

Chapter 32

PAROLE*

A. Introduction

Parole is a system of discretionary release for prisoners who have not yet completed their maximum sentences. Parole also refers to the process of your supervised re-joining the community while you serve the remainder of your sentence outside of prison.¹ In this Chapter, Part B provides an overview of the parole system of New York State. Parts C through I examine New York's parole system in detail. Part C explains the calculation of the minimum imprisonment period; Part D discusses the Shock Incarceration Program; Part E discusses the sentence of parole supervision; Part F explains parole release hearings; Part G reviews release on parole; Part H covers parole revocation; Part I discusses release from parole supervision; Part J looks at the parole system of California; Part K examines the Florida state system; Part L examines the Illinois state system; Part M examines the Texas state system; and Part N examines the Michigan parole system. Prisoners in other states must research their own states' laws on parole, as parole laws tend to be very different from state to state and parole has been completely eliminated in many states. See Chapters 35 of the *JLM*, "Getting Out Early: Conditional and Early Release," for information on conditional and early release, and see Chapter 39 of the *JLM*, "Temporary Release Programs," for information on temporary release programs.

B. New York

In New York, the Division of Parole and the Department of Correctional Services recently merged and became the Department of Corrections and Community Supervision (DOCCS).² The parole law is found in the N.Y. Executive Law § 259 and in Title 9 of New York State Compilation of Codes, Rules and Regulations, Part 8000.³ The parole law requires the DOCCS to adopt written guidelines for use in making parole decisions.⁴ The DOCCS also publishes pamphlets, handbooks, and other materials that explain the parole process.⁵

For further information, check with your institution's parole officer, pre-release center, or law library. They should have the New York State Parole Handbook, "Questions and Answers Concerning Parole Release and Supervision."⁶ This pamphlet gives the DOCCS' answers to questions on issues

* This Chapter was revised by JoAnn Kintz, based in part on a previous version written by Mary Beth Myles. Special thanks to Professor Philip Genty of Columbia Law School for his valuable comments.

1. This supervised release can be as a result of a discretionary parole release or a mandatory supervised release ordered by the sentencing judge.

2. In New York, Parole, Conditional Release, Work Release and Temporary Release programs are run by the Department of Corrections and Community Supervision. N.Y. CORRECT. LAW §§ 150, 151, 851, 852 (McKinney 2014); N.Y. CORRECT. LAW § 10 (McKinney 2014); N.Y. PENAL LAW § 70.40 (McKinney 2009). Probation is handled by the Division of Probation and Correctional Alternatives. N.Y. EXEC. LAW § 240 (McKinney 2018). Because the combining of the departments is so recent, the state laws may still describe the Division of Parole and the Department of Correctional Services as separate departments.

3. N.Y. COMP. CODES R. & REGS. tit. 9, § 8000 (2020). The New York Official Compilation of Codes, Rules, and Regulations is in a green three-ring binder, and it should be in your prison library.

4. N.Y. EXEC. LAW § 259-c(4) (McKinney 2018). Though the Guidelines are written and codified, the Parole Board is not absolutely bound to follow them.

5. These materials can be located online at <https://doccs.ny.gov/community-supervision-0> or by contacting the N.Y. State Department of Corrections and Community Supervision at (518) 473-9400.

6. COMMUNITY SUPERVISION HANDBOOK, QUESTIONS AND ANSWERS CONCERNING RELEASE AND COMMUNITY SUPERVISION, N.Y. STATE DEPT. OF CORR. & CMTY. SUPERVISION (2019), *available at* https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Mar. 10, 2020).

regarding time served, institutional parole and parole board activities in state correctional facilities, parole supervision, the revocation process, the Sentencing Reform Act of 1995, interstate parole, juvenile offenders, restoration of rights, executive clemency, appeals, and access to parole files. If available, you should also review other DOCCS publications, especially the *Guidelines Applications Manual*, and look at the laws and regulations themselves.⁷

This Chapter describes the practices and procedures of the Parole Board. Parole has five basic phases:

- (1) Determination of your minimum sentence;
- (2) Parole release considerations, preparing for your parole hearing, and the hearing itself;
- (3) Release on parole and supervision by parole officers;
- (4) Constitutional due process protections required in the parole revocation process; and
- (5) Release from parole and the restoration of full rights.

You can appeal a Parole Board decision in two ways. The first appeal is an administrative procedure conducted through the Appeals Unit of the Parole Board.⁸ You *must* first try the administrative process within the DOCCS. If that fails and you wish to continue, you may then appeal through an Article 78 proceeding in the New York courts.⁹ The courts have adopted an extremely tough test for review of any Parole Board decision. In order for courts to intervene in Parole Board decisions, you must show “irrationality bordering on impropriety on the part of the parole board.”¹⁰ In other words, you must show that the Parole Board’s decision did not make sense and was close to being improper in order for a court to step in. It is very unusual for a court to find that a Parole Board’s decision was wrong.

C. Minimum Term of Incarceration Under an Indeterminate Sentence & Conditional Release Under a Determinate Sentence

There are two types of sentences the sentencing court can give: indeterminate and determinate. An “indeterminate” sentence is when the court assigns a range of minimum and maximum time a prisoner must serve, rather than a specific number of days or years. A determinate (“flat”) sentence is a fixed period of time you must spend in prison. If you are serving a determinate sentence, you are not eligible for parole but may qualify for conditional release.

If you were given an indeterminate sentence, the sentencing court should have set the minimum amount of time you must serve in a state correctional facility before you become eligible for release.¹¹ Since 1995, New York has been moving away from indeterminate sentencing and discretionary parole release to the system of determinate sentences. Determinate sentences are required for persons

7. A copy of the Division of Parole’s Release Decision-Making Guidelines Application Manual should be available at the law library for each state prison or by contacting your Facility Parole Officer.

8. The appeals procedure is the same for Parole Board decisions regarding a minimum period of imprisonment (MPI), parole release, parole rescission, and final revocation. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.1(a).

9. For a discussion of Article 78 proceedings, see Chapter 22 and Part C(6) of Chapter 5 of the *JLM*.

10. *In re Russo v. N.Y. State Bd. of Parole*, 50 N.Y.2d 69, 77, 405 N.E.2d 225, 229, 427 N.Y.S.2d 982, 986 (1980) (holding that the Parole Board may impose an MPI for a longer period of time than the sentencing judge could have fixed). The *Russo* standard has been held to be a review of “whether the Board’s decision to deny parole was arbitrary or capricious.” *Silmon v. Travis*, 95 N.Y.2d 470, 477, 741 N.E.2d 501, 505, 718 N.Y.S.2d 704, 708 (2000) (holding it was not arbitrary or capricious for the Board to consider a lack of remorse and insight in denying parole). See *Jorge v. Hammock*, 84 A.D.2d 362, 364, 446 N.Y.S.2d 585, 587 (3d Dept. 1982) (holding complete disregard of a sentencing judge’s recommendation in setting a minimum incarceration period was inappropriate and entitled prisoner to a new hearing).

11. N.Y. PENAL LAW § 70.00(3) (McKinney 2009). If you were sentenced before September 1, 1980, the Parole Board—instead of the sentencing court—will fix your minimum term. See *Schwimmer v. Hammock*, 59 N.Y.2d 636, 637, 449 N.E.2d 1266, 1267, 463 N.Y.S.2d 188, 189 (1983) (holding the Parole Board had the authority to set prisoner’s minimum period of incarceration (MPI) because the law in existence at the time of sentencing did not give the sentencing court the power to set an MPI).

sentenced as second violent felony offenders after 1995, or first violent felony offenders after 1998.¹² Determinate sentences are also required for felony drug offenders sentenced after 2004.¹³ Persons sentenced to a determinate sentence as violent or second violent felony offenders are eligible for conditional release when they have served six-sevenths of their sentence.¹⁴ Persons serving determinate sentences for felony drug offenses are eligible for merit time/conditional release after serving five-sevenths of their sentence.¹⁵

But there are three exceptions. First, you may get early parole if you successfully complete a shock incarceration program¹⁶ (described in Part D of this Chapter). Second, you may appear before the Parole Board prior to the expiration of your minimum sentence if you are eligible for “merit time.”¹⁷ Most categories of non-violent felonies qualify for merit time.¹⁸ If you are serving a sentence that qualifies and you have earned merit time, you will appear before the Parole Board for release consideration after you have served five-sixths of your minimum sentence for a determinate sentence.¹⁹ If you are serving an indeterminate sentence for a felony drug offense, you may earn additional merit time and appear before the Parole Board for release consideration after serving two-thirds of your minimum sentence, and for all other indeterminate sentences, you may earn additional merit time and appear before the Parole Board for release consideration after serving five-sixths of your minimum sentence.²⁰ Third, certain categories of felony drug offenses are eligible for a sentence of parole supervision²¹ (described in Part E of this Chapter).

D. Shock Incarceration Program

Shock Incarceration is a Department of Correctional Services program in which selected eligible prisoners participate in a structured six-month program at a Shock Incarceration facility.²² Shock Incarceration is a highly structured program that requires daily exercise, a full work day, daily meetings, and substance abuse counseling. Participants are also required to participate in high school equivalency classes through the educational programs offered.²³ Generally, participants who successfully complete the program are issued a Certificate of Earned Eligibility and become eligible for parole release consideration before completing the court-imposed minimum sentence.²⁴ See Part F(5) of this Chapter for additional information on Certificates of Earned Eligibility.

