according to the terms of the original sentence (return of service having been made on the parole violation warrant), an "institutional revocation hearing" will be conducted by a panel of the Parole Board within 30 to 60 days of return. Members of the Board must make a "Final Determination" as to whether a condition or conditions of parole have been violated.

The Institutional Parole Officer is responsible for preparing Form "C" (Notice of Institutional Revocation Hearing) and delivering it to the parolee at least three days in advance of the hearing. The Form "C" is equivalent to Form "A" (Notice of Preliminary Hearing) and should state the purpose of the hearing and the rights afforded the parolee which include:

a. Written notice of the alleged violations of parole;
b. Disclosure to the parolee of evidence against him/her;
c. Opportunity to be heard in person and to present witnesses and documentary evidence; however, witnesses may be limited as to the number where it appears that their testimony would be repetitive;
d. Right to confront adverse witnesses unless members of the Board find "good cause" for denying such confrontation;
e. Right to retain an advocate;
f. Right to a written statement disclosing the action of the Board and the reasons for it. The normal procedure is for the panel to announce the decision at the conclusion of the hearing specifying the finding of the Board as to each of the alleged violations. The panel makes an independent decision, assuming that the revocation is affirmed, as to whether reparole should be considered, and if this decision is adverse to you, the written statement will follow.

As a result of the decision of the U.S. Supreme Court in Moody V. Daggett, decided November 15, 1976, the Board has approved the following change in policy regarding the timing of the institutional parole revocation hearing (conducted by members of the Board) where the individual is confined on an intervening sentence for a crime committed while on parole and a parole violation warrant was issued an is lodged as a detainer. Moody V. Daggett held that a parolee is not constitutionally entitled to an immediate revocation hearing in these circumstances but that the execution of the parole warrant triggers the loss of "conditional liberty" spoken of in Morrissey V. Brewer and sets in motion the required hearing procedures.

This policy is designed to maintain basic fairness while at the same time recognizing that the Board faced difficulties in making a decision on the disposition of a parole warrant so early in the intervening sentence.

I. Hearings will not automatically be scheduled on parole violation within 30 to 60 days following commitment on the new sentence as in the past.
EXCEPTION:

II. Where parole eligibility on the intervening sentence is one year or less away, hearings will continue to be scheduled routinely within 30 to 60 days of commitment, with proper notice of (Form "C"). This will apply mainly to House of Correction and Concord and Framingham sentences and is to allow the parolee to present mitigating factors and to provide the opportunity for the removal of any direct impediment to community-based or other program participation.

III. Following the conclusion of any such revocation hearing where the disposition is "warrant to stand" members of the Board will indicate at what point, if any, another review will be made. If no specific time is indicated, the matter of disposition of the warrant will be reviewed at the time of the eligibility hearing on the intervening sentence. If a determination is made at the time of the eligibility hearing that the parole warrant is to be executed, either by reason of parole or good conduct charge, Board Members may vote that a hearing be scheduled for reparole consideration at a specific time following execution of the warrant. If no hearing is voted, it is presumed that the individual will serve the remainder of the sentence, unless he has more than a year to serve, in which case he will receive an annual review. In no event will a second revocation hearing be held.

IV. Any individual confined under sentence with an unexecuted parole warrant lodged as a detainer may request, either directly or through a parole representative, review of the status of the warrant. The Board may (a) Schedule a hearing by members of the Board or an interview by a hearing officer; (hearing officers may not conduct final parole revocation hearings) (b) Act administravely by either withdrawing the warrant or voting "warrant to stand" or (c) Take no action.

POLICY STATEMENT #81-2

Subject: Scheduling of release hearings for parole violators who are ineligible for re-parole at the time of the institutional revocation hearing.

