

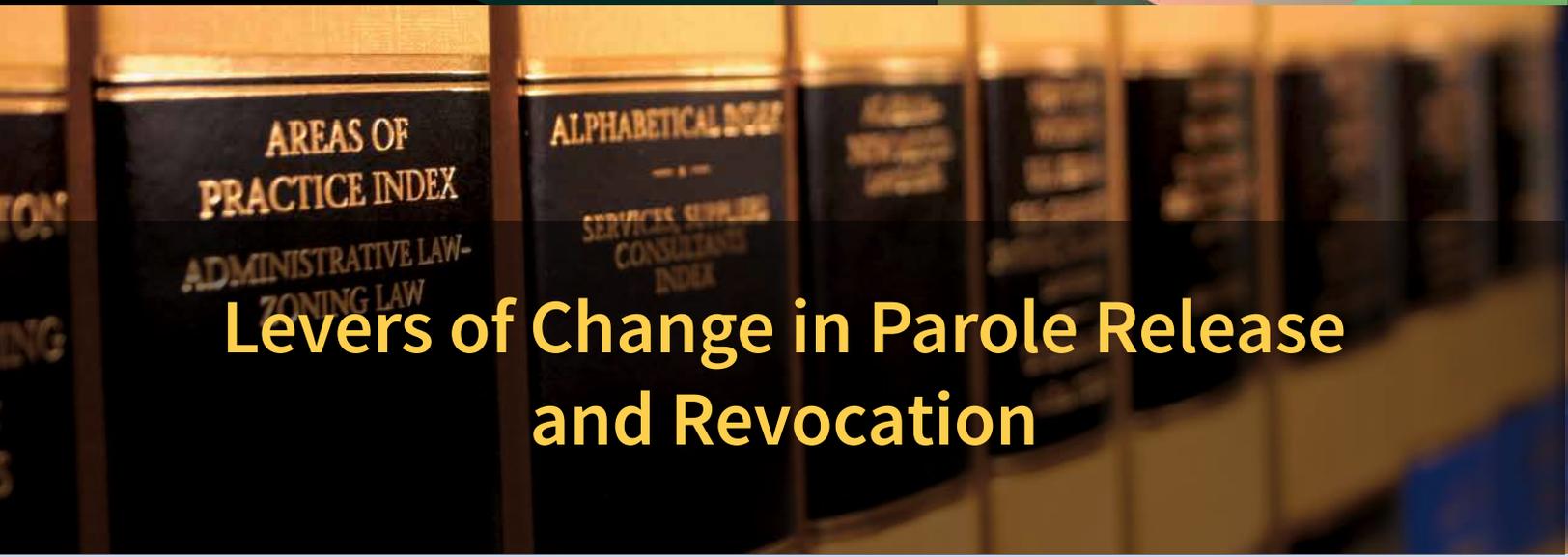
UNIVERSITY OF MINNESOTA

LEVERS OF CHANGE IN PAROLE RELEASE AND REVOCAATION

A report by the Robina Institute of
Criminal Law and Criminal Justice



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE



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by

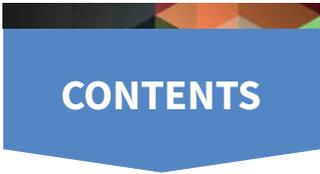
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EXECUTIVE SUMMARY

Overview

Paroling authorities play an important, if often unrecognized role, in American prison policies. Discretionary parole processes decide the actual release dates for most individuals subject to confinement in 34 states. Additional leverage over time served is exercised through parole boards' revocation and re-release authority. The degree of discretion these back-end officials exert over the dosage of incarceration is vast, sometimes more than that held by sentencing courts.

Any comprehensive program to change American prison policy must focus to a significant degree on prison-release discretion, where it exists, and its relationship to time served. During the buildup to mass incarceration, many parole boards became increasingly reluctant to grant release to eligible prisoners. Today, if it were possible to reverse this upward driver of prison populations, parole boards could be important contributors to a new evidence-based status quo of lower prison rates in many states. Reasonable objectives of reform include policy-driven increases in the likelihood of parole release, and more rational decision making overall about time served.

This report describes twelve “levers of change,” each associated with potential reforms in the realm of discretionary parole release. The reforms are called “change levers” because, once a lever is pulled, it is designed to impact prison populations by altering parole grant rates and durations of time served. The report identifies 12 areas of innovation that, to some degree, have already been tried by a number of states. In most cases, from a distance, it is impossible to evaluate the quality of each state's implementation of one or more change levers, or the results that have been achieved. But the fact that states have begun to experiment in specific areas shows that there is an appetite for reform. In addition, actual experimentation indicates that some of the groundwork has been laid for evaluation, improvement, and dissemination of promising ideas to many additional states.

Some levers have become embedded in the decision protocols of parole boards over the past 20 years and more, while others have emerged only recently. One of the goals of this report is to demonstrate how combining the levers is key to reform. This report maps the terrain of the 12 identified change levers, to the degree permitted by available information. The map shows a huge amount of state-by-state variation, even without hands-on study of each system. The report further classifies individual levers based on the number of jurisdictions in which they have been identified, and their *potential* impact on states' prison populations.

States Presenting the Greatest Opportunity for Change

Almost certainly, some change levers are more important than others—and many of the levers tend to reinforce one another if the overriding objective is to exert the greatest impact on the likelihood of parole release and the length of sentence. When the most salient levers of change are viewed in combination, the states most ripe for reform are Alaska, Arkansas, Kentucky, New Hampshire, Mississippi, Montana, Nebraska, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, and Vermont.

The Importance of Risk Assessment to Reform

The use of good-quality risk assessment tools is a necessary precondition to the successful adoption of numerous other levers of change. Risk assessment is already prevalent in the states, but not all instruments are of adequate quality and, in many jurisdictions, risk tools lack credibility with the parole board members who are supposed to use them. Merely checking the box of “use of risk assessment scale” is no guarantee of achieving meaningful reform. What is needed are rigorous quality controls on the instruments themselves, buy-in by parole boards and other officials, clear decision rules and presumptions for their use, and procedures that pull certain categories of low-risk cases out of the regular hearing process into a more routinized administrative protocol that does not require a vote of the board. Properly configured, the use of risk assessment combined with other levers is a high priority precondition for reform.

Key Recommendations

The landscaping analysis suggests a series of recommendations based on the comparative salience of the levers of change discussed throughout this report.

1. Establish Presumptive Parole Release for Low Risk Offenders

Starting with the gateway lever of risk assessment, states should not only eliminate parole release criteria that emphasize retribution and merely mention risk, but should also prioritize individuals assessed as low risk for release at the earliest opportunity.

2. Adopt Decision Criteria that Obviate the Need to Hear Low Risk Cases

The prioritization of individuals assessed as low risk may be achieved by incorporating risk into the state’s parole guidelines. But by far, the lever that presents the greatest potential for change, albeit still relatively new, is to adopt provisions for administrative parole. When release is based on objective criteria that obviate the need for a hearing, release will become routine.

3. Limit Parole Discretion to the Most Serious Cases

The routine release of low risk offenders will allow parole boards to focus their attention where it is needed most: on those offenders who represent a potential risk to public safety.

4. Limit the Impact of Revocation on Time Served

For those who are released and are later revoked, states should limit forfeiture of the time on parole to the period following commission of the offense or declaration of the violation. Even more boldly, states should disconnect the parole supervision period from the prison sentence. One possible plan, recommended by the new Model Penal Code, is that parole supervision terms should be no longer than 5 years and, for most releasees, there should be presumptive termination after one year if they have substantially complied with parole conditions.

5. Reconsider Release for Elderly Individuals under Geriatric Parole

For those individuals who continue to serve lengthy sentences, states should consider enacting and/or actively utilizing a geriatric release policy, taking advantage of the fact that most individuals desist from crime as they get older, and they eventually present little threat to public safety. This might take the form of age-based parole eligibility for otherwise ineligible prisoners. Alternatively, a separate and dedicated process for the release of older inmates could be fashioned.

I. PRISON POLICY, REFORM, AND PAROLING AUTHORITIES: TAKING STOCK

The Unrecognized Impact of Parole Board Decisions on Prison Policies

The U.S. witnessed striking growth in prison populations for nearly four decades, from 1972 through a peak in 2007-08 (Travis, Western, and Redburn 2014; Gottschalk 2015). Since 2008, nationwide prison rates have gone into modest decline, but have continued to rise in about one-third of the states (Carson 2018; Cahalan 1986). Despite the slight downturn nationally, the U.S. still suffers from “mass incarceration,” and remains the worldwide “leader” in its high incarceration rates (Institute for Criminal Policy Research 2018).

This well-recognized phenomenon is due in significant measure to dramatic increases in the number of admissions, and changes in time served relative to incarceration. Within this context, paroling authorities have continued to occupy an influential, but low visibility niche, across the landscape of corrections. Parole boards and the release systems they drive exert a large impact on prison populations that is seldom acknowledged. As a group, states with discretionary release experienced faster prison growth during the high growth years of 1980-2009 than other states and remain today the category of states with the highest-prison-rates (American Law Institute 2011).

This suggests that parole boards exert sizeable leverage in shaping the contours of states’ prison policies. Though variation exists, discretionary parole processes determine the actual release dates for most individuals subject to confinement in two-thirds of the states. Parole boards’ authority to establish release eligibility dates functions in alignment with other discounts that may be granted or withheld during the prison stay, including good time and earned time credits. Parole boards exercise additional discretion over time served through revocation and re-release decisions. Thus, in many states, the most salient decisions governing the amount of time an individual serves take place after an individual’s admission to prison. It is notable that the “degree of discretion” back-end officials exercise over the dosage of incarceration is vast, sometimes more than that held by sentencing courts.

Parole boards experienced substantial challenges to their authority and legitimacy, especially during the decades spanning the 1970s-1990s. With remarkable rapidity, discretionary parole release was abolished or sharply curtailed in at least 20 states. While the concerns that underscored this remarkable development have been documented elsewhere (Rhine, Petersilia, and Reitz 2017),¹ it is noteworthy that no parole board has been abolished since the turn of the twenty-first century. Only one (in New York) has suffered a significant loss of authority (New York State Permanent Commission on Sentencing 2014). Several parole boards have since been restored. The fact that a majority of states have retained discretionary release within indeterminate sentencing systems points to the importance of taking stock of these back-end officials, mainly parole boards, given the unrecognized impact they exert on the ebb and flow of prison populations across the nation. Doing so requires a review of states’ sentencing structures, and efforts currently underway to reform parole; matters to which we now turn.

States’ Sentencing Structures and Backend Discretion

In classifying American paroling systems, it is helpful to begin with the essential definitions of “indeterminate” versus “determinate” sentences (Rhine, Petersilia, & Reitz, 2017, p. 291).

An “indeterminate” prison sentence is one for which an offender’s date of release cannot be predicted with fair accuracy from the court’s sentence at the conclusion of a criminal trial. The length of term will be fixed by one or more decision makers who exercise later-in-time release discretion in a way that is neither routinized nor reasonably knowable in advance.

A “determinate” prison sentence is one for which an offender’s date of release can be predicted with fair accuracy from the court’s judgment at the conclusion of a criminal trial. The length of term may be adjusted by one or more decision makers who exercise later-in-time release discretion in a way that is routinized and reasonably knowable in advance.

These definitions turn on matters of degree for individual cases and entire state sentencing structures. A review of all 50 states shows there is no such thing as a *purely* indeterminate sentencing system in which the full duration of a prison sentence is left to the discretion of a parole board.² Nor can a pure determinate sentencing system be found. Most jurisdictions exhibit features of both for designated categories of crimes or offenders. And no two states are the same.

Therefore, the overall designation of a sentencing system as indeterminate versus determinate involves judgment and unavoidable imprecision. In fact, different sources often arrive at varying decisions (Lampert & Weisberg, 2010; Lawrence, 2015; Stemen et. al., 2006). The ideal approach would be to think in terms of “degrees of indeterminacy” rather than a strict division into two system types. States’ locations along such a continuum would better express the powers held by parole boards and other back-end authorities to influence time served.³ Nuanced measurements of this kind do not yet exist, however. Comparative analysis of “indeterminate” versus “determinate” states remains a useful exercise, but it is important to remember that the terms are approximations, and do not reflect variations within individual state systems. When assigning classifications to entire states, this report will reflect what happens to most prisoners most of the time.

Table 1, titled the “Status of Parole Boards by State and Sentencing Structure for Most Offenses,” illustrates which states have retained their paroling authority within an indeterminate system of sentencing. States that have abolished their parole board or dramatically curtailed its discretionary authority to grant release are also classified noting the year legislation was enacted or became effective resulting in a largely determinate sentencing structure.

As Table 1 shows, a majority of states, a total of 34, have retained the function of parole release housed within indeterminate sentencing systems in which judges impose a sentencing range or maximum sentence and parole boards determine release dates for most inmates. In the other 16 states, which exhibit determinacy in sentencing, parole boards do not decide

most offenders’ release dates. They may, however, exercise discretionary authority over “old code” offenders, that is, those convicted prior to the effective date of the determinate sentencing statute, and/or inmates serving life sentences. Under both indeterminate and determinate structures, corrections officials exert an impact through decisions affecting good time provisions or their equivalent, unless such credits were rescinded in the transition to greater determinacy in sentencing.