A prisoner may submit an application to the Shock Incarceration screening committee for permission to participate in the shock incarceration program.²⁵ Eligible prisoners are also screened to insure that their participation in the program is “consistent with the safety of the community, the

12. N.Y. PENAL LAW §§ 70.02, 70.04 (McKinney 2009).

13. N.Y. PENAL LAW §§ 70.70, 70.71 (McKinney 2009).

14. N.Y. CORRECT. LAW § 803(1)(c) (McKinney 2014).

15. N.Y. CORRECT. LAW § 803(1)(d) (McKinney 2014).

16. N.Y. CORRECT. LAW §§ 865-867 (McKinney 2014); N.Y. EXEC. LAW 259-i(2)(e) (McKinney 2018).

17. Merit time is time credit given for such actions as good behavior, efficient performance of duties, and success in a treatment program. N.Y. CORRECT. LAW. § 803(1)(d)(iv) (McKinney 2014).

18. N.Y. CORRECT. LAW § 803(1)(d)(ii) (McKinney 2014).

19. N.Y. CORRECT. LAW § 803(1)(d)(iii) (McKinney 2014).

20. N.Y. CORRECT. LAW § 803(1)(d)(iii) (McKinney 2014).

21. N.Y. PENAL LAW § 70.70(3)(d) (McKinney 2014).

22. If you complete a shock incarceration program, you are eligible to receive a Certificate of Earned Eligibility under Section 805 of N.Y. Corrections Law. N.Y. CORRECT. LAW §§ 805, 867(4) (McKinney 2014). See Part F(5) of this Chapter for additional information on Certificates of Earned Eligibility.

23. N.Y. COMP. CODES R. & REGS. tit. 7, §1800.6(b) (2020).

24. N.Y. CORRECT. LAW § 805 (McKinney 2014).

25. N.Y. CORRECT. LAW § 867(1) (McKinney 2014). To be eligible, you must be under the age of 40 and have been at least 16 years old when you committed the crime for which you are incarcerated. You must be eligible for parole within three years and not have been convicted of a felony with an indeterminate sentence. The commission of certain crimes will also make you ineligible, including but not limited to a violent felony offense, an A-1 felony offense, manslaughter in the second degree, or rape in the second or third degree. N.Y. COMP. CODES R. & REGS. tit. 7, §1800.4 (2020).

welfare of the applicant, and the selection criteria for the program.”²⁶ Therefore, even if you meet the eligibility criteria for the program, you still may not ultimately be chosen to participate.

E. Sentence of Parole Supervision

If you have a history of drug or alcohol addiction, and abuse of that substance has led you to commit illegal acts, you may be given a sentence of parole supervision (also known as a “Willard Sentence” after the Willard Drug Treatment Center). You are eligible for a sentence of parole supervision only if you satisfy the following three requirements:

- (1) You have a history of drug or alcohol addiction that has significantly contributed to your illegal acts,
- (2) A sentence of parole supervision would likely help you become or stay drug-free, and
- (3) A sentence of parole supervision would not risk “public safety or public confidence in the integrity of the criminal justice system.”²⁷

Furthermore, you can only be given a sentence of parole supervision for conviction of certain specified crimes.²⁸ When the court considers whether to give you a sentence of parole supervision, the prosecutor may either agree with or oppose the sentence, and the court is permitted, but not required, to consider the prosecutor’s view.

If you receive a sentence of parole supervision, you will be placed under the supervision of the state DOCCS and will be sent immediately to a reception center for no more than ten days.²⁹ Once you arrive at the reception center, the law requires that you be given a copy of the conditions of your parole. You will need to acknowledge in writing that you have received a copy of these conditions.³⁰ Sometime after you leave the reception center, you will be placed in a drug treatment campus for ninety days.³¹ While you are at the campus, the DOCCS will assess your needs and develop a personal drug treatment

26. N.Y. COMP. CODES R. & REGS. tit. 7, §1800.3(c) (2020).

27. N.Y. CRIM. PROC. LAW § 410.91(3) (McKinney 2005); *People v. Denué*, 275 A.D.2d 863, 864, 713 N.Y.S.2d 783, 784 (3d Dept. 2000) (denying petitioner a sentence of parole supervision because he did not show that he had a history of substance dependence that significantly contributed to his criminal conduct or that he was not subject to an undischarged term of imprisonment).

28. The specified crimes are listed in N.Y. CRIM. PROC. LAW § 410.91(5) (McKinney 2020) and include the following: burglary in the third degree as defined in N.Y. PENAL LAW § 140.20 (McKinney 2010); criminal mischief in the third degree as defined in N.Y. PENAL LAW § 145.05 (McKinney 2010); criminal mischief in the second degree as defined in N.Y. PENAL LAW § 145.10 (McKinney 2010); grand larceny in the fourth degree as defined in N.Y. PENAL LAW §§ 155.30(1)–(6), (8)–(10) (McKinney 2010); grand larceny in the third degree as defined in N.Y. PENAL LAW § 155.35 (McKinney 2010) (except where the property consists of one or more firearms, rifles, or shotguns); unauthorized use of a vehicle in the second degree as defined in N.Y. PENAL LAW § 165.06 (McKinney 2010); criminal possession of stolen property in the fourth degree as defined in N.Y. PENAL LAW §§ 165.45(1)–(3), (5)–(6) (McKinney 2010); criminal possession of stolen property in the third degree as defined in N.Y. PENAL LAW § 165.50 (McKinney 2010) (except where the property consists of one or more firearms, rifles, or shotguns); forgery in the second degree as defined in N.Y. PENAL LAW § 170.10 (McKinney 2010); criminal possession of a forged instrument in the second degree as defined in N.Y. PENAL LAW § 170.25 (McKinney 2010); unlawfully using slugs in the first degree as defined in N.Y. PENAL LAW § 170.60 (McKinney 2010); criminal diversion of medical cannabis in the first degree as defined in N.Y. PENAL LAW § 179.10 (McKinney 2010); an attempt to commit any of the aforementioned offenses if such attempt constitutes a felony offense; or a class B felony offense defined in N.Y. PENAL LAW § 220 (McKinney 2008) where a determinate sentence is imposed pursuant to N.Y. PENAL LAW § 70.70(2)(a) (McKinney 2009); or any class C, class D or class E controlled substance or cannabis felony offense as defined in N.Y. PENAL LAW § 220 or § 221 (McKinney 2008). You are only eligible if (i) you are a second felony offender as defined in N.Y. CRIM. PROC. LAW § 410.91(5) (McKinney 2020) who stands convicted of no other felony offense; (ii) you have not previously been convicted of either a violent felony offense as defined in N.Y. PENAL LAW § 70.02 or a class A or class B felony offense (other than a class B felony offense defined in article 220 of the penal law, which contains a variety of drug offenses); and (iii) you are not subject to an undischarged term of imprisonment. N.Y. CRIM. PROC. LAW § 410.91(2) (McKinney 2005).

29. N.Y. CRIM. PROC. LAW § 410.91(1) (McKinney 2005).

30. N.Y. CRIM. PROC. LAW § 410.91(6) (McKinney 2005).

31. N.Y. CRIM. PROC. LAW § 410.91(1) (McKinney 2005).

program. In most cases, this program will include help from local community organizations that work with the DOCCS.³² After you have completed the drug treatment program at the campus, you will be given money, clothes, and transportation from the drug treatment campus to the county where your parole supervision and drug treatment plan will continue.³³

F. Parole Release Hearing and Appeals

1. Your Right to a Parole Release Hearing

The parole release hearing is an interview where the Parole Board determines whether you should be released from prison before you serve your maximum sentence. You are entitled to a parole release hearing at least one month before the end of your minimum period of incarceration.³⁴ There are some situations in which you may become eligible for parole before you complete your minimum sentence. You may get early parole if you complete a Shock Incarceration program, if you are eligible for and earn merit time, or if you serve and successfully complete a sentence of parole supervision.³⁵ (See Parts D and E of this Chapter for a description of the Shock Incarceration Program and the Sentence of Parole Supervision.) You do not have to file for a parole release hearing; one will be scheduled for you automatically. If you believe your scheduled parole release hearing is past due, you can contact the pre-release center or parole officer at your institution.

2. Steps to Take Before the Hearing

Only the Parole Board can decide to release you on parole; there is no statutory or constitutional right to parole release.³⁶ Nevertheless, there are ways you can improve your chances of being released on parole. While you are in prison, the more that you do to get ready for your re-entry into the community, the better your chances become of convincing the Board to release you on parole. However, in recent years, the Parole Board has placed a great deal of importance on the seriousness of the crime when making decisions about prisoners who are put in prison for violent felonies. In addition to the facts and circumstances of the underlying crime, the Parole Board is likely to consider five basic areas:

- (1) *Education*—Did you take any classes while in prison? Those classes might include a GED course, vocational training, or college;
- (2) *Employment*—Did you try to develop any job skills? These could range from making furniture to kitchen work, as long as it is a skill that relates to life and might help with employment outside of prison;
- (3) *Issues That Led to Incarceration*—Can you address the problems that led to your conviction? For example, if you are in on a drug use charge, did you participate in any treatment programs?;
- (4) *Likelihood of Community Reintegration*—Have you had any contact with your family or community? Even if you cannot show family ties like letters or visits, developing a contact with a halfway house or an ex-offender service group will help; and
- (5) *Future Plans and Goals*—You should be prepared to discuss your immediate plans and future goals for your life after release on parole.

In short, your activities while you are in prison affect your chances for parole.

