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Handbook for New Parole Board Members (Second Edition)

HANDBOOK FOR NEW PAROLE BOARD MEMBERS

(Second Edition)

by

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NATIONAL INSTITUTE OF CORRECTIONS

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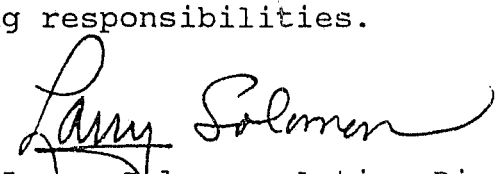
FOREWORD

The task of a parole board member is difficult, and the responsibility is substantial. Written board policies that guide decisionmaking have the impact of establishing public policy. Individual decisions affect the lives of offenders and a specific segment of the public. The aggregate effect of all paroling decisions influences the amount of prison space required and determines the length and type of supervision society demands of offenders upon their release from confinement.

Parole board members are generally appointed to their positions by the governor. Seldom do board members come from a parole background, but instead they are appointed for other expertise and sensitivities. They may have a strong background in a field like law enforcement, business, or human services. Often appointees may be leaders of an important interest group or segment of society. This diversity makes for an eclectic and often dynamic decisionmaking group, but new members frequently endure a difficult and frustrating process of learning about parole.

There are approximately 350 parole board members in the country. Few formal training opportunities are available to new board members. Given the immense pressure on boards, it is common for a new member to conduct a full hearing schedule on his or her first day on the job.

This monograph is intended to assist in orienting new board members to parole in general and, through the questions at the end of each chapter, to assist them in learning about how parole operates in their particular state. This is not intended to represent a complete training package for new board members, but we hope it provides an early foundation as board members assume difficult parole decisionmaking responsibilities.



Larry Solomon, Acting Director
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PREFACE

After more than a decade of change, parole remains one of the chief topics in an ongoing and lively discussion of the purposes and practices of the criminal justice system in this country. In several jurisdictions, discretionary parole release has been abolished, but parole boards continue to set conditions of release. In others, policymakers have sought to restructure the parole process, while others are contemplating the most effective use of parole release and supervision in their overall approach to crime and crime control.

This is the second edition of The Handbook for New Parole Board Members. The original, written by Kathleen J. Hanrahan and published in 1982, was developed as part of the National Parole Seminar project administered by the Training Center of the National Council on Crime and Delinquency, and funded by the National Institute of Corrections.

In 1986, the National Institute of Corrections initiated the Parole Technical Assistance Project. That project, administered by COSMOS Corporation in conjunction with the Center for Effective Public Policy, provided assistance to nine paroling authorities on the development and implementation of structured decisionmaking in parole. The experience in those jurisdictions and others convinced NIC of the need to update the Handbook.

The topics in the first edition of the Handbook were drawn from the suggestions of participants in the 1980-82 National Parole Seminars. This second edition retains most of those topic areas and adds subjects of more recent interest.

The purpose of the Handbook is to provide new parole board members and related personnel with an overview of the full range of issues associated with the parole process. The emphasis is on the parole of adult felons, with discussion divided between the policymaking role of parole boards and some of the day-to-day operational details.

The discussion of those issues is necessarily general: Paroling authorities differ remarkably in the scope of their responsibilities, their organizations, staffing patterns, and lines of authority. The political climate in which parole operates varies from state to state, as does the legal structure of which parole is a part. It would be impossible to cover these in detail for each jurisdiction.

The Handbook is designed as follows: A brief, largely descriptive discussion is provided for each major topic.

Immediately following each major section is a series of questions. The questions concern significant features and procedures of parole that vary from state to state; when answered, they will provide new members with specific and detailed information about parole in their jurisdiction.

Additional entries, covering parole of juveniles or misdemeanants, for example, can be made by each parole board to increase the usefulness of the Handbook to its members.

This second edition of the Handbook is drawn heavily from the first edition, and I want to acknowledge my debt to the work of Kathleen Hanrahan. I am also deeply grateful for the guidance of Linda Adams, and the support and assistance of Becki Ney and Jennis Binns, all colleagues at the Center. Teresa Mulloney provided much-appreciated help with the Handbook's preparation. Kermit Humphries at NIC was an endlessly patient project monitor and source of advice and encouragement. Finally, I made extensive use of "Parole Today - A Jurisdiction By Jurisdiction Analysis", a survey conducted for the Association of Paroling Authorities International by Bobbie Vassar and Ed Rhine in 1985, and updated in 1987. This most valuable document is being updated again in 1988.

INTRODUCTION

Parole has three principal functions. The first is the decision to release offenders from prison after they have served a period of time but before expiration of the maximum term. The second function of parole is a period of supervision in the community following release; it is a prerequisite to release that the parolee agree to abide by a set of conditions, imposed by the paroling authority, during the period of supervision. The third function is to determine whether the parolee's transition to the community is proving successful, and to choose an appropriate response if repeated rule violations or new crimes indicate it is not. That response may include a revocation of parole and reimprisonment.

The parole board or paroling authority is an administrative agency within the executive branch of government. The authority of the board as it relates to each of these three functions varies from state to state. In at least 11 states and at the federal level, for example, the parole board has little or no authority to make release decisions, but sets the conditions for release.[1] In 38 states, the board determines conditions but does not have the responsibility for supervision in the community;[2] supervision is administered by another state agency, usually the department of corrections. Finally, the press of prison overcrowding in some states has seen an increasing number of state felons serving their entire sentences in local jails. These felons remain under the authority of the state parole board, despite being in county facilities.[3] In addition, a number of state paroling authorities have been given responsibility for the release of all county inmates, whether serving state or county sentences.[4] Parole boards in these states have had to adapt their paroling procedures to accommodate these two different, jail-confined populations.

Many parole boards or paroling authorities have other responsibilities. One of the more common is to review requests for executive clemency and to make recommendations to the governor or a separate clemency board; in a few jurisdictions the parole board has the authority to grant pardons or commutations. In some states the legislature has empowered the parole board to grant special early release to inmates when prison and jail population levels reach an emergency state.[5]

The words parole and probation are often used interchangeably, but they have entirely different meanings. Probation is a sentence to supervision in lieu of imprisonment, or in addition to a term of confinement in a county jail or workhouse. It is a judicial function; the decisionmaking agency is the sentencing court. The court sets the conditions and duration of supervision, and, in the event of violation of a condition of probation, it is the sentencing judge who determines whether revocation is warranted.

Parole release is also different from mandatory release. The latter refers to the non-discretionary release of a prisoner at expiration of the full term, minus legislatively mandated good time credits where these are available. Mandatory release can occur when a prisoner is ineligible for parole, has been denied parole, or has refused parole. Such a prisoner is said to "max out." Upon release, the ex-prisoner may or may not be subject to post-release supervision, depending on the practices or requirements in the particular state. Such post-release supervision may be the same as that provided to paroled prisoners, but these are not parolees.

PAROLE AND SENTENCING STRUCTURES

The authority of a parole board to grant discretionary release to a prisoner before the expiration of the maximum term is a function 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 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 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 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.

Determinate sentencing was the norm in the United States prior to the introduction of parole at the turn of the century. Parole was proposed at that 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.

THE ORIGIN OF PAROLE

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 participation 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.[6]

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 stages by which a prisoner could earn marks to advance to the important intermediate stage of virtual freedom; upon successful completion of this 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.[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 sentencing provisions of the time, and parole was seen as a response to some of the criticisms: It 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 (again in New York) in 1817, and through gubernatorial clemency, which was used far more extensively than today. Furthermore, 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. Parole boards, independent of the 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]

Parole came under attack again in the 1960's and 1970's, 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 1960's and 1970's focused on both the assumptions of the rehabilitative ideal and the results in practice of indeterminate sentencing and parole release. 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 little positive 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 impact of the research findings was amplified by concerns about the effects of a philosophy of rehabilitation on the critical

issue of length of incarceration. 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, driven more by the individual prejudices and idiosyncrasies of board members than by research-based predictions of parole success.[15] Inmates, facing potentially lengthy terms of imprisonment without board action, were subjected to continuing uncertainty about how long they would serve. Critics charged that the uncertainty of indefinite sentences undermined whatever rehabilitative benefits prison programs might offer and contributed to the inmate unrest that characterized the period.

The discrediting of rehabilitation as the primary purpose of incarceration was accompanied by increasing support for just deserts to take its place. Just deserts, also called retribution, emphasizes equity in sentencing, the scaling of sentences to the severity and harm of the crime and the culpability of the criminal. 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-1960's and showed no sign of dropping by the mid-1970's. 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.[16], [17] 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 continue to grow in most jurisdictions. The justification for these statutes is not usually retribution or just deserts, but some combination of general deterrence (most evident in the "crime with a gun" laws) or incapacitation.

PAROLE TODAY

Ironically, as the nation approaches the end of the 1980's, the impact of these changes in sentencing laws on institutional populations is being credited with spurring a new appreciation for and interest in parole. Although crime rates across the country have changed very little in the intervening decade, the number of persons confined in jails and prisons has risen dramatically during this period and continues to grow every year.[18]

There is little question that sentencing law changes have played a major role in this population growth. With this growth has come widespread litigation and court intervention concerning conditions of confinement [19] and swelling corrections budgets, both capital and operational. States and counties alike are caught up in the overcrowding crisis.

In the midst of this crisis, parole has assumed new importance. There has been no diminishing of lawmakers' concern for public safety, but it is increasingly coupled with the realization that jail and prison beds are an expensive and scarce corrections resource. In most states, parole remains the sector of the corrections system with the flexibility and the centralized authority to respond to changing public needs. Parole boards in those states retain the ability to change their paroling policies: They can adjust the factors used to make the release decision or the priority attached to them. If the board uses a structured decision tool, the cut-off score for release can be raised or lowered as required. The board can couple these actions with changes in parole conditions or the level of supervision.

The concerns and criticisms of the earlier debate have not evaporated. As parole moves to meet the challenges of the 1980's and 1990's, policymakers are continuing to reassess the goals of parole release decisions and the purpose of supervision in the community. Should release decisions be based on inmate performance while incarcerated; on inmate participation in treatment or programs; on the length of time served for his or her offense; or on a prediction of the risks and stakes of recidivism if released? Many paroling authorities are translating their decision goals into explicit release criteria or policies, often by incorporating a guidelines framework in the process. Increasingly, they are taking the same approach to supervision and revocation decisions, seeking to differentiate services from surveillance, and public safety from administrative convenience or routine.

Whether or not parole boards are playing a role in relieving the pressure of overcrowding, they are proceeding with a keen sense of their accountability to other policymakers and the public for their actions. Paroling authorities are taking a more visible role as a public policymaking body within the total criminal justice system.

QUESTIONS ABOUT PAROLE IN THE STATE

Please complete the following questions in as much detail as necessary to acquaint new members with parole in your jurisdiction.

1. By law, the parole board has the following responsibilities:

2. By executive order, the parole board has the following responsibilities:

3. By practice or tradition, the parole board has the following responsibilities:

4. Trace the history of parole in your state, including the date first established and any significant changes in organization or authority of the board.

5. Is the existence of parole under threat in your state? If so, from what branch or agency is that threat coming?

6. Are parole's current practices or procedures under attack in your state? If so, from where are those challenges coming?

7. Additional comments:

PAROLE AS PART OF THE CRIMINAL JUSTICE SYSTEM

As the preceding history and overview indicate, parole plays a key role in the overall administration of criminal justice in most states across the country. It is also clear, however, that parole has been especially vulnerable to succeeding waves of criticism and change. There are many reasons for that vulnerability, several of which lie directly with parole boards themselves. Despite parole's central place in corrections, parole boards have too often been content to leave that role unexplained, to operate in relative isolation and obscurity, and to act primarily as individual case decisionmakers rather than as policymakers.