This policy statement governs the scheduling of release hearings for individuals in the following circumstances:

> An individual on parole is revoked and returned on the basis of a new arrest resulting in conviction and sentnece (B sentence). At the final revocatin hearing, the individual is not eligible for parole consideration due to the operation of the B sentence. Therefore, based on the new conviction and snetence, the resulting Board vote is: Revocation Affirmed: Parole Denied, (not eligible).

This issue is whether the next parole release hearing should occur as the annual review on the original (A) sentence, or, occur at the parole eligibility on the new (B) sentence?

Effective immediately, individuals in the above circumstances shall automatically be next reviewed for parole release at the eligibility on the new (B) sentence.

This method would prevent an individual who has received only a short commitment for a B sentence from automatically receiving an effective one year setback of parole consideration.

POLICY STATEMENT #81-1

Subject: Scheduling of release hearings for inmates discharged from intervening sentences for crimes comitted while on parole, to parole violation warrants.

This policy statement shall govern the scheduling of parole release hearings for individuals in the following circumstances:

> An individual serving a sentence for a crime committed on parole, (intervening sentence), and with the parole violation warrant lodged, has a hearing with the resulting Board vote being "Revocation Affirmed: Parole Denied; Warrant to stand". Subsequently, the individual is discharged from the intervening sentence, the warrant is then executed and the individual resumes serving the original sentence.

The issue, is, when is the next parole hearing?

Effective immediately, individuals in the above circumstances shall automatically be next reviewed for parole consideration one year from the date of the hearing on the intervening sentence. The date of the execution of the warrant has no bearing on the date of the next release hearing in these circumstances. Naturally, at the intervening sentence hearing, the Board may vote to schedule the next hearing for some time less than one year.

VII EARLY CONSIDERATION

State Prison
1/3 Consideration

Individuals serving sentences for certain specifically enumerated violent crimes, although regularly parole eligible after service of two-thirds of the minimum sentence (but in no event less than two years), may in certain instances achieve an earlier eligibility under the provisions of Chapter 764 of the Acts of 1965, now incorporated in Chapter 127, S. 133b. There is a mechanism established under which, with the approval of the institution superintendent, the commissioner of Correction and a majority of the members of the Parole Board, an individual may become eligible at some point between 1/3 and 2/3rds of the minimum term. This procedure is not available to those serving sentences for crimes committed while under Massachusetts parole supervision.

The process is as follows:

1) The individual may write to the Superintendent as early as 90 days before the date of one-third of their minimum sentence. An internal classification board will then review the case, making sure the individual is eligible, interview the person and make a recommendation to the Superintendent. The Superintendent approves or denies 1/3 parole consideration based upon review of the Classification Board's recommendation and the individual's record.

2 Should the one-third request be approved by the Superintendent, is then forwarded to the Commissioner of Correction for his consideration.

3) If approved by the Commissioner, the request is sent to the Parole Board. A majority of the Board must approve the request; if they do, the individual's name is placed on a parole hearing list as specified by the Board to be seen by the Board for parole consideration.

Should the inmates request for 1/3rd consideration be denied at any point, the whole process stops and they may submit a new application after 90 days have expired.

Early Consideration
Concord/Framingham/House of Correction

Individuals serving a sentence to MCI Concord, MCI Framingham or a House of Correction may request early consideration at any time. A written request should be submitted to the Superintendent or Sheriff in charge of the institution where incarcerated. If the Superintendent or Sheriff, or a person designated by them for that purpose, approves the request, a package containing the institutional recommendation, inmate's written request, and all pertinent records such as police reports, sentencing summary, probation reports, etc. is then sent to the Institutional Parole Officer. If all necessary material is included, the IPO then forwards it to the Board for a vote.

An inmate may again request early consideration upon denial by the Board, no sooner than 90 days from the date of denial.

While the Parole Board does not intend to discourage legitimate early consideration requests their considerations will be based only on evidence of compelling institutional achievement and on a predominance of "positive over negative factors".

In the absence of a verified medical or family emergency, the Board will not entertain early consideration petitions for the following categories:

Those serving weekend sentences;
those serving sentences of less than six months;
individuals with outstanding warrants.