32. N.Y. CRIM. PROC. LAW § 410.91(6) (McKinney 2005).

33. N.Y. CRIM. PROC. LAW § 410.91(7) (McKinney 2005).

34. N.Y. EXEC. LAW § 259-i(2)(a) (McKinney 2018).

35. N.Y. CORRECT. LAW § 805 (McKinney 2014).

36. See, e.g., *Barna v. Travis*, 239 F.3d 169, 171 (2d Cir. 2001) (holding that a prisoner does not have a justifiable expectation of release on parole, and that it is up to the Parole Board to determine prisoner eligibility for parole); *Boothe v. Hammock*, 605 F.2d 661, 664 (2d Cir. 1979) (holding that New York state's statutory scheme of parole did not create a due process entitlement to parole). However, as discussed in Part F(5) of this Chapter, in 1987 New York adopted the Certificate of Earned Eligibility program, which created a presumption in favor of release on parole in certain situations.

As an eligible parole candidate, you must complete what is known as a parole or release plan before your parole release hearing. This plan will be part of your Parole Board Report.³⁷ The Guidelines describe “release plans” as including the “community resources, employment, education and training and support services” that are available to you in prison.³⁸ One of the most important parts of your parole plan is your plan for employment or education after release. If you are granted parole but have not created a satisfactory plan, your release date will be pushed back until you have made one.³⁹ Therefore, if you are finding it difficult to develop a parole plan, you must get some help as soon as possible. Otherwise, you risk delaying or losing your parole release.

For help in preparing your parole plan, contact the pre-release center or parole officer at your institution. The parole regulations state that the DOCCS should “assist inmates eligible for . . . parole . . . to secure employment, educational or vocational training.”⁴⁰ In addition to contacting the pre-release center and/or institutional parole officers, you should use any other contacts you have (like former employers, family, or friends) to get a job while still in prison. For information on employment in New York City, you can contact the New York State Department of Corrections and Community Supervision at (518) 473-9400. The Fortune Society is another good source of support that may lead to possible employment. It offers one-on-one counseling and tutoring. You can write to the Fortune Society at 29-76 Northern Boulevard, Long Island City, NY 11101 or call (212) 691-7554.

Your institutional record is also an important part of your Inmate Status Report. It will list your program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy, and relationships with staff and other prisoners.⁴¹ It is important that this information present a favorable image to the Parole Board. However, while it may be helpful to maintain a good-standing prison record to make a good impression on the Parole Board, it is important to note that good conduct alone does not guarantee parole.⁴²

To obtain parole, your record and conduct must show the Parole Board that:

- (1) You “will live and remain at liberty without violating the law,”
- (2) Your release will not harm society, and
- (3) You will not “deprecate” the seriousness of the crime you committed (make the crime seem less serious) and undermine respect for the law.⁴³

If you have been issued a Certificate of Earned Eligibility, which is explained in Part F(5) of this Chapter, the Parole Board will apply a lesser standard of review in determining your parole.⁴⁴

37. N.Y. EXEC. LAW § 259-i(2)(c)(A)(iii) (McKinney 2010); N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.3 (2020). New York defines the Parole Board Report as follows: The Parole Board Report is prepared by an Institutional Parole Officer and will include information such as: (1) court information on the present offense, the judge’s sentence, etc.; (2) your age, place of birth, occupation, marital status, and other personal characteristics; (3) your legal history (prior offenses); (4) your institutional record, including any disciplinary record, your medical history and involvement in educational and recreational programs; (5) your inmate statement, which includes comments regarding the offense that resulted in your conviction, as well as your comments about your prior record; and (6) your Parole Plan. N.Y. State Dept. of Corr. & Cmty. Supervision, *New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision* (2020), at 15, available at https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Feb. 29, 2020).

38. N.Y. EXEC. LAW § 259-i(2)(c)(A)(iii) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.3.

39. N.Y. State Dept. of Corr. & Cmty. Supervision, *New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision* (2020), at 13–15, available at https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Feb. 29, 2020).

40. N.Y. COMP. CODES R. & REGS. tit. 9, § 8000.1(a)(5).

41. N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.2(d)(1) (2020).

42. N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2018).

43. N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2018).

44. N.Y. COMP. CODES R. & REGS. tit. 9, § 8010.2(a) (2020) (“[R]eceipt of a certificate of earned

Nevertheless, it is a good idea to build the strongest record of education, program participation, and work that you can since your activities while in prison directly affect this part of the Inmate Status Report.

If the Parole Board grants parole, some prisoners may be required to find acceptable housing before being released. The Parole Board's requirements for approved housing may be very challenging (for example, prisoners may be banned from living near a school or a school bus stop, may not be allowed to live alone, or may not be allowed to live in a shelter).⁴⁵

If you are serving a sentence for a non-violent felony, other than those involving manslaughter, homicide, or sexual misconduct, you may be eligible for presumptive release.⁴⁶ Presumptive release allows you to be released to parole supervision without appearing before the Parole Board as long as you have no serious disciplinary violations and have not brought a frivolous court proceeding while in prison.⁴⁷ You must submit an application in order to be considered for presumptive release and should talk with your Correction Counselor for more information on the program application.⁴⁸ Individuals who successfully complete the Shock Incarceration program are eligible for presumptive release.⁴⁹

3. The Parole Release Hearing

A two- or three-member panel of the Parole Board conducts the parole release hearing during visits to each facility.⁵⁰ Only one member of the panel will review your parole plan in detail. The other panel members will be present at the interview, but will generally defer to the judgment of the member who read the file. Instead of reading the full report, the other panel members will receive a summary of your parole report. The Parole Board members, the facility parole officer and staff, and a hearing reporter will be present at the release interview. You are not permitted to have an attorney with you at this interview.⁵¹

During the parole release interview, panel members will ask you questions about:

- (1) Your plans if you are released on parole;
- (2) Your conduct and activities while in prison;
- (3) Your criminal record, including past crimes and time served; and
- (4) The events surrounding the crime for which you are presently incarcerated.

It is important to note that the panel members will consider whether you understand why the crime happened, whether you feel any remorse for the crime, and what you would do differently in the future. You must answer all questions honestly, but be sure to present your side of the story in answering any difficult questions. Remember, if your parole is denied and you want to appeal, the basis for any appeal *must* appear in the hearing record. So, you must present all your information and reasons for parole at the interview.

eligibility...shall create a presumption in favor of parole release."); *see also* N.Y. CORRECT. LAW § 805 (McKinney 2014).

45. *See People ex rel. Travis v. Coombe*, 219 A.D.2d 881, 881–882, 632 N.Y.S.2d 340, 341–342 (4th Dept. 1995) (holding that parole grantee was not entitled to immediate release, since “[n]o residence was located for relator that was acceptable to the Division of Parole”).

46. N.Y. CORRECT. LAW § 806 (McKinney 2014).

47. N.Y. CORRECT. LAW §§ 806(1)(i)–(iii) (McKinney 2014).

48. N.Y. CORRECT. LAW § 806(3) (McKinney 2014); *see also* State of New York, Department of Corrections and Community Supervision, Directive No. 4791, Presumptive Release (2017).

49. N.Y. CORRECT. LAW § 806(1) (McKinney 2014).

50. COMMUNITY SUPERVISION HANDBOOK, QUESTIONS AND ANSWERS CONCERNING RELEASE AND COMMUNITY SUPERVISION, N.Y. STATE DEPT. OF CORR. & CMTY. SUPERVISION 13 (2019), *available at* https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Mar. 10, 2020); New York State law also says that the Board of Parole “shall consist of not more than nineteen members appointed by the governor with the advice and consent of the senate.” N.Y. EXEC. LAW § 259-b(1) (McKinney 2018).

51. N.Y. STATE DEPT. OF CORR. & CMTY. SUPERVISION, COMMUNITY SUPERVISION HANDBOOK, QUESTIONS AND ANSWERS CONCERNING RELEASE AND COMMUNITY SUPERVISION 13 (2019), *available at* https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Mar. 10, 2020).

Be sure to bring to your release hearing any documents that would make a good impression on the panel members, such as program certificates, diplomas, or letters of recommendation. These should already be in your parole file, but sometimes institutional authorities file them incorrectly.

The Parole Law *requires* the Parole Board to take into consideration *all* of the following factors in determining early release on parole:

- (1) Your institutional record;
- (2) Your academic achievements;
- (3) Your training or work assignments;
- (4) Any therapy you have had;
- (5) Interpersonal relationships with staff and other prisoners;
- (6) Your performance, if any, in a release program;
- (7) Any release plans involving community resources, education, and training support services;
- (8) Any deportation orders;
- (9) Any written or oral statement of the crime victim;⁵²
- (10) The seriousness of the offense for which you are presently incarcerated;⁵³
- (11) Recommendations of the sentencing court and district attorney;
- (12) The recommendation of your attorney at trial;
- (13) The pre-sentence probation report;
- (14) Any mitigating and aggravating factors;⁵⁴
- (15) Activities following arrest and prior to conviction;⁵⁵ and
- (16) Any prior criminal record.⁵⁶

If the Board fails to consider relevant statutory factors in determining your parole, you may have grounds for appealing the parole decision.⁵⁷ However, the Board does not have to give each factor equal weight.⁵⁸

The Board decides whether or not to grant parole either on the day of the hearing or a few days later. Typically, the panel will make a decision immediately after you leave the room. The Parole Board has a large amount of decision-making power in deciding whether or not you are eligible for parole. Beyond the factors listed above, the Parole Board establishes its own guidelines to determine when a prisoner is eligible for parole,⁵⁹ and it currently sets a high standard. As the Second Circuit stated in *Barna v. Travis*, “the New York parole scheme is not one that creates in any prisoner a legitimate

52. The Parole Board will also consider any statements made on the victim’s behalf by a representative.

53. The Parole Board will consider both the type of sentence and the length of the sentence.

54. Mitigating factors are circumstances in your crime that do not excuse the criminal conduct but might make the Board view your crime less harshly—for example, if you had no prior criminal record. Aggravating circumstances are those that might make the Board view your crime more harshly—for example, if your crime affected a large number of people.