Efforts to Reform Parole in Indeterminate Sentencing Jurisdictions

There are indications of a growing commitment among American releasing authorities to strengthen their policies and practices. What was before an insular community has in recent years become more receptive to outside attention. Increasingly, parole boards appear more willing to consider the adoption of reform-centered policies and practices.

A majority of states presently rely on structured-decision tools, principally risk assessment instruments, when determining whether to grant or deny parole release. Most jurisdictions use actuarially-based risk assessments. Related efforts to introduce greater structure can also be found in the extent to which releasing authorities have incorporated parole guidelines to inform release decision-making. The intent behind the adoption of risk-based tools and parole guidelines is to foster greater consistency, and fairness in the decisions that are made, in addition to achieving outcomes that contribute to public safety.

Another indicator of reform is the cluster of states that have participated in executive level sessions under the theme, *Learning Collaborative: Paroling Authorities as Key Partners in Achieving Governors’ Criminal Justice Policy Goals*. This collaborative, with support from the Bureau of Justice Assistance, involves a partnership with the National Governors Association Center for Best Practices and the National Parole Resource Center. Four states participated in 2015 (Iowa, Rhode Island, Utah, and Wyoming), with four more doing the same in 2017 (Colorado, Kentucky, Nebraska, and North Carolina).

Table 1: Status of Parole Boards by State and Sentencing Structure for Most Offenses

State	Parole Release, Indeterminate Sentencing	No Parole Release, Determinate Sentencing	Year Parole Abolished
Alabama	x		
Alaska	x		
Arizona		x	1994
Arkansas	x		
California		x	1977
Colorado	x		
Connecticut	x		
Delaware		x	1990
Florida		x	1983
Georgia	x		
Hawaii	x		
Idaho	x		
Illinois		x	1978
Indiana		x	1977
Iowa	x		
Kansas		x	1993
Kentucky	x		
Louisiana	x		
Maine		x	1976
Maryland	x		
Massachusetts	x		
Michigan	x		
Minnesota		x	1982
Mississippi	x		
Missouri	x		
Montana	x		
Nebraska	x		
Nevada	x		
New Hampshire	x		
New Jersey	x		
New Mexico		x	1979
New York	x		
North Carolina		x	1994
North Dakota	x		
Ohio		x	1996
Oklahoma	x		
Oregon		x	
Pennsylvania	x		
Rhode Island	x		
South Carolina	x		
South Dakota	x		
Tennessee	x		
Texas	x		
Utah	x		
Vermont	x		
Virginia		x	1995
Washington		x	1994
West Virginia	x		
Wisconsin		x	2000
Wyoming	x		
Total	34	16	

A sizeable number of states have also participated in the Bureau of Justice Assistance's Justice Reinvestment Initiative (JRI) in exploring statutory changes relevant to parole release, good-time and earned-time credits, and improvements in boards' decisional instruments. The Pew Charitable Trusts reported that, from 2007-2017, 21 states revised their parole hearing, decision, and/or eligibility processes, while 16 expanded good or earned time credits. Another 11 jurisdictions expanded the reach of their geriatric or medical parole standards (Pew Charitable Trusts 2018). Some of JRI's most ambitious work in these domains has been over the last several years, in states like Louisiana, Alaska, and Mississippi. Although the reforms sponsored by JRI in those states are too new to be evaluated, they provide evidence of willingness at the state level to reconsider past prison-release policies. A recent report by the Justice Policy Center at the Urban Institute highlights additional JRI parole-related reforms (Harvell et al., 2017). These include the crafting of administrative provisions aimed at granting presumptive parole for certain categories of offenders. Other provisions prioritize the release of prisoners assessed as low risk.

Over the past several years, the Robina Institute's Parole Release and Revocation Project has had no difficulty recruiting partner sites interested in pursuing internal parole reforms. Initial on-site work on releasing policies was undertaken with the Colorado State Board of Parole. Subsequently, the Institute issued a Request for Proposals to parole boards across the country. Roughly twice as many submissions were received as the capacity of the Institute could accept. On-site collaboration was undertaken and completed with the Georgia Board of Pardons and Paroles (addressing risk assessment and the revocation process), and the Kansas Prisoner Review Board (targeting revocation policies). Technical assistance continues with the Pennsylvania Board of Probation and Parole (reviewing discretionary parole release and offender outcomes).

It is evident that parole boards in an impressive number of jurisdictions have taken steps to achieve greater structure, consistency, and openness in their decision-making. However, more work is needed to secure substantial progress in the reform of parole and undoing mass incarceration. Some of the most salient levers of change or reform associated with releasing authorities throughout the country are discussed in what follows.

II. SALIENT LEVERS OF CHANGE: LANDSCAPING THE NATIONAL SCENE

Levers of Change: A Preview

This section offers a brief preview of 12 “levers of change” each associated with potential reforms influenced by paroling authority decision-making. The reforms are called “change levers” because once the lever is pulled, it is designed to impact prison populations by altering grant rates and durations of time served. A description is provided of each lever. This is followed by a fuller discussion of the change levers presented herein, and an assessment of their importance relative to the reform of paroling authority practices. There, the report focuses in on the 34 states with discretionary parole release.

1. Risk Assessment Used in Parole Release

The use of actuarial tools to assist in parole release decision-making is well-established in most, but not all, states. The mapping of this lever will illustrate where such tools are deployed, the variety of tools in use, and the extent to which attention has been devoted to their validation on local offender populations.

2. Opportunity to Contest Risk Score

This lever will probe for whether offenders’ risk assessment scores can be challenged at some point during their parole review or hearing.

3. Prioritize Release for Low Risk Prisoners

Though risk assessment features prominently in parole board decision-making, this discussion will show that some states have begun to prioritize the release of individuals who have demonstrated a low risk of reoffending.

4. Deprioritize Offense Seriousness in Release Criteria

The issue of offense seriousness often forms the rationale for decisions to deny parole by noting that to grant release (at that time) would depreciate the

gravity of the crime of conviction. This lever will account for such states, albeit with an emphasis on those that are influenced by factors other than the seriousness of the offense.

5. Use of Parole Guidelines

The use of parole guidelines represents a trend towards greater structure when weighing or evaluating the factors associated with the decision to grant or deny parole. The mapping of this lever will show those states that rely on such guidelines, and discuss the salience of the variations that are found in format and the factors considered.

6. Administrative Parole Provisions

Provisions for administrative parole are found in several states. The adoption of this lever, often providing for presumptive parole for certain categories of crime, will be reviewed in those jurisdictions where this lever of change has emerged.

7. Changes in Parole Eligibility

Those states that recently introduced changes mainly by expanding parole eligibility will be identified and discussed.

8. Prisoner Preparation for Parole Board Review

This lever will address the extent to which information germane to offenders’ preparation to present their case at a parole interview or hearing is made available.

9. Compassionate Parole Release

A number of states have revised their policies pertinent to compassionate parole. This lever and its provisions will be described accounting for elderly prisoners, those with a terminal illness, and those with serious medical conditions.

10. Parole Supervision Term Disconnected From Remaining Prison Sentence

Many states, mainly those with indeterminate sentencing structures, require that the length of supervision extend to the balance of the maximum prison term that remains. A new innovation is to separate the parole term from the remaining prison sentence. The promises and perils of this approach will be discussed.

11. Forfeiture of “Street Time” Limited to Violation Period Under Supervision

Some states rescind any time served under supervision upon revocation, while others limit the amount of the forfeited time to that following the violation. This discussion will highlight where such variations are found.

12. Limited Reincarceration Period Upon Revocation

Though parole boards often have the authority to impose reincarceration upon revocation up to the expiration of the maximum sentence, some states authorize shorter terms, sometimes placing “caps” on reincarceration. Additionally, some states provide for the automatic re-release of offenders once the term of revocation has been served. Such states’ practices will be reviewed.

This reflects a steady and significant increase over time. Comparatively, drawing on earlier surveys, 48% of the respondents in 1991 (Runda et al., 1994), and 73% in 2008 (Kinney & Caplan, 2008), reported doing so.⁴

A 2018 scanning of states’ statutes and other sources undertaken for this report reveals that of 34 states with indeterminate sentencing structures, 30 states (88%) presently deploy risk assessment tools at the release decision making stage.⁵ Only four do not.⁶ Some jurisdictions rely on the assessment of risk in the absence of parole guidelines (e.g., Iowa, Nebraska, New Jersey, South Carolina), while others incorporate a risk assessment within a parole guidelines framework (e.g., Colorado, Georgia, Idaho, Texas). Very few states do not draw on a risk assessment of some kind when considering parole release. Even more, every parole board that makes use of a guidelines-driven approach to decision-making embeds risk assessment as a factor to be considered. Parole guidelines will be addressed in a forthcoming section.

Though the use of actuarial tools in the parole release decision making process is typically required by statute, the authorizing legislation is frequently silent on what instrument(s) should be adopted. The findings from the Robina parole survey show that the most commonly used risk assessment at release is the Level of Service Inventory Revised (LSI-R). Other such tools include COMPAS (Correctional Offender Management Profiling for Alternative Sanctions), the Static-99 (for specialized sex offender assessments), the Salient Factor Score, and instruments developed in-house (e.g., the Maryland’s Standardized Public Safety Risk Assessment). Evidence-based practice calls not just for an empirically grounded approach relative to assessing offender risk, but for the periodic validation of whatever risk assessment tools are adopted. This ensures that the risk prediction instrument is accurate in predicting the risk for the decision point and population where the instrument is actually being used, as opposed to where the instrument was developed (Bureau of Justice Assistance). Jurisdictions responding to the Robina parole survey reported that of all the instruments used by 36 respondents, approximately 76% of these tools have been validated on offender populations in the home jurisdictions, while 24% have not (Ruhland et al., 2016). However, the Robina survey did not ask for detail about the validation process, so these findings

Individual Levers and Why They Matter

Risk Assessment Used in Parole Release

The use of actuarial risk assessment instruments has become a visible component of criminal justice decision making, encompassing pretrial release, prosecution, sentencing, and parole. During the past several decades, there has been a marked increase in the number of states that draw on risk assessment tools to inform parole release decision-making. A recent national survey by the Robina Institute reveals that most states now rely on structured-decision tools, typically risk assessment instruments, when determining whether to grant or deny parole release (Ruhland et al., 2016). In 2015, the year during which information was collected, roughly 90% of the responding states indicated they used actuarially-based risk assessments.

do not speak to the methodology used, the date of the validation, nor its periodicity. A recent policy brief issued by the Bureau of Justice Assistance's Public Safety Risk Assessment Clearinghouse (Hu et al. 2017) indicates that of 10 states responding, half have validated the risk assessment tool used for parole release decision making on their local population.

To the extent parole boards' release decisions are (or should be) based on prospective and informed evaluations of an individual's likelihood of reoffending, properly administered and validated risk instruments contribute to a more objective decision making process in contrast to reliance on clinical assessments alone. There has been a noticeable growth in sophistication over the past 20 years or so producing risk assessment outcomes that more accurately identify an offender's predicted probability of recidivism. This improvement gives parole board members the capacity to separate higher-risk from lower risk offenders enabling a more efficient use of prison resources. Some states credit their adoption of risk assessment tools in the parole release process with helping to reduce the prison population and lower the rate of recidivism.

There is growing support for parole boards' reliance on actuarially grounded risk assessments as they are viewed as foundational for evidence-based practices (McVey, Rhine, and Reynolds 2018). As noted above, legislatures increasingly require them, often with an emphasis on public safety attendant to offender release.⁷ Of crucial importance, the use of actuarial tools represents a necessary precondition to the successful adoption of numerous other levers of change mentioned throughout this report.

Opportunity to Contest Risk Score

The use of actuarial tools by paroling authorities in assessing and classifying offenders by risk levels is well-established when considering whether to grant or deny parole. The impact of such tools serves to sort individuals under review for release into groups with higher or lower known probabilities of reoffending or being returned to prison within a specified number of years. (Mears & Cochran, 2015). Often, but not always, the reliance on risk assessment is housed within a parole guidelines matrix and affects the amount of time

that must be served prior to offenders' reaching their initial eligibility dates. As a crucial factor that board members weigh in their overall decision calculus, the outcome of a risk assessment acts to diminish or enhance individuals' prospects for gaining release subsequent to their hearing before the parole board.

Despite their growing sophistication and accuracy, concerns have been raised with respect to the predictive capacity of the actuarial tools that are deployed. Several of these issues were considered in an earlier section, including the critical problem of over-prediction. It turns out that actuarial tools are better at predicting low- rather than high-risk behavior (Rhine, Petersilia, and Reitz 2017). Drawing from the results produced by the Level of Service Inventory-Revised (LSIR), the instrument's false-negative rate is 2%-3% meaning that very few individuals assessed as low risk actually reoffend or fail on the outcomes at stake. Conversely, this same instrument produces a false positive rate estimated at 30% for higher-risk offenders. To the extent that paroling authorities place a singular emphasis when denying release based largely on the assessment of high-risk, they will systematically lengthen prison terms for some who might otherwise be suitable for release to the community.