The many critical functions that parole serves in the criminal justice system place the parole board in a potentially powerful position. In most states, parole boards determine the actual term of incarceration for the majority of offenders. The board specifies the conditions under which an offender is released and, in some jurisdictions, the term of supervision. It can revoke the release and return the parolee to prison. The board's release policies may have a direct impact on institutional management if institutional behavior is a parole criteria. In no other part of the system is so much power concentrated in so few hands.

The power of the parole board is expressed in two ways: first, through the decisions of its members in individual cases; second, through the cumulative effects of all of those combined decisions on the entire system. It is in this latter way that parole boards are powerful, policymaking bodies, whether by intent or not. That policymaking power is intensified, of course, when paroling authorities recognize their critical role and develop and promulgate written policies for their activities.

Because parole is so central to the functioning of most corrections systems, parole boards were able to operate for many decades without much visibility or accountability. It was only when parole was singled out for criticism and targeted for abolishment that parole boards in many jurisdictions recognized the cost of their isolation and low visibility.

There are a number of structural and organizational reasons for the traditionally low profile of most parole boards. Their members are executive appointments (or, in a few cases, civil service appointments), increasingly chosen for their expertise in law, criminal justice, or the social services. In most states, board members personally conduct release hearings and revocation proceedings. These responsibilities keep members on the road, at correctional institutions, much of the time. The pressure of these activities has grown in recent years: The rise in the number of incarcerated persons has meant an increase in the number of cases upon which the board must act. Whether serving full time or part

time, board members have little time to spend in the central office, either individually or together. These factors combine to reinforce a tendency for members to view themselves primarily as individual decisionmakers.

Parole boards can choose to redefine their role, but the choice to act as a policymaking body will probably require changes in the parole board's internal operations. If they can do so, board members should arrange to spend time together, not just to decide difficult cases or to respond to crises, but to assume a proactive stance toward the board's mission and place in the criminal justice system. Such a proactive approach involves defining the goals of parole release, of supervision, and of revocation, and using those goals to develop explicit policies to guide the organization's actions. Those goals and policies can form not only the rationale for its internal operations, but also the basis of the board's relationships and policy development activities with other agencies and policymaking bodies.

The parole board has many different, and often multi-faceted, relationships with other agencies. The board will be guided in its approach to these groups by the nature of the connection between them, and what it hopes to achieve from the interaction.

Some of these relationships are operational: that is, in the course of case decisionmaking, the work of the parole board or its staff is linked to the work of another organization. The department of corrections and the courts are two examples of this type of connection. The parole agency depends on them to complete and make available offender/inmate records for the parole board's use. Here the board may seek increased cooperation between parole staff and that of the other agency, and better understanding on the part of that agency of parole's duties and restraints.

In other cases, the agency or group may have the law or policy-making power to affect the parole board's authority or operations. The legislature or a sentencing commission fall into this category. Other groups may be important to the board for their ability to influence policymakers: the media and victim rights organizations, for example. Increasingly, parole boards are actively seeking and creating new ways to interact with these agencies and groups, to inform them about parole, and to affect the legal and organizational structures which govern parole operations.

The corrections crises brought on by overcrowding and federal court intervention have given parole boards some new opportunities to participate in policy development activities. Many states have established "blue ribbon" commissions to examine the causes and solutions of the problems, and parole boards are often represented on them. Other jurisdictions have created sentencing commissions to reform their sentencing laws, or legislative committees can also

provide parole boards with avenues for participation in broader policymaking.

The precise nature of the relationship between parole and other agencies and policymaking bodies varies with the legal and organizational structure of each state's system. What follows is an overview of the principal groups with which parole typically interacts.

THE GOVERNOR

The parole board is an executive branch agency. In 41 states, the governor appoints board members, and, in a few states, it is the governor who grants parole, based on the board's recommendations. The operation of parole is ultimately the responsibility of the governor, as is the operation of the state's corrections system. For those jurisdictions experiencing a crowding crisis, the common accountability of corrections and parole to the governor may result in a direct expectation from the administration that parole will adjust its policies and practices to provide relief to the institutions.

The parole board will be in a better position to respond to this expectation if it can articulate clearly to the governor and the administration the options available in adjusting its policies, the possible consequences of each option, and the additional resources or adaptions in its operations needed to responsibly carry out the governor's request. The more explicit the board's own policies and criteria for decisionmaking are, the more prepared it will be to make this response.

In some 17 states, the legislature has created emergency release mechanisms to handle overcrowding crises. In almost every case, the parole board is the vehicle through which the emergency releases are effected, usually through accelerated parole eligibility. This type of legislation creates a division of responsibility for emergency action between the legislative and executive branches. It provides an explicit directive to the parole board to make release decisions based on the need to reduce prison populations.

The governor may depend on the parole board for other types of assistance. In many states, the board acts as the investigative and review agency on matters of executive clemency -- pardons, commutations, and reprieves -- and makes recommendations to the governor in individual cases.

THE LEGISLATURE

With the exception of the few jurisdictions where the state constitution provides for parole, parole is established by statute.

Where the parole board is a legislatively created agency, the legislature is empowered to amend the manner in which the board exercises its authority. In Colorado, for example, when the legislature reinstated parole in 1985, it mandated the development of risk guidelines for the board's use in release decisionmaking.

The legislature can also amend the scope of the board's authority. The most dramatic example, of course, is the abolition of parole. More common is the piecemeal amendment of the sentencing and criminal codes that provide the framework for the parole board's activities. Legislatures have continued to be active in these areas, changing parole eligibility statutes, for example, and creating new categories of offenses for which imprisonment is mandatory.

The other area of legislative impact on parole is the budget approval process. This has particular importance for those parole agencies which have direct responsibility for community supervision of parolees, and which may employ hundreds of parole agents.

In all of these instances, the parole board has a clear stake in keeping legislators well informed about parole, its operations, its value to the total corrections 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 as described earlier.

THE PUBLIC

Although parole's relationship with the public is indirect, it is critical nonetheless. As issues of crime and justice have become increasingly politicized, no criminal justice agency can afford to overlook the impact of public opinion on law and policymakers.

The general problem with the weight given to public opinion is the frequency with which it is invoked without reference to any objective measurement of it. Parole faces a special problem because the question of who sets the offender's actual term of incarceration is such a complex one. When criminal justice system actors confess to not fully understanding parole eligibility in their own system, is it any wonder that the public is confused?

One research project, The Figgie Report, Part V: Parole - A Search for Justice and Safety, released in 1986, found a surprising degree of awareness of parole and its operations among those surveyed. The respondents indicated a clear understanding, for example, that the term imposed by the judge does not represent the time that a prisoner will actually serve. On the other hand, the report highlights the dilemma facing parole boards in making the role of parole understood. The questions asked in the survey referred to "prisoners...who leave early on either parole or some other from of early release." [20] (Emphasis added.) In the same question, parole release was contrasted to prisoners serving "their full sentence." [21] (Emphasis added.) For those states that empower parole boards to grant discretionary parole release, the board's power to determine the term of incarceration is an intrinsic part of the state's legislated sentencing structure. The term set by the board, however that is determined, is the full term for that inmate; parole release is not early release.

This, unfortunately, is an all too common view of parole. It is exacerbated by the common media practice of reporting the sentences faced by accused felons in terms of the legal maximum available, often combined for all charges in the indictment, although this is rarely, if ever, the sentence pronounced after adjudication. Under these circumstances, the public is quite ready to react with especial outrage at the parole board when a parolee commits a particularly visible or heinous crime. That outrage is expressed in letters to newspapers, to the governor, and to the legislature.

Parole boards have much to gain by taking on the task of educating the public about parole, about its role, the process by which decisions are made, the criteria and purposes of those decisions, and the manner in which parole supervision is carried out. Once again, the parole board that has been proactive in developing explicit policies in these areas will find it easier to translate those into an educational campaign.

As with the legislature, the 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. An informational pamphlet can be a resource, especially if it is combined with a program of outreach to civic, fraternal, and religious organizations. Many of these groups welcome speakers, and the board might avail itself of those opportunities. The Kansas Parole Board takes a more active approach to such an effort: It holds monthly public meetings in each of the state's three metropolitan centers to listen and respond to public concerns. All of these activities will be strengthened if the board regularly collects and publishes data on its decisions and outcomes. Case studies, descriptions of special programs, and profiles of field staff and their daily routines are additional materials that can be distributed to the press and public.

Virginia and Massachusetts are two states that publish newsletters for this purpose.

Some states have developed videotapes of mock parole and revocation hearings for internal training purposes. With the appropriate narration, tapes like these could be made available for use by classes, civic organizations, and professional societies. The widespread availability of this type of technology makes it an appealing avenue for broader outreach and education than the board and staff might be able to undertake in person.

VICTIMS

Victims of crime make up a very special sub-group of the general public to which parole boards are increasingly paying particular attention. They may relate to the board as the specific victims of would-be or current parolees, or as members of organized victim rights groups. For every one that is known to the board in either of those categories, there are many more who remain anonymous members of the broader "public."

The emergence of organized victim advocacy groups as potent political forces is a relatively recent phenomenon. Their origins are diverse: Rape crisis centers, neighborhood watch organizations, domestic violence programs, and Mothers Against Drunk Driving have all played a part in sensitizing government to the special concerns and needs of victims. Whatever their roots, these groups have profoundly affected the conduct of the criminal justice system, including parole.

The most frequent complaint of victims is that they are ignored: No one in the criminal justice system seems to care about their anger, their fear, or their hurt. They are expected to appear in court when told to do so, and then are dismissed. Legislatures in many states have responded to these concerns by requiring parole officials to notify victims (or their survivors) of impending parole hearings, and, in some cases, to open those hearings to victim participation. In other states, parole boards themselves have created their own policies regarding victims. As of 1987, at least 20 states had either laws or formal policies requiring victim notification of parole hearings; at least six of those permit victims to testify at the hearings. The other 14 invite victim input in writing or through separate meetings with officials.

Victim input or participation in the parole process will present little difficulty for most parole boards, once they have developed clear principles regarding the use of that input. The parole hearing is not a re-trial of the offender, and, in most cases, a re-telling of the facts of the crime is not helpful to the release decision or to the setting of parole conditions. Without

policies on this, however, most parole board members find the emotion-laden testimony of victims difficult to incorporate into the decision process.

Such testimony can be limited by board policy to information regarding ongoing damages or personal loss to the victim from the crime in the months or years that the offender has been in prison or to information about threats or reprisals from the offender, or his or her family, to the victim and/or the victim's family. This is new information that can assist board members in determining if restitution is called for, or if the offender represents a real threat to the victim if released.

In terms of victim rights groups, the board may choose to make a particular effort to educate them about parole. Special meetings with members or staff and regular packets of information may be appropriate. The key is to listen, to pay attention to their concerns, and not to ignore or overlook them.

THE MEDIA

The media's importance to parole is its ability to influence the direction of public policymaking. The stories it chooses to cover, the accuracy of the information it imparts, and its editorial position, all affect the public's perception of crime and the criminal justice system. From the point of view of law and policy makers, media coverage of these issues is an important gauge of public opinion and public concern.

Parole boards are often unhappy with the media's handling of parole-related news: The only time parole seems to be in the news is when a parolee commits a high profile crime. The offenders in such cases may not, upon examination, even be parolees, but probationers or ex-parolees who have finished their terms. In other cases, the media is subject to the same lack of understanding as others and may refer to parole as "early release;" they may convey the impression that parole release is automatic rather than discretionary, and overlook the supervision function.

It may be possible for parole boards to improve the media's coverage of parole-related news. Such an effort can take two forms: first, improving the media's understanding of the functions and process of parole release and supervision; second, providing the broadcast and print media with stories which present parole in a more balanced and factual manner. The first can be achieved through the use of the same kinds of informational pamphlets, data on decisions and parole outcomes, and case studies and profiles, that may be developed for the general public. These might be packaged in a press packet to which updated information is added regularly. In addition, the parole board chair might request

meetings with newspaper editorial boards and station managers for an exchange of information and concerns.