55. It is important to effectively use your pre-conviction time (that is, the time following your arrest but before conviction and sentencing), especially if you are out on bail. Seeking employment—or, if you already have a job, keeping a good record at that job—can sometimes help justify a lower sentence and early release on parole.

56. N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2018).

57. *See, e.g.,* King v. N.Y. State Div. of Parole, 190 A.D.2d 423, 431, 598 N.Y.S.2d 245, 250 (1st Dept. 1993), *aff’d*, 83 N.Y.2d 788, 791, 632 N.E.2d 1277, 1278, 610 N.Y.S.2d 954, 955 (1994) (holding that the Parole Board has a duty “to give fair consideration” to each person who comes before it, and where the record “convincingly demonstrates” that the Board did not fairly consider the proper standards in reaching its decision, courts must intervene); *but see, e.g.,* Valderrama v. Travis, 19 A.D.3d 904, 905, 796 N.Y.S.2d 758, 759 (3rd Dept. 2005) (holding that a parole decision made in accordance with the requirements of the statutory guidelines is not subject to further judicial review unless it is affected by irrationality bordering on impropriety).

58. *See* Geames v. Travis, 284 A.D.2d 843, 843, 726 N.Y.S.2d 506, 506 (3d Dept. 2001) (holding the Parole Board does not have to weigh each factor equally; the heavy weight put on crime severity and criminal history was acceptable in this situation); King v. N.Y. State Div. of Parole, 190 A.D.2d 423, 431, 598 N.Y.S.2d 245, 250 (1st Dept. 1993), *aff’d*, 83 N.Y.2d 788, 791, 632 N.E.2d 1277, 1278, 610 N.Y.S.2d 954, 955 (1994) (holding that although it is not necessary for the Parole Board to refer to every factor or for the board to give each factor equal weight, the Board must consider each factor laid out in the law).

59. N.Y. EXEC. LAW § 259-c(4) (McKinney 2018).

expectancy of release.”⁶⁰ Even though the Parole Board must consider the above factors, the list is only intended as a guide. In recent years the Board has given particular weight to the factors of the seriousness of the crime and past criminal history for individuals in prison for violent felonies.

4. Victim Impact Statement

A victim impact statement is a written statement to the Parole Board by the crime victim or the victim's family, describing the effect of the crime on the victim's life or on his or her family.⁶¹ The victim or the victim's family must submit the statement at least ten business days before your parole hearing.⁶² You usually cannot see the victim's (or the victim's family's) statement unless the victim or court authorizes you to do so.⁶³

Whether or not there is a victim impact statement in your file, you can ask as many people as possible from your family, your community, and your legal team to write letters to the Parole Board in support of your release. If the letters come to you directly, photocopy them (or ask someone to photocopy them for you) and ask the parole officer at your facility to add them to your file. You should also bring these letters to your pre-parole interview and to the parole hearing itself.

5. Certificate of Earned Eligibility

The “Earned Eligibility Program”⁶⁴ was enacted to address the problem of overcrowding in state prisons. Under the program, once you are in custody, you should be assigned a work and treatment program “as soon as practicable.”⁶⁵ Two months before your minimum term expires, the DOCCS will review your institutional record to determine whether you have complied with your program. If you have successfully participated in this program, DOCCS *may* issue you a “Certificate of Earned Eligibility.”⁶⁶ Prisoners serving an indeterminate sentence with a minimum term of eight years are not able to receive a Certificate of Earned Eligibility. It is also important to note that even if you successfully complete the program, you may still be denied a Certificate of Earned Eligibility since the decision to issue a Certificate of Earned Eligibility is discretionary.⁶⁷ This means that it is entirely up to DOCCS to determine whether to grant you a Certificate of Earned Eligibility and DOCCS is not required to give you one even if you complete the program. A court of law cannot force DOCCS to issue you a Certificate of Earned Eligibility, even if you have completed your treatment program; however, DOCCS cannot arbitrarily (randomly or unreasonably) deny a Certificate of Earned Eligibility. In such instances, a court may review the denial, although it is important to remember that courts often defer to the opinion of DOCCS, except in unusual or extreme circumstances.

If you have a Certificate of Earned Eligibility and have served your minimum period of incarceration, the standard for parole release is easier to meet.⁶⁸ The Parole Board will not consider

60. *Barna v. Travis*, 239 F.3d 169, 170–171 (2d Cir. 2001) (holding that denial of parole did not violate the Due Process or *Ex Post Facto* clauses, since petitioners did not have “a legitimate expectancy of release that is grounded in the state's statutory scheme”); *see also* *Graziano v. Pataki*, 689 F.3d 110, 114–15 (2d Cir. 2012) (applying *Barna*).

61. N.Y. EXEC. LAW § 259-i(2)(c)(A)(v) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.4 (2020).

62. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.4(b) (2020).

63. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.4(e) (2020).

64. N.Y. CORRECT. LAW § 805 (McKinney 2014).

65. N.Y. CORRECT. LAW § 805 (McKinney 2014).

66. N.Y. CORRECT. LAW § 805 (McKinney 2014). *See* *Klos v. Haskell*, 835 F. Supp. 710, 723 (W.D.N.Y. 1993), *aff'd*, 48 F.3d 81, 89 (2d Cir. 1995) (stating the Commissioner and Deputy Commissioner of the Department of Corrections and Community Supervision may exercise “their discretion, without restraint, to remove an inmate from participation in the [Certificate of Earned Eligibility] program”).

67. *See* *Frett v. Coughlin*, 156 A.D.2d 779, 781, 550 N.Y.S.2d 61, 63 (3d Dept. 1989) (“Successful participation in the program is merely a threshold requirement which activates the Commissioner's discretionary power to issue a Certificate of Earned Eligibility. [S]tatute . . . does not create a liberty interest in receiving a Certificate of Earned Eligibility . . . even upon successful participation in the program, the Commissioner may deny the certificate.”).

68. N.Y. CORRECT. LAW § 805 (McKinney 2014).

your release if there is a reasonable probability that it will not “deprecate the seriousness of [the] crime.”⁶⁹ However, when you possess a Certificate of Earned Eligibility, the Board presumes you will probably live and remain at liberty without violating the law—which means unless the Board affirmatively finds otherwise, you should get parole.

One month prior to the expiration of your minimum period of incarceration (MPI), you will be interviewed by members of the Board for release consideration.⁷⁰ The Parole Board will review:

- (1) The institutional record, including program goals and accomplishments, academic achievements, vocational education training or work assignments, therapy and interactions with staff and inmates;
- (2) Performance, if any, as a participant in a temporary release program;
- (3) Release plans, including community resources, employment, education and training, and support services available to the inmate;
- (4) Any deportation order issued by the federal government against the inmate while in the custody of the Department of Corrections and Community Supervision and any recommendation regarding deportation made by the Commissioner of the Department of Corrections and Community Supervision pursuant to section 147 of the Correction Law;⁷¹
- (5) Any statement made or submitted to the Board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated;
- (6) The length of the determinate sentence to which the inmate would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the Penal Law for a felony defined in article 220 or article 221 of the Penal Law;
- (7) The seriousness of the offense with due consideration to the type of sentence and length of sentence;
- (8) Recommendations of the sentencing court, the district attorney, and the attorney who represented the inmate in connection with the conviction for which the inmate is currently incarcerated;
- (9) The pre-sentence probation report, as well as consideration of any mitigating and aggravating factors and activities following arrest prior to the inmate's current confinement;
- (10) Prior criminal record, including the nature and pattern of the inmate's offenses, adjustment to any previous periods of probation, community supervision, and institutional confinement;
- (11) The most current risk and needs assessment that may have been prepared by the Department of Corrections and Community Supervision; and,
- (12) The most current case plan that may have been prepared by the Department of Corrections and Community Supervision pursuant to section 71-a of the Correction Law.⁷²

It is important to note that having a Certificate of Earned Eligibility does not automatically allow you to receive parole.⁷³ Rather, it “merely create[s] an expectation of parole ... that deserves due process protection.”⁷⁴ As in all cases, you have a right to be heard by the Parole Board, and if you are

69. N.Y. EXEC. LAW § 259-i(2)(c)(A)(McKinney 2018); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.2(a) (2020) (explaining that the Board may consider “other risk and need assessments or evaluations [that] are prepared to assist in determining the inmate's treatment, release plan, or risk of reoffending”).

70. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.1(a) (2020).

71. N.Y. CORRECT. LAW § 147 (McKinney 2014).

72. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.2(b) (2020). *See, e.g.*, *Pike v. N.Y. State Div. of Parole*, 188 A.D.2d 602, 603, 591 N.Y.S.2d 495, 496 (2d Dept. 1992) (holding that despite the Department of Correctional Services issuing petitioner a Certificate of Earned Eligibility, “petitioner's release was incompatible with the welfare of society, and that the petitioner would not remain at liberty without violating the law”); *Confoy v. N.Y. State Div. of Parole*, 173 A.D.2d 1014, 1015, 569 N.Y.S.2d 846, 847 (3d Dept. 1991) (holding that Parole Board's denial of parole based on the findings that the “[prisoner] would not remain at liberty without violating the law and that his release would be incompatible with the welfare of society” was supported by the law and evidence).