Given the importance accorded risk assessment tools by parole boards, it is vital that steps be taken to address this and other concerns associated with the accuracy of the risk instruments that are adopted.⁸ One of the more important steps that should be pursued includes permitting offenders to contest the accuracy of their risk scores. Doing so means providing the individuals with an explanation of the risk instrument in use, the factors considered and their weighting, and an avenue in advance of a parole hearing to review the pertinent information and scoring. It is also essential that offenders be given the opportunity to question or dispute potential errors that require clarification and/or correction (McVey, Rhine & Reynolds, 2018).

Some states grant individuals the opportunity to review the information that will be considered during their parole hearing or review. The Robina national survey asked if offenders had the opportunity to review and contest their risk assessment score. Of 28 respondents from indeterminate states, a total of 13

(46%) answered affirmatively, while the remaining 15 (54%) indicated that they did not (Ruhland et al. 2016). Further analysis reveals that several jurisdictions provide offenders with the information to be drawn on by the parole board in making its decision, presumably inclusive of their risk score (e.g., Alaska, Iowa, Utah). In one jurisdiction, Georgia, an inmate may contest the risk score *after* a parole decision is made.⁹ The affirmative responses from nearly half of the survey respondents demonstrates a recognition of the importance of this issue though a better understanding of its application and the extent to which a contested score is actually changed remains unknown.

This particular parole lever was most often discussed under the section on procedural rights in the Robina Institute's state parole profiles. Its value is especially pertinent to ensuring that there is a system of checks and balances in place to challenge the accuracy of offenders' risk assessment scores. In those instances where the individual is classified as high risk, it is crucial that the scoring produces an appropriate assessment and outcome. Where such an opportunity to contest the risk score exists, it creates the possibility for some high-risk individuals to be more accurately reclassified, in all likelihood to a lower level of risk, which may enhance the individual's prospect for release.

Prioritize Release for Low Risk Prisoners

As noted above, the Robina survey found that nearly all responding states utilize risk assessment in some form in the parole release decision (Ruhland et al., 2016). Another way to measure the importance of risk assessment is to examine how risk is attended to in the parole board's decision release criteria. These criteria are often set in statute or administrative regulations, and represent the overarching state policy with regard to the use of risk assessment. Risk is a forward-looking consideration that places emphasis on future offending. Thus, when risk is included in the release criteria, it has the potential to shift attention away from the current offense, for which retribution should have already been addressed in establishing the sentence. In scanning those states that maintain discretionary parole release, we found that risk was included in the release criteria or otherwise prioritized in 21 states but was not mentioned in the release criteria for 13 states (Table 2).

For those states that require the consideration of risk, there is variation in how much direction parole boards are given as to when and how risk should enter into the release decision. Here, the states fall into several common patterns. The most common approach, as in West Virginia, is to simply list risk as one among many factors the board must consider (W. Va. Code R. § 92-1-6). In these states, although risk has been incorporated into the release decision making process, from a policy perspective, risk takes on no more importance than any other factor. In other states, risk is emphasized in building the case plan. Here, the focus is on risk and needs, which drives the assignment of the programming individuals must complete in order to be considered for release. Mississippi takes this even further, providing for automatic release upon completion of the case plan (Miss. Code Ann. §§ 47-7-3.1; 47-7-18). A few states place particular emphasis on risk. For example, state law in Colorado requires that "risk of reoffense shall be the central consideration by the state board of parole in making decisions related to the timing and conditions of release on parole or revocation of parole" (Colo. Rev. Stat. Ann. § 17-22.5-404). But even this emphasis does not provide specific direction to the board about how to think about risk. It could just as easily promote actions by the board that emphasize denying release to high risk individuals as granting release to low risk individuals.

The more direct approach is for state law to specify not only that risk must be considered in the release decision but also *how* risk is to be considered. In Louisiana, for example, release may be authorized by less than a unanimous decision (two of three panelists) when "[t]he offender has obtained a low-risk level designation determined by a validated risk assessment instrument" (La. Stat. Ann. § 15:574.2(C)(2)(f)). Hawaii takes this concept the furthest, requiring that "a person who is assessed as low risk for re-offending *shall* [emphasis added] be granted parole upon completing the minimum sentence" (Haw. Rev. Stat. § 706-670(1)), except in certain situations such as when the individual has committed serious misconduct while in prison or has a pending felony charge. Finally, risk often serves as one of the primary dimensions of parole release guidelines. In this context, risk is often placed on equal footing with offense severity, which serves as the second dimension on a parole release guidelines grid. Individuals who

score low risk on a validated risk assessment and who were convicted of a low severity offense are typically recommended for release at the point of first eligibility. Nevada, for example, publishes the grid in its administrative code (Nev. Admin. Code § 213.516).

In order for risk to serve as a lever for change, states should follow the examples set by Louisiana, Hawaii, and Nevada by both requiring risk to be considered and providing explicit direction to parole boards to prioritize individuals who are low risk for release. As noted in the discussion above, lower risk scores are considered more reliable, so parole boards should be able to act with confidence when allowing the release of individuals who are assessed as low risk. Paired with an administrative procedure rather than a full hearing, this change has the potential to allow the routine release of a large number of offenders without endangering public safety. This change will also permit the board to focus its time on cases that present more difficult considerations.

Deprioritize Offense Seriousness in Release Criteria

In considering offenders for release, every parole board will take into account the offense of conviction in some manner. For example, the conviction offense is often the primary determinant for establishing the eligibility dates for release consideration. Individuals convicted of more serious offenses will be required to serve a longer portion of their sentence before being considered for release whereas individuals convicted of less serious offenses will be required to serve a shorter portion of their sentence before being considered for release. But the question this lever places on the table is how much weight should the seriousness of the offense be given when considering release?

Consideration of the offense is a backwards looking retributive function. The focus is not on the individual's readiness for release or likelihood of reoffending if returned to the community. Instead, the focus is on whether the individual has served an appropriate amount of time given the seriousness of the offense, often taking into account the specific circumstances and facts of the underlying case. Arguably, however, these circumstances should already have been taken

into account by the sentencing court. The sentencing range with which the parole board has to work should already reflect punishment that is proportionate to the seriousness of the offense and the individual's criminal history. The minimum time to serve, typically set by state law, should result in a sentence that meets the retributive goals of the sentence. The parole board's function then, should not be to evaluate whether the individual has served enough time to satisfy the need for retribution, but to determine whether, having served that time, the individual represents a low risk to public safety and demonstrates readiness for release.

Many states have criteria that continue to maintain a backward looking retributive focus (Table 2). For example, parole boards such as that in Alaska, Nebraska, and Tennessee are directed through release criteria to look at the presentence investigation report, which was prepared at the time of the conviction, or to consider input from the sentencing court or prosecutor (Alaska Stat. § 33.16.110, Neb. Rev. Stat. § 83-1,115, Tenn. Comp. R. & Regs. 1100-01-01-.07). In Arkansas, the parole board can also consider input from the sheriff (Code Ark. R. 158.00.1-2). Though there are no specific criteria in statute, the Utah Board of Pardons and Parole has published decision criteria on its website that take a particularly retributive perspective, considering multiple dimensions of the conviction offense including whether weapons were used in commission of the offense, whether the crime was committed for personal gain, and whether the individual was the lead organizer or simply a follower or minimal actor in commission of the crime.¹⁰ While all of these considerations were highly relevant at the time of sentencing, they are less relevant to – and arguably, are not the best sources of information for – determining the individual's level of dangerousness in the present day or the effort the individual has put into programming or treatment to reduce that risk.

It may be that the retributive focus of the parole board represents a concern for public safety. Indeed, in a 2015 survey of parole board chairs' views, nearly all respondents viewed public safety as the primary goal in parole release (Burkes et al., 2017). Alternatively, focusing release criteria on retributive factors may represent a concern for public perception about how the board functions. In this vein, some states require parole boards to consider “whether parole at this time would diminish the seriousness of the offense” (see e.g., Mont.

Code Ann. § 46-23-208). But here again, if other policies that govern the pronouncement of sentence and the minimum time to serve are in place and already address retributive goals, there should be no need for the parole board to reconsider retribution at the point of the release decision.

In order to put this lever into action, a state should revise the release criteria to deemphasize consideration of the underlying offense at the time of the parole hearing. States could remove the conviction offense from the release criteria altogether, but few states do that. Instead, the statutes or administrative regulations that define the release criteria either require the offense to be considered as one among many factors, or are revised to place greater emphasis on forward looking criteria like risk assessment or completion of the individual's case plan. The latter focus is found in states that have adopted administrative parole provisions. Parole guidelines are often another mechanism that have been used to shift the parole release decision away from the retributive goals of sentencing towards risk to reoffend. Despite these shifts, parole board chairs rank the nature and severity of the current offense as the most important factors in the release decision (Ruhland et al., 2016), indicating more work is needed to shift the mindset of parole board members.

Use of Parole Guidelines

Paroling authorities, as observed earlier, have adopted tools over several decades aimed at bringing greater structure to their decision making. Alongside the growth and increasing reliance on risk assessment instruments, parole guidelines have been implemented across numerous jurisdictions. Parole guidelines systems offer the possibility of bringing greater consistency to the release process, if not more objectiveness and transparency to the decisions that are made (Burke et al., 1987; Burke, 2003).

Fewer states rely on parole guidelines than risk assessment tools though the assessment of risk invariably forms a component whenever such guidelines are deployed. A scan of 34 states with indeterminate sentencing structures reveals that 20 parole boards (59%) now draw on parole guidelines when making release determinations (Table 2). The remaining 14 jurisdictions (41%) do not.¹¹ Doing so is often authorized by statute.

Formal parole guidelines are often framed as a grid or matrix, with offense severity forming one axis of the grid, and risk to reoffend forming the other. The time to be served, or the recommendation as to when to release (e.g., at first eligibility) is presented at the intersection of these two axes. The lower the crime severity level and level of parole risk, the less the presumptive duration of imprisonment and the more likely the recommendation will be to release. Exceptions may be made based on the presence of aggravating and mitigating factors. The reliance on such factors, when documented, offers a measure of transparency and a knowable rationale for board members' overrides. The Georgia Board of Pardons and Parole offers an example of this model of parole guidelines, incorporating a Parole Decision Guidelines system accounting for the severity of the crime and the individual's likelihood of reoffending. Uniquely, its risk assessment process is dynamic, automatically updating risk calculations to gain more predictive accuracy. Its guidelines are also gender specific.

Another version of parole guidelines adopted by a smaller number of releasing authorities is sometimes referred to as a decision tree or sequential model (Burke 2003). This approach is illustrated by the Parole Decisional Instrument developed by the Pennsylvania Board of Probation and Parole, and the Parole Board Release Guideline Instrument deployed by the Colorado State Board of Parole. These decision tools include more factors than a traditional guidelines grid. Sequential guidelines can give weight to individuals' offense, risk and needs assessment, participation in institutional programming, and behavior during confinement. They can also incorporate input from others, such as corrections officials.

The statutory and policy language used to govern the application of parole guidelines makes it clear that the guidelines' recommendations are wholly advisory.¹² Parole boards may and often do depart from the instrument's recommendations. They carry no legally binding effect and may be overridden.¹³ Nor is there provision in any parole guidelines jurisdiction for prisoners to appeal an adverse outcome.

The initial evidence for assessing the impact of parole guidelines is dated and relatively scant. Tonry (2016) summarizes what is known by pointing to an earlier

era spanning the 1970s and 1980s during which an initial round of guidelines studies were conducted focusing on the U.S. Parole Commission, and parole boards in three states: Minnesota, Oregon, and Washington. These states and the federal system have long since transitioned to sentencing guidelines systems. Nonetheless, the evaluations of their parole guidelines matrices demonstrated that when well-run, such systems are capable of achieving improved consistency in offenders' dates of release and the amount of time served in prison. Other outcomes were accomplished as well, including reductions of unwarranted disparities, and the establishment of meaningful protocols governing administrative appeals for contested cases (Arthur, D. Little, Inc., and Goldfarb and Singer, Esqs. 1981; Blumstein et al., 1983).

Despite the gradual adoption of parole guidelines by releasing authorities since then, there has been a discernible gap in research attention devoted to assessing their impact on parole board decision-making. Though not a comprehensive review, two more recent evaluations of the guidelines systems in two states, Colorado and Idaho, are discussed in what follows. The Colorado Board of Parole makes use of the Parole Board Release Guideline Instrument (PBRGI) for most offenders; a tool developed in collaboration with the state's Division of Criminal Justice within the Department of Public Safety. Two categories inform the structure of the grid: risk and readiness forming 15 cells in the matrix. The PBRGI has been in use since 2012 maintaining data on rates of agreement with the instrument's recommendations in actual decisions by the Board. In 2013-2014, the Board's combined decisions, both release and deferral, were in agreement with the PBRGI 68 percent of the time. In cases where deferral was recommended by the instrument, the agreement reached 92.3 percent, while it fell to 42.9 percent when the guidelines recommended release (Ford 2015).