Providing the media with stories requires the board or its staff to develop a new sensitivity to their own work: What might be of interest to a newspaper or television station faced with a slow news day or a human interest spot to fill? Parole boards are somewhat hampered in this effort by the restraints of privacy laws, but some stories might be general in nature, while others could be done if names were disguised. Press releases are the backbone of this approach, of course, as is the development of a solid relationship with the reporters who cover these issues.

THE COURTS

The connection between parole boards and the courts has several dimensions. The first involves the sentencing courts with whom parole boards share responsibility for specific cases; the second involves appellate courts that have authority to review parole processes and decisions; and the third concerns the mutual interest and activity of courts and the board in policy issues related to the criminal law and sentencing.

Sentencing Courts

In states with discretionary parole release, parole boards and state courts with felony jurisdiction share responsibility for the sentencing of convicted felons who are to be imprisoned. The court alone decides the dispositional phase of sentencing: whether to imprison, to confine to the county jail or workhouse, or to impose a probation sentence. If the decision is to imprison, the court determines, within the constraints of the sentencing structure, the maximum sentence and sometimes a minimum term of confinement. Within this framework, it is the parole board through its release decisions that decides actual duration of imprisonment.

- **Actors in the Sentencing Process.** The relationship of the parole board and the sentencing courts is complicated by the number of actors involved in the sentencing process. Prosecutors, defense attorneys, and probation officers, as well as judges, all play a role in sentencing. Furthermore, each actor's role is changeable, depending on the state's sentencing laws and the practices of jurisdictions within the state. Many states, for example, combine an indeterminate sentencing structure with mandatory sentences for certain offenses. In cases involving those offenses, the prosecutor's authority to decide the charges on which to indict becomes far more critical to the sentencing process than the judge's authority to pass sentence. In these same cases, parole boards typically have little or no discretionary release authority.

The role of the probation officer in most courts is advisory: As part of a pre-sentence investigation, intended to provide the judge with background information on the defendant, probation officers may include a sentence recommendation. This practice is not universal, and, in the jurisdictions where it occurs, the recommendation may have greater or less influence on the court's decision.

By far, the arena of greatest activity by prosecutors and defense attorneys is in plea bargaining. In most jurisdictions, the great majority of felony cases are disposed of by plea rather than conviction at trial. Plea bargains are made by the prosecutor, defense attorney, and defendant, and frequently are approved, at least tacitly, by the sentencing judge. The factor functioning for the defendant as an inducement to plea is a concession in penalty. One common strategy is for the court to accept a plea to a lesser charge, one that carries a less severe sentence. Another is to accept a plea to a single charge and drop additional charges against the defendant.

- **Differences in Approach to the Purpose of Sentencing.** Whether the sentence given is the result of a plea bargain and a guilty plea or follows a trial, once the case becomes the responsibility of the parole board, the time served will be driven by their views on the purposes of sentencing. Those views will determine the factors considered and the information used by the board in making the decision. If the board, for example, gives priority to a just deserts purpose, then they are likely to consider all of the facts and circumstances surrounding the offense, regardless of the charge on which the offender pled or was found guilty. Consequently, parole boards may, by their actions, violate a plea bargain.

In the same manner, the board may disregard the intent of the sentencing judge, setting the term of incarceration or the conditions of release to meet their own goals rather than the court's. This will be particularly the case if one of the board's goals is to enhance the equity of sentences imposed by different courts across the state in similar cases. These differences among parole boards, the courts, prosecutors, and defense attorneys are unavoidable as long as criminal justice systems lack a consistent, system-wide agreement on the purpose of sentencing. Without such an agreement, each segment of the system, and sometimes each actor within a segment of the system, can operate according to their own values or beliefs regarding purposes.

- **Information and Communication Needs.** Parole boards rely on all parts of the sentencing court for case information. Depending on the board's purpose and criteria for decisionmaking, background information from the probation officer's pre-sentence investigation may be essential to the board's release decision, or to the choice of release conditions. Prosecutors and defense attorneys provide

descriptions of the facts and circumstances surrounding the offense, which most boards also find critical. Although it is not often a specific decision criteria, the intent of the sentencing judge, if it is known, carries influence with many parole boards in making their decision.

In each instance described here, the board needs and uses information generated by other parts of the system in the course of their routine operations. Although the board depends on those individual actors, and the accuracy and completeness of their information, it has no control over them. Furthermore, the individuals involved may not be fully aware of the importance to the parole process of the information they are called upon to supply.

Court system personnel need accurate information <u>from</u> the board as well. Probation officers, prosecutors, and defense attorneys typically offer sentence recommendations to the judge. If that recommendation is imprisonment, it may include an estimate of parole eligibility. The judge's own decision in passing a sentence of incarceration will doubtless take parole eligibility into account. These recommendations and decisions will be seriously flawed if the information on which they are based is inaccurate. Judges, probation officers, prosecutors, and defense attorneys all need to know the board's eligibility formula and decision criteria, as well as the chances of an inmate's being granted parole at first eligibility.

The parole board's small size and centralized authority make it far easier for the board to take responsibility for the information-sharing and communication that this mutual dependence requires. This can take a variety of forms, including the development of descriptive materials for distribution to court officials and presentations at professional conferences and meetings. The board's participation in other policy groups, overcrowding task forces, sentencing commissions, and the like, -- with judges, prosecutors, probation officials, and the defense bar, -- offers further opportunities to share information and mutual concerns. Through these avenues, the board may also be able to propose laws or state-wide policies concerning these issues, on uniform case documentation by court personnel, for example.

One of the more noteworthy findings of the Figgie Report, cited earlier, is the level of support for discretionary parole release and parole supervision among judges. This support can form the basis of a far more collaborative approach to their shared responsibilities by the courts and parole boards. To be sustained, however, that collaboration requires deliberate efforts by the board.

Appellate Courts

The other major connection between parole boards and the court system involves judicial review of parole processes and decisions. This connection has only developed in recent years, but it has already had far-reaching consequences.

Before the 1960's, the parole process (indeed, the entire postadjudicatory phase of the criminal justice system) was shielded from review or intervention by the courts. This "hands off" policy, as it is called, was in essence a denial of jurisdiction.[22] The reasoning for the policy can be reduced to a few themes. The first was based loosely on a separation of powers argument; parole and prisons, as executive branch agencies, were seen as beyond the scope of judicial authority. The second theme was the belief that correctional officials required full discretion in order to maintain order and security within the institutions and effect treatment of offenders. Court intervention in correctional matters, it was felt, would frustrate these objectives.

The final line of reasoning was based on the notion that prisoners had been given adequate opportunity to exercise their rights at trial; it was reasonable, once conviction occurred, that they forfeit the majority of those rights. Matters such as parole or good time deductions were viewed as privileges, not rights, and their denial or revocation was thus inappropriate for judicial review.[23]

The courts abandoned the hands-off policy in the late 1960's; the change was part of a broader trend toward accepting cases involving a variety of constitutional issues. In parole, decisions of the lower appellate courts have touched on virtually all aspects of the process: the setting of eligibility dates, parole release hearings, inmates' access to files, the use of guidelines, parole denial, rescission, conditions of supervision, the legality of searches of parolees, and parole revocation. The outcomes of cases have varied and the general direction of holdings has not been steady, but judicial review remains available to prisoners and parolees.

At the national level, the Supreme Court has addressed portions of the parole process. Revocation of parole has received the most attention, but two cases, Greenholtz (1979) and Allen (1987), concern parole release. The holdings in these cases are discussed in the pages that follow. In general, the Court has rejected the notion that parole involves only a privilege, and has recognized some limited rights which fall within constitutional due process protections.

THE DEPARTMENT OF CORRECTIONS

The department of corrections is the agency with which the parole board has the most contact. Corrections and parole interact in a number of direct ways. Often the department of corrections provides assistance to the board by maintaining case files used by the board, for example, and docketing cases for hearings. The board may rely on corrections for some personnel, institutional caseworkers, for example, who interview prisoners before hearings, help develop parole plans, or counsel those denied parole. In many states, parole supervision is administered by the department of corrections.

There are less tangible bonds between the agencies as well. Corrections officials often look to the parole board for assistance in maintaining institutional discipline and regulating population levels. Boards may support or reinforce the maintenance of prison discipline by taking prisoners' institutional conduct into account when setting release. Sometimes this practice is formalized and a clean conduct record is a prerequisite for parole eligibility. More often, institutional conduct is one factor correctional officials would like the board to consider.

There are a variety of other measures available to corrections officials to enforce institutional regulations. Sanctions for misconduct range from the loss of institutional privileges to disciplinary segregation or the loss of good time credits. Good time credits were created as a tool for prison administrators to encourage good behavior; prisoners who refrain from serious infractions may earn an acceleration in their parole eligibility date.

In most jurisdictions, good time credits are deducted from the minimum term, thereby advancing parole eligibility. In a few states, credits are deducted from the maximum term. In those jurisdictions, credits have a direct effect on time served only in cases where the prisoner is not released by parole. Corrections officials in these states view parole as the primary incentive for good behavior, and they may want the board to examine disciplinary records when determining release dates. Boards choosing to incorporate institutional behavior into their release criteria often find that it bears little relationship to other decisionmaking goals and has to be treated separately in the decision process.

As prison population levels continue to rise across the country, prison officials are increasingly looking to parole boards for assistance to manage them. These populations have gone up dramatically since the early 1970's. At the end of 1986, there were over 546,000 persons confined in the nation's prisons.[24] That represents a growth of 180% from 1970, when 196,000 were imprisoned.[25] Despite the addition of tens of thousands of prison beds

to state and federal systems, most jurisdictions are operating well above capacity.

Parole boards can help reduce prison populations, at least temporarily, by increasing the number of parolees. In at least 40 states, prisoners have successfully brought suits alleging cruel and unusual punishment because of crowding and other prison conditions;[26] the remedies ordered by the courts often require reduction in population levels. In these states and others with severe crowding, parole boards are facing pressure to increase the number of parolees.

Parole boards differ in their willingness to consider prison crowding when making release decisions. Even those boards that believe crowding should be considered often find themselves in a difficult position: expected to release more prisoners, but still held fully accountable for individual release decisions.

Emergency release measures, described earlier, can be of some, albeit short-term, assistance to parole boards in these situations. By explicitly directing the board to institute accelerated release policies to relieve crowding pressures, the legislature accepts a share of the responsibility for these activities. Most of these measures also require the governor or the corrections commissioner to declare that an emergency exists, further distributing responsibility. In most jurisdictions that have such measures in effect, a declaration of emergency is followed by the rolling back of minimum sentences to expand the pool of parole-eligible inmates. The rollback may be a percentage of the sentence, as in Tennessee, for example, or in blocks of time: Rollbacks in Michigan and South Carolina are in 90-day segments.

The crowding crisis in most states has raised another issue between parole boards and corrections departments: parole revocation policies. The return of parole violators to prison can make a significant contribution to total prison admissions. In 1987, in the state of Tennessee, for example, parole violators represented 26% of new prison admissions.[27] Beleaguered corrections officials may look to the parole authority to adjust its policies on returning violators to prison for other than new felony convictions.

The question of the parole board's role in reducing prison population levels or maintaining discipline is a policy issue that needs to be addressed explicitly. Boards should decide whether these matters will influence decisions, and, if so, how population or discipline will be taken into account. As is the case with other parts of the system, the board can seek cooperation and collaboration in these matters with department of corrections officials.

PAROLE AS PART OF THE CRIMINAL JUSTICE SYSTEM

Please complete the following questions in as much detail as necessary to provide new board members with an understanding of the relationship between parole and other criminal justice agencies in your state.

General

1. Does the parole board meet on a regular basis to discuss policy issues?

2. Does the board participate in any external policymaking bodies (e.g., a sentencing commission, overcrowding task force, or criminal justice council)? If so, what are these bodies and who represents the parole board on them?

The Governor

1. Does the board advise the Governor on matters of executive clemency? If yes, describe the usual procedure and attach copies of standard forms.