There will be a very strong presumption against early consideration in the following categories:

Those serving a sentencing representing a crime on parole;
those convicted of trafficking in narcotics;
those convicted of sex offenses.

Provisional Rescission
and
Rescission of Parole Dates

There are several events that may trigger the rescission process for an individual who has been voted a parole or reserve date. For example, a new criminal warrant being issued, a previously issued warrant discovered, a violation of the law, or the individual is alleged to have violated an institutional rule (major violation). The matter will be reviewed by members of the Parole Board who may, by office vote, rescind the previous vote) of the panel which granted a release date. The specific vote of the Board will be "Rescind vote of (date of previous vote) and place on next available list for hearing". An institutional "rescission" hearing will then be held by members of the Board to determine: (1) whether adequate grounds existed to rescind the previous vote and (2) what action should be taken such as granting a new parole date, a postponement or denia of parole. The Board will rescind a date when it believes that the incident cases some doubt as to parole readiness or results in a new parole eligibility date which makes a person not eligible for parole at that time.

The procedure used during this process are similar to those used in revocation of parole because the prospective parolee has a significant interest at stake, to wit: Anticipated freedom.

A Form C-1, Notice of Institutional Hearing Re: Possible Final Rescission of Parole Release Date will be given to the inmate by the Institutional Parole Officer within 72 hours of the hearing.

X

Split Sentences

In split sentences, the Board's jurisdiction is based on the total sentence which includes the committed portion together with the suspended portion. Eligibility for parole is based on the committed portion and, when the Board is considering parole, it weighs the issues of punishment and incapacitation as well as the various positive and negative factors. However, when the Board considers parole in the case of split sentences, the Board will, except in unusual circumstances, place a stronger burden on the offender seeking release on parole when the committed portion is of short duration.

With respect to State Prison sentences, where the committed portion of the sentence expires prior to an individual's regular parole eligibility date, the Board would not have jurisdiciton since the individual would be released on probation before being eligible for parole. This latter interpretation is required under an opinion of the Attorney General to the Chairman of the Parole Baord dated August 3, 1976.

XI

"Forthwith Sentences"

A forthwith sentence is a sentence which a court orders to take effect immediately notwithstanding a previous sentence being served by a prisoner. Chapter 279 of the Massachusetts General Laws provides for two kinds of forthwith sentence:

1) From a jail or house of correciton to the state prison (Section 27)

2) From MCI-Concord to the state prison or a house of correction (Section 28)

Under Section 27, a forthwith sentence to the state prison erases a house of correction sentence. See In re Kinney, 1977 Mass. App. Adv. Sh. 773, 777. However, Section 28 is less clear as to whether a forthwith sentence the state prison erases a Concord sentence. The recent case of Cabil V. Parole Board (Norfolk Sup. Ct.) No. 124975, 1-24-79) held that a forthwith sentence imposed under Section 28 wipes out an underlying Concord sentence.

Therefore, a forthwith sentence to a state prison, whether imposed under Section 27 or Section 28, erases any underlying house of correction or Concord sentence. In light of the Cabil case the Department of Correction and the Parole Board will henceforth deem a Concord sentence to be terminated when a forthwith sentence to the state prison is imposed under C. 279, S. 28. Since the Cabil case also held that any parole period emanating from a Concord sentence is wiped out by a forthwith sentence to the state prison, the Parole Board will close its case and withdraw its violation warrant (if any) where an individual on parole from a Concord sentence receives such a forthwith sentence.

The following aditional comments are offered in the interest of further clarifying the operation of forthwith sentence.

1. There is no provision in the law for a forthwith sentence from the state prison to the state prison; or from a house of correction to a different house of correction. Where such sentences are imposed, correctional staff should contact the sentencing court and request clarification and/or correction of the mittimus.