The Idaho Commission of Pardons and Parole (the Commission) implemented parole guidelines, among other reforms, in 2015 following the enactment of legislation the year before. The recommendations from the guidelines to grant or deny parole are discretionary incorporating offense severity, risk to reoffend, programming completion and disciplinary reports. A before – after evaluation by the Urban Institute shows

that the parole guidelines have increased transparency in its release decision-making. Though the grant rate has stabilized, and the Commission is aligned in most cases with what the guidelines recommend, a gap is growing between recommendations for parole and the Commission's grant rate. Additionally, those released from prison have comparable rates of recidivism to those individuals released before the introduction of the guidelines and other reforms. The number of individuals reconvicted of misdemeanor offenses has also increased (Pelletier et al. 2018).

What the evaluations of these two jurisdictions suggest is that there has been a shift in focus when earlier parole guidelines systems are compared with more contemporary systems of parole guidelines. If, as Tonry (2013) notes, the primary purpose of the former was to serve as a mechanism for accomplishing more procedural fairness and greater consistency in time served, a central goal today is to frame release decision-making in a manner that is responsive to offender risk. Though Colorado and Idaho show differences in their respective instrument's structure, both display a notable commitment to assessing readiness for release and the individual's likelihood of reoffending. More, however, is necessary to enhance the impact of this lever.

Though nearly two-thirds of indeterminate sentencing states rely on a system of parole guidelines to inform decisions to grant or defer parole release, their potential value as a lever of reform has yet to be achieved. The implementation of well-designed, structured, policy-informed parole guidelines may serve to contribute to the sensible management of states' limited correctional resources. But two more components are necessary to achieve this. First, parole boards should be required to articulate their reasons for departing from the recommendations in parole guidelines. Second, they should produce regular reports detailing their use of parole guidelines and the rates of and reasons for departure. These components will add a measure of transparency and accountability to the parole decision making process, which may, in and of itself, promote greater adherence to the guidelines. At a minimum, the components would provide the board with information about whether the policy articulated in the parole guidelines is deemed appropriate or

bears no relation to actual practice within the jurisdiction. And reporting on guidelines use affords the opportunity to examine the operation of the system for bias. Like sentencing guidelines in some determinate sentencing jurisdictions, parole guidelines, if properly administered, are well-positioned to achieve greater fairness, rationality, and consistency in release decision-making (Frase, 2013; Tonry, 2016).

One additional consideration is essential to maximizing the potential of this lever. The willingness to adopt parole guidelines systems must be accompanied by a commitment to presumptive parole release. As Hawaii demonstrates (see below), this presumption may be rebutted for good cause. When combined with evidence-based tools for determining offenders' risk and readiness for reentry, parole guidelines provide an effective and defensible approach to the reduction of offender recidivism and successful desistance.

Administrative Parole Provisions

It appears that administrative parole occupies a unique niche within the continuum of discretionary parole release. Provisions for administrative parole governing presumptive release have been established relatively recently, and in only a small number of states. Though there is variation, this particular lever reflects a commitment to both structure and transparency in decision-making. Just as importantly, it does so in a manner that offers more certainty of release for defined categories of offenses and offenders within a framework driving eligibility thresholds known at the time of admission to prison. If presumptive release dates in parole guidelines systems function mainly in an advisory manner (e.g., Colorado, Pennsylvania, Texas), the same presumption under administrative parole triggers an automatic release from imprisonment without a hearing, given offenders' compliance with pre-established criteria.

At least four states have adopted administrative parole provisions: Maryland, Mississippi, Oklahoma, and South Dakota (Md. Code, Correctional Services, § 7-301.1; Miss. Code Ann. § 47-7-18; Okla. Stat. Ann. Tit. 57, § 337.2; S.D. Codified Laws § 24-15A-38).¹⁴ Each jurisdiction begins by specifying clear standards governing eligibility for release. Offenders must satisfy a mini-

imum period of their sentence in reaching parole eligibility, which in Mississippi (H.B. 545) and Oklahoma (H.B. 2286) requires those convicted of non-violent crimes to serve 25% of the term of incarceration. In South Dakota the setting of a presumptive parole date can be as low as 25% and as high as 75% of the offender's sentence (S.D. Codified Laws § 24-15A-32). Where they fall on this continuum is dependent on their crime of conviction and prior history. Maryland sets a release date at one-quarter of the sentence imposed, albeit for a narrower band of offenses pertaining to certain controlled substances or property crimes in which the value is under \$1500 (Md. Code Ann., Correctional Services, § 7-301).

These jurisdictions incorporate several shared features for the release of parole-eligible offenders without a hearing. The common elements include offenders' compliance with the requirements of their parole case plan, and the absence of serious institutional misconduct within a specified period of time. Some also require agreement with the terms of supervision post-release, and the submission of a discharge plan approved by the parole board. Within each of these states, offenders found to be in compliance with the conditions of their case plan are granted release without appearing before the parole board. In making these determinations, the releasing authority works in a collaborative capacity with the department of corrections. Typically, it is the department of corrections that furnishes notification of offenders' compliance with the parole case plan to the parole board.

Each jurisdiction requires a hearing before the parole board for offenders deemed to be in non-compliance, and/or if such a forum is requested by a victim subsequent to notification regarding the prisoner's pending date of release.¹⁵ Though such actions remove the presumption of parole, the offender may still be released. If, however, parole release is denied, the individual is provided with guidance on the corrective actions that need to be taken prior to the next hearing, scheduled thereafter on an annual basis.

Three additional states merit mention: Hawaii, Michigan, and New Jersey.¹⁶ Neither Hawaii nor Michigan has formally adopted a specific provision calling for administrative parole release, but each authorizes in statute

presumptive parole for low risk offenders once their minimum eligibility has been met. Both establish this option couched within the structure of parole guidelines. Hawaii enacted legislation as part of its involvement in the Justice Reinvestment Initiative in 2012. The Paroling Authority relies overall on guidelines for setting when minimum parole release may occur, but not for determining the date of actual release. Yet for eligible low-risk offenders the minimum parole release date and the actual release date are one and the same. The releasing authority notes that unless good cause is shown, offenders who have been assessed as low-risk must be granted parole at the earliest guidelines-defined release date. Good cause not to release may be demonstrated where offenders are found to have an extensive criminal history record that indicates a likelihood of criminal behavior, despite the results of a risk assessment; institutional misconduct equivalent to a misdemeanor or felony within thirty-six months of the expiration of the minimum imprisonment term; pending felony charges in Hawaii; incarceration for sex offenses or child abuse; or, the absence of an approved parole plan (Haw. Rev. Stat. § 706-670).

Michigan just passed legislation that became effective on December 12, 2018 (HB 5377). The new law establishes what are considered clearer parole guidelines for determining whether offenders who have reached their earliest eligibility for release and who are low-risk to reoffend are suitable to return home. The process for making this determination is called “objective parole” designed to incorporate evidence-based release decisions that enhance public safety. Though the law expressly states that offenders do not enjoy an entitlement to parole, it goes on to declare that the parole board may *without interviewing an offender* grant release if the prospective releasee has a “high probability” of being paroled. A departure from approving parole release under such circumstances must be for one or more of 11 reasons that are substantial, compelling and documented in writing. These reasons overlap with some of those enumerated in the various states discussed above. The need for and the importance of a sufficient parole plan, a recurrent feature in each of the jurisdictions considered, is required as well.

The announcement of the new parole reforms in Michigan were accompanied by claims they will save taxpayers \$40 million annually within five years. Over the same timeframe, the changes are projected to reduce the state’s prison population by 1,800 – 2,400 beds (WDIV Detroit – October 9, 2018). Whether these assertions bear fruit cannot be known at present.

Several states discussed above, notably, Maryland, Mississippi, Oklahoma, and South Dakota, offer administrative parole for individuals convicted of non-violent crimes or low-level drug and property offenses without placing the consideration of risk at the forefront of the decision process. Whether driven mainly by offense type or level of risk, as is the case with Hawaii and Michigan, both models present a viable administrative option for narrowing parole discretion and expediting offender release.

The potential impact of administrative parole provisions when tied to a firm and predictable commitment to presumptive release offers significant long-term promise as a meaningful mechanism for contributing to the downsizing of states’ prison populations. Though the jurisdictions that make use of this option warrant further study, the impact of this particular parole lever bears careful attention.

Changes in Parole Eligibility

The nature of a discretionary release system depends largely on how much power is given to the releasing authority over the months, years, or percentages of prison terms that must be served in individual cases. States with indeterminate sentencing structures reveal significant variation in the degree of indeterminacy, affecting sometimes dramatically, offenders’ eligibility for initial parole consideration. When measured comparatively by the amount of release discretion they exhibit, a wide continuum emerges. Under New Jersey’s highly indeterminate system, first release eligibility (assuming full credit earnings) on a 10-year maximum sentence is reached at 1 year, 11 months, and 5 days (New Jersey State Parole Board 2010). In Pennsylvania, offenders’ release eligibility in most cases is set at 50% of the maximum sentence imposed by the judge (61 Pa. Cons. Stat. Ann § 6137).¹⁷ In Georgia, prisoners generally attain eligibility for initial parole consideration after serving one-third of their total sentence (Ga. Code Ann., § 42-9-45).

Releasing authorities display substantial differences in the leverage they exert over the length of offenders' prison terms. What they share in common is that the minimum sentence to be served prior to reaching initial parole eligibility is largely determined by statute. These determinations impact on states' prison policies and the length of incarceration served by offenders. Expanding eligibility for parole release offers a meaningful, and often untapped avenue for shortening the average amount of time individuals spend in confinement. As a lever of reform, it is notable that several states have addressed this issue expanding parole eligibility through their participation in the Justice Reinvestment Initiative.¹⁸

The states that are summarized (Table 2) show that the expansion of parole eligibility may take different forms. Senate Bill 91 in Alaska enacted in 2016 extended for the first time discretionary parole to nearly all prisoners who were not convicted of a Class A or unclassified sex offenses or first degree murder. In 2012, Louisiana passed House Bill 1026. Under this legislation, individuals convicted of a second nonviolent offense gained eligibility for parole after serving 33% of their sentence, instead of the previous requirement of 50%. For first-time offenders, it dropped from 33% to 25%. In 2014, under House Bill 585, Mississippi expanded parole eligibility to individuals with sentencing enhancements for certain offenses, such as the sale of controlled substances near schools. It also inserted a retroactive provision allowing individuals convicted of nonviolent offenses and previously ineligible for parole consideration to submit a petition for eligibility upon completion of 25% of their sentence.¹⁹

States' efforts to change (expand) offenders' eligibility for parole have followed several distinctive pathways. They have introduced statutory reforms that make more types of offenses eligible for parole, reduced the time-served requirements necessary for reaching parole eligibility, and in some instances, modified sentencing enhancements for designated categories of crimes. Nonetheless, the experiences gained in those states that have embraced the expansion of offenders' initial eligibility for parole release have yet to be examined. The relatively small number of states that have moved in this direction suggests it remains not just a much underutilized lever of parole reform, but one that is likewise poorly understood.

Prisoner Preparation for Parole Board Review

As important as the mechanisms the parole board uses to determine release, are the steps taken to ensure that individuals sentenced to prison have the opportunity to be active participants in the parole release process. This starts from the moment they enter the door, and requires that individuals are given information about the expectations for their conduct while in prison and the steps they can take for self-improvement. Additionally, individuals must be informed about as well as prepared for their appearance before the parole board. There are a number of markers that form a continuum across which it is possible to assess the types of actions taken to equip offenders so they understand what they need to do to prepare for and share during their interview or parole hearing. These markers include receiving notice of initial parole eligibility, notice of their hearing date, information on how the parole process works, and what steps they can take to enhance their prospects for release. Combined, such markers offer a comparative yardstick by which states may be discussed. The denial of release on parole may set back another opportunity for reconsideration for a year or more, and in some instances may eliminate the prospects for a future hearing altogether.

Research on reconsideration conducted by the Robina Institute shows there is pronounced state-by-state variation in the intervals between the initial decision to deny parole and any subsequent review of whether to grant release. Most states permit an annual review in most cases. Many jurisdictions, however, have carved out exceptions for certain types of crimes and/or for prisoners serving lengthier sentences, at times requiring that inmates "serve all" or "max-out" on their sentence (Watts 2017).

The issue of reconsideration remains largely uncharted, but it helps elucidate the context in which prisoners' preparation and individual presentations to the parole board may matter a good deal. Additionally, results from the Robina Institute's national parole survey reveal that releasing authorities frequently consider inmates' disposition or demeanor, their testimony, and their case plan.²⁰ These are among the most common factors around which attention at a hearing is directed. It is

evident that offenders' preparedness may exert a dramatic impact on the dosage of time they serve behind bars, a matter decided not just at initial eligibility, but in subsequent reconsideration hearings that may occur many years in the future, if at all (Watts 2017).