2. What official in the Governor's office is responsible for parole-related matters? (List name, title, and responsibilities.)

3. Is the state operating under any type of emergency release order or act? If so, what is the role of the Governor under its terms?

_____
_____
_____
_____
_____

The Legislature

1. What legislative committees review legislation that affects parole?

Committee:
_____
_____

Chair:
_____
_____

Person to
Contact:
_____
_____

2. Does the parole board have a legislative liaison? If not, who is responsible for responding to legislative inquiries, requests, etc.?

_____
_____
_____
_____
_____

3. Attach copies of statutes of particular importance to the board's operations (e.g., the statute establishing the board, its personnel, and scope of authority).

The Public and the Media

1. Describe any public relations activities of the board.

_____
_____
_____
_____

2. What member of the board or the staff has principal responsibility for dealing with the public or media?

Victims

1. What is the law and/or board policy relating to notification of victims of parole hearings or other actions?

2. Does the board engage in any activities related to addressing victims' needs or concerns about parole and the parole process?

The Courts

1. How is the state's judicial system organized?

2. What is the formal allocation of sentencing authority between the sentencing court and the parole board?

3. What organizations are there within the state that might be able to help the board improve efficiency or improve collaboration with other agencies within the criminal justice system (e.g., state judicial conference, the state bar association, organizations of trial attorneys, public defenders or defense counsel, probation officers who complete presentence investigations)? List the name and address of each organization and the name of a person who may be contacted.

4. Have any of the aspects of parole discussed in this section been reviewed by appellate courts with jurisdiction over parole in this state? If yes, provide citations and summarize the holdings.

5. Is the parole board now substantially in compliance with those holdings?

<u>The Department of Corrections</u>

1. Describe the organizational structure of the Department of Corrections.

2. Which individuals within the Department have responsibilities relevant to parole?

3. What parole services or personnel are provided by the Department of Corrections?

4. For each institution specify the security classification and type of inmate housed.

5. Is there statutory provision for good time? If yes, at what rate is good time earned and how does it reduce the sentence?

6. Does the board consider institutional conduct at release hearings? If yes, what weight is it given?

7. Attach copies of institutional rules, indicate penalties for infractions, and summarize disciplinary hearing procedures.

8. What is the policy of the parole board with respect to prison population levels?

9. Is the corrections system or any correctional institution currently under court order because of overcrowding or other conditions of confinement? If yes, provide citation to the case and summarize the parts of the holding relevant to parole.

PAROLE RELEASE

Parole release is the central feature of the parole process. It is, as noted earlier, controversial. Parole release has been abolished in some states and restructured in others.

The procedures and basis for release decisions have always varied by state; these differences are now more pronounced than ever. Paroling authorities are coping with increased caseloads and demands for greater accountability and certainty in their decisionmaking. What follows is an overview of the issues surrounding release decisions, and the methods some jurisdictions are using to address them.

PAROLE ELIGIBILITY

If one were to conceptualize the parole release decision as an equation, the first element of it would be parole eligibility. Prisoners may be paroled only after they become legally eligible for release. When they are paroled after that is at the discretion of the parole board. Legal eligibility is determined by statute. Eligibility requirements vary by state, and it is not uncommon for a single jurisdiction to have different requirements for various categories of offenses or offenders. Parole eligibility is ordinarily based on time served, but some statutes include additional requirements, such as a period of good conduct before the parole hearing.

One common model for parole eligibility permits release after some fraction of the maximum term (one-third, for example) has been served. In other jurisdictions, the court imposes a separate minimum term that must be served before parole. Elsewhere, prisoners are eligible for parole at any time. In addition to the general eligibility requirements, most states have created mandatory minimum term provisions for specific types of crimes, such as felonies involving the use of a handgun. Defendants convicted of an included offense ordinarily must be imprisoned and are ineligible for parole until the minimum has been served.

PURPOSES SERVED BY THE PAROLE DECISION

Implicit in the notion of parole is the fact that parole release can be denied as well as granted, that prison stays can be extended as well as shortened. Parole's chief function is to serve as a gatekeeper between prison and the community. In meeting that responsibility, paroling authorities and their individual members have traditionally brought several, sometimes contradictory, criteria to bear on their release decisions. Charges by critics that

those decisions are arbitrary and capricious have increasingly forced parole boards to make those criteria uniform across their members, and to articulate them as policy.

There are no "correct" parole release criteria, nor are the distinctions between them always absolutely clear. It is helpful, however, to examine the assumptions and values that each member brings to the release decision. They affect everything from the information members want in order to make a decision, to the optimal scheduling of hearings. The following is a discussion of the most common goals or purposes of parole decisions. They include the traditional philosophical purposes associated with sanctioning generally, as well as some that are typically associated only with parole and are more pragmatic than philosophical. Some of these goals are predictive in nature: that is, the decision is based on a prediction of what the inmate may or may not do if released. Rehabilitation, incapacitation, and deterrence are primarily concerned with using the parole release decision to prevent future crime. Just deserts and the promotion of good institutional behavior are not predictive: They seek to punish or reward past conduct. The information needed to make the release decision will vary significantly, depending on the goal or goals of the decisionmaker.

Offender Rehabilitation

The original intent of indeterminate sentencing and the parole process was to provide an incentive for prisoners to rehabilitate or reform themselves: Upon evidence of a change for the better, an inmate could be discharged from prison before the expiration of the full term imposed by the court. The ultimate concern expressed here is for public safety: Has this individual changed enough that he or she can be returned to live in the community without committing additional crime.

As evidence of change, parole board members might look for inmate participation in prison counseling or treatment programs, educational or job training achievements while incarcerated, positive reports from prison counselors, religious observance, job and housing commitments from the community, and so forth. The board may want prisoners with particular offense histories (sex offenses, for example), or criminogenic disorders (drug addiction, for example) to complete a special treatment program before release.

Parole board members who want to grant parole release upon evidence of prisoner rehabilitation are likely to find themselves stymied by the current status of rehabilitative opportunities within their state's prisons. Rapid population growth, with its drain on space and budgets, has robbed many prison systems of the ability to offer much in the way of treatment, education, or training for the inmates who need or want it.

Prisoners can wait years to get into specialized treatment programs in many states.

An additional burden on boards which place primary emphasis on rehabilitation is the need to establish some certainty about the connection between the behavior used as evidence of change, program participation for example, and long term behavior change in the community. Such certainty may be difficult to get.

Just Deserts

Unlike any judge, or even all the judges in one county or court circuit, the parole board sees the cases of all the robbers, all the burglars, all the rapists, and so on that come into the state's prison system. With this unique perspective, parole boards are in a position to compare cases, to determine a "typical" length of stay for similarly situated offenders, and to compensate for the uneven handling of similar cases by different judges across a state. This process of "evening out" the treatment of offenders, of requiring them to serve a typical amount of prison time for their offenses before release, is a common impulse for parole boards. It also implies that aggravated or worse cases should serve more time than the typical or average amount, and mitigated cases less time.

This perspective, often called a just deserts framework, views prison primarily as a punishment for the crime committed. The time to be served, therefore, should be a function of the seriousness of the crime and the culpability of the offender. The information required for the decision will pertain to these items: Exactly what happened when the crime occurred; who was hurt; what was the value of any loss or damage; was the victim particularly vulnerable; what was this inmate's involvement in the crime; what was his/her state of mind at the time, and so on.

Incapacitation

Incapacitation is a more recent expression of parole's traditional concern with preserving public safety. It is unlike a rehabilitative orientation which views prison as offering an opportunity for change and parole as a reward and recognition for that. An incapacitative approach to parole views prison as a way of keeping dangerous offenders out of the community, and parole as a screen through which only the relatively safe ones can be returned to it.

Parole release decisions made from this perspective are necessarily dependent on the paroling authority's ability to predict inmate behavior if released. That prediction has two parts: First, what are the chances that this individual will commit a new crime or crimes (the risk), and second, what level of harm is the crime likely to entail if committed (the stakes). The

board's predictive ability will be greatly enhanced if they make use of research that can help them to identify the indicators of risk and stakes among their state's inmate population.

Many boards who take this approach are turning to risk prediction tools to guide their decisionmaking. Such instruments have many advantages, and those are examined in more detail in the next section. It is worth noting here that devices of this type provide parole boards with an explainable basis for their decisions. As corrections issues grow more politicized, paroling authorities increasingly are called upon to explain or defend their decisions. Law suits from victims (or their survivors) of parolee crime, brought against the parole board or its individual members, have added to the pressure. While the decisions in most of these suits have upheld the immunity of parole boards from liability for parolee behavior, some state courts have begun picking holes in that immunity. In an Arizona case in 1977, Grimm v. Arizona Board of Pardons and Paroles, the state Supreme Court found that the Board was liable if the release was "reckless or grossly or clearly negligent."[28] The use of a research-based decision tool certainly can offer boards a consistent rationale for their actions in this area.

Deterrence

Although more typically associated with sentencing decisions, parole boards can also be moved to make release decisions based on general or specific deterrence. In the latter case, boards may want to make a prison stay long enough to teach either the first-time or the repeat offender a lesson. The hope is that a more severe response this time will keep this particular offender from reoffending. General deterrence is perhaps the more commonly articulated of the two: "promoting a respect for the law" is a typical phrase in the mission statements of parole boards. In a given case that concern may be expressed in the question: If we release this offender at this point, will the length of his or her incarceration be so short as to undermine respect for the law by the non-offending public?

The challenge for parole boards wanting to use either general or specific deterrence as a goal of their decisionmaking is to come up with a method for determining what is "enough time" to teach either the individual or the general public to respect the law.

Reinforce Institutional Adjustment

There is a long tradition in parole of boards' using their power to release to support the orderly operation of corrections institutions. Citations for misconducts while in prison are frequently part of an inmate's "parole package" for consideration by the board. For those who value this as a criteria, good behavior is seldom grounds for granting parole, but misconduct may be

grounds for denying it. As discussed earlier, the weight a board chooses to give institutional conduct may be influenced by what other options, like good time, are available in the system to reward or punish prison behavior.

If a parole board does decide to use institutional behavior as a criteria, members may want to establish policies as to the nature and the time frame of misconducts that will be considered in the parole decision.

Other Considerations in Decisionmaking

Although the purpose or goals described above are the major philosophical and pragmatic bases of parole decisions, there are other factors that may to a lesser extent influence the board's decisions.

- **Public reaction.** Some cases, perhaps because of the high profile or particular vulnerability of the crime victim or the circumstances of the offense, are bound to be subject to an unusual amount of public scrutiny. It is probably impossible for any parole board to be immune to the pressure of public opinion in such cases. It may be helpful for a board to have developed some principles or policies about how it will handle these types of cases. A full discussion of the issues, separate from the actual case decisions, may permit members to articulate more freely their positions, feelings, and fears in relation to them, and may avoid decisions based on unexamined individual assumptions and values.

- **The intent of the sentencing judge.** As discussed in Chapter 2, some judges include a statement of intent, including length of incarceration, as part of the court record accompanying the offender to prison. Some boards have an explicit policy about the priority or weight to be given to the judge's wishes. As with all other decision factors, a full discussion and the development of policy in this regard can make the board's decisions more consistent and explainable.

STRUCTURING THE RELEASE DECISION

It is not feasible for a parole board to meet all of these goals, nor take account of all of these considerations, in its release decisionmaking. Among other things, many of them are contradictory. Yet the legislation creating parole in many states lists all of these and more as decision factors to be used by the parole board. Agencies and constituencies, including those described in the preceding chapter, have interests or values that they want to see preserved or addressed in the parole process. These groups or individuals have often not hesitated to share their views. In addition, of course, each parole board member brings his or her own goals and values to the board's decisions. As a result,

individual cases may be decided by different criteria depending on the case, the timing, or the board members hearing it. It is small wonder, then, that critics have decried the inconsistency and seeming capriciousness of parole decisionmaking. In fact, boards by and large have not acted in an arbitrary manner, rather they have often tried to achieve too much and to be responsive to too many through their decisions.