2. There is no provision in the law for a sentence to be imposed forthwith, notwithstanding and outstanding unexecuted parole violation warrant.

However, any unexecuted parole violation warrant will be automatically voided upon the imposition of a forthwith sentence to the state prison.

Questions regarding the implementation of this directive should be directed to the Legal Office of the Department of Correction or the Parole Board.

Effective the 30th day of July, 1979.

XII

PARDONS AND COMMUTATIONS

A. Introductory Statement

Under the provisions of Chapter 127, S. 154 of the General Law, the full membership of the Parole Board is constituted as the Governor's Advisory Board of Pardons with authority to make a non-binding recommendation to the Governor. The Massachusetts Constitution confers upon the Governor the power to exercise clemency with the advice and consent of a majority of the Council. The clemency power may be exercised in favor of an individual convicted of a crime who is not under commitment or sentence, the normal case, or in favor of an individual presently confined in which case a senence is reduced to a less severe term, e.g. from life to a term of years. The latter exercise of clemency is commonly referred to as a commutation of sentence, although under Chapter 127, S 152 of the General Laws, the word "Pardon" is an umbrella term covering any exercise of the pardoning power including commutation.

A pardon is an act of grace or forgiveness conferred upon an individual who has been convicted of a crime. The Massachusetts Pardoning Statute does not set forth the legal effect of a pardon and there are few laws explicitly prohibiting convicted felons from holding Civil Service jobs or obtaining a particular license. However, a pardon removes the legal consequences of an individual's behavior and where a specific law causes an individual to be disqualified from appointment by virtue of a felony conviction, a pardon erases the ineligibility (Commissioner of M.D.C. Director of Civil Service, 384 Mass. 184. Once a pardon has been granted, a line entry is added to the individual's criminal record reading: "Full and Complete Governor's Pardon".

Upon approval of a petition for pardon, the governor shall direct all proper officers to seal all records relating to the offense for which the person received the pardon. Such sealed records shall not disqualify a person in any examination, appointment or application for employment or other benefit, public or private, including, but not limited to, licenses, credit or housing, nor shall such sealed record be admissible in evidence or used in any way in any court proceeding or hearing before any board, commission or other agency except in imposing sentence in subsequent criminal proceedings. On any application or in an interview for employment, or in any other circumstances, where a person is asked whether he has been convicted of an offense, a person who has received a pardon for such offense may answer in the negative. The attorney general and the person so pardoned may enforce the provisions of this paragraph by an action commenced in the superior court department of the trial court.

B. Any individual desiring the exercise of clemency in his behalf must initiate the process by the submission of a written petition directed to the Governor. The petitions are then forwarded to the Advisory Board of Pardons for a report and recommendation. All petitions become a matter of public record. In cases where the petitioner is confined in a correctional institution, copies of the petition are sent to the Attorney General, the Commissioner of Correction and the chief of police of the municipality in which the crime was committed. If the individual was convicted in the Superior Court, the district attorney in whose jurisdiction sentence was imposed shall be notified, or, if conviction was obtained in the district court, the justice of that court shall be notified. Where the individual is not confined, or has never been confined, the Attorney General, chief of police and the district attorney are sent copies of the petition if a felony was involved; otherwise no notification is necessary. These officials are permitted to make written recommendations to the Board within six weeks of their notification. The Board also gathers essential material; complete criminal record from the Board of Parobaiton; the official version of those crimes for which a pardon is sought; and other information.

The Advisory Board of Pardons must forward the petition together with its report and recommendation to the Governor within ten weeks of the receipt of the petition;' except that if it is determined that adequate consideration requires a hearing on the merits, a hearing may be held in any pardon or commutation matter, and in this case the Advisory Board report and recommendation must be forwarded to the Governor within six weeks of the original receipt of the petition.

(General Laws, Chapter 127, S. 154) In cases where the petitioner is confined under sentence for a felony, the Attorney General and the district attorney must be notified of the hearing and are entitled to appear.