The Robina parole survey posed several questions aimed at understanding the extent of states' compliance with several of the markers described earlier.²¹ The findings show that for indeterminate sentencing jurisdictions, of 27 respondents, prison staff in 13 states (48%) let inmates know at admission or shortly thereafter when they are *eligible for release on parole*. In another 11 states (41%), both prison staff and releasing authorities let the inmate know, while releasing authorities alone in 2 states (7%) share such information with offenders. Of equal importance, of 24 respondents, in 10 states (42%) prison staff inform inmates of their *initial parole hearing date* soon after they are admitted into the system. In another 4 states (16%) it is just the releasing authority, and in 6 states (25%) both the prison staff and releasing authority share this information with the inmate (Ruhland et al., 2016).

According to the Robina parole survey, in numerous states releasing authorities or prison staff also give inmates information on steps offenders can take to increase their prospects for earning parole. Of 26 respondents, the releasing authority and correctional staff both furnish such information to offenders in 18 states (69%). Either the prison staff or the releasing authority do so directly in 7 (27%), and 1 (4%) state(s), respectively (Ruhland et al., 2016).

Some states, albeit fewer, also give inmates information intermittently to gauge the inmate's progress toward earning a favorable parole consideration. Accounting for 23 respondents, 6 states (26%) do so through the releasing authority and prison staff during their incarceration, while 4 states (17%) offer this information through correctional staff alone. However, one-half of the respondents, 13 (56%), reported they do not provide such feedback. Nor do any parole boards act alone on this matter. When releasing authorities engage in efforts to inform or educate inmates, they do so primarily regarding the parole release process in 20 states and for reentry planning in another 15 states (Ruhland et al., 2016).

It appears that most states notify offenders of their initial parole eligibility date, and the date of their initial parole hearing. A sizeable majority of states also give inmates information on what actions they can take to improve their prospects for parole release during their hearing. Over half of those jurisdictions reporting do not offer interim reports assessing inmates' progress.

Within this mix, 8 states appear to meet many of the markers in terms of preparation to achieve release at the first opportunity for parole: Alaska, Hawaii, Iowa, Maryland, Mississippi, Missouri, Montana, and Wyoming. These states publish information on the parole process, including their guidelines and/or decision rules. They also provide notification of initial parole eligibility upon admission to prison, and offenders' initial parole hearing dates. These same states offer guidance on the steps offenders can take to gain parole release following admission to prison, and reentry planning. Though in-depth information is not available, the spirit of this lever places or should place an emphasis on ensuring each individual has a clear understanding of what is expected of him or her and what must be done while incarcerated to achieve readiness for release.²²

Compassionate Parole Release

This lever encompasses incarcerated offenders who fall under several interrelated categories, including elderly or aging prisoners, those with serious medical conditions, individuals who are permanently incapacitated, and/or those considered terminally ill. Though the header for this section presumes a commitment to one or more of these forms of compassionate release, very few states actually embrace this label to describe the range of programs falling within their jurisdiction. Such programs variously incorporate statutory provisions addressing medical parole, medical furlough, parole for the terminally ill, special needs parole, and geriatric parole. It appears that just 4 jurisdictions refer to this type of release explicitly as compassionate release.²³

Regardless of what term is deployed, it is a lever of change that is pulled with striking rarity. Yet a recent report observes that with the exception of one state (Iowa), compassionate release, broadly defined, is found in the remaining 49 states appearing "everywhere and nowhere" (Price 2018). Though authorized in statute in these jurisdictions, compassionate release

in any of its forms is rarely granted. As a general rule, states offer compassionate release when offenders reach a certain age (55-60+ years of age) often accompanied by a requirement that they have served a minimum (albeit significant) number of years or percentage of their maximum sentence. Even more, there is an expectation that the individual's condition in terms of health has deteriorated so severely he or she no longer presents a threat to the community should release be approved.

A review of several states' use of compassionate release is revealing. Citing a news source in August 2017, the state Office of Legislative Services reported that medical parole in New Jersey has been granted, at most, twice annually since 2010 (Leonard 2017). In Rhode Island, another news article observed that between 1991 (when the state's medical parole law began) and 2015, a total of 66 applications were forwarded to the Parole Board for its consideration. Of those, 38 were approved, or roughly 1.5 per year (Liberman 2015). If there are jurisdictions that are generous in their approval of medical parole, or more generally, compassionate release, they are difficult to unearth due largely to the fact that only 13 states are required to track statistics on the matter.

Paroling authorities exercise sizeable clout relative to approving or denying offenders' applications for compassionate release. These agencies and their board members are often, but not always, the decisive players. Within indeterminate sentencing jurisdictions, parole boards make the final determination or recommend to the governor relative to terminal illness and for serious medical conditions in 30 states (88%). In 4 states (12%) they do not. Far fewer of these jurisdictions provide compassionate release for geriatric prisoners. It appears that paroling authorities review such petitions and/or may issue recommendations to the governor in another 12 states (35%). It is not an option in the remaining 22 states (65%). A dozen states provide compassionate parole release across all three categories: geriatric, terminal illness, and serious medical conditions (Table 2). The states are Colorado, Connecticut, Georgia, Louisiana, Missouri, Mississippi, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming.

The issue of compassionate release has become especially important over the past several decades given the graying of American prisons. The aging of prisoners serving sentences that are quite lengthy combined with the increasing number of offenders with serious and deteriorating health conditions present unique challenges to those in corrections with the responsibility for their management and release. The gravity and growing urgency of confronting this trend, one that will only continue to accelerate in impact, is difficult to overstate. As Pro and Marzell point out: "By 2030 prisons will house more than 400,000 individuals who will be 55 and older, making up nearly one-third of the population" (cited in Price 2018: 9).

In light of their leverage, parole boards are favorably positioned to serve as a catalyst for effecting change in many states' compassionate release policies. As a much underutilized lever in practice, however, the reluctance or unwillingness of parole boards to pull this lever has always kept the frequency of its deployment at the margins relative to impacting states' prison populations. An impressive literature indicates that individuals falling within the parameters of eligibility for any form of compassionate release are the least likely to be rearrested or reincarcerated; they present little threat to public safety (Ghandnoosh, 2017; Nellis, 2017; Pro & Marzell, 2017).²⁴ As an untapped lever of reform relative to parole boards, there exists persuasive justification that compassionate release could be significantly expanded to a far larger pool of eligible offenders who no longer present a threat to the communities to which they return.

Parole Supervision Term Disconnected from Remaining Prison Sentence

There are enormous differences relative to the prescribed length of time parolees are expected to spend under post-release supervision across the states.²⁵ In some instances, the exposure to supervision may be surprisingly brief. In others, periods of post-release supervision may and often do extend far beyond the actual period of incarceration the offender served in prison (Klinge, 2013). In several states, parole supervision may last for 10 years or more, with lifetime supervision in many required for certain offenses (most notably, crimes involving sexual violence).

The decision to grant discretionary parole release enables offenders to return to the community sooner than would otherwise occur should they be required to serve their full prison sentence. But in nearly all jurisdictions, the supervision term is commensurate with the unserved balance of the prison term (American Law Institute, 2017). For example, in Pennsylvania, the length of supervision is attached to the maximum prison sentence ordered by the sentencing court: “The parolee is to remain in the legal custody of the Board until the expiration of his maximum sentence, or until he is legally discharged” (37 Pa. Code §63.2). And as shown in the lever that follows this one, many states cause all time on parole to be forfeited if parole is later revoked. The combined result is that individuals who experience the revolving door of prison may end up serving extremely lengthy sentences. Two promising practices have been developed to reduce the effect of an unsuccessful parole experience on the overall length of sentence: automatic discharge from parole after a certain period and disconnecting the parole term from the sentence.

With some major exceptions, parole supervision in Utah expires automatically following a 3-year term. The exceptions include offenses against the person (e.g., assaults, sex offenses, kidnapping, trafficking) for which the term of parole is extended through the person’s maximum sentence though the actual duration of parole supervision may be terminated earlier by the Board of Pardons and Parole (Utah Code Ann. § 76-3-202(2)(a) (West 2018)).²⁶ The advantage of this system is that if an individual who is paroled still has a lengthy portion of the sentence left unserved, the individual can effectively earn his or her way to discharge from that sentence by accomplishing a three-year parole term without violation. It is also an advantage in that discharge is automatic; no process is needed to prompt the board to act. The disadvantage of the system is that if the individual is revoked, the individual is still subject to the unserved balance of the sentence. And if released again, the period of parole starts over; final discharge requires either maxing out on the sentence or achieving another 3 years without any violations unless the parole board discharges the individual sooner (Utah Code Ann. § 76-3-202 (5)).

Colorado, on the other hand, has developed a policy that completely disconnects the parole term from the sentence. Post-release supervision terms in Colorado are determined according to a schedule based on the inmate’s underlying sentence and level of classification (Colo. Rev. Stat. Ann. §§ 18-1.3-401; 18-1.3-401.5). Mandatory periods of parole range from one year to five years depending on this designation. Under this scheme, when a person is released from prison, the sentence is considered to have been fully served, and the separate mandatory parole term that was ordered at sentencing commences immediately. If parole is later revoked, the mandatory parole term serves as the outer limit for any additional time spent in prison (Colo. Rev. Stat. Ann. § 17-2-103 (11)(b)). This approach has the potential to serve as an incentive for compliant behavior in prison as well as the potential to reduce the overall amount of time served in prison and on parole. But it also comes with a risk in that the parole board may become more risk averse when making the initial release decision because the stakes – discharge of the sentence – are much higher.

The importance of this lever is rooted in the recognition that requiring parolees to serve the unfinished portion of their prison sentences or to be subject to the demands and myriad conditions of supervision for 10 or 20 years or in some instances for life, accomplishes little of public policy value (American Law Institute, 2014). It does, however, expose parolees to the vicissitudes of parole violation and revocation processes. The last lever discussed in this report addresses the need to reform states’ approaches relative to the revocation and reincarceration of parolees, especially for technical violations of supervision.

Forfeiture of “Street Time” Limited to Violation Period Under Supervision

When an individual is unsuccessful on parole, the board may determine that it is appropriate to revoke parole and order confinement. When that happens, a question arises as to whether the individual should receive any recognition for the time spent on parole prior to that violation. In other words, should the time on parole be applied towards service of the sentence,

or should it be disregarded? In many states, parole is articulated as an act of grace, and not a right (e.g., Nev. Rev. Stat. Ann. § 213.10705). Yet, how this issue is handled has the potential to greatly increase the overall time served on a sentence triggering implications that can be enormous.

The most punitive approach is to require that *all* time served on parole is forfeited upon revocation. When this occurs, the individual is typically subject to the full unserved balance of the sentence upon revocation. A review of discretionary parole release states indicates that six states take this approach, requiring forfeiture of all time from release to the violation or revocation. But in a few, this hard line is limited to certain circumstances, such as when the violation is due to the commission of a crime of violence (e.g., 61 Pa. Cons. Stat. Ann. § 6138). An additional eight states require forfeiture of all or a portion of the time on release at the discretion of the parole board.

An emerging approach, seen in ten states (Table 2), is to limit the forfeited time to the violation period. Under this approach, the triggering event is the date of the offense (if the violation is a new offense) or the date the violation is declared, such as issuance of a warrant or arrest for the alleged violation. Any time between that point and the revocation will not count as service of the sentence. It is relevant to note, however, that most states provide that any time the individual serves in custody following arrest or awaiting a final determination on the violation is credited toward service of the sentence. If the violation is proven and parole is revoked, the time the individual forfeits is limited to the time from the violation forward.

This approach has the benefit of recognizing the period during which the individual *was* compliant, which in some cases, can be a lengthy period of time, and minimizes the impact of revocation on the overall sentence length. It is also preferable to the approach in those states where the amount of credit given is subject to the discretion of the parole board because it sets an objective measure for the period of forfeiture and is less likely to be impacted by bias or other motivations.

Limited Reincarceration Period Upon Revocation

Parole boards have traditionally held the power of reincarceration as well as release. Parole is a form of conditional release where the privilege of remaining in the community depends on the individual maintaining compliance with conditions set by the parole board. Thus, when the individual violates those conditions, the parole board must determine an appropriate response. One response is to revoke parole for the remaining term of the sentence. But going to this extreme can result in disproportionate and costly sanctions for minor violations, especially those that involve conduct that would be legal but for the fact that it violates a condition of parole (Klingele, 2013). Instead, many states have shifted to graduated sanctions or revocation caps as a means of applying swift and appropriate sanctions to violations while reserving revocation of the full prison term for those who repeatedly violate parole conditions or whose conduct presents a danger to public safety.

A review of statutes governing discretionary parole release states reveals that half of the states, 17 of 34, permit the imposition of an incarcerative sanction less than the remaining prison term (Table 2). However, the form and duration varies. Some states permit “quick dips” of incarceration totaling just a few days at a time, and these states often permit parole officers to impose these sanctions as an alternative to the revocation process (see e.g., Colo. Rev. Stat. § 17-2-103). In other states, the parole board may be permitted to impose sanctions short of revocation of the full remaining prison term, and state law may impose “caps” on the sanction period. In these instances, the sanction may or may not be considered a revocation. For example, in Arkansas, parolees can be subject to confinement for 90 to 180 days for technical violations or serious condition violations without having their parole revoked (Ark. Code Ann. § 16-93-715).