More recently, the growth of correctional populations, with its increased parole hearing load and expedited releases, and the public's demand for greater accountability have added to the pressure on parole boards to make explicit their policies for decisionmaking. Paroling authorities, like other policymakers, have historically been reluctant to set limits on their discretion, either as a body or as individuals. The past twenty years, however, have produced changes in our notion of sound correctional policymaking. Among those changes is an increasing acceptance of the need for policy-driven rather than case-by-case decisionmaking.

Given the criticisms of parole for arbitrary and unexplainable decisions, the threats to its existence, and the burdens it is called upon to shoulder, policy-driven decisionmaking offers parole many advantages. In 1986, the National Institute of Corrections made available a program of technical assistance on structured decisionmaking to paroling authorities.[29] From NIC's ongoing contacts with boards across the country, the agency saw a number of problems and needs that this approach to decisionmaking might help to address. The resulting work by that project confirmed NIC's initial assessment of the field. Among the most common needs identified were:

- to provide clearer guidance to hearing examiners who conduct hearings and make release decisions or recommendations;
- to enable the board to explain its decisions to other government officials and agencies, to the public, and to inmates;
- to enhance the efficiency of decisionmaking as hearing caseloads have increased by standardizing the information used;
- to increase the consistency of decisions;
- to predict more effectively success on parole;
- to have better and more consistent information with which to make increasingly difficult decisions;
- to provide more effective guidance to field officers on parole conditions and supervision.[30]

No doubt other boards would have different or additional needs.

What is Structured Decisionmaking?

The increased acceptance of structured decisionmaking in criminal justice has produced many variations in the form and use of the structure: sentencing guidelines, probation caseload classification schemes, risk prediction instruments for all kinds of purposes, bail guidelines, and so on. In parole, the most common reference is to guidelines. In practice, however, that term is used to describe many different approaches to decisionmaking, from an unweighted list of factors or items of information to be taken into account by the parole board, to Oregon's decision matrix which specifies a range for each inmate's term of incarceration.

Structured decisionmaking refers to the making of individual case decisions in accordance with explicit goals and policies determined by the larger, policymaking body -- in this case, a parole board or parole advisory body. The NIC Parole Technical Assistance Project, described above, identified seven characteristics of structured decisionmaking:

- **Explicitly stated goals for decisionmaking practices (e.g., just deserts, rehabilitation, risk management, etc.).** For most boards this is probably the most difficult task; sorting through all the different purposes and values brought by individual members, contained in the board's enabling legislation, or perceived as critical by other agencies, and choosing those that will drive the decisions of this board.

- **Explicit, written policy covering topics such as release, offender eligibility for parole, setting terms, conditions of parole release, or supervision levels.** The policies that will govern the practices and operation of parole will vary according to the goal or goals the board has selected. Each one can have quite distinct implications for the way parole's functions will be carried out. Choosing goals is, in part, a process of answering the question: What do we want to achieve through this decision? Creating the policies that accompany them involves asking: How can we best assure that our decisions do achieve our goals?

- **Explicit decisionmaking tools (e.g., rating sheets, risk prediction devices).** Decisionmaking tools interpret overall policy for individual case decisions. They help to organize and systematize the information needed for the decision, pulling from the hundreds of items of information typically available on each case only those that have a direct bearing on the decision. As hearing dockets increase and the pressure of prison crowding brings more difficult decisions to the board, decision tools can expedite the decisionmaking process. Furthermore, in expediting the process, the board can actually enhance both its fairness and its effectiveness, because the information used is uniform across cases.

- **Revocation policy.** Revocation is the other release decision made by parole boards: the decision to revoke release and return a parolee to prison. Because revocation involves an offender who is at liberty, though under parole supervision, the decisionmaking process must meet higher due process standards. Revocation practices also have a direct impact on prison populations and some boards may experience pressure from corrections departments to avoid return whenever possible. Such pressure is often countered by the need from field staff for means by which to enforce parole conditions. Explicit revocation policies can assist the board to balance these pressures while maintaining consistent goals for parole.

- **Explicit rules for overriding policy.** As important as it is to articulate policies for decisionmaking, it is just as critical to have agreed-upon rules for those cases in which those policies do not seem appropriate. A board might choose categories of cases, for example, to exempt from standard policy, or attributes of cases for which overrides are acceptable. The key, however, is to make those rules as explicit as the original policy.

- **Tracking systems to document compliance with policy.** Tracking systems provide feedback to the board on how well its policies are working for the decisionmakers who are supposed to be using them. With a monitoring mechanism in place, the board can determine how often individuals are overriding policies, in what direction, and to what extent. Substantial deviation by a number of board members may mean that the board's stated goals do not have the support of the entire board; that those goals or the resultant policies are misunderstood, or that the population for which the policies were devised has changed.

- **Mechanism for systematic revision of policy.** Feedback mechanisms are only worthwhile if the board is willing and able to use the information thus generated. That is likely to entail the dedication of board time at regular intervals to review policies and practices.

As discussed earlier, the form that structured decisionmaking takes varies among the jurisdictions that have chosen to use it. So too does the extent to which parole boards meet all seven of the just described characteristics. It is beyond the scope of this handbook to delineate and define all of the forms now in use across the country. There are, however, some common issues related to them that bear further discussion.

Time

The keystone of a structured decisionmaking approach is the achievement of consensus by parole board members on the goals of their parole decisions. Arriving at a consensus and using it to create policies takes time. In the often harried schedules of most

boards, time is a precious commodity and blocks of it may be hard to find. The risk of not spending the time that this work requires is that the outcomes will not have the full support or understanding of board members. The result can be policies that are never fully implemented or are frequently ignored or overridden.

Past Practice

As parole boards have developed decision tools, some have chosen to base their future decisionmaking on past board practice. These boards have asked researchers to examine and model statistically earlier decisions in order to identify the factors which have most heavily determined decision outcomes. These factors are codified in a rating sheet, matrix, or some other type of decision aid.

Decision tools of this type are called descriptive instruments. They describe past practice. The process of creating them by-passes the current board's determining a goal or goals for its decisions in the way discussed above. In contrast, decision tools or instruments that reflect the board's choice of goals are normative: They are designed to guide decisions to achieve a specific desired outcome.

Risk Prediction

Prediction is an essential element of any criminal justice decision that has as its goal the prevention of future criminal activity. That prediction may be made intuitively, out of the experience of the decisionmakers, or objectively, on the basis of an empirically-based rating system.

For any paroling authority that has chosen incapacitation as its chief crime control strategy, risk prediction is a central concern. These parole boards seek to use their release, supervision, and revocation decisions to restrain or restrict the ability of offenders to commit new crimes. In this effort, risk prediction is the means by which a board distinguishes offenders' likelihood of reoffending. It is a method for sorting parolees and would-be parolees, in this case by a prediction of their individual risk.

On a policy level, risk prediction provides paroling authorities with the information they need to conduct the business of their agency. If a parole board has the capacity to distinguish offenders by the risk they potentially represent, the board can make policy choices on how to respond differentially to them. It enables the board to make the best use of available resources to achieve its stated objective. Those policy choices include: first, what kinds and levels of risk are acceptable to the board in terms of releasing inmates on parole; second, in order to manage the degrees of risk represented by those released, what conditions

of parole are appropriate, and what types of services and levels of supervision are required in the field; and third, how can the board most effectively enforce parole conditions and supervision for different types of parolees. These policy choices will, of course, dictate other decisions on issues ranging from staffing patterns to information flow.

As noted earlier, risk prediction can be made intuitively, out of experience, or objectively, on the basis of empirical analysis. The state of the art in the study of human decisionmaking is convincing in its evidence of the predictive superiority of statistically derived instruments over intuitive judgments.[31] For a board choosing a policy goal of incapacitation, the accumulated experience of criminal justice decisionmakers argues strongly for the use of these instruments in the parole process.

The construction of risk prediction instruments involves many technical issues. In the hands of trained personnel, research staff, an outside consultant, or a combination thereof, these tasks are straightforward and should present no difficulties. A full discussion of those technical issues is beyond the scope of this handbook.[32] There are, however, policy parameters to this work which the board itself must engage, including:

- **A specific definition of the behavior or behaviors to be predicted.** Researchers need guidance from the board on its concerns. Success on parole, for example, can mean very different things, from no new felony convictions to cooperation with the supervising agent. The agency as a whole needs to know what the criterion of success is.

- **An acceptable level of error.** Because no instrument is 100% accurate, the parole board will want information on the expected error rate of the instrument, and on the nature of those errors. Predictions can be inaccurate in one of two ways: false negatives, those who are expected to "succeed" who do not, and false positives, those who are predicted to fail who do not, or would not if release had been granted. The implications for each type of error are quite different. It is up to the board to explore these implications and to agree on error rates in each category that are acceptable.

- **The choice of predictor variables or factors.** Researchers may find individual characteristics that are predictive but that the board finds unacceptable for ethical or other reasons; race and sex are two examples. The board and its research team should approach this task together.

PAROLE RELEASE HEARING

Scheduling

The scheduling of parole hearings will vary with the eligibility requirements, parole purposes, and decision practices of the jurisdiction. Where prisoners must by law serve some portion of the prison term before becoming eligible for parole, the hearing has traditionally been conducted a month or so before the actual eligibility date. In jurisdictions where the board has the discretion to set eligibility dates, most have determined a percentage of the full term which must be served before an inmate is eligible for parole. The practice here also has been to conduct hearings a month or so before that eligibility date.

This traditional practice of scheduling release hearings so close to eligibility has its basis in the original rehabilitative intent of parole and incarceration. The board wanted as much time as possible to observe a prisoner's progress in prison and to judge the success of his or her rehabilitation. This practice is changing in many jurisdictions for a number of reasons. The press of increased hearings loads and the demand for prison beds have caused some boards to initiate hearings earlier in prisoners' terms. This permits more adequate preparation time for each case and the timely release of inmates once parole is granted. In some states, the shift in emphasis from rehabilitation to an incapacitative or a just deserts purpose has obviated the need to hold hearings late in the prisoners' terms: Boards usually have the information they need for decisionmaking well in advance of the eligibility date.

This latter change is most obvious in those states which by law or by policy have implemented parole guidelines. In states like Oregon and Georgia, the guidelines permit the parole board to establish a presumptive term of incarceration and a tentative release date. This information is given to inmates soon after their admission to prison, along with the factors which may change that presumption.

The Conduct of Hearings

The procedures of release hearings differ from state to state. In some jurisdictions, the full board conducts hearings; in others, it is a panel of two or three members, a hearing officer, or a combination of members and hearing officers.

For those states which use hearing officers or hearing examiners, their role can be either to make release decisions or to recommend appropriate decisions to board members. The use of hearing examiners as decisionmakers is most common in states with large prisoner populations: Texas, California, and Pennsylvania, for example. In either case, the hearing officers have a vital

function in parole operations and it is important that the board provide them with clear policies by which to carry out their responsibilities.

The release hearing itself is usually informal; parole hearings are not adversary proceedings. A common practice is to circulate the files of prisoners scheduled for hearings among members of the hearing body a few days before the hearing. One member typically takes responsibility for reviewing the case information, presenting the case to other members, and conducting the interview. Most states permit the inmate to have an attorney present at the hearing, although his or her role may be limited to assisting the prisoner to present information to the panel. Nearly all states permit the inmate to submit letters and documents in support of his or her case and to make a statement.

Like so many other aspects of the parole process, the release hearing has been the subject of widespread legislative action and/or board policy change in recent years. Most of these changes have been aimed at making the hearing, and the decision which results, more public and the decisionmakers more accountable. At least nine states have passed laws requiring the paroling authority to notify victims (or their survivors) of scheduled parole hearings. Many other states have internal policies requiring notification. In most of these jurisdictions, victim input is sought via written statements, but, in a few states, the victim can participate in the hearing itself. Some states, by legislation or policy, also require the notification of the judge, prosecutor, and any law enforcement agency involved with the case, and solicit their comments. Although there is no conclusion to be drawn yet on the effect of these changes on decision outcomes, they are certain to make parole hearings less informal than they once were.