73. *See Howard v. N.Y. State Bd. of Parole*, 270 A.D.2d 539, 539–540, 704 N.Y.S.2d 326, 327 (3d Dept. 2000) (holding that the fact that the prisoner received a Certificate of Earned Eligibility did not stop parole board from being able to deny him parole release).

74. *People ex rel. Hunter v. Bara*, 144 Misc. 2d 750, 752, 545 N.Y.S.2d 65, 66 (Sup. Ct. Richmond County

denied parole, you have a right to be told why you were denied.⁷⁵ If a court determines that the Parole Board did not comply with these requirements, you may be entitled to a new hearing.⁷⁶

6. Denial of Parole Release

If you are denied parole, within two weeks of your first hearing, the Parole Board must provide you with a detailed written explanation stating the reasons you were denied parole.⁷⁷ Within two weeks of your first hearing, the Board will also set a date for reconsideration of your parole release, which must be scheduled within twenty-four months of your first hearing.⁷⁸ The twenty-four month notice period begins from the date of your last parole hearing.⁷⁹ Before the new hearing, you should (1) prepare a new parole plan; and (2) try to strengthen the parts of your record that the Board identified as reasons for denying parole. If you are denied parole more than once, you must continue to follow this procedure. If your parole is *revoked* (taken away), there is no time limit for rescheduling a parole release hearing. So, if your parole is revoked and you are returned to prison, the Parole Board may order that you be held for a period longer than twenty-four months before being given another parole hearing.⁸⁰ See Part H of this Chapter for more information on parole revocation.

7. Appealing Denial of Parole Release to Appeals Unit

You can appeal a denial of parole. This appeal is an administrative procedure conducted through the Appeals Unit of the Parole Board.⁸¹ You have the right to an attorney when you appeal to the Parole Board. If you cannot afford an attorney, one will be assigned to you.⁸² You can appeal a release proceeding on one or more of the following grounds:

- (1) The proceeding and/or determination violated lawful procedure, was influenced by an error of law, or was “arbitrary, capricious or otherwise unlawful;”⁸³
- (2) A Board member or members relied on mistaken or irrelevant information in making a decision, and this can be *shown in the record* of the hearing; or
- (3) The determination was excessive.⁸⁴

If you believe you have grounds for an appeal, immediately file a “notice of appeal,” which should be included in the notification of denial. Then request an attorney if you do not already have one. You

1989) (holding that the prisoner only has a liberty interest in the possibility of release on parole which required due process).

75. N.Y. EXEC. LAW § 259-i(2)(a)(i) (McKinney 2018) (effective until Sept. 1, 2020).

76. *See People ex rel. Hunter v. Bara*, 144 Misc. 2d 750, 752, 545 N.Y.S.2d 65, 67 (Sup. Ct. Richmond County 1989) (“If the Parole Board fails to comply with the statutory due process protection, the parole candidate is entitled to a new hearing rather than a habeas corpus relief . . . It does not give the petitioner a vested right to release.”).

77. N.Y. EXEC. LAW § 259-i(2)(a)(i) (McKinney 2018).

78. N.Y. EXEC. LAW § 259-i(2)(a)(i) (McKinney 2018) (effective until Sept. 1, 2020); N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.3(b) (2020). *See* N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.1 (2020).

79. N.Y. EXEC. LAW § 259-i(2)(a)(i) (McKinney 2018).

80. *See People ex rel. Matthews v. New York State Div. of Parole*, 58 N.Y.2d 196, 205, 447 N.E.2d 689, 693, 460 N.Y.S.2d 746, 750 (1983) (holding that denial of adjournment (delay) of parole revocation hearing did not violate due process).

81. The appeals procedure is the same for Parole Board decisions regarding a minimum period of imprisonment (MPI), parole release, parole rescission, and final revocation. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.1(a) (2020).

82. N.Y. EXEC. LAW § 259-i(4)(b) (McKinney 2018). You should write to the County Clerk for the county in which your prison is located and ask the Clerk to assign you a lawyer for the administrative appeal.

83. “Arbitrary, capricious or otherwise unlawful” means the Parole Board’s decision to deny parole was not reasonable and shows a clear error in judgment by the Board. *West v. N.Y. State Bd. of Parole*, 41 Misc. 3d 1214(A), 980 N.Y.S.2d 279 (Sup. Ct. 2013) (explaining that while the Board need not discuss all the factors outright, they must give reasonable consideration to all the statutory factors when making a determination regarding parole).

84. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.3(a) (2020) (emphasis added).

must file a notice of appeal within thirty days of receiving the notification of denial; otherwise, you will have waived your right to an appeal.⁸⁵

You should begin to prepare for your appeal by obtaining the parole release hearing minutes from: New York State Division of Parole, 97 Central Avenue, Albany, NY 12206.⁸⁶

You will have to pay for the parole release hearing minutes (the record of the proceeding). If you have an attorney and cannot afford to pay for the minutes, your attorney can get them for you. You may also make a written request for “[a]ll other nonconfidential, discoverable documents relating to the appeal.”⁸⁷ So, if you believe there is important information in your parole records to support your appeal, you may request permission to access it. However, you will not be given unrestricted access. Access to your parole records will be limited in the following ways:

- (1) You can only gain access to your case record at certain times—just before a scheduled appearance before the Board or a hearing officer, or prior to making an administrative appeal;⁸⁸
- (2) You can only access parts of the case record that the Board or the hearing officer will consider;
- (3) You will not be given access to diagnostic opinions that could seriously disrupt your institutional program,⁸⁹ information obtained from a confidential source, or information that might harm another person;⁹⁰ and
- (4) The DOCCS will not grant access to reports or materials from other agencies.⁹¹ You will only be allowed to review the record at the prison or at the area parole office that serves the prison.⁹²

8. If Your Administrative Appeal is Denied

If you make an administrative appeal and are denied relief and want to seek a court to review the decision, you can begin an Article 78 proceeding.⁹³ Remember, as discussed in Chapter 22 of the *JLM*, “How to Challenge Administrative Decisions Using Article 78 of the New York Civil Practice Law and Rules,” you must serve (properly deliver) your Article 78 petition to each respondent and the New York Attorney General within four months of the date when the Appeals Unit decision becomes final.⁹⁴ This four-month limit is called the “statute of limitations.”

If you pursue an Article 78 review, it is important to note that it is difficult to get a court to reverse the Parole Board’s decision. The Parole Board’s decisions are discretionary (left to the Parole Board’s choice) and are not subject to review by courts if the decision is made in accordance with what the law requires.⁹⁵ There are two ways for a prisoner to get a reversal of the Board’s decision. A prisoner must

85. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.1(b) (2020).

86. N.Y. EXEC. LAW § 259-i(6)(a)(i) (McKinney 2018) states that “[t]he board shall provide for the making of a verbatim record of each parole release interview, except where a decision is made to release the inmate to parole supervision, and . . . except when the decision of the presiding officer after such hearings result in a dismissal of all charged violations of parole, conditional release or post release supervision.”

87. N.Y. COMP. CODES R. & REGS. tit. 9, §§ 8000.5(c)(3), 8006.1(e) (2020). Nonconfidential, discoverable documents are materials that you are not restricted from seeing.

88. N.Y. COMP. CODES R. & REGS. tit. 9, § 8000.5(c)(1) (2020).

89. N.Y. COMP. CODES R. & REGS. tit. 9, § 8000.5(c)(2)(i)(a)(1) (2020).

90. N.Y. COMP. CODES R. & REGS. tit. 9, § 8000.5(c)(2)(i)(a)(3) (2020).

91. N.Y. COMP. CODES R. & REGS. tit. 9, § 8000.5(c)(2)(i)(b) (2020).

92. N.Y. COMP. CODES R. & REGS. tit. 9, § 8000.5(c)(6)(ii) (2020).

93. See Part C(6) of Chapter 5 of the *JLM* and Chapter 22 of the *JLM* for discussions of Article 78 proceedings.

94. N.Y. C.P.L.R. 217(1) (McKinney 2019).

95. N.Y. EXEC. LAW § 259-i(5) (McKinney 2018). See *Davis v. N.Y. State Div. of Parole*, 114 A.D.2d 412, 412, 494 N.Y.S.2d 136, 137 (2d Dept. 1985) (“[T]he division of parole’s release decisions are discretionary, and if made in accordance with the statutory requirements, such determinations are not subject to judicial review.”); *Ristau v. Hammock*, 103 A.D.2d 944, 945, 479 N.Y.S.2d 760, 761 (3d Dept. 1984) (requiring a showing of “irrationality bordering on impropriety to warrant intervention by the courts” in a Parole Board’s release decision, which is discretionary).

make a “convincing showing” that either (1) the Board did not consider the required factors or considered erroneous information,⁹⁶ or (2) acted “irrationally bordering on impropriety” in reaching its decision such that it was arbitrary and capricious.⁹⁷ The Parole Board may not consider the following factors in deciding whether to grant parole: “penal philosophy, the historical treatment of individuals convicted of murder, the death penalty, life imprisonment without parole, and the consequences to society if those sentences are not in place.”⁹⁸ Thus, if you are denied parole on the basis of one of those factors, you may have a right to a new hearing.⁹⁹ In addition, the Parole Board may not consider “illegally seized evidence which has already been suppressed in a criminal action,” or “public pressure” in determining whether or not to grant a prisoner parole.¹⁰⁰ The Parole Board may not deny parole on the grounds that the “best kind of treatment” for your emotional and physical problems would be to remain in prison.¹⁰¹ Finally, the Parole Board is required to consider any recommendations made by the sentencing court, and a reviewing court may order reversal and reconsideration if the Board fails to do so.¹⁰²

Again, despite these limited examples of court reversals, it is important to remember that courts generally defer to Parole Board decisions. Even in cases where the Parole Board based its decision to deny parole on factors other than those specified by the legislature, courts have upheld the decision,

96. *E.g.*, *Plevy v. Travis*, 17 A.D.3d 879, 880, 793 N.Y.S.2d 262, 263 (3d Dept. 2005) (reversing denial of parole and ordering a new parole hearing because the Parole Board improperly considered the petitioner’s prior violation of parole, which had been dismissed at the time, when determining denial of parole); *Lewis v. Travis*, 9 A.D.3d 800, 801, 780 N.Y.S.2d 243, 245 (3d Dept. 2004) (reversing denial of parole and granting a new parole hearing due to the Parole Board’s reliance on incorrect information about the petitioner’s conviction when making its determination); *Edge v. Hammock*, 80 A.D.2d 953, 954, 438 N.Y.S.2d 38, 39 (3d Dept. 1981) (reversing Parole Board’s determination of minimum period of imprisonment and ordering a new hearing because the Parole Board based its determination on crimes the petitioner had not been convicted of).

