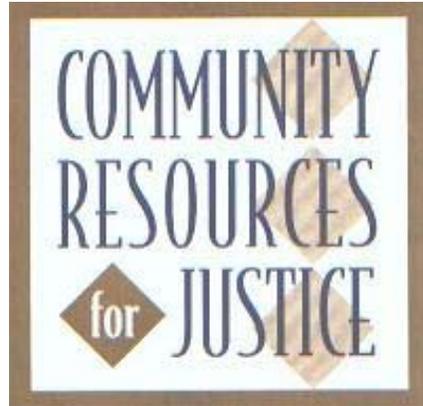


## Policy Brief - July 2001



# *The Role of Parole*

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The role of parole is being hotly debated in the Commonwealth today. The legislature is in the midst of deliberating several proposals that seek to address the issues raised by the return of ex-offenders to our communities - more than 20,000 from Massachusetts prisons and houses of correction every year -- all of which would considerably change our state's supervised release function. Understanding parole's current role within the Commonwealth's criminal justice system and the impact of the proposals is critical to making sound public policy that promotes the safety of our communities and the well-being of its citizens.

To that end, this brief examines: the current state statute and release criteria that govern the Parole Board's decision-making process; parole trends over the last decade; Board membership; the impasse created by parole criteria and classification practices; and the role of parole in maintaining public safety. In addition, some recommendations are offered for consideration as the legislature moves forward in its deliberations.

### **Parole Statute**

"The Parole Board shall determine which prisoners in the correctional institutions of the commonwealth or in jails or houses of correction may be released on parole, and when and under what conditions, and the power within

such jurisdiction to grant a parole permit to any prisoner, and to revoke, revise, alter or amend the same, and the terms and conditions on which it was granted shall remain in the parole board until the expiration of the maximum term of the sentence of sentences for good conduct, or unless otherwise terminated..."

M.G.L c. 27 § 5

Currently in Massachusetts there exists a system of discretionary parole, wherein the Parole Board evaluates inmates for conditional release from prison and supervises these offenders in the community. Approved for such release, the parolee serves the remainder of his sentence in the community under the supervision of parole officers who monitor offender compliance with release conditions. The Parole Board exercises discretion in determining three separate aspects of supervised release: *who* is granted conditional release; *when* these inmates are ready for release to the community; and *under what conditions* individual parolees must abide in order to maintain freedom.

Once an inmate becomes a parolee he is no longer under the custody of a correctional institution and responsibility for him transfers to the Parole Board. Beyond the institutional hearings that determine an offender's release date and parole conditions, the Board has the responsibility of supervising that offender in the community and can amend or revoke stipulations as needed. Individualized conditions of release can require offenders to attend counseling, submit to drug tests and keep a job while simultaneously prohibiting them from frequenting certain locations, staying out beyond a specific time or associating with particular people.

### **Release Criteria**

"No prisoner shall be granted a parole permit merely as a reward for good conduct but only if the parole board is of the opinion that there is a reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society..."

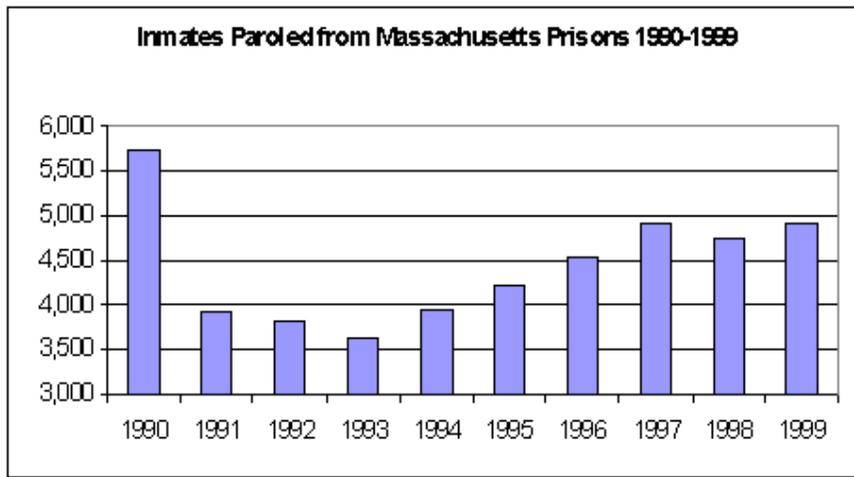
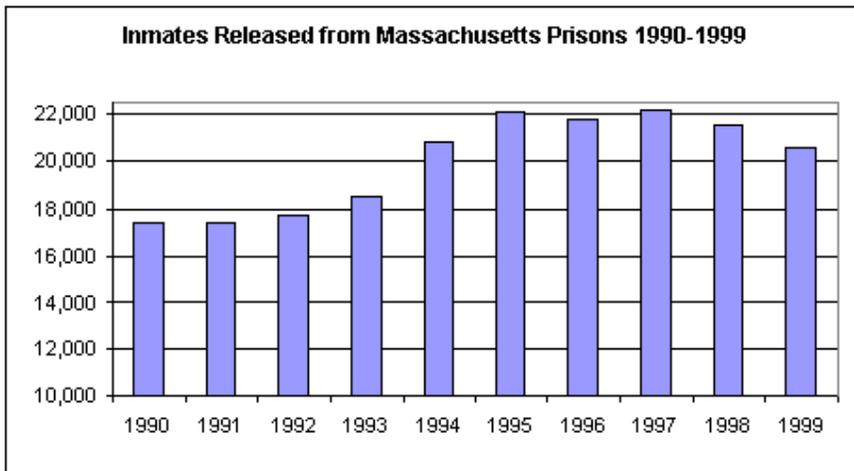
M.G.L c. 127 § 130