Even when parole is revoked, many states permit the parole board to impose prison sanctions that are short of the remaining time on the prison term, often 15, 30, 60, or 90 days. However, such sanctions are typically only permissible for technical violations, which are violations of the conditions of parole that do not constitute a new criminal offense. But often, there are certain behaviors in addition to new crimes for which the capped sanctions are not available, and these typically relate to concerns for public safety. For example, in Hawaii, Louisiana, Pennsylvania, and West Virginia, the revocation cap does not apply when the violation is absconding (Haw. Rev. Stat. § 353-66; La. Stat. Ann. § 15:574.9; 61 Pa. Cons. Stat. Ann. §§ 6138; W. Va. Code § 62-12-19). Hawaii and Louisiana also exclude failure to register as a sex offender, Louisiana and Pennsylvania exclude possession of a prohibited weapon, and Alaska excludes failure to complete sex offender treatment or an intervention program for batterers (Alaska Stat. § 33.16.215). But in some states, revocation caps are not available based upon the individual's offense of conviction, such as Louisiana, which excludes individuals who have been convicted of crimes of violence or sex offenses (La. Stat. Ann. § 15:574.9).

More than a third of the states that impose revocation caps (7 of 17) also explicitly provide that release is automatic upon completion of that term. For example, Alabama provides that the individual “shall automatically continue on parole for the remaining term of the sentence without further action from the board” (Ala. Code § 15-22-32(b)(1)). This ensures that the short term of incarceration serves as a swift and certain sanction for the parolee without burdening the parole board with further responsibility. West Virginia permits the Division of Corrections to effect release, but requires that release cannot be effected until the Division approves a home plan (W. Va. Code § 62-12-19), which has the potential to result in an administrative delay. The majority of states, however, are silent on the issue.

Though these short periods of incarceration for parole violations are becoming prevalent in modern parole practice, more work could be done to increase their effectiveness. Those states that permit the imposition of lengthier periods of confinement, ranging from 60 days to six months, could reduce the periods, or consider developing a sanctioning grid to establish better proportionality between the violation and the sanction. States that currently exclude absconding could follow Alaska's lead and establish a revocation cap for absconding violations that is longer than for other technical violations.²⁷ The seventeen states that currently do not impose any caps on revocation periods at all could consider enacting them. And all states could make it clear that the individual is entitled to release on parole without a hearing after serving the sanction.

III. OPPORTUNITIES FOR REFORM

Sorting States' Parole Practices via Mapping the Terrain

Paroling authorities have, to very different degrees, adopted a wide range of what has been discussed throughout as “levers of change.” Overall 12 levers were highlighted as being of special salience to discretionary parole decision-making. Each is important relative to its impact on the ebb and flow of a given jurisdiction’s prison population. Some levers are deployed across a majority of states while others are found in a much smaller number of such jurisdictions. Several of the levers have only recently emerged while some have become embedded in parole boards’ decision processes during the past decade or two. Table 2 and the discussion that follows presents a summary of the variation that may be observed, designed to sort out and map states’ parole practices within indeterminate sentencing structures.

Aligned with the increasing support for risk assessment in criminal justice, paroling authorities have incorporated actuarial tools informing release decisions in 30 of 34 states (88%). The reliance on this lever far exceeds the adoption of any other lever. Nearly half of 28 responding states, that is, 13 (46%), noted they provide offenders with an opportunity to contest their risk score. The variable of risk was included, but not often prioritized in statutorily-defined release criteria for 21 states, while it was not mentioned in the release criteria for 13 states. If risk is a factor that calls for a forward-looking emphasis, it is the case that numerous states have criteria that maintain a backward looking retributive focus in which offense severity is predominant. A majority of parole boards in 20 of 34 states (59%) make use of parole guidelines. Four states now have administrative parole provisions with four additional states either pursuing this lever or having already adopted some variation of it within existing guidelines practice.

Table 2: Visualizing the Levers of Change

State	Factors Affecting Release								Compassionate Release			Preparation for Parole Hearing ^a				Revocation		
	Uses Risk Assessment	Opportunity to Contest Risk Score	Release Prioritized for Low Risk ^a	Risk Mentioned in Criteria	Release Criteria Emphasize Retribution	Uses Parole Guidelines	Admin Parole	Changes in Parole Eligibility ^b	Geriatric	Terminal Illness	Serious Medical Condition	Notice of Parole Eligibility	Notice of Initial Hearing Date	Notice of Steps to Enhance Release Prospects	Given Info that Gauges Progress	Forfeiture Limited to Time Since Violation	Revocation Period Capped	Automatic Release After Revocation Period
AK	x	x			x			x			x	x	x	x	x		x	x
AL	x			x		x				x	x	x		x		x	x	x
AR	x			x	x	x				x	x	x		x			x	x
CO	x		x			x			x	x	x	x	x	x			x	x
CT	x					x			x	x	x							
GA	x	x		x		x			x	x	x			x				
HI	x	x	x			x	x*		x	x	x		x		x		x	
IA	x	x		x							x	x	x	x	x	x		
ID	x			x		x				x	x	x	x	x				
KY	x			x						x	x	x	x	x				
LA	x		x				x*	x	x	x	x	x		x		x	x	x
MA	x			x								x		x		x		
MD	x	x				x	x	x		x	x	x	x	x	x		x	
MI	x	x		x		x	x*			x	x	x	x	x				
MO	x	x		x	x	x			x	x	x	x	x	x	x	x	x	
MS							x	x	x	x	x	x	x	x	x		x	
MT	x	x			x	x				x	x	x	x	x	x		x	
ND										x	x	x	x	x		x	x	
NE	x			x	x					x	x				x	x	x	
NH										x	x	x	x	x				
NJ	x	x		x			x*			x	x	x		x				
NV	x	x	x			x				x	x							
NY	x	x			x	x				x	x	x	x	x		x		
OK							x		x	x	x	x	x		x			
PA	x			x	x	x						x	x	x			x	x
RI	x		x		x	x		x		x	x							
SC	x			x				x	x	x	x	x	x	x				
SD	x						x		x	x	x	x		x				
TN	x				x					x	x				x			
TX	x			x		x			x	x	x						x	
UT	x	x			x	x			x	x	x		x	x	x	x	x	
VT	x			x	x	x				x	x							
WV	x	x		x		x				x		x	x	x			x	
WY	x					x			x	x	x	x	x	x	x		x	
Total	30	13	5	16	11	20	4 and 4*	6	12	30	30	26	20	26	10	10	17	7

*Denotes moving toward adoption; ^a Source: Ruhland et al. 2016; ^b Sources: The Urban Institute, July 2013; Lavigne, et.al. 2014; and Harvell, et al., March 2017.

Spurred by the Justice Reinvestment Initiative, at least 6 states have expanded parole eligibility. Relative to prisoners’ preparation for parole board review, of those responding, in 26 of 27 states (96%), notice of parole release eligibility is provided shortly after admission to prison. Similarly, in 20 of 24 states (83%), offenders receive timely notice of their hearing date subsequent to entering prison, while of those responding all 26 states reported they provide information on steps offenders might take to enhance their prospects for parole.²⁸ In relation to compassionate parole release, in 30 of 34 states (88%), decisions regarding terminal illness and serious medical conditions warranting release are made by paroling authorities or by the governor. For geriatric prisoners, the parole board makes such decisions or recommends to the governor in 12 of 34 jurisdictions (35%). It is evident that the vast majority of parolees may be subject to supervision for the remainder of their prison term. Just 1 out of 34 states truly decouples the length of supervision from the unexpired portion of the sentence. Relative to revocation, 17 of 34 states (50%), permit the imposition of an incarceration sanction less than the remaining prison term. Over one-third of the states that impose revocation caps (7 of 17) also specify that release is automatic upon completion of that term.

Re-Sorting the Levers of Change

The levers of change may be resorted based on two key dimensions: the number of states in which they are presently *deployed*, and their potential *impact* on a jurisdiction’s prison policy (as shown in Table 3 below). The boundaries of each of these dimensions, however, require clarification. The frequency with which each lever is deployed is divided into numerous (more than fifteen states) and fewer (fifteen states or less), while their impact is categorized as either high or moderate. The impact reflects our estimation of the extent to which the lever in question, if fully implemented, may contribute to a measurable increase in a state’s rate of parole release or reduction in the length of time served in prison. Thus, high impact levers possess the capacity to accomplish one or more of the following outcomes: a noticeable reduction in a jurisdiction’s incarcerated population, a significant diminution in the duration of time served in confinement, and stronger presumptions offering more consistency and certainty with respect to parole decision-making. In contrast, moderate impact levers support such outcomes, but may not, in and of themselves, achieve them. It is notable that many of the levers, both high and those of moderate impact, are presently under-utilized by paroling authorities.

	Numerous States (> 15)	Fewer States (< 15)
High Impact	<ul style="list-style-type: none"> • Use of Parole Guidelines • Compassionate Release • Limited Reincarceration Period Upon Revocation 	<ul style="list-style-type: none"> • Prioritize Release for Low Risk Prisoners • Administrative Parole • Changes in Parole Eligibility • Deprioritize Offense Seriousness in Release Criteria • Forfeiture of “Street Time” Limited to Violation Period Under Supervision • Parole Supervision Term Disconnected from Remaining Prison Sentence
Moderate Impact	<ul style="list-style-type: none"> • Risk Assessment Used in Parole Release • Prisoner Preparation for Parole Board Review 	<ul style="list-style-type: none"> • Opportunity to Contest Risk Score

The six levers shown under the fewer states and high impact category offer substantial promise for assisting states in reshaping their prison policy towards decarceration, and greater parsimony in the length of sentences offenders serve. The potential for facilitating such change becomes even more pronounced if the three levers highlighted under numerous states and high impact are expanded to all states with discretionary parole release.

Two of the remaining three levers offer the promise of a more moderate impact, regardless of the number of states in which they are found, but significantly, they also carry a further implication. These levers include the opportunity to contest a risk score and the extent to which prisoners are adequately prepared for parole board hearings. The degree to which these particular levers are achieved in practice brings to the fore the importance of procedural justice and individuals' perceptions of the legitimacy of their treatment under the rule of law. Well-known research notes that an expressed commitment to procedural justice by criminal justice officials may impact on individual behavior in a manner that fosters desired prosocial outcomes (Tyler, 2003). To an appreciable extent, the full activation of these levers by paroling authorities and corrections agencies would serve to model the rule of law in tone and substance.

States Providing the Greatest Opportunity for Reform

As has been well-established in this report, parole boards exercise an immense amount of discretion over release and revocation. Their decisions greatly affect the length of the prison sentence. Though each lever has the potential to achieve some degree of change in multiple states, these changes will do little more than nibble around the edges if made individually. The use of risk assessment offers a prime example. Risk assessment is already prevalent in the states. But by itself, risk assessment is limited in achieving meaningful reform. What is needed are rigorous quality controls on the instruments themselves, buy-in by parole boards and other officials, clear decision rules and presumptions for their use, and procedures that pull certain categories of low-risk cases out of the regular hearing process into a more routinized administrative protocol that does not

require a vote of the board. Properly configured, the use of risk assessment combined with other levers is a high priority precondition for reform.

Table 4 presents the most salient levers for impacting the likelihood of parole release and the length of the sentence. These levers were chosen from among the levers demonstrating the highest impact because together, they have even greater potential. Here, we score the states based on whether they have implemented the lever or still have work to do if it is to be deployed. Those jurisdictions that have enacted laws, administrative rules, or policies putting the lever into effect are coded in green while those that have not are coded in red. The only exception is the column indicating whether the release criteria emphasize retribution. The states that do so are coded red, because here, the opposite represents the desired outcome.

The final column in the table totals the results. Those states that score highest represent the greatest opportunity for change. Three states could work on 7 of the levers: Alaska, New Hampshire, and Tennessee. Two more could work on six of the levers: Montana and North Dakota. And an additional eight could work on five levers: Arkansas, Kentucky, Mississippi, Nebraska, New York, Pennsylvania, Rhode Island, and Vermont.

The landscaping analysis revealed several *key recommendations*. As the phrasing implies, discretionary parole release hinges on the exercise of discretion. This discretion often takes the form of passing judgment on an individual. The question is not whether the individual has completed the prescribed punishment, but whether he or she has achieved some sort of measurable prosocial change. Yet in determinate states, release does not hinge on such assessments, and little is known about the individual's transformation, or lack thereof, as that person exits prison. And there is no discernable difference in crime rates between determinate and indeterminate states. One way to change this dynamic is to move to a model of guided discretion. Under this model, which underpins sentencing guidelines, the parole board would be given several signals or markers as to when parole release should occur, and would be generally expected to follow those signals. It would also be given the opportunity to depart when necessary.