97. *Silmon v. Travis*, 95 N.Y.2d 470, 476, 741 N.E.2d 501, 504 (2000) (explaining when judges may intervene in decisions made by parole commissions); *see also* *Monroe v. Thigpen*, 932 F.2d 1437, 1442 (11th Cir. 1991) (noting that “[a] parole board may not engage in ‘flagrant or unauthorized action’” by knowingly relying on false information); *Russo v. N.Y. State Bd. of Parole*, 50 N.Y.2d 69, 77, 405 N.E.2d 225, 229, 427 N.Y.S.2d 982, 986 (1980) (rejecting assertion that parole board acted arbitrarily in setting minimum period of imprisonment at maximum sentence).

98. *King v. N.Y. State Div. of Parole*, 83 N.Y.2d 788, 791, 632 N.E.2d 1277, 1278, 610 N.Y.S.2d 954, 955 (1994) (requiring a new hearing before a different panel after finding prisoner was not given a proper parole hearing because “one of the Commissioners considered factors outside the scope of the applicable statute”).

99. *See* *King v. N.Y. State Div. of Parole*, 83 N.Y.2d 788, 791, 632 N.E.2d 1277, 1278, 610 N.Y.S.2d 954, 955 (1994).

100. *Quartararo v. Russi*, No. 45734/92, 1994 WL 16858139 at *20 (N.Y. Sup. Ct. Jan. 31, 1994). In *Quartararo v. N.Y. State Div. of Parole*, 224 A.D.2d 266, 637 N.Y.S.2d 721 (1st Dept. 1996), the court held that the Parole Board “improperly considered factors outside the scope of Executive Law § 259-i and in violation of a prior court order” and ordered a new hearing in front of a different panel. The court held that it was improper for the Parole Board to consider press accounts of the petitioner’s crime, unchallenged *ex parte* allegations for removal from a work release program, and photographs of the victim in reviewing the petitioner’s application for parole. *Quartararo v. Russi*, No. 45734/92, 1994 WL 16858139 at *25 (N.Y. Sup. Ct. Jan. 31, 1994) (*unpublished*).

101. *People ex rel. Smith v. N.Y. State Bd. of Parole*, 91 Misc. 2d 486, 487, 398 N.Y.S.2d 12, 12 (Sup. Ct. Dutchess County 1976) (holding that petitioner’s parole status be reinstated because the Parole Board does not have “the duty of determining what would be the best kind of treatment for petitioner’s emotional and physical problems”).

102. *E.g.*, *Standley v. N.Y. State Div. of Parole*, 34 A.D.3d 1169, 1170, 825 N.Y.S.2d 568, 569 (3d Dept. 2006) (reversing denial of parole because the Parole Board “repeatedly failed to consider sentencing minutes and recommendations of the sentencing court” and remanding for a reconsideration that includes these factors); *McLaurin v. N.Y. State Bd. of Parole*, 27 A.D.3d 565, 565, 812 N.Y.S.2d 122, 123 (2d Dept. 2006) (affirming decision ordering Division of Parole to obtain prisoner’s resentencing minutes and have a new hearing); *Edwards v. Travis*, 304 A.D.2d 576, 576, 758 N.Y.S.2d 121, 122 (2d Dept. 2003) (Parole Division’s failure to consider sentencing judge’s recommendation warranted judicial intervention). *But see* *Porter v. Alexander*, 63 A.D.3d 945, 947, 881 N.Y.S.2d 157, 159 (2d Dept. 2009) (holding that although the sentencing court’s minutes were missing from the court file, this did not require a new hearing because there was no indication that the sentencing court made a positive recommendation regarding parole).

since the Parole Board may deny parole where “it is incompatible with the welfare of society.”¹⁰³ Thus, the Parole Board may consider additional factors (such as lack of remorse or insight and acceptance of responsibility) to determine whether your release is compatible with the welfare of society.

9. Rescission (Reconsideration of Grant of Parole)

Even if your parole release interview goes well and you receive a parole release date, the Parole Board may be able to reconsider and change its decision before your release date. The New York State Department of Corrections and Community Supervision has established procedures for reconsideration of parole.¹⁰⁴

The senior parole officer, or the parole officer in charge of a facility, may temporarily suspend a release date if he realizes that there may be a basis for Board reconsideration.¹⁰⁵ There are two general categories of events that might cause temporary suspension. The first is the discovery of “significant information which existed” or “significant misbehavior which occurred” *before* the parole release decision that was not known by the Board.¹⁰⁶ The second is an event that occurred *after* the Board’s decision to grant release.¹⁰⁷ The basis for Board reconsideration may include, but is not limited to, one or more of the following circumstances:

- (1) Significant misbehavior or a major violation of facility rules,
- (2) An escape or removal from temporary release,
- (3) A prisoner’s commitment to a psychiatric treatment center,
- (4) Imposition of an additional definite sentence,
- (5) Imposition of an additional indeterminate sentence, and
- (6) Any major changes to the sixteen factors listed in Part F(3) of this Chapter.¹⁰⁸

This list is not exclusive. For example, in a 2005 case, *Pugh v. Parole*, parole was rescinded (taken back) because the victims’ statements were not considered before granting parole. Once the victims complained, the Board considered their statements.¹⁰⁹ The parole officer should notify you in writing of the suspension “as soon as practicable,” investigate the circumstances leading to the suspension, and prepare a “rescission report” for a Board member.¹¹⁰ The Board member will then review the report and decide either to reinstate your release date or to hold a rescission hearing. A rescission hearing is a hearing held to determine if after being granted but before parole release officially occurs, parole will be taken back or not. If a rescission hearing is ordered, you will receive a copy of the rescission report and a notice of the rescission hearing at least seven days before the hearing.¹¹¹ The notice must state:

- (1) The date and place of the hearing;
- (2) The specific allegations that will be considered at the hearing; and
- (3) A description of your rights at the final hearing, like your right to counsel, to testify, to present witnesses and introduce evidence, and to cross-examine most of the government’s witnesses.¹¹²

103. *Silmon v. Travis*, 95 N.Y.2d 470, 477–478, 741 N.E.2d 501, 505–506, 718 N.Y.S.2d 704, 708–709 (2000) (holding that a decision by the Parole Board to deny parole for a prisoner who pleaded guilty to murdering his wife but denied culpability was not arbitrary or capricious).

104. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5 (2020).

105. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(1) (2020).

106. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(2)(i) (2020).

107. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(2)(ii) (2020).

108. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(2)(ii)(a)–(7) (2020).

109. *Pugh v. N.Y. State Bd. of Parole*, 19 A.D.3d 991, 993, 798 N.Y.S.2d 182, 184 (3d Dept. 2005) (holding that victim impact statements, which had not been available before, were substantial enough evidence to justify rescinding petitioner’s parole).

110. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(3) (2020).

111. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(5) (2020).

112. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(5)(i)–(iii) (2020).

There is no specific time limit, but the rescission hearing must be scheduled to take place within a “reasonable time after the board orders a hearing.”¹¹³ You have the right to be represented by a lawyer at a rescission hearing, but there is no requirement that a lawyer be appointed to you.¹¹⁴ You have the right “to appear and speak on [your] own behalf; to present witnesses and introduce documentary evidence; and to confront and cross-examine adverse witnesses.”¹¹⁵ But you cannot force witnesses to appear if the members of the Board of Parole conducting the hearing find good cause in the record for a witness not to appear.¹¹⁶

A majority of the Board members at the hearing (that is, at least two of the three members) must find there is substantial evidence presented at the hearing to support a decision to rescind parole.¹¹⁷ In general, if there was enough evidence to find you guilty of a violation of facility rules at the Superintendent’s Hearing, there is probably enough evidence to uphold parole rescission.¹¹⁸ The Parole Board will then rescind the release date. The Board will then set a new date for release consideration for not more than twenty-four months from the date of the original release interview, or it will set a new release date.¹¹⁹ If the majority of the Parole Board does not believe that there is enough evidence to support taking back parole, it will cancel the temporary suspension and restore the original release date. If that date has passed, the Board will set a new one for as soon as practicable.¹²⁰ The appeal process for rescission is the same as the process for appealing parole denial.¹²¹

It is not clear whether the rescission of parole creates a protected “liberty interest” that invokes due process protection.¹²² The Supreme Court held in *Jago v. Van Curen* that an incarcerated person whose parole date was revoked before his release did *not* have a liberty interest requiring due process protection.¹²³ The Court made this decision even though the incarcerated person did not receive notice or a hearing about the rescission of his parole. In *Lanier v. Fair*,¹²⁴ the First Circuit noted that *Van Curen* involved a state law that gave the Parole Board complete power in determining its parole policies. Thus, in that particular case, the law did not create a liberty interest. But other courts have found that you have a liberty interest when your parole is rescinded, and that you deserve due process protection in those cases.¹²⁵ For example, when a state law uses language that requires the consideration of parole, some courts have found that this language creates an “expectation of parole”. Exceptions of parole constitute a liberty interest protected by the U.S. Constitution.¹²⁶ Also, some

113. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(c)(1) (2020).

114. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(5)(iii)(a) (2020).

115. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(5)(iii)(b)–(c) (2020).

116. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(b)(5)(iii)(c) (2020).

117. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(d)(1) (2020).

118. *Brooks v. Travis*, 19 A.D.3d 901, 901–902, 797 N.Y.S.2d 183, 184 (3d Dept. 2005) (holding that petitioner’s guilty plea to an offense in a misbehavior report was enough evidence to show a significant misbehavior for the purpose of rescinding parole).

119. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(d)(1)(i)–(ii) (2020).

120. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.5(d)(2) (2020).

121. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.1 (2020).

122. For a discussion of due process and “liberty interest,” see Parts B and C of Chapter 18 of the *JLM*.

123. *Jago v. Van Curen*, 454 U.S. 14, 17, 102 S. Ct. 31, 34, 70 L. Ed. 2d 13, 17 (1981).

124. *Lanier v. Fair*, 876 F.2d 243, 251 (1st Cir. 1989).

125. *See, e.g., Watson v. DiSabato*, 933 F. Supp. 390, 392 (D.N.J. 1996) (holding that New Jersey’s parole statute creates a sufficient expectation of parole eligibility to give rise to a liberty interest); *Harper v. Young*, 64 F.3d 563, 564–565 (10th Cir. 1995) (“[P]rogram participation is sufficiently similar to parole or probation to merit protection by the Due Process Clause itself.”).

126. *See, e.g., Clarkson v. Coughlin*, 898 F. Supp. 1019, 1040 (S.D.N.Y. 1995) (holding that there is a state-created limited protected liberty interest in New York parole proceedings, extending as far as a prisoner’s rights to be heard and to know reasons for parole denial); *Wilson v. Kelkhoff*, 86 F.3d 1438, 1446 (7th Cir. 1996) (holding that Illinois’s parole statute provides for protectable liberty interest in release for most prisoners). *But see Allison v. Kyle*, 66 F.3d 71, 73–74 (5th Cir. 1995) (holding that Texas’ parole statute does not create a liberty interest in parole that is entitled to due process protection); *Hamm v. Latessa*, 72 F.3d 947, 955 (1st Cir. 1995) (finding no state-created liberty interest in parole for a parole proceeding governed by Massachusetts state law).

courts have decided that when a parole board narrows its rescission authority in its own regulations, it creates a liberty interest that requires due process protection.¹²⁷ Therefore, it is possible that since the New York State DOCCS has established a process for the reconsideration of parole, it has also created a liberty interest in parole that deserves due process protection. This issue has not yet been brought before a court of law.

G. Release on Parole

1. Release Procedures

If you are granted parole release, the first step is to complete your parole plan and have it approved. Upon the completion and approval of your parole plan, you will be given a “Conditions of Release” form to sign, and will have to report to a parole officer.¹²⁸ If you are approved for parole release prior to having an approved employment and residence program, you will be placed on “open date” status. This means that the Board will determine your release date when they receive your approved supervision plan.¹²⁹

If you were sentenced for a felony sex offense, a violent felony or a felony drug offense, the law requires that you serve post-release supervision for a period of time after your release.¹³⁰ Post-release supervision for a felony sex offense may be up to twenty-five years. For a violent felony or a felony drug offense, post-release supervision may last up to five years, depending on the type of offense for which you were imprisoned.¹³¹ The sentencing court has the power to choose a shorter term of post-release supervision within the ranges defined by law. Their decision to do so is depends on the nature of the crime that resulted in your conviction.¹³² If your sentence requires post-release supervision, do further research at your facility’s library or online. This Section of the *JLM* provides only a general overview of the law and its effects.

2. Supervision of Parole

After you are placed on parole, you will remain under the supervision of the Department of Corrections and Community Supervision. Supervision will end either at the end of your maximum sentence, at the end of your parole supervision (which may be granted early by the Parole Board if you have been on unrevoked community supervision for at least three consecutive years), or upon a return to prison.¹³³ Be sure you completely understand the conditions of your release. This includes any special conditions set by the parole officer or the Parole Board. The failure to follow any parole release requirement could result in a violation. Violations might result in the start of parole revocation proceedings. If you have any questions about the terms of your release or what type of activity is prohibited, ask your parole officer to explain.¹³⁴

127. See *Green v. McCall*, 822 F.2d 284, 287 (2d Cir. 1987) (holding that where a parole commission has limited rescission authority, parole grantees whose early release date was set but were not released had protectable liberty interest entitling them due process); *Ellard v. Ala. Bd. of Pardons & Paroles*, 824 F.2d 937, 943–944 (11th Cir. 1987) (“In view of the statutory restrictions on the authority of the Parole Board to revoke a parole, we conclude that [parole grantee] had a constitutionally protected liberty interest.”).

128. N.Y. COMP. CODES R. & REGS. tit. 9, § 8003.2 (2020).

129. N.Y. State Dept. of Corr. & Cmty. Supervision, *New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision* (2020), at 12–13, available at https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Feb. 29, 2020).

130. N.Y. PENAL LAW § 70.45(1) (McKinney 2009).

131. N.Y. PENAL LAW §§ 70.45(2), 70.45(2-a)(i) (McKinney 2009).

132. N.Y. PENAL LAW §§ 70.45(2), 70.45(2-a) (McKinney 2009).

133. N.Y. COMP. CODES R. & REGS. tit. 9, § 8003.1(a) (2020); N.Y. EXEC. LAW § 259-j(1) (McKinney 2018).

134. See generally N.Y. State Dept. of Corr. & Cmty. Supervision, *New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision* (2020), at 19, available at https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Feb. 29, 2020).

It is very important to create a good working relationship with your parole officer. Your parole officer will be responsible for deciding whether you are able to serve the remainder of your sentence outside of prison. In addition, your parole officer can serve as an important resource to help you in many ways. For example, your parole officer may inform you of social service programs or emergency hotlines. Cooperate with your parole officer, but you should also know that the conversations you have with your parole officer are not confidential. *Statements that you make about your activities that might be considered parole violations could be deemed confessions or admissions, and these statements could be used against you in parole revocation proceedings.*¹³⁵ However, if your parole officer wrongly collects evidence, this evidence may not be used against you in a criminal prosecution. Even if the same evidence is admissible at your parole revocation hearing, it will not be allowed at your criminal proceeding.¹³⁶

There are several important conditions of release you must follow carefully. Failure to do so might result in a violation of your parole, which could result in parole revocation proceedings. The conditions of release are:

- (1) Within twenty-four hours of your release, you must report to your designated area of release immediately and file an *arrival report* with the office of the DOCCS;
- (2) You must not leave the state or any area defined in your “Conditions of Release” plan without permission;
- (3) You must not intentionally avoid supervision by avoiding your parole officer or avoiding the designated place of residence;
- (4) You must let your parole officer visit your home and work to inspect your property. You must immediately tell your parole officer of any change of address or change in employment status;
- (5) You must reply “promptly, fully, and truthfully” to any communication from your parole officer or a representative of the DOCCS;
- (6) You must tell your parole officer of any contact with police or any new arrest immediately. Even if the charges in the new arrest are dropped, failure to report an arrest can be a violation of your parole;
- (7) You may not associate with people who have criminal records;
- (8) You may not violate a law that has prison time as a possible penalty, and you may not threaten the safety of yourself or others;
- (9) You may not own, possess, or purchase any kind of firearm or dangerous knife without written permission from your parole officer. Other prohibited items include razors, stilettos, or imitation pistols, or any instrument that could easily cause physical injury without an acceptable explanation for having the item;
- (10) If you do leave the state of New York, you waive the right to challenge extradition to New York from another state or another country.
- (11) You may not use or possess any controlled substance or drug paraphernalia without medical authorization;
- (12) You must follow all instructions given by your parole officer; and
- (13) You will follow any special conditions set by your parole officer or a member of the DOCCS.¹³⁷

Other special conditions of parole may be set based on the nature of the underlying criminal conviction. Parole conditions may be set by a member of the Board of Parole, the DOCCS, or a parole

135. See, e.g., *People ex rel. King v. N.Y. State Bd. of Parole*, 65 A.D.2d 465, 468–469, 412 N.Y.S.2d 138, 140–141 (1st Dept. 1979) (holding that admission to parole officer of possession of heroin was admissible in a parole revocation hearing, even though evidence of heroin was suppressed in court proceeding because it had been illegally seized).

136. See, e.g., *People ex rel. King v. N.Y. State Bd. of Parole*, 65 A.D.2d 465, 468, 412 N.Y.S.2d 138 (1979) (1st Dept. 1979) (“We note at this juncture that a parole revocation hearing is not a stage of a criminal prosecution, and the standards applied to the former do not carry over to the latter.”).