At the conclusion of the hearing, the prisoner is typically asked to leave the room while the case is discussed and a decision is made. In some states the prisoner is immediately informed of the decision and the reasons for it. Others delay notification; the prisoner is informed of the outcome by an institutional counselor or by letter.

If parole is denied, a rehearing date is set according to a schedule established by statute or by board policy. Many parole boards permit prisoners to appeal parole decisions; review may consist of case file review or a new hearing.

Due Process Considerations

The question of whether prisoners have a due process claim at release hearings has been raised repeatedly since the Supreme Court's decisions concerning parole revocation. Two cases decided by the Supreme Court have established the limits of that claim.[33]

In the first case, Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979), prisoners petitioned the Court to extend due process protections to the parole grant hearing. They made two arguments: First, that the existence of a parole system creates a protectable interest; this argument was based largely on Morrissey v. Brewer, which established such an interest in parole revocation proceedings. Second, the prisoners claimed that the specific language of the Nebraska parole statute provides that the board "shall" parole prisoners at first eligibility unless the board determines that release should be deferred because of one or more of four listed factors (substantial risk of nonconformity to parole conditions; release would depreciate the seriousness of crime or promote disrespect for law; release would undermine institutional discipline; continued stay would enhance later capacity to lead a law abiding life).

The Court rejected the first claim on the basis of the "crucial distinction" between the liberty interests of a parolee who stands to lose his or her liberty through revocation, and the desired liberty of a prisoner anticipating parole release. The Court further noted that part of the revocation decision is factual; it is a determination of whether a violation of parole has occurred. Parole release, in the eyes of the Supreme Court, is not a purely factual decision. It is based on "an amalgam of elements, some of which are factual but many of which are purely subjective appraisals..."

Although the Court in Greenholtz established that there is no constitutional right to parole release, the Court did find that the language of the Nebraska parole statute created a protectable expectation of parole: that is, the use of the words "shall order his release unless.." gave prisoners certain due process rights to which they were not otherwise entitled.

This finding was further amplified by the court in the 1987 case, Montana Board of Pardons v. Allen, 41 CrL 32581 (1987). Here also, the Court determined that the language of the Montana statute, "the board shall release on parole..." created the expectation that parole would be granted "when" certain criteria were met.

The implications of Greenholtz and Allen for parole board practice pertain to the determination by the board that individual prisoners do or do not meet the statutorily-defined criteria for release when the law connects those criteria to an expectation of release.

PAROLE RELEASE

Please complete the following questions in as much detail as necessary to provide new board members with an understanding of parole release hearings.

PAROLE ELIGIBILITY

1. Summarize the statutory requirements for parole eligibility, including mandatory minimum terms.

2. Does the parole board have the authority to override legislated eligibility requirements in exceptional cases? If so, state authority and board policy.

3. Apart from statutory requirements, what are the board's policies on parole eligibility?

4. How is parole eligibility determined if a prisoner is serving consecutive sentences?

5. Are any categories of offenses or offenders excluded from parole by statute?

6. Are any excluded by board policy?

PAROLE RELEASE DECISIONMAKING

1. What is the primary goal of the board's release decisions?

2. How was that determined? When?

3. What factors does the board typically consider when making release decisions?

4. Are these factors structured in a formal way?

5. How were those factors chosen, and by whom?

6. How much discretion do members have in using those factors?

7. If the board's goal is/includes rehabilitation, public safety, or deterrence, have the decision factors been studied for their predictive value, or their relationship to the desired goal?

8. What information does the board rely on to establish the presence or absence of the factors?

9. Who prepares the information?

10. If the board uses a risk prediction or risk assessment tool or scale, how recently was it validated for your state's parole population?

11. How does the risk assessment relate to parole conditions and field supervision?

12. Does the board have a mechanism for receiving and reviewing data on the outcomes of their decisions?

HEARING PROCEDURES

1. Describe the hearing schedule and the procedure for docketing cases.

2. Who conducts hearings?

3. Is the board required by statute to notify others of the hearing? If so, who?

4. Does the board require notification by policy?

5. Describe the usual hearing procedures.

6. Is the victim, prosecutor, etc. permitted to testify at the hearing or to submit testimony? What is the board's policy on using that testimony, whether given or submitted?

7. When and how is the prisoner notified of the decision? Are any others (e.g., the sentencing court) routinely notified?

8. Can prisoners appeal a parole decision? If so, what are the procedures and criteria for accepting a case for review?

9. Attach any relevant standard forms.

PAROLE RESCISSION

Prisoners ordinarily are released on the date set at the parole hearing. But the parole board has the authority to rescind parole, that is, to cancel or postpone release, during the period between the parole grant hearing and the actual release date.

The basis for parole rescission may be a serious disciplinary infraction or the receipt by the board of new, pertinent information. Parole rescission is, for example, essentially what is involved in a guidelines system when a presumptive release date is changed because of institutional misconduct.

Rescission, like other parole decisions affecting parolees' liberty, raises questions of procedural fairness. The issue has been addressed by the courts, and all have mandated some procedural protection. The courts, however, have not always agreed on how much due process is required.

It is an oversimplification, but not a drastic one, to say that the courts differ in whether they have applied the standard of procedural protection offered parolees at revocation hearings or that offered prisoners at good-time forfeiture proceedings.

Based on a review of the case law, one commentator concluded: "On balance, it appears that the standards of revocation are not applicable to rescission and that disciplinary standards will suffice."[34] Those standards were set out by the Supreme Court in 1974 in the Wolff v. McConnell decision.[35]

That decision, governing institutional disciplinary hearings, requires written notice of the alleged violation in sufficent advance of the hearing (at least twenty-four hours) to permit the inmate to present witnesses and documentary evidence if it "will not be unduly hazardous to institutional safety or correctional goals," and a written statement by the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken.

The court specifically did not provide for confrontation or cross examination of witnesses, leaving that matter "to the sound discretion of the officials of state prisons." Nor did the courts provide for assistance of counsel; instead, the court held that where an inmate is illiterate or the issue is so complex that the inmate requires assistance to present it fully, the staff may designate an inmate or staff member to assist the prisoner.

Some states, Massachusetts for example, handle rescission decisions with the same procedural safeguards as revocation hearings, choosing by policy to acknowledge that prisoners in this situation may have a different liberty interest than that of prisoners facing a disciplinary hearing.

PAROLE RESCISSION

Please complete the following questions in as much detail as necessary to provide new board members with an understanding of parole rescission.

1. What are the possible bases for rescission?

2. How is the board notified that a possible basis for rescission exists in an individual case?

3. What procedures are used to rescind parole? (Summarize any pertinent case law.)

4. Attach copies of relevant forms.

5. Are there any rules or common practices for establishing a new release date or determining the duration of postponement of parole?

6. Additional comments:

PAROLE SUPERVISION

Once released, the parolee is placed under parole supervision. He or she is assigned to a parole officer or agent and remains in the community, subject to the conditions specified in the parole order. Violations of those conditions can place a parolee in jeopardy of revocation and reimprisonment or some other form of sanction, depending on the policies and practices of the jurisdiction.

In 38 states, the administration of parole field services or supervision is the responsibility of the corrections department rather than the parole board. This arrangement has the advantage of consolidating the supervision of different correctional populations within one agency, and of making that supervision continuous from prison to the community. It does, however, inhibit the ability of the parole board to manage the entire parole process and to ensure a consistent goal or purpose for it.

Although administration of parole may be placed elsewhere, the supervision of releasees and its purpose are extensions of the release decisionmaking of the parole board. Supervision in the community is the carrying out of the decision goals of the board. In choosing criteria for release, in evaluating prisoners in relation to those criteria, and in setting parole conditions, the parole board is making a judgment about the appropriateness of continuing a prisoner's sentence outside of an institution. Whether their goal is just deserts, rehabilitation, incapacitation, or deterrence, a major part of the board's judgment is whether and how that goal can be met in the community. The board's authority to revoke parole is a statement of that logic: If the parolee cannot successfully serve his or her time in the community, then the board can return the parolee to prison or order some other measures in the community.

As discussed in earlier chapters, parole boards have, in the past, tended to operate without explicit goals and policies about their release decisionmaking. It is not surprising, therefore, that parole officers responsible for field supervision have operated under many of the same vague and often contradictory expectations as parole boards. Field agents have been asked to act both as protectors of community safety through surveillance activities, and as helpers charged with assisting in the rehabilitation and reintegration of parolees. Because field parole agencies are large and diffuse operations, typically organized into regional and sub-regional offices, those expectations can be differently emphasized from region to region or even from officer to officer.

The pressures for change on field supervision mirror those experienced by parole boards. The number of people under parole

or post-release supervision has risen substantially in recent years: On December 31, 1978, there were 175,711 persons under supervision in the states;[36] on the same day in 1985, the number was 277,438 [37] -- a 58% increase in seven years. This increase is a function of both more prisoners being released each year onto supervision (175,490 in 1985, up from 103,000 in 1979) [38] [39] and longer terms on parole in some states. These larger numbers under supervision coincide, in some jurisdictions, with the presence in community caseloads of more difficult cases: The inadequacy of institutional resources to meet an escalating demand for beds may have resulted in the release to supervision of prisoners who would not have met earlier standards for release. Agency budgets have often not kept up with these changes in the number and types of cases in the community.

Field supervision is no longer immune to the politicization of crime and corrections issues, and to public and policymaker demands for greater accountability. Responsibility for the success or failure of those on release is increasingly viewed as shared by both the releasing and the supervising authorities. As part of that shared accountability, supervision agencies are being called upon to explain the content of their supervisory practices, how the content was determined, and its relevance to the characteristics of the population under supervision.

Because of the role supervision plays in carrying out the intent of the release decision, it is appropriate that the paroling authority participate in decisions concerning supervision content. Regardless of where administrative responsibility is placed, parole boards have an obligation to make clear the basis on which they are making release decisions and the implications of that for supervision and revocation policies.

This is most obvious, perhaps, in the case of boards that are using an incapacitative, risk-driven decision framework. If a parole board is using its releasing authority to control the risk that offenders represent or may represent in the community, then the board has to take into account the kind of control the parolee will be under when released. The decision to grant parole in individual cases may be dependent on the level of control that will be available.

For a board with a rehabilitative orientation, the concern will be with the services and treatment the board believes are necessary for particular individuals in order to grant release.

These are obvious examples that illustrate some of the issues in this area. There are many others. Among the more important is the relationship between the content of supervision and revocation policy. The issue is most likely to be raised by the imposition by parole agents of conditions or restrictions on a parolee that the board did not direct. The conditions may not be relevant, in

the board's view, to its release intent. A problem may arise if the agent or agency wants the parolee revoked for not complying with those conditions or restrictions.

The need for consistency between the releasing and the supervising authorities on the purposes and policies of supervision is becoming more urgent. In the face of mounting pressure to operate more efficiently and effectively, many supervision agencies are acting to introduce new methods of screening parolees and new measures to supervise them. These developments are comparable to those undertaken by parole boards in their decisionmaking practices in response to similar pressures. These efforts can only be strengthened by their coordination.

The administrative separation of parole functions does not have to hinder their organization around a common parole purpose. In order to achieve this, however, the parole board has first to clarify their own decisionmaking goals; the implications of those for supervision practices; the purpose and meaning of their parole conditions; the discretion they expect parole agents to use in the enforcement of those conditions; the importance they give to different types of violations, and the circumstances under which they will consider a revocation. Following their own agreements on those issues, the board must take responsibility for establishing and maintaining close contact with the supervision agency. That contact should include an openness to the experience of the field agency and a willingness to incorporate that learning into the board's policies and practices. In many respects, a paroling authority's approach to working with the supervision agency can be comparable to its work with the courts and other agencies: to seek increased cooperation and collaboration in the pursuit of common policy aims.