The Parole Board's assessment of an inmate must extend beyond the offender's conduct while incarcerated to include consideration of how the offender will likely conduct himself in the community upon release. In order to be considered for discretionary release, the inmate must have a viable transition plan in place that includes housing, potential job opportunities, and a support network that can incorporate family, friends, church and 12-step programs. In this way, the Parole Board is accountable to the public not only for whom they release but also, to some extent, for the actions of the offenders under its supervision in the community until the expiration of their sentence.

### **Parole Trends**

In the wake of the 'tough on crime' policies of the last decade, the public's increased desire for harsher, longer sentences, and decreased tolerance for conditional release has translated into a reduction in parole rates. In 1990, when Massachusetts prisons released 17,376 inmates, 5,774 (33%) were granted conditional supervised release; in 1999, when 20,621 inmates were released, only 4,910 (24%) were paroled. So in a period that saw a 19% increase in releases, those released under parole oversight declined by 15%.<sup>1</sup>

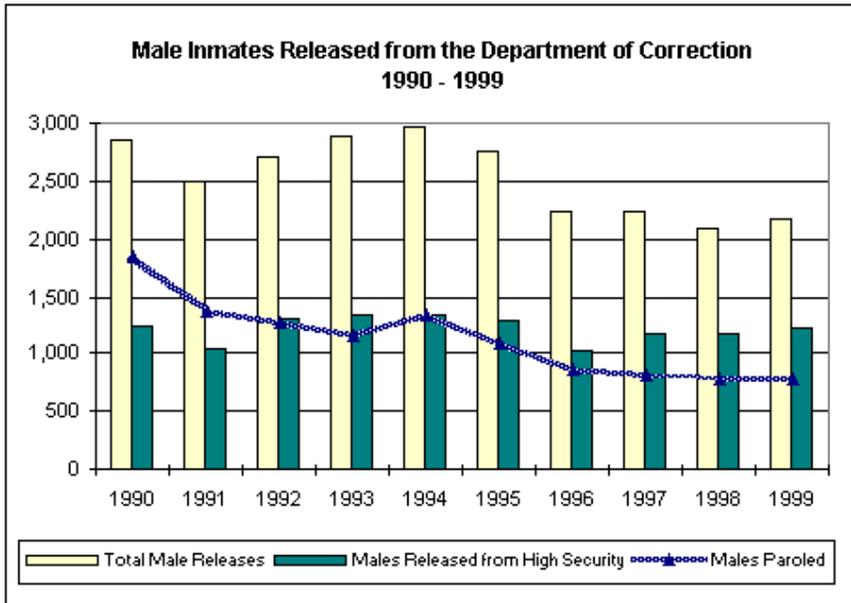
(Figures 1 & 2)



While paroling rates for less-serious offenders serving shorter sentences in county facilities have changed little over the last decade, the paroling rate for inmates released by the Department of Correction, which houses inmates serving longer sentences for more serious crimes, has been cut in half. In 1990, 70% of state inmates who went before the Board were paroled as compared to 38% in 1999.<sup>2</sup> This trend is most noticeable among men released from Massachusetts' state prisons. Examining all releases from state prison, the percentage of paroled male inmates has been halved from 65% of all male releases in 1990 to 36% in 1999. This statistic is particularly worrisome when considered in light of the three-fold increase in the percentage of male DOC inmates discharged directly from maximum security over this same time period.<sup>3</sup>

Taken together, we can conclude that Massachusetts has seen an increase in the number of male state inmates released directly from high security prisons without the benefit of parole supervision and support.