1. Establish Presumptive Parole Release for Low Risk Offenders

In this report, we have identified several levers that, when combined, can set a strong framework for guiding the discretion of parole boards, increase the rate of release, and reduce the overall length of time served. Starting with the gateway lever of risk assessment, states not only should eliminate release criteria that emphasize retribution and merely mention risk, but should also prioritize individuals assessed as low risk for parole release at the earliest opportunity. An obvious

concern raised by this approach is that violent offenders are often at a low risk to reoffend. However, as explained further in this report, this presumption for release of individuals who are assessed as low risk works in tandem with the deprioritization of the offense in the parole release process. The sentencing range with which the parole board has to work and the minimum time to serve should already reflect punishment that is proportionate to the seriousness of the offense and the individual’s criminal history, thus narrowing the parole board’s consideration to the issue of risk to reoffend at the time of release.

Table 4: Assessing Opportunity for Reform

State	Uses Risk Assessment	Release Prioritized for Low Risk ^a	Risk Mentioned in Criteria	Release Criteria Emphasize Retribution	Uses Parole Guidelines	Admin Parole	Geriatric Release	Forfeiture Limited to Time Since Violation	Levers of Opportunity
AK	x			x					7
AL	x		x		x			x	3
AR	x		x	x	x				5
CO	x	x			x		x		3
CT	x				x		x		4
GA	x		x		x		x		3
HI	x	x			x	x*			3
IA	x		x					x	4
ID	x		x		x				4
KY	x		x						5
LA	x	x				x*	x	x	2
MA	x		x					x	4
MD	x				x	x			4
MI	x		x		x	x*			3
MO	x		x	x	x		x	x	3
MS						x	x		5
MT	x			x	x				6
ND								x	6
NE	x		x	x				x	5
NH									7
NJ	x		x			x*			4
NV	x	x			x				4
NY	x			x	x			x	5
OK						x	x	x	4
PA	x		x	x	x				5
RI	x	x		x	x				5
SC	x		x				x		4
SD	x					x	x		4
TN	x			x					7
TX	x		x		x		x		3
UT	x			x	x		x	x	4
VT	x		x	x	x				5
WV	x		x		x				4
WY	x				x		x		4
Total	30	5	16	11	20	4 and 4*	12	10	

2. Adopt Decision Criteria that Obviate the Need to Hear Low Risk Cases

The prioritization of individuals assessed as low risk may be achieved by incorporating risk into the state's parole guidelines. But by far, the lever that presents the greatest potential for change, albeit still relatively new, is to adopt provisions for administrative parole. When release is based on objective criteria that obviate the need for a hearing, release will become routine.

3. Limit Parole Discretion to the Most Serious Cases

Paroling authorities lack the resources comparable to many state court systems and often experience daunting workloads. The routine or administrative release of low risk offenders will allow parole boards to focus their attention where it is needed most: on those offenders who represent a potential risk to public safety.

4. Limit the Impact of Revocation on Time Served

For those who are released and later revoked, states should limit forfeiture of the time on parole to the period following the commission of the offense or declaration of the violation. This credits the individual with the time spent successfully on parole and ensures that the individual does not have to completely restart the clock on the unserved balance of the prison sentence. Even more boldly, states should disconnect the parole supervision period from the prison sentence. One possible plan, recommended by the new Model Penal Code, is that parole supervision terms should be no longer than five years and, for most releasees, there should be presumptive termination after one year if they have substantially complied with parole conditions.

5. Reconsider Release for Elderly Under Geriatric Parole

For those individuals who continue to serve lengthy sentences, states should consider enacting and/or actively utilizing a geriatric release policy, taking advantage of the fact that most individuals desist from crime as they get older, and they eventually present little threat to public safety. This might take the form of age-based parole eligibility for otherwise ineligible prisoners. Alternatively, a separate and dedicated process for the release of older inmates could be fashioned.

Matching Opportunity with Parole Reform: Next Steps

Though Table 4 has identified multiple states as being opportune for reform, additional work would need to be undertaken to determine if the political will exists in the jurisdictions so noted to consider engaging in a significant change process. Each of the levers presented herein offers innovations that are occurring somewhere in the U.S. An additional next step, therefore, should be to study the states that have already adopted one or more of these levers to learn how the innovations are actually being implemented. For example, is Colorado continuing to release low risk offenders at the same rate given the new policy that results in discharge of the sentence upon release? Additionally, comparative work should be conducted across states with differing innovations. Is it better, for instance, to disconnect the parole term from the sentence or to implement an earned compliance program to allow an individual to gain an early discharge from parole? In essence, the next steps should be to connect these ideas to practice: we should find out how they are really working on the ground, follow them over time, and evaluate them for effectiveness.

IV. CONCLUSION

The levers illustrated in the landscaping analysis reveal the “lay of the land” relative to paroling practices across 34 states. The levers of change represent what is being done by releasing authorities as we find them today. They offer the potential for, and in some places, have already exerted an impact on states’ prison policies. The markers for pursuing significant parole reform are shown in this report; both those that are greatly underutilized, and those that appear in a fair number of states. It is notable that several states identified above have embraced an impressive number of the various changes that have been discussed. For those that have yet to do so, this report provides a roadmap for them to consider.

In the future, however, we hope that parole boards would undertake additional, if not more far-reaching, levers of change. We view these additional levers as broadly aspirational, and do not believe they are found anywhere. They include the complete removal or disavowal of retribution as a factor in paroling authorities’ release criteria with a focus instead on risk and readiness for release; the establishment of presumptions of release for most prisoners such that if parole is denied, the presumption becomes even stronger after each denial; the adoption of criteria governing a meaningful external review for those denied release; the creation and enforcement of measures to monitor and encourage compliance with parole guidelines; the adoption of re-release contracts subsequent to revocation; where maximum terms are disproportionately high in relation to first release eligibility, the addition of provisions for setting mandatory release dates well short of the statutory maximum; for those serving life sentences, the provision of release eligibility for all prisoners at 15 years or earlier, regardless of the length of the maximum sentence, coupled with a meaningful opportunity to earn release; and the creation of statutory provisions targeting the credentials, job security, and quasi-judicial stature for parole board members.

The aforementioned recommendations, admittedly aspirational, would greatly strengthen the institutional integrity of paroling authorities. Together with the levers of change already considered, they would increase substantially parole boards’ release capacities in a manner attendant to public safety and enhanced prospects for offenders’ success. They would likely contribute as well to a measurable reduction in states’ prison populations, and at the same time, establish systemic supports for achieving the goals of fairness, transparency, and accountability across the whole of the parole release process.

REFERENCES

Articles

- Alper, Mariel, Kevin R. Reitz, Edward E. Rhine, Alexis L. Watts, and Jason P. Robey. 2016. *By the Numbers: Parole Release and Revocation Across 50 States*. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice. University of Minnesota Law School.
- American Law Institute. 2011. *Model Penal Code: Sentencing, Tentative Draft No 2*. Philadelphia: American Law Institute.
- American Law Institute. 2014. *Model Penal Code: Sentencing, Tentative Draft No. 3*. Philadelphia, American Law Institute.
- Arthur, D. "Little, Inc., and Goldfarb and Singer, Esqs. (1981)." *An Evaluation of Parole Guidelines in Four Jurisdictions*.
- Blumstein, Alfred, Jaqueline Cohen, Susan E. Martin, and Michael Tonry. eds. 1983. *Research on Sentencing: The Search for Reform*. 2 vols. Washington, DC: National Academy Press.
- Bureau of Justice Assistance, "Risk Assessment Landscape," Public Safety Risk Assessment Clearinghouse, accessed on Dec. 8, 2018, <https://psrac.bja.ojp.gov/selection/landscape>.
- Burke, Peggy, ed. 2003. *A Handbook for New Parole Board Members: Part of a Resource Kit for New Parole Board Members*. Washington, DC: National Institute of Corrections.
- Burke, Peggy, Linda Adams, Gerald Kaufman, and Becki New. 1987. *Structuring Parole Decisionmaking: Understanding the Past; Shaping the Future*. Washington, DC: National Institute of Corrections.
- Burkes, Kaleena. J., Edward E. Rhine, Jason P. Robey, & Ebony L. Ruhland. 2017. *Releasing Authority Chairs: A Comparative Snapshot across Three Decades*. Retrieved from: <https://robainstitute.umn.edu/publications/releasing-authority-chairs-comparative-snapshot-across-three-decades>.
- Cahalan, Margaret Werner. 1986. *Historical Corrections Statistics in the United States, 1850-1984*. Washington, DC: Government Printing Office.
- Carson, E. Ann. 2018. *Prisoners in 2016*. Washington, D.C.: Bureau of Justice Statistics.
- Ford, Kevin. 2015. *Analysis of Colorado State Board of Parole Decisions: FY 2014 Report*. Colorado Division of Criminal Justice and State Board of Parole.
- Frase, Richard S. 2013. *Just Sentencing: Principles and Procedures for a Workable Sentencing System*. New York. Oxford University Press.
- Gottschalk, Marie. 2015. *Caught: The Prison State and the Lockdown of American Politics*. Princeton: Princeton University Press.
- Ghandnoosh, Nazgol. 2017. *Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences*. Washington, D.C: The Sentencing Project.
- Harcourt, Bernard E. 2007. *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age*. Chicago: University of Chicago Press.
- Harvell, Samantha, Jeremy Welsh-Loveman, and Hannah Love with Julia Durnan, Josh Eisenstat, Lora Gollian, Eddie Mohr, Elizabeth Peletier, Julie Samuels, Chelsie Thompson, and Margaret Ulle with Nancy Lavigne, Principal Investigator. 2017. *Reforming Sentencing and Corrections Policy: The Experience of JRI States*. Washington, D.C.: Urban Institute.
- Hu, Cathy, KiDeuk Kim, and Edward Mohr. 2017. *National Scan of Policy and Practice in Risk Assessment (Policy Brief Number 2017-01)*. Washington, DC: The Risk Assessment Clearinghouse.
- Institute for Criminal Policy Research. 2018. *World Prison Brief: Highest to Lowest Prison Population Rate*. London: Institute for Criminal Policy Research. Retrieved from: http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?-field_region_taxonomy_tid=All
- Kinney, Susan C. and Joel M. Caplan. 2008. *Findings from the APAI Survey of Releasing Authorities*. Philadelphia, PA: Center for Research on Youth and Social Policy. University of Pennsylvania.

REFERENCES

Articles

- Klinge, Cecelia. 2013. "Rethinking the Use of Community Supervision." *Journal of Criminal Law and Criminology*. 103(4): 1015-70.
- LaVigne, Nancy, Samuel Bieler, Lindsay Cramer, Helen Hoe, Cybele Kotonius, Deborah Mayer, David McClure, Laura Pacifica, Bryce Peterson, and Julie Samuels. *Justice Reinvestment Initiative State Assessment Report*. Washington, DC: Urban Institute and U.S. Department of Justice: Bureau of Justice Statistics
- Lampert, Alexandra and Robert Weisberg. 2010. "Discretionary Parole Release in the United States." Unpublished Manuscript. Palo Alto, CA: Stanford University Law School.
- Lawrence, Alison. 2015. Making Sense of Sentencing: State Systems and Policies. National Conference of State Legislatures. Retrieved at: <http://www.ncsl.org/documents/cj/sentencing.pdf>.
- Leonard, Nicole. 2017. "State Assemblymen Pass Health Bills on Medical Parole, Disability and More." Press of Atlantic City, August 6. http://www.pressofatlanticcity.com/news/state-assemblymen-pass-health-bills-on-medical-parole-disability-and/article_d06634da-3d26-5ced-8e21-abc6e3df21b4.html.
- Lieberman, Ellen. 2015. "Aging Behind Bars in Rhode Island," *Rhode Island Monthly*, September 4. <http://www.rimonthly.com/aging-behind-bars-in-rhode-island/>
- McVey, Catherine C., Edward E. Rhine, Carl V. Reynolds. 2018. *Modernizing Parole Statutes: Guidance from Evidence-Based Practice*. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice. University of Minnesota Law School.
- Mears, Daniel P., and Joshua C. Cochran. 2015. *Prisoner Reentry in the Era of Mass Incarceration*. Thousand Oaks, CA: Sage.
- Nellis, Ashley. 2017. *Still Life: America's Increasing Use of Life and Long-Term Sentences*. Washington, D.C: The Sentencing Project.
- New Jersey State Parole Board. 2010. *The Parole Book: A Handbook on Parole Procedures for Adult and Young Adult Inmates*. 4th ed. Trenton: New Jersey State Parole Board.
- New York State Permanent Commission on Sentencing. 2014. *A Proposal for 'Fully Determinate' Sentencing for New York State*. New York: New York State Permanent Commission on Sentencing.
- Pelletier, Elizabeth, Leigh Courtney, and Brian Elderbroom. 2018. *Assessing the Impact of Idaho's Parole Reforms*. November. Washington, D.C: Urban Institute.
- Pennsylvania Board of Probation and Parole. 2014. *Pennsylvania's Reentry System: Toward Safer Communities*. Harrisburg, Pennsylvania.
- Pew Charitable Trusts. 2018. *35 States Reform Criminal Justice Policies Through Justice Reinvestment*. July.
- Pro, George and Miesha Marzell. "Medical Parole and Aging Prisoners: A Qualitative Study." 2017. *Journal of Correctional Health Care*. 23.
- Price, Mary. 2018. *Everywhere and Nowhere: Compassionate Release in the States*. Washington, D.C: Families Against Mandatory Minimum Sentences.
- Rhine, Edward E., Joan Petersilia, and Kevin R. Reitz. 2017. "The Future of Parole Release." In *Reinventing American Criminal Justice*. (eds.) Michael Tonry and Daniel S. Nagin. Vol. 46 of *Crime and Justice: A Review of Research*. Edited by Michael Tonry. Chicago: University of Chicago Press.
- Rhine, Edward E., Alexis Watts, and Kevin R. Reitz. 2018. "Parole Boards within Indeterminate and Determinate Sentencing Structures." Blog April 3. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice. University of Minnesota Law School.
- Ruhland, Ebony L., Edward E. Rhine, Jason P. Robey, and Kelly Lyn Mitchell. 2016. *The Continuing Leverage of Releasing Authorities: Findings from a National Survey*. Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice. University of Minnesota Law School.