PAROLE CONDITIONS

Virtually every paroling authority has responsibility for establishing post-release conditions. At a minimum, these conditions form the standards of behavior expected of those released until the expiration of the supervision term.

Most parole boards have a set of standard conditions that are imposed uniformly on released prisoners. Other conditions, so-called "special" conditions, are added as individual cases warrant. The number and scope of standard conditions vary considerably from state to state.

As parole boards are acting to tighten and make explicit their criteria for release decisions, many are turning their attention to the standard conditions they impose to make certain that they reflect the same policy goals. Boards in the past have used long lists of conditions intended to define a very narrow range of

permitted behavior for those on release. Increasingly, boards are paring away at those lists, removing those conditions not directly related to their policy aims. A not uncommon group of conditions, for example, pertain to the parolee's obtaining his or her officer's "counsel and permission" to marry or divorce; another requires parolees to stay out of establishments where "intoxicants" are sold or used. Such specifications may be appropriate for some releasees, depending on the board's purpose and the individual's criminal history, but they probably are not necessary for all.

In reviewing standard conditions, paroling authorities are also responding to field agent concerns about enforcement. As caseloads grow and agent accountability for parolee behavior is heightened, field officers are understandably interested in limiting and channeling their efforts to those areas of behavior that are demonstrably connected to the overall intent of their supervision.

Extraneous or outdated parole conditions can place field officers in the position of having to make their own choices about enforcement. Selective enforcement, dependent on the discretion of individual officers, can produce both ineffective and unfairly disparate supervision.[40] A board that is unclear about its reasons for imposing even the most carefully chosen conditions can produce the same situation.

THE CONTENT OF SUPERVISION

A prisoner released to the community, whether on parole or post-release supervision, is still serving his or her sentence. The officers charged with supervising the sentence completion have two chief tasks. The first is to oversee the releasee's meeting or completing of the release conditions specified by the paroling authority. The second is to ensure that he or she leads a law-abiding life in the community. The actual practices used in carrying out these tasks will depend on a number of things, including the scope of the conditions, the sanctioning goals of the board, and the prevailing orientation and standards of those administering the supervision, including the individual parole officer.

The standard practices of parole supervision include office visits, scheduled and unannounced home visits, calls or visits to employers and family members, spot checks of "hang-outs" (street corners, bars, or other places), urine screenings for alcohol and drugs, and calls or visits to programs in which the parolee is supposed to be participating.

The classic (and much written-about) dilemma facing parole officers is the extent to which they play a law enforcement role

versus a social work role. The problems facing an ex-prisoner upon release are overwhelming. Most are given a set of street clothes, a small amount of money, and instructions to report to a parole officer. After years in a tightly regimented and physically restricted setting, a parolee can find the supposed freedom of the streets daunting. Finding and holding a job, resuming family relationships, the ready availability of alcohol and drugs, and the pull of old friendships (the resumption of which may be forbidden by the parole agreement) can represent incredible difficulties to the releasee. A parole officer charged with ensuring that this individual leads a "law-abiding life" can scarcely overlook these problems. While the officer is working to help the parolee with these and other adjustments, he or she is also expected to be looking for violations of parole conditions or the law. The more extensive or stringent the conditions, the greater the role conflict the officer is likely to experience.

This role conflict is probably most acute in agencies that do not have clear policy guidelines on the intent of supervision and how that intent is to be carried out. While most do have minimum standards for officer-parolee contacts, that is, how often and where they are to take place, in the absence of explicit goals for the overall supervision the individual officer or unit is left to make their own choices. If, for example, an officer defines his or her function as incapacitating parolees, restricting their ability to commit rule or law violations, then that officer may choose to spend a lot of time in the field, doing spot checks at home and on the job, and asking for frequent urine screenings. The "helping" role may be limited to those services which are essential to keeping the individual straight. An officer with a more rehabilitative approach may spend more time in the office developing contacts with social service, counseling, employment, and education agencies; helping parolees to get these services; and performing counseling and casework services for his or her clients. Many officers, however, try to incorporate elements of both approaches in their work.

Constraints on Supervision Practice

The ability of parole officers to carry out their responsibilities, however those are defined, is hampered by a number of problems.

- **Caseload.** Defining an ideal or an appropriate number of cases that any one officer should be supervising is probably impossible: It depends on the goal of the supervision, the expectations of the agency, and the types of cases in the caseload. In jurisdictions where caseloads have grown to over a hundred per officer, however, the sheer number of cases precludes anything but superficial, infrequent contact. In the face of these kinds of workloads, agencies or their officers are forced to give virtually no supervision to some parolees in order to give any to others.

- **Community resources.** Often the parole board's conditions, or the officer's assessment of what an individual needs call for treatment or specialized services that are simply not available in his or her community, that are available but lack the space for more clients, or that refuse services to ex-prisoners. The parolee may have to do without needed services, and the officer is hampered in his or her ability to assist those under supervision. The officer may resort to trying to provide some version of those services him or herself.

Changes in Supervision Procedures and Content

As mentioned earlier, supervision procedures are changing in response to the combined pressure of increasing numbers, public demand for more accountability, and, in some states, more difficult cases. Lawsuits that seek damages for the victims of parolee crime, citing improper or negligent supervision, are being brought with increasing frequency.[41] The threat to abolish parole, discussed earlier, affects those charged with parole supervision as well.

- **Caseload classification.** Traditionally, the assignment of parolees to parole officers has been driven by a variety of agency needs, including equalizing officer workloads, using the particular skills of some officers with specialized populations, or centralizing the supervision of releasees in a particular area or neighborhood. The day to day content of the supervision is left to the best judgement of the individual officer, or is based on uniform standards for all cases.[42]

Caseload classification is aimed at organizing an agency's supervision resources around the achievement of specific supervision goals. The goals are the basis for defining criteria by which parolees are distinguished and placed in supervision categories. The most commonly used criteria include: risk of reoffending, need for services, risk of violent behavior, or a combination of these. While these criteria indicate a strong orientation toward an incapacitative purpose, classification systems can be designed to meet other goals as well.

The actual process of categorizing releasees according to criteria is only the first part of a classification system. Of equal importance is the definition of efficient and effective supervision for each category. Because such systems are policy-driven, parole agencies can specify the content of supervision that is both sufficient and appropriate for each group of parolees.

Caseload classification has parallels in other parts of the criminal justice system. Parole classification schemes seek to structure discretion, reduce disparity, make decisionmakers more accountable, and the process (in this case, supervision) more efficient and effective.

• **Intensive supervision.** Intensive supervision parole (ISP) refers to a wide variety of special programs designed to place more restrictions on parolee behavior, and/or to require parolees to engage in specific activities (community service projects or mandatory treatment programs, for example). ISP typically involves the imposition of a curfew, increased officer-parolee contact (usually several times a week or even daily), and frequent screenings for drug and alcohol use. These programs can be part of a general caseload classification scheme, used for the highest risk parolees, for example, or they can be free-standing, targeted for specific groups. Some jurisdictions are using ISP programs in conjunction with short-term incarceration. In New Jersey and Tennessee, for example, the individual applies for a form of early release; if accepted, he or she is placed on ISP.

Like any other form or condition of post-release supervision, ISP should be guided by the policy goals of the releasing authority, and its components carefully related to those goals. There has been a disturbing trend among some programs, especially in the probation area, to simply add on more and more conditions and restrictions. Such "add-ons" can create impossible situations for parolees, who are then violated and returned to prison.[43]

• **House arrest and electronic monitoring.** Electronic monitoring uses a telephone and a computer to ensure and enforce house arrest. A variety of active and passive signaling systems can keep parole officials informed about whether or not a parolee is at home when scheduled.

As with intensive supervision, electronically-monitored house arrest can be used with a classification system or on its own. It has been more widely implemented as part of probation sentences, but the paroling authorities in some jurisdictions are experimenting with it in conjunction with early release efforts, or to enable the release of prisoners deemed at high risk.

Electronically monitored house arrest raises concerns about the limits of possible intrusion into the lives of releasees. In an era when parole remains under threat of abolition, and the crime control ability of parole supervision is questioned, it is tempting to seek ever more restricted forms of control in the community. However, as one researcher has noted, "If we begin to regard homes as potential prisons, capacity is, for all practical purposes, unlimited."[44] As with ISP, any house arrest program should be constructed in conformance with policy goals, and the population carefully targeted to avoid unnecessary levels of intrusiveness and control. One standard for the use of these and related forms of control is "when there is substantial reason to believe that its imposition is immediately, directly, and importantly related to the ability of an offender...to reside satisfactorily in the community without committing serious crimes."[45]

• **Fees for supervision.** In a time of budget constraints, administrators and policymakers alike are looking for ways to add to revenue. Fees for supervision have the added appeal of forcing offenders to return to the system some of what their offending has cost: Like restitution and community service, fees can be seen as part of paying one's debt to society.

Against these positive attributes must be placed the burden such fees can present to both the parolee and the parole officer. In the latter case, parole officers are already struggling with confusing role expectations. Fee collection can be an additional strain, particularly when the officer is well acquainted with the other difficulties the releasees under his supervision are encountering, or when more pressing matters are at issue in the supervision. For the parolee facing the typical obstacles to employment that ex-offenders encounter, and with likely family support and restitution obligations to meet, fees can be an unmanageable hardship.[46] Fees may end up being an unenforceable condition of parole.

THE INTERSTATE COMPACT

Most parole supervision systems include a number of parolees from other jurisdictions. Under the provisions of the Interstate Compact for the Supervision of Parolees and Probationers, a state may accept parolees from other states for supervision, or release prisoners to parole in other jurisdictions. The Compact was created in 1937, and has been joined by all 50 states. It is administered in each state by an official appointed by the governor.

The terms of the Compact require a supervision system to accept a parolee <u>if</u> he or his family resides in the state and the parolee can find employment. In all other cases, the receiving state must agree to the transfer. The parolee, in turn, waives the right to extradition proceedings to the releasing state.[47]

If a parolee accepted under the Compact violates a condition of parole, the receiving state conducts the preliminary revocation hearing and forwards the report and recommendations to the releasing authority. The parolee may be returned to that authority for revocation proceedings.[48]

PAROLE SUPERVISION

Please complete the following in enough detail to acquaint new board members with parole supervision.

1. What agency administers parole supervision?

_____
_____

1.(a) If supervision is administered by another agency, by what mechanism does the parole board maintain communication with it?

_____
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_____

2. Who is the director of field services?

_____

3. How are field services organized?

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_____

4. Does field services use a caseload classification system?

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_____

4.(a) What criteria does the system use to classify parolees?

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_____
_____

5. Who administers the Interstate Compact? (Attach copies of relevant forms and Compact rules.)

_____

6. What parole conditions are routinely imposed? List any additional, special conditions that may be imposed and attach a copy of the standard parole agreement.

_____
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_____

7. List and describe any special supervision programs, including their goals, and the process by which parolees are chosen for them.

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PAROLE REVOCATION

Parole revocation is the decision to return a parolee to prison because of a violation of a parole condition. The revocation process is set in motion by the parole officer. Theoretically, any violation of parole is grounds for revocation. Because of their role in initiating revocation proceedings, parole officers have some discretion in choosing which violations to overlook and which to report. In most jurisdictions, however, the parole board makes the final determination on reimprisonment. The Board, therefore, either explicitly or implicitly sets the policy on those violations which it considers serious enough to warrant revocation. Explicit policies on this matter are one way that paroling authorities can establish clear guidance for and direction to those with responsibility for supervision. The establishment of policies on revocation by the board is consistent with the board's overall policymaking role, and enables that body to pursue uniform goals for the entire parole process.

The due process requirements for revocation hearings have been established by the Supreme Court. In so doing, the Court recognized a liberty interest for those already on parole release that is distinguishable from those awaiting parole or facing institutional actions. If the parolee is found guilty of a violation, the parole board makes two determinations: whether to revoke parole and the duration of the imprisonment.