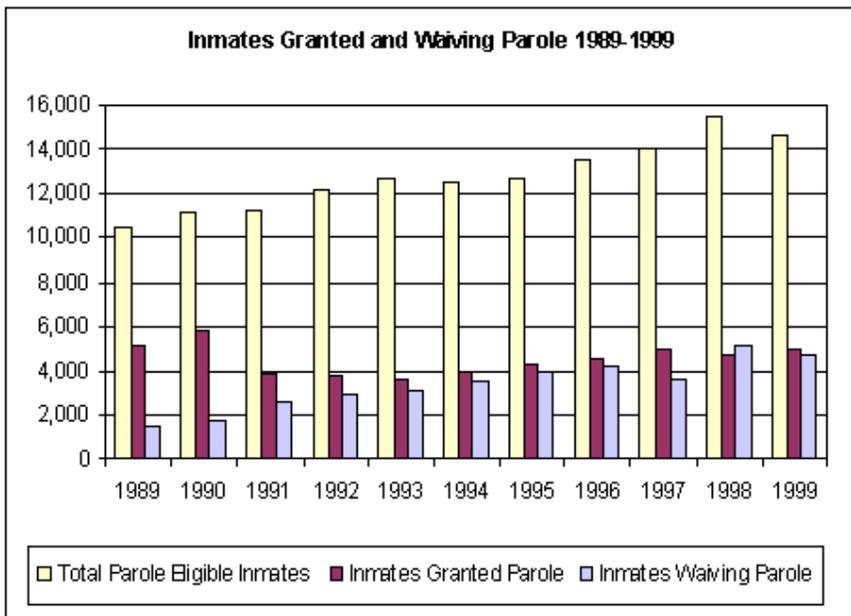
(Figure 3)



In addition to increased public wariness regarding parole, the decline in parole grant rates and high parole revocation rates have discouraged inmates from going before the parole board. Inmates are more likely now to opt to 'pay their dues' behind bars than they were in 1990. The last decade saw a tripling in the percentage of parole eligible state inmates and a doubling of parole eligible county inmates waiving their right to a release hearing.<sup>4</sup>

Instead, these inmates are choosing to entirely forgo parole eligibility bypassing the board and the controlled, supervised release it provides. These trends are cause for concern, for so long as the number of inmates paroled declines, the number of inmates released unconditionally rises.

(Figure 4)



### Parole Board Membership

"Such persons shall be graduates of an accredited four-year college or university and shall have had at least five years of training and experience in one or more of the following fields: parole, probation, corrections, law, law

enforcement, psychology, psychiatry, sociology and social work..."

M.G.L. c. 27 § 4

Another hypothesis for the Commonwealth's declining parole grant rates has to do with a subtle but systematic shift in the membership of the parole board. The Parole Board consists of seven members with expertise in criminal justice or the behavioral sciences all of whom are appointed by the Governor for a term of five years. In the event of a vacancy, a panel may be appointed by the Governor to submit a list of individuals from which the Governor can choose a replacement. While the statute directs that the list of individuals represent a variety of disciplines including "an attorney admitted to practice law in Massachusetts, a psychiatrist who is a member in good standing of the American Psychiatric Association, a psychologist certified by the Massachusetts Board of Certification in Psychology, Inc., and a member of the Massachusetts parole staff" it does not mandate diversity of the Parole Board. Today we find that the six members of the parole board have backgrounds in law enforcement and served as former assistant district attorneys, state troopers, police officers, and probation officers prior to their appointments. There exists one vacancy on the board.

In light of the law enforcement and prosecutorial backgrounds of its members, some believe that the Board is predisposed not to grant parole and is instead inclined to revisit the crime and retry the case rather than evaluate an inmate's progress while incarcerated and chart his course for life after prison.