The Board may summon witnesses at a hearing and may administer oaths and affirmations. The issue at such a hearing is soley whether there are factors present which warrant clemency. The Board is not empowered to review the proceedings of the trial court and shall not consider any questions regarding the correctness, regularity, or legality of such proceedings. The petitioner may produce favorable witnesses at such a hearing and any opposition is also entitled to appear. The petitioner is also entitled to be represented by counsel who must file a statement of interest with the Secretary of State under the provisions of Chapter 127, S. 167.

C. Guidelines for the Exercise of the Clemency Power

The present Governor has issued guidelines pertaining to the exercise of clemency. However, although these guidelines provide a framework for Advisory Board action, the Board is not prohibited from making a recommendation that departs from them, if circumstances warrant.

1. Pardon Petitions

Under the Governor's guidelines, pardons are warranted for persons who exhibit a substantial period of good citizenship subsequent to their criminal conviction and who are able to verify a specific and compelling need for a pardon. A substantial period of good citizenship is defined as a period of seven years in which the individual has not been convicted or incarcerated in the cases of felonies; or five years in the case of misdemeanors. An example of a compelling need would be a situation where a pardon was required to obtain a license or a particular job. If the petitioner is not able to demonstrate a specific need, a longer period of good citizenship and incident-free behavior is generally required, normally ten years. Particular circumstances may justify the relaxation of these guidelines and while successful periods of parole or probation will be included as part of the period of good citizenship, the parole or probation term must be completed prior to the filing of a petition.

2. Guidelines for the Commutation of Sentence

The power to commute a sentence is rarely exercised as it is considered an extraordinary remedy. The most frequent use of the commutation power is in the case of a life sentence for first degree murder which carries no parole eligibility. Reduction in the severity of the sentence enables such individuals to be considered for parole at some time in the future. The possibility of commutation relief in the future is viewed as a strong motivation for individuals confined to utilize available resources for self-improvement. In accordance with the Governor's guidelines, recommendations in favor of commutation of sentence will be considered where:

(a) Petitioner has, within his or her capacity, made exceptional strides in self-development and improvement; or

(b) Petitioner is suffering from a terminal illness or has a severe and chronic disability which would be mitigated by release from prison; or

(c) Petitioner's further incarceration would constitute gross unfairness because of the basic equities involved.

With respect to clemency recommendation in First Degree Murder cases, the Advisory Board notes that parole eligibility on life sentences for Second Degree Murder is fifteen years but declines to specify a precise period that must be served before favorable recommendation on a commutation petition would be considered in First Degree cases. The shorter the time served, however, the heavier the burden on the petitioner to demonstrate justification for a favorable recommendation.

In the majority of cases, the recommendations to the Governor will be commutation of sentence to a term of years bringing about parole eligibility some six to eighteen months in the future rather than immediate parole eligibility. This allows the individual to take advantage of community-bassed programming under Chapter 777 and to develop a favorable track record in minimum security placement prior to parole consideration.

Because of the Governor's commutation guidelines, the Advisory Board will seldom recommend favorable action on a commutation petition if;

(a) There is a viable administrative or judicial remedy available; or

(b) The petitioner is convicted but not yet sentenced; or

(c) The relief sought is from a lengthy sentence which is not yet being served; or

(d) Petitioner has not yet qualified for and made responsible use of furloughs; or

(e) Petitioner has not yet progressed from a 24-hour maximum security confinement status. (This does not apply to persons confined in protective custody).

In a majority of instances, the Governor follows the recommendation of the Advisory Board if within the guidelines and will seldom grant releif where the Advisory Board makes an unfavorable recommendation.

In cases where a petitioner confined after commission of a felony is seeking commutation relief and has received a favorable recommendation from the Advisory Board of Pardons, a public hearing must be held by and before the Executive Council. The Advisory Board is utilized by council members as a resource at this proceeding.