REVOCATION HEARINGS

Revocation was the first aspect of parole to be addressed by the Supreme Court. In 1972, the court handed down the Morrissey v. Brewer decision (408 U.S. 471), which established a two-stage process for revocation. The first stage is a preliminary hearing to determine whether there is probable cause to believe that a parole violation has occurred. The Court specified that this determination "should be made by someone not directly involved in the case." Most jurisdictions use hearing examiners, case analysts, or some other board or staff member to conduct these hearings. The hearing is normally held in the field. The parolee must receive advance written notice of the hearing, its purpose, and the parole violations that are alleged.

At the hearing, the parolee may present letters, documents, and persons with relevant information; upon his or her request, individuals who have supplied information adverse to his or her case are to be made available for questioning in the parolee's presence. However, if the hearing officer determines that an informant would be subject to harm if identified, he or she need not be made available for cross-examination. A summary of the

hearing is prepared. If probable cause is found, the parolee is returned to the institution for the final revocation hearing.

The second stage, the final revocation hearing, is held to evaluate any contested facts and to determine whether the facts warrant revocation. This hearing is to be conducted within a reasonable period of time, by a "neutral and detached" hearing body, usually the parole board, or a panel of the board. The procedures for notice, evidence, and confrontation are substantially the same as those of the preliminary hearing. In addition, the evidence against the parolee must be disclosed to him or her, and the hearing body must prepare a written statement of the evidence relied upon and the reasons for the revocation. Many boards have developed policies on "a reasonable period of time"; this is typically 30 to 60 days following return to the institution.

The year following the Morrissey v. Brewer decision, the Supreme Court decided Gagnon v. Scarpelli (411 U.S. 778, 1973). This case concerns attorney representation and appointment of counsel at revocation hearings. The Court established a case-by-case method for determining whether attorneys should be permitted or appointed for indigent parolees. The criteria elaborated in the decision are:

> ...counsel should be provided in cases where, after being informed of his right to request counsel, the ...parolee makes such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation... or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make the revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.

The Court directed the decisionmaker to consider also whether the parolee appears "capable of speaking effectively for himself." If a request for counsel is denied, the grounds for refusal must be succinctly stated in the record. Some states, as a matter of policy, provide counsel for all indigent parolees at revocation hearings.

Since these two decisions, a number of courts have explicated these procedural requirements. One commonly litigated issue is whether the preliminary revocation hearing to determine whether there is probable cause is required in all cases. It is not. Parolees may waive the hearing in a number of states, and a review of case law found that a "a number of courts have held that a preliminary hearing is not necessary if the parolee has been charged with or convicted of a new crime."[49] Some states have eliminated both revocation hearings upon conviction of a new felony offense. In 1987, however, the Court of Criminal Appeals in Texas,

which had such a policy, overturned a revocation order imposed without a hearing as violating the Morrissey requirements.[50]

Morrissey requires a timely hearing. In 1976, the Supreme Court eased that requirement in Moody v. Dagett, (429 U.S. 789) a case involving a federal parolee convicted of and sentenced for a new offense. A revocation warrant had been issued against the parolee, but it was not executed. The parolee, imprisoned on the basis of the new offense, sought to have the revocation canceled. The Court held that revocation need not be decided in this situation until the intervening sentence had been served. State courts have varied in their judgments on the meaning of "timely." In states which have policies on time limitations between return to prison and the final hearing, some courts have found those mandatory, others discretionary.[51]

THE DECISION TO REVOKE

Although legally any violation of a parole condition is adequate grounds for revocation, it is difficult to determine how often revocation is based purely on technical, that is, non-criminal, violations. In some cases, revocation on technical violations is made in lieu of prosecution on a new charge when a criminal offense has been committed. In others, parole is revoked on technical grounds when an officer suspects criminal activity, but there is insufficient evidence for arrest. Prison admission data will classify these as technical violators. The practice of revoking parole on the basis of suspected new criminal conduct has been criticized because parolees can be found guilty of the conduct and imprisoned on the basis of procedures and evidence that would not sustain a conviction in court.

Studies conducted in the 1970's indicate that revocations on purely technical grounds are typically made, when a pattern of violations indicate a potential for resumption of criminal activity or the parole officer finds the parolee unmanageable.[52]

The escalating demand for prison beds, and the desire to avoid reimprisonment when the offense or violations would not otherwise warrant such a sanction, have caused parole officials to seek intermediate sanctions short of revocation. "Half-way back" programs, as these are sometimes called, can involve the imposition of intensive supervision or house arrest, or the placement of violators in halfway houses. These measures are usually imposed for a time-limited period, after which regular parole is resumed.

In cases where a new felony charge is brought, both the parole board and the court have jurisdiction. The court can choose to proceed with the charges, rather than to accept revocation in lieu of prosecution. The board in this case can also choose to revoke

or to hold off on revocation until after conviction and the imposition of a new sentence.

DURATION OF REIMPRISONMENT

If the board decides to revoke parole, it must determine how long the parolee should be reimprisoned. Assuming the parolee has not been convicted and imprisoned on a new charge, the sentence on the original offense provides the framework within which the board acts. In most jurisdictions, the parolee may be imprisoned until expiration of the original sentence, sometimes diminished by previously earned good-time, sometimes not. Some jurisdictions credit time spent on supervision before the revocation incident; others do not credit street time. How much of the original full term the board requires to be served is usually a matter of board policy: The board generally retains the same kind of discretion it had for the original release. Few boards have developed guidelines to govern duration of reimprisonment. Like release guidelines, they make the policy of the board explicit and help ensure evenhanded decisions. The U.S. Parole Commission, for example, provides that ordinarily parolees revoked on the basis of technical violations will serve up to nine months; if the parole commission determines that the parolee engaged in new criminal conduct or if a new conviction has occurred, a prison sentence is calculated under the parole release guidelines.

If the parolee is prosecuted, convicted, and receives a new sentence, the court may order that it run concurrently with or that it follow the original sentence. Some states require consecutive sentences for parole violators with new sentences. The board then must decide whether and when to revoke parole, and how to calculate parole eligibility. Here also, the use of explicit parole guidelines by the board can make the process more fair and efficient.

PAROLE REVOCATION

Please complete the following questions in enough detail to acquaint new board members with revocation procedures.

PREHEARING PROCEDURES

1. What violations, if any, are parole officers required to report to the board? (Attach a copy of the report form.)

2. Is a warrant required to detain a parolee for revocation proceedings? If so, who issues the warrant?

3. If arrested for a new crime, are parolees eligible for release on bail?

REVOCATION HEARINGS

1. What is the policy with respect to parolees suspected of new crimes--revocation, prosecution, or both?

2. Who usually conducts preliminary and final revocation hearings?

3. Are there circumstances that always require revocation?

REIMPRISONMENT

1. When parolees are returned to prison with a new conviction and sentence, how is the term calculated if consecutive? If concurrent?

2. If no new conviction is involved, are there any rules or guidelines governing duration of imprisonment?

PAROLE DISCHARGE

The duration of supervision is normally established by statute. A common approach is to permit supervision to run from release until expiration of the maximum term (or the maximum minus good-time credits). In some jurisdictions, particularly those where parole release has been abolished, specific periods of supervision are established for each felony class or for certain categories of offenses.

Usually there is a statutory provision for early discharge from supervision. A common practice is to require that parolees serve a one- to two-year, violation-free period. The statute may merely authorize discharge, or create a presumption of discharge which the board must overcome to continue supervision in a particular case. In some jurisdictions, parolees are not formally discharged from supervision. Instead, the parolee is released from "active supervision"; contact with the parole system may cease or be reduced to the barest minimum, but the individual maintains the legal status of a parolee until the expiration of the term.

Early discharge has been recommended by a variety of authorities. The Commission on Accreditation for Corrections in its standards for parole, for example, recommends discharge after one year.[53]

PAROLE DISCHARGE

Please complete the following questions in enough detail to acquaint new board members with parole discharge.

1. Summarize the statutory provisions with respect to duration of supervision.

2. Is there statutory authorization for discharge from parole? If yes, summarize the provisions of the law.

3. Describe the procedures for discharge and attach any standard forms.

REFERENCES

1. NIC Information Center, "Parole in the United States 1985," U.S. Department of Justice, National Institute of Corrections, 1985, p. 3.

2. Ibid., p. 7.

3. Tennessee and Louisiana, for example.

4. In addition to the six states with unified corrections systems, states including Massachusetts, Tennessee, Texas, New Jersey, Georgia, Virginia, and Maryland require the state parole board to review county inmates for parole release.

5. Some 17 states have such statutes on their books, but most have not used them. States which have made use of this mechanism include: Michigan, Tennessee, South Carolina, Arizona, and Iowa.

6. 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, Minn.: West, 1981), p. 81.

7. Sol Rubin, The Law of Criminal Correction, 2nd ed. (St. Paul, Minn.: West, 1973), p. 621.

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. For a discussion, see Ibid., pp. 624-25.

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, Mass.: Ballinger, 1979), pp. xviii-xix.

11. Attorney General's Survey, Parole, p. 34.

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13. Some key publications of this period include: Jessica Mitford, Kind & 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, Mass.: 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. These states are: Maine, California, Indiana, Illinois, Minnesota, Connecticut, Colorado, North Carolina, Washington, Florida, New Mexico, and Idaho.

17. Colorado passed legislation in 1985 reauthorizing parole.

18. 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.)

19. As of January 1986, some 40 states had all or part of their corrections system operating under court orders or consent decrees.

20. p. 6.

21. p. 6.

22. Notes and comments: "Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Conviction," Yale Law Review, vol. 72 (1965), pp. 506-507.

23. Ibid.

24. Bureau of Justice Statistics, Bulletin "Prisoners in 1986", May 1987.

25. Bureau of Justice Statistics, Bulletin "State and Federal Prisoners, 1925-1985", October 1986.

26. ACLU National Prison Project, "Status Report - The Courts and Prisons", February 1986.

27. Tennessee Department of Corrections, Status Report, February 1988.

28. Grimm V. Arizona Board of Pardons and Paroles, 564 P. 2nd 1227 (Ariz. 1977).

29. The project, Technical Assistance for Parole Decisionmaking (NIC Grant #GG9), was conducted by the COSMOS Corporation and the Center for Effective Public Policy between January 1986 and August 1987.

30. Peggy B. Burke, "Structuring Parole Decisionmaking: Lessons from Technical Assistance in the Nine States", August 1987.

31. Stephen D. Gottfredson and Don M. Gottfredson, Accuracy of Prediction Models, paper for the National Research Council's Panel on Research on Criminal Careers, November 1984, p. 64.

32. For a full review of these issues, see Stephen D. Gottfredson, The Honest Decision-maker's Guide to Prediction and Risk Assessment, prepared for the Technical Assistance for Parole Decisionmaking Project (NIC Grant #GG9, 1987); and Stephen D. Gottfredson and Don M. Gottfredson, "Screening for Risk among Parolees: Policy, Practice, and Method", in Prediction In Criminology (Albany, New York: SUNY Albany Press, 1985).

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35. 418 U.S. 549 (1974).

36. National Council on Crime and Delinquency, Parole in the United States, 1979, p. 30.

37. BJS Bulletin, "Probation and Parole 1985," January 1987, p. 3.

38. Ibid., p. 3.

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41. See Rolando del Carmen, Civil Liabilities of Parole Personnel for Release, Non-Release, Supervision, and Revocation, pp. 33-39.

42. Todd R. Clear and Kenneth Gallagher, "Probation and Parole Supervision: A Review of Current Classification Practices", Crime and Delinquency, July 1985 (Vol.31, No.3), pp. 425-427.

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44. Joan Petersilia, "Exploring the Option of House Arrest", Federal Probation, p. 53.

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46. Ibid.

47. Council of State Governments, The Handbook on Interstate Crime Control (Lexington, Ky.: Council of State Governments, 1978) Ch. 1.

48. David Stanley, Prisoners Among Us (Washington, D.C.: The Brookings Institution, 1976) p. 124.

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