## **Catch 22**

The Parole Board can hardly predict an offender's behavior in the community when he has been incarcerated in a high security prison for a significant length of time. Therefore, it is not uncommon for the Board to grant an inmate conditional release contingent upon his satisfactory completion of specific achievements while he is still incarcerated. Often such 'in-house' stipulations require an offender to spend six months in a minimum security or pre-release facility or to participate in specific programming. While these requirements may inform the Parole Board's decision-making, and thereby enhance public safety at-large, the Board has no authority over the classification practices and programming policies of correctional institutions.

Each of the Commonwealth's 15 correctional agencies has its own classification practices that must balance institutional security, inmate behavior and programming needs, prison capacity, as well as offense type and severity. The type of facility in which an inmate is housed, and the programming available to him there, obviously impact on his preparedness for release and life in the community. Consequently, central to any discussion of parole and release preparation is the subject of classification -- the statutory mandates and in-house correctional policies that keep specific offenders in certain security levels.

This disconnect between correctional classification practices and parole's release requirements means many offenders find themselves in a catch 22 -- unable to receive parole unless they demonstrate they can live civilly in a lower security setting, but unable to transfer to the lower security setting to demonstrate that they can live civilly.

Current classification practices and parole board decisions understandably reflect the spirit of the time. The public's desire for harsher sentences and decreased tolerance for discretionary release has had its impact on the practices of the agencies that constitute our state's criminal justice system. Decisions are made cautiously and conservatively with little room for error. No one wants another "Willie Horton." The result is a 'not on my watch' criminal justice system that values decisions free of risk and media attention over enhanced public safety: rather make safer decisions and release fewer inmates than make decisions that could jeopardize the reputation and integrity of an entire agency.

The joke is on us, however. The very thing the public wants -- community safety -- is jeopardized when inmates are released without the supervision and support of parole. Our one-sided approach to crime - harsher sentences without attention to when and how inmates are released - has compromised our desire

for public safety. While limiting the number of paroled inmates may stem the tide of conditional releases, it does not keep these inmates from being released to our communities. Instead, it only serves to deprive both the inmates and the communities to which they return from the benefit of a controlled, supervised transition from prison to the streets

## **The Role of Parole in Maintaining Public Safety**

Whatever the reason, be it decreased public support, an increase in inmates waiving parole hearings, a shift in the composition and attitude of the Parole Board, the creation of an interagency no-mans land, parole numbers are down. The result is that the inmates who pose the *greatest* threat to public safety are denied parole, while minor offenders, least in need of supervision, are under the watchful eye of a parole officer.

These high-risk offenders get caught in the quagmire of correctional classification practices unable to move through the security levels, while their counterparts are systematically prepared for release. It is the offenders who waive their right to a parole hearing that should cause citizens concern. Often, more serious offenders forgo community supervision and are able to remain anonymous upon their discharge. All these offenders who finish their sentences behind bars are released unconditionally from their term of incarceration. Indeed, there exists an ironic incompatibility between the Parole Board's legislative statute to release only those offenders that are not a threat to public safety, and the public safety risk posed by having the most dangerous offenders leave prison unsupervised.

## **Saving Discretionary Parole**

How to address this incompatibility has been the subject of much deliberation on Beacon Hill. The Governor has proposed legislation that incorporates post-release supervision into the sentencing guidelines. The Massachusetts Bar Association has built on this idea and made recommendations that enhance the role of parole in managing public safety. As the legislature contemplates criminal justice reform, it is important that they continue to consider changes that start at sentencing and proceed through post-release supervision.

Because much can happen in the life of an inmate between commitment to and release from prison, often many years apart, it is important that any solution maintains a discretionary component. Allowing no opportunity for discretionary release leaves little incentive for inmates to try to rehabilitate themselves while incarcerated. Should both the model and riotous inmate serve exactly the same amount of time? Why behave and participate in programming if there is no chance of shortening the length of incarceration, beyond the minimal earned good time? Indeed, anecdotal evidence suggests that correctional officers dislike the idea of doing away with conditional discharge as it can have a negative impact on the conduct and manageability of incarcerated offenders. Eliminating discretion in the release of inmates may work against our attempts at rehabilitation, and, in the long run, jeopardize public safety.

The Board should have the discretion to parole inmates who demonstrate that they are ready for release and are willing to abide by conditions set on them. However, for those offenders unwilling, unable, or unready to change, there must be an alternate system in place. We must not allow our most serious offenders to return to the communities from which they came without support and supervision. It is in the best interest of their victims, their families, and our neighborhoods that they have supervision and guidance upon their release. In contrast to their counterparts on 'traditional parole' who agree to release conditions in exchange for conditional discharge, these offenders should be mandated to comply with specific stipulations in order to prevent their relapse and recidivism.