REFERENCES

Articles

- Runda, John C., Edward E. Rhine, and Robert E. Wetter. 1994. *The Practice of Parole Boards*. Washington, D.C: National Institute of Corrections, US Department of Justice and Association of Paroling Authorities International.
- Starr, Sonja B. 2014. "Evidence-Based Sentencing and the Scientific Rationalization of Discrimination." *Stanford Law Review*. 6: 803-70.
- Stemen, Don, Andres Rengifo, and James Wilson. 2006. *Of Fragmentation and Ferment: The Impact of State Sentencing Policies on Incarceration Rates, 1975-2002*. U.S. Department of Justice, Washington, D.C.
- Tonry, Michael. 2016. *Sentencing Fragments: Penal Reform in America, 1975-2025*. New York: Oxford University Press.
- Tonry, Michael. 2013. "Sentencing in America, 1975-2025." In *Crime and Justice in America, 1975-2025*. (ed.) Michael Tonry. Vol. 42 of *Crime and Justice: A Review of Research*. Edited by Michael Tonry. Chicago: University of Chicago Press.
- Travis, Jeremy, Bruce Western, and Steve Redburn. 2014. (eds.) *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Research Council. Washington, DC: National Academies Press.
- Tyler, Tom R. 2003. "Procedural Justice, Legitimacy, and the Effective Rule of Law." 30 of *Crime and Justice: A Review of Research*. Edited by Michael Tonry. Chicago: University of Chicago Press.
- Watts, Alexis. 2018. "In-Depth: Sentencing Guidelines and Discretionary Parole Release." Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice. University of Minnesota Law School.
- Watts, Alexis. 2017. "Parole Release Reconsideration in States with Discretionary Release." Minneapolis, MN: Robina Institute of Criminal Law and Criminal Justice. University of Minnesota Law School.
- Urban Institute. July 2013. *The Justice Reinvestment Initiative: Experiences from the States*. Washington, D.C.
- WDIV Detroit. October 9, 2018. *New Law Reforms Parole Guidelines in Michigan*.

Statutes and Administrative Rules

- Ala. Code § 15-22-32(b)(1) (2018).
- Alaska Stat. §§ 33.16.110; 33.16.215 (2018).
- Ark. Code Ann. § 16-93-715 (2018).
- Code Ark. R. 158.00.1-2 (2018).
- Colo. Rev. Stat. Ann. §§ 17-2-103; 17-22.5-404 (2018).
- Ga. Code Ann., § 42-9-45 (2018).
- Ga. Comp. R. & Regs. 475-.05 (2018).
- Haw. Rev. Stat. §§ 353-66; 706-670(1) (2018).
- La. Stat. Ann. §§ 15:574.2(C)(2)(f); 15:574.9 (2018).
- Md. Code Ann., Correctional Services, §§ 7-301; 7-301.1 (West 2018).
- Miss. Code Ann. §§ 47-7-3.1; 47-7-18 (2018).
- Mo. Rev. Stat. § 217.730 (2018).
- Mont. Code Ann. § 46-23-208 (2018).
- Neb. Rev. Stat. § 83-1,115 (2018).
- Nev Admin Code 213.516 (2018).
- Nev. Rev. Stat. Ann. § 213.10705 (West 2018)
- Okla. Stat. Ann. Tit. 57, § 337.2 (West 2019).
- 37 Pa. Code §63.2 (2018).
- 61 Pa. Cons. Stat. Ann. §§ 6137, 6138 (West 2018).
- S.D. Codified Laws §§ 24-15A-32; 24-15A-38; 24-15A-39 (2018).
- Tenn. Comp. R. & Regs. 1100-01-01-.07 (2018).
- W. Va. Code § 62-12-19 (2018).
- W. Va. Code St. R. § 92-1-6 (2018).

ENDNOTES

- ¹ For a synopsis of the criticisms directed recently at releasing authorities, especially those pertaining to procedural fairness, see Kevin R. Reitz, Concept Letter, Arnold Foundation, December 6, 2017 (on file with the author).
- ² This discussion draws from a blog article posted on the website of the Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School (Rhine, Watts, & Reitz, 2018).
- ³ Some jurisdictions have sentencing guidelines to structure judicial-decision making at the “front-end” of the system, but have also retained discretionary parole release at the “back-end” of the punishment process (Watts, 2018). For more information about sentencing guidelines states, see the Sentencing Guidelines Resource Center at sentencing.umn.edu.
- ⁴ This trend line represents a tally of responding states from both indeterminate and determinate sentencing jurisdictions across each of the surveys whose results are reported.
- ⁵ The Robina survey is largely consistent with the use of risk assessment tools shown in a recent policy brief issued by the Bureau of Justice Assistance’s Public Safety Risk Assessment Clearinghouse (Hu et al., 2017), and the associated online content (Bureau of Justice Assistance). Thirty states responding to the Robina survey indicated that they use risk assessment in the release decision whereas only twenty-three of those states indicated the same response in the BJA survey. The states that differed were Alaska, Colorado, Missouri, Nevada, New Jersey, New York, and Vermont.
- ⁶ These states include Mississippi, New Hampshire, North Dakota, and Oklahoma. Mississippi does not require the use of an actuarial tool at release, but does mandate drawing from the results of a risk and needs assessment in the development of offenders’ case plans.
- ⁷ Yet it is also the case that the application of such tools raises a host of concerns. Actuarial predictions of recidivism are connected in complex ways to race and social class (Harcourt, 2007; Starr, 2014). This is grounded in the reality that current risk assessments rely on variables that are partly driven by individual behavior and partly by where the justice system looks for offenses and how it responds when it finds them. The over prediction of risk, especially high-risk, is likewise troubling (Rhine et al., 2017). These issues are further considered in the discussions of the parole levers pertaining to offenders’ opportunities to contest their risk scores, and prioritizing the release of low-risk prisoners.
- ⁸ These measures include, but are not limited to, assessing reliability and interrater consistency, user training and knowledge, and initial and subsequent validations of the risk tool(s) deployed.
- ⁹ The state’s regulations state that “[after] the Board notifies the inmate of their decision, the inmate may contest either the Crime Severity Level or Risk to Re-Offend scores by writing within 30 days the Parole Guidelines Subject Matter Expert in the Board’s Central Office” (GA Comp. R. & Regs. 475-.05. Parole Consideration).
- ¹⁰ See <https://bop.utah.gov/index.php/hearings-top-public-menu/decision-factors>.
- ¹¹ It appears that parole guidelines are under development in Nebraska, while the status of such guidelines in informing parole decision-making by the Tennessee Board of Parole is not clear. In 2015, the Robina national survey queried all 50 states regarding their implementation of parole guidelines. Inclusive of states in both determinate and indeterminate states, it found that of 39 respondents, 17 releasing authorities (44%) reported using parole guidelines. A larger cluster of 22 jurisdictions (56%) stated they did not do so (Ruhland et al., 2016).
- ¹² The discussion to follow of the parole lever called Administrative Parole Provisions highlights an exception in the use of parole guidelines in Hawaii. There the scoring of the guidelines serves to establish when minimum parole release may occur, but it does not determine the actual date of release. For eligible low-risk offenders, however, the minimum parole release date and the actual release date are one and the same. Unless good cause is shown, offenders who have been assessed as low-risk must be granted parole at the earliest guidelines defined release date.
- ¹³ The relevant guidance for Pennsylvania notes that a Parole Decisional Instrument (PBPP 361) is used by the Board “to analyze individual cases and guide consistency in decision making. The instrument is a guide to advise the decision maker. It does not replace professional discretion, nor does it bind the Board to grant or deny parole, or create a right, presumption or reasonable expectation that parole will be granted” (Pennsylvania Board of Probation and Parole, 2014).
- ¹⁴ Alaska enacted legislation authorizing administrative parole, but its statutory tenure was short-lived. Rolled out on January 1, 2017, under SB91, this particular provision was rescinded when SB54 was signed into law on November 29, 2017. Communication with Lonzo Henderson, Chair, Alaska Parole Board, on October 10, 2018. Louisiana likewise introduced administrative parole effective November 1, 2017. Although some aspects of the law were to be implemented for eligible offenders, during the 2018 legislative session the start date was extended to November 1, 2020. According to Sheryl Ranatza, Chair, Louisiana Board of Pardons and Parole, more changes are expected given the many complex and unresolved issues presented by administrative parole. Communication with Chair Ranatza on October 22, 2018.

ENDNOTES

- ¹⁵ The South Dakota statute applies to individuals who committed their crimes after July 1, 1996. Such offenders must be released when they are eligible, unless they have failed to substantially comply with their “Individual Program Directive” while incarcerated (S.D. Codified Laws §§ 24-15A-39).
- ¹⁶ In New Jersey, legislation referred to as “Earn Your Way Out” passed out of the Assembly Law and Public Safety Committee as A1986. It consists of corrections and parole reforms directing the development of a reentry plan for each inmate, and establishing administrative parole release for certain inmates who meet certain criteria similar to the states discussed in this section. The measure has bipartisan support having already passed the Senate (as S761).
- ¹⁷ The trial courts in Pennsylvania must impose a minimum and maximum sentence. Inmates are eligible for parole release upon expiration of the former (61 Pa. Cons. Stat. Ann § 6137).
- ¹⁸ The discussion that follows draws mainly on the experiences of those states working in conjunction with the support provided under the Justice Reinvestment Initiative (The Urban Institute, 2013; Lavigne et al., 2014; and Harvell et al., 2017). Two states with discretionary parole release, Arkansas and New Hampshire, were identified as having expanded parole eligibility in one of the justice reinvestment reports cited herein. A review of these states was unable to identify the status of any specific measures taken at the time of their JRI investment or since then.
- ¹⁹ Other states have taken similar steps. Iowa (House File 2064) now permits the parole board to release persons for non-violent offenses upon service of one-half their mandatory minimum sentence. Maryland (2016 Justice Reinvestment Act) effective in 2017, Rhode Island (H 5128) in 2017, and South Carolina (Senate Bill 1154) in 2010 expanded parole eligibility for geriatric, medical, permanently disabled and/or terminally ill offenders.
- ²⁰ Of the 40 respondents, 38 considered the disposition or demeanor of the inmate at the hearing, 37 their testimony, and 35 the offender’s case plan (Ruhland et al., 2016). These findings represent indeterminate and determinate sentencing states.
- ²¹ The discussion that follows draws on the results from paroling authorities in indeterminate sentencing jurisdictions only. The number of respondents varies as some states did not answer the full battery of questions posed in the survey. Those offering no response or not applicable were not included in the summary.
- ²² This includes receiving their case plan, understanding which programming they have to complete, and the impact of engaging in actions that warrant discipline in prison.
- ²³ Serious medical conditions covering those with a terminally ill diagnosis are eligible for consideration for release under compassionate release or compassionate parole in Connecticut, Louisiana, South Dakota, and Utah.
- ²⁴ Offenders serving life or life without parole sentences, in addition to those confined under virtual life sentences form the backdrop to this discussion. The work of FAMM and the Sentencing Project illustrate the salience of compassionate release as an untapped lever of change.
- ²⁵ The discussion of this lever draws from the state parole profiles completed by the Robina Institute, and Rhine, Petersilia, and Reitz 2017.
- ²⁶ A conviction for second-degree forcible sexual abuse or sexual abuse of a child (or an inchoate crime based on these offenses) committed after July 2008 requires that the offender serve a ten year parole sentence. The conviction for some violent and/or sex crimes committed after July 2008 may result in lifetime parole which can be terminated early by the Board.
- ²⁷ In Alaska, the term for absconding is 30 days compared to 3-10 days for other technical violations (Alaska Stat. § 33.16.215).
- ²⁸ Though these appear to be robust markers, far fewer states take other steps that are essential to maximizing offenders’ opportunities to be fully prepared to appear before the parole board. Only 10 of 23 responding states appear to give information that gauges inmates’ progress towards parole release. For this reason, the lever has been placed in Table 3 under fewer states and modest impact.

The Robina Institute of Criminal Law and Criminal Justice is located at the University of Minnesota Law School. The Robina Institute connects research and education with practice to create transformative change in sentencing laws and correctional policies.

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