XIII

Disclosure of Records

Inmates Access to Information About Themselves Compiled by or for the parole Board.

The Parole Board compiles information about inmates in order to make informed decisions about release, supervision, etc. In general, this information is of two types: 1. Criminal Offender Record Information (CORI); 2. Evaluation Information. The rules covering when this information can be disclosed to the individual whom it is about vary according to which type of information it is.

1. Criminal Offender Record Information (CORI)

Examples of CORI are: Official records of court convictions and appearances, record of criminal charges, sentences, whether and when released on parole, parole eligibility dates, etc. In general, CORI is brief line-items of an individual's official contacts with the criminal justice system. Each individual has the right to inspect and, if practical copy CORI which refers to him or her. However, the Parole Board generally will provide access only to CORI which originated within the Parole Board. Access to CORI which occurred from another agency, such as Corrections or Probation, must be obtained through the agency of origin.

Evaluative information is a much broader category of information. It is documents like classification reports, psychiatric evaluations, and other reports about an individual's mental, or physical health, employment and social histories, and other assessments and evaluations.

Generally, this type of information will be disclosed upon request to the person it pertains to. However, if any of this information was provided only upon a legitimate expectation that it would be kept confidential or its release may tend to result in harm to an individual, or, if its release would interfere with an on-going treatment relationship, then this information may be withheld from disclosure, but the individual will be told of that fact.

If an individual is interested in seeing information held by the Parole Board, he or she should make a request of the Institutional Parole Officer to do so. If an item that they want to see is not available from the IPO, individuals may authorize in writing someone else who is not an inmate or parolee to go and obtain this information, but only for the purpose of giving it to them. Identification is also required.

Attorneys and law students representing them, may also be given permission in writing to review CORI or Evaluative Information that can be disclosed.

If they have any questions, they should contact the I.P.O.

XIV Interstate Compact

A process in which the Massachusetts Parole Board participates in-on a mutual level. It allows an individual to do his/her parole in another state rather than in the state where they were convicted. A person must be paroled from the state where they are serving their sentence, accepted by the state where they plan to live. The person enters into a legal agreement in which they consent to be supervised by the parole rules of both the sending and receiving states. In order to be accepted by the receiving state, a program (home and work) must previously be submitted for investigation and approved. The receiving state acts as the agent for the sending state.

Due to the fact that the above process takes several weeks, it is recommended that a person requesting to be paroled to another state contact the Institutional Parole Officer well in advance of their hearing, since they must submit a proposed home and work plan, and it must be approved by the other state before they will accept a person if paroled.

PAROLE HEARINGS BY HEARING OFFICERS

Statutory Authorization

(a) Under Massachusetts General Law Chapter 127 section 134, it is the Parole Board policy that the Chairman of the Parole Board designates Hearing Officers to conduct Hearings in lieu of the Board for inmates serving sentences or total aggregate of sixty days to one year who are under the Board's jurisdiction.

(1) This includes split sentences having committed portions of sixty days or more.

(2) This includes weekend sentences having committed portions of sixty days or more.

(b) Such inmates are automatically parole eligibile at half time.

(c) The Hearing Officer so designated reports his/her findings and recommendations as to parole and conditions of parole to the Board. The Board may grant or deny a parole permit after considering the report and recommendations.

Drug Law Parole Eligibilities

Since passage of Chapter 436 of the Acts of 1980, effective July 10, 1980, there has been great confusion and uncertainty regarding parole eligibilities under the various statutes and amendments of the so-called "drug laws", contained in Chapter 94C,§32, et. seq. All these statutes have been amended at least twice in that time, and several three or four times, attempting to resolve ambiguities and inconsistencies in the statutory language. Compounding this maze, numerous court decisions have struck down various provisions of these statutes as unconstitutional.

With the latest amendments to these statutes, contained in Chapter 571 of the Acts of 1983, effective December 13, 1983, it appears that predictability and precision finally exists in the terms of these laws.