137. The preceding release conditions are listed in N.Y. COMP. CODES R. & REGS. tit. 9, § 8003.2(1)–(13) (2020).

officer as long as they are made in accordance with law.¹³⁸ Furthermore, the DOCCS has special guidelines for sex offenders, which may include residency restrictions and curfews.¹³⁹ This means it may be very difficult to qualify for the conditions of parole, as you may be required to live in a place not near a school or a school bus stop. Those with a sex offense may also be prohibited from living with a minor. For a discussion of special conditions that are often imposed on parolees convicted of sex offenses, see Chapter 36 of the *JLM*, “Special Considerations for Sex Offenders.”

If you are having any trouble with your parole officer, contact the parole officer’s supervisor.

3. Your Rights While on Parole

Your parole officer has a fair amount of discretion in supervising you and evaluating possible parole violations. When you sign your “Conditions of Release” form, you give “advance consent” to certain parole officer conduct that might be unconstitutional in other contexts. For example, your parole officer may search you and seize property without a warrant and without probable cause. He or she may visit your home frequently to make sure you still live there.¹⁴⁰ Your parole officer may also visit your place of employment.¹⁴¹

Since you are still considered to be in the constructive custody of the state, you—unlike an ordinary citizen—may not receive full constitutional protection against violations of your rights. There has been some litigation on the extent of privacy and other rights that you keep as a parolee. From this litigation, courts have decided that any search must be knowing and voluntary, and reasonably related to the rehabilitation goal. Any search must also be performed by a parole officer in his or her duty to monitor your rehabilitation.¹⁴² Since you usually must consent to home visits from your parole officer and searches at the time of parole, a court will likely find that the knowing and voluntary requirement is met. This is likely if you state that you understand and agree to abide by all the conditions your parole. ¹⁴³ Furthermore, it is unlikely that a court will find that the other two requirements have not been met unless there is no foundation for the search or it has nothing to do with you. ¹⁴⁴ For example,

138. N.Y. COMP. CODES R. & REGS. tit. 9, § 8003.3 (2020); *Dickman v. Trietley*, 268 A.D.2d 914, 916, 702 N.Y.S.2d 449, 451 (3d Dept. 2000) (holding that a parolee’s field parole officer was authorized to impose the parole condition prohibiting the parolee from residing with a woman the parolee had never met, since restriction was rational and violated no statutory requirement).

139. See, e.g., *Monroe v. Travis*, 280 A.D.2d 675, 675–676, 721 N.Y.S.2d 377, 378 (2d Dept. 2001) (holding that Parole Division could require sex offender to secure approved housing before granting his request of conditional release); *Billups v. N.Y. State Div. of Parole*, 18 A.D.3d 1085, 1085–1086, 795 N.Y.S.2d 408, 409 (3d Dept. 2005) (holding that Parole Board’s requirement that prisoner find suitable residence as a condition of prisoner’s parole release was rational, because prisoner had a history of violent conduct and sexual offenses).

140. See N.Y. State Dept. of Corr. & Cmty. Supervision, *New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision* (2020), at 23, available at https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervion_Handbook.pdf (last visited Feb. 29, 2020).

141. N.Y. COMP. CODES R. & REGS. tit. 9, § 8003.2(d). If you are worried that your parole officer visiting your job might be a problem, advise your parole officer about this. N.Y. State Dept. of Corr. & Cmty. Supervision, *New York State Parole Handbook, Questions and Answers Concerning Parole Release and Supervision* (2020), at 23, available at https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervion_Handbook.pdf (last visited Feb. 29, 2020).

142. *People v. Hale*, 93 N.Y.2d 454, 464, 714 N.E.2d 861, 866, 692 N.Y.S.2d 649, 654–655 (1999) (holding that a parole officer’s search of the home of a parolee suspected of dealing drugs did not violate his constitutional rights when parolee had agreed to searches for illegal drugs as a condition of parole).

143. N.Y. COMP. CODES R. & REGS. tit. 9, § 8003.2(4) (2020). See also *United States v. Yeary*, 740 F.3d 569, 581–582 (11th Cir. 2014) (finding that an incarcerated person who understood and accepted the terms of his release, which included unwarranted searches, knowingly and voluntarily consented to such searches).

144. *People v. Tony*, 30 Misc. 3d 867, 874–875, 914 N.Y.S.2d 585, 592 (Sup. Ct. Bx. County 2010) (holding that where a parole officer had no reason to suspect petitioner of a parole violation and searched his residence, the firearm located at the residence during the search would not be admissible in evidence because the search was not “rationally and reasonably related” to the parole officer’s duties).

courts have held that you may be required to give blood and have your DNA kept on file in a data bank as part of a legal search.¹⁴⁵

4. Special Parole

Special parole is different from regular parole. Special parole was created especially for drug offenses. It was repealed in 1984 but still covers crimes committed before November 1, 1987.¹⁴⁶ Special parole follows a prison term and is set by the sentencing judge. Regular or traditional parole allows for release before the end of a prison term and is set by the Parole Board. However, if you violate the conditions of special parole you must serve the remainder of the special parole term in prison. After serving the remainder of your special parole term, the Parole Commission may set a new term of imprisonment. Following your imprisonment, the Parole Commission also has the right to set a term of traditional parole.¹⁴⁷ The Parole Commission may also re-set another term of special parole after revoking a term of special parole.¹⁴⁸

H. Revocation of Your Parole (Taking Away Your Parole)

1. How and Why Parole Revocation Begins

If you do not follow the terms of your parole release, you may have to return to prison to serve the rest of your sentence. In order for the Parole Board to revoke (take away) your parole, you must have violated a condition of parole “in an important respect.”¹⁴⁹ This standard, however, is often met by a direct violation of one of the explicit conditions of parole. These conditions may include not making curfew¹⁵⁰ or being in an explicitly prohibited area.¹⁵¹ Decisions by the Parole Division to revoke parole may only be reviewed by a court. A court will decide whether the Parole Board followed the proper

145. N.Y. EXEC. LAW § 995-c(3) (McKinney 2020); *Kellogg v. Travis*, 188 Misc. 2d 164, 169, 728 N.Y.S.2d 645, 649 (Sup. Ct. N.Y. County 2001) (holding N.Y. Exec. Law § 995-c is constitutional and withdrawal of a parolee’s blood does not constitute an illegal search and seizure, even though less invasive means of getting a DNA sample exist).

146. 21 U.S.C. § 841(c) (repealed 1984). *See also*, *Strong v. U.S. Parole Comm’n*, 141 F.3d 429, 431 (2d Cir. 1998) (“Although [21 U.S.C. § 841(c)] was repealed by the Sentencing Reform Act of 1984, it still governs convictions for offenses committed before November 1, 1987”), *abrogated on other grounds by Rich v. Maranville*, 369 F.3d 83 (2d Cir. 2004).

147. *United States v. Caraballo*, No. 96 Civ. 6915 (KTD), 86 Cr. 336 (KTD), 2000 U.S. Dist. LEXIS 499, at *8–9 (S.D.N.Y. Jan. 20, 2000) (*unpublished*) (holding that the Parole Commission can re-impose a term of regular parole on a prisoner who violated special parole and was imprisoned for the remaining period of his special parole).

148. *Rich v. Maranville*, 369 F.3d 83, 90 (2d Cir. 2004) (holding that “when special parole is revoked that term is suspended and continues to exist. The Commission thus creates nothing when it re-imposes that court-created term of special parole after the revocation and incarceration”); *Billis v. United States*, 83 F.3d 209, 211 (8th Cir. 1996) (finding that district courts have the authority to impose a subsequent term of supervised release after revocation of an initial term of supervised release); *U.S. Parole Comm’n v. Williams*, 311 U.S. App. D.C. 416, 54 F.3d 820, 823 (1995) (finding that the Parole Commission may place the incarcerated person back on special parole). *But see Strong v. U.S. Parole Comm’n*, 141 F.3d 429, 432 (2d Cir. 1998) (holding that the Parole Commission lacks the authority to impose a second term of special parole after revoking the original term); *Artuso v. Hall*, 74 F.3d 68, 71 (5th Cir. 1996) (finding that the Parole Commission lacked statutory authority to impose a second period of special parole after it had revoked a first special parole term); *Fowler v. U.S. Parole Comm’n*, 94 F.3d 835, 837 (3d Cir. 1996) (finding that only traditional parole, not special parole, could be granted after special parole had been revoked).

149. N.Y. EXEC. LAW § 259-i(3)(c)(iv) (McKinney 2018); *People ex rel. Korn v. N.Y. State Div. of Parole*, 274 A.D.2d 439, 440, 710 N.Y.S.2d 124, 125 (2d Dept. 2000) (stating that a violation of a “substantial condition” of parole is sufficient to have parole revoked and that a curfew violation meets this standard).

150. *See People ex rel. Korn v. N.Y. State Div. of Parole*, 274 A.D.2d 439, 440, 710 N.Y.S.2d 124, 125 (2d Dept. 2000) (holding that a prisoner violated a “substantial condition” of his parole by missing his curfew without adequately explaining this violation, and this was a reasonable ground to support revoking prisoner’s parole).

151. *Bellamy v. N.Y. State Div. of Parole*, 274 A.D.2d 871, 872, 711 N.Y.S.2d 596, 597 (3d Dept. 2000) (holding that revocation of parole was justified where parolee was found on a street that he was twice told not to