Devising a system that can accommodate for the differing needs of the many communities and offenders of Massachusetts is a way to both encourage inmate transformation and rehabilitation as well as address those offenders whose return jeopardizes the safety of our communities.

## **Recommendations**

More than 20,000 sentenced offenders are released from Massachusetts prisons and houses of correction every year. While their numbers, offenses, and demographics fluctuate from year-to-year, one fact remains constant - nearly every offender that goes to prison eventually comes out. Understanding that these men and women are returning, and continue to return, to their homes, families, and neighborhoods, the question for us as citizens of the Commonwealth is: How do we want these ex-offenders to return to the community? Do we want them to arrive with or without support, with or without supervision, with set conditions of release or with no strings attached?

What is the answer? Whatever it is, it needs to start with an understanding that higher parole rates do not mean softer sentences but rather safer streets.

In light of the current debate, Community Resources for Justice recommends the following:

- Institute a system of pre-sumptive parole that incorporates both discretionary release and mandatory supervision. That is, shift the mandate of the Parole Board from deciding "whether" an inmate is paroled to "when" and "under what conditions", reserving post-sentence supervision only for those inmates who waive their parole hearing, are ineligible for parole or are too dangerous to warrant parole.
- Mirror presumptive parole after the presumptive sentencing structure of the sentencing guideline proposals. Just as the guideline proposals set the minimum sentence within a given range at two thirds of the maximum, stipulate that inmates are presumptively paroled after serving two thirds of their sentences. Like the judge in presumptive sentencing, the Board should state reasons in writing when deciding not to parole an inmate. In this way the responsibility of the Parole Board is reconstituted to determine 'when', not 'if', to parole an inmate, enabling the Board to surmount the political risks and liabilities that currently hamper its decision making process.
- For inmates who complete their sentences physically behind bars, grant the Parole Board the authority to determine, at discharge, the length of an offender's term of post-release supervision. While the period of supervision should be commensurate with the term of incarceration it should also reflect the risks and needs of the individual. Because offenders under post-release supervision will have 'served their time', the role of parole in implementing post-release supervision should be constructive rather than punitive; guiding, not catching, offenders as they transition from prison. Terms of post release supervision should range from 2-6 months for inmates incarcerated for 1 to 2.5 years; 6-12 months for inmates serving 2.5 to 5 years; and 12-24 months for inmates who serve more than five years.
- Vest the Parole Board with the resources and responsibility to determine how to handle the technical violations of offenders under its supervision. Just as sentencing judges, in the various sentencing guideline proposals, can make use of a wide range of intermediate sanctions; so too the Board should have the discretion and the options to address technical violations using the limited resources of the Commonwealth in an efficient and cost-effective manner. Perhaps breaking a curfew or skipping a treatment meeting results in a fine, or perhaps a positive drug test results in spending the weekend in jail, or enhanced treatment. Why jeopardize a parolee's home, family, job and stability by putting him back in jail in for a month? In order to legitimately aid and effectively supervise offenders in their transition to the community, the Parole Board must have the necessary discretion and resources to ensure that every violation is addressed in a practical, parsimonious and predictable manner.

## **Conclusion**

Anticipating the expiration of an offender's sentence, the role of the Parole Board should be to fashion individualized terms of supervision for every offender returning to the community. Combining presumptive discretionary parole and mandatory supervision empowers the Parole Board to use both the carrot and the stick in releasing and supervising returning offenders. By providing incentives for inmate rehabilitation, while planning for those unwilling, unable or unready to change, we can ensure that every returning offender benefits from the supervision and support of the Massachusetts Parole Board as they transition from prison to community.

Endnotes

<sup>1</sup> Community Resources for Justice, *Returning Inmates: Closing the Public Safety Gap*, January 2001. 23.

<sup>2</sup> Massachusetts Parole Board, "10 Year Trends" *Statistical Report 1900-1999*, 8.

<sup>3</sup> Massachusetts Department of Correction, *A Statistical Description of Releases From Institutions and the Jurisdiction of the Massachusetts Department of Correction During 1999*, September 2000. 35, 36.

<sup>4</sup> Mass. Parole Board, "10 Year Trends", 18.

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