The following chart should be utilized to determine parole eligibilities in these cases. Where an ambiguity or conflict existed within or between statutes, the rule of strict construction of penal statutes was applied. Inasmuch as the most recent amendments appear to have finally produced statutory language that effectuates goals of enhanced penalties for greater quantities of drugs, future cases under these statutes should be free of the infirmities of the previous versions.

It should again be pointed out that there are two relevant dates for computing the applicable parole eligibility rule: 1) the date the offense was committed, and 2) the date of sentencing. If the parole eligibility rule in effect for the offense at the time the crime was committed is different from the one in effect at the time of conviction and sentencing, then the rule that produces the earlier parole eligibility must control.

Section	Drug Offense	Parole Eligibility	Effective Dates
32(a)	Class A	Statute ruled unconstitutional by court	7/10/80 to 11/16/82
		Regular P.E. Rules	11/17/82 to present
32(b)	Class A second or subsequent offense	Regular P.E. Rules	7/10/80 to 12/12/83
		Minimum five years P.E. (Chapter 571 Acts of 1983)	12/13/83 to present
32A(a)	Class B	Regular P.E. Rules	7/10/80 to present
32A(b)	Class B second or subsequent offense	Regular P.E. Rules	7/10/80 to 1/4/83
		Mandatory minimum one yr P.E.	1/5/83 to 12/12/83
		Mandatory minimum three years P.E.	12/13/83 to present
32A(c)	Phencylidine	Regular P.E. Rules	2/3/81 to 1/4/83
		Mandatory minimum one yr P.E.	1/5/83 to present
32B(a)	Class C	Regular P.E. Rules	7 /10/80 to present
32B(b)	Class C Second or subsequent offense	Mandatory minimum two years P.E.	7/10/80 to present
32C(a)	Class D	Regular P.E. Rules	7/10/80 to present
32C(b)	Class D second or subsequent offense	Regular P.E. Rules	7/10/80 to present
32D(a)(b)	Class E	Regular P.E. Rules	7/10/80 to present

Section	Drug Offense	Parole Eligibility	Effective Dates
32E (all sections)	Trafficking in marijuana,cocaine heroin, opium, morphine	Regular P.E. Rules	7/10/80 to 1/4/83
		Mandatory minimum one yr P.E.	1/5/83 to 12/13/83
32 E(a)(1)	50 pounds or more marijuna	Mandatory minimum one yr P.E.	12/13/83 to present
32E(a)(2)	100 pounds or more marijana	Mandatory minimum three years P.E.	12/13/83 to present
32E(a)(3)	2000 pounds or more marijuana	Mandatory minimum five years P.E.	12/13/83 to present
32E(a)(4)	10,000 pounds or more marijuana	Mandatory minimum ten years P.E.	12/13/83 to present
32E(b)(1)	28 grams to 100 grams cocaine	Mandatory minimum three years P.E.	12/13/83 to present
32E(b)(2)	100 to 200 Grams cocaine	Mandatory minimum five years P.E.	12/13/83 to present
32E(b)(3)	100 grams or more, cocaine	Mandatory minimum ten years P.E.	12/13/83 to present
32E(c)(1)	28 grams to 100 grams, heroin	Mandatory minimum five years P.E.	12/13/83 to present
32E(c)(2)	100 grams to 200 grams heroin	Mandatory minimum ten years P.E.	12/13/83 to present
32E(c)(3)	200 grams or more	Mandatory minimum fifteen years P.E.	12/13/83 to present
32F(a)(b)(c)	Distribution of Class A,B,r C to minor	Regular P.E. Rules	7/10/83 to 1/4/83
		Mandatory minimum two yrs	1/5/83 to present
32F(a)		Mandatory minimum five yr PE	12/13/83 to present
32F(b)		Mandatory minimum three years P.E.	12/13/83 to present
32F(c)		Mandatory minimum two yrs PE	12/13/83 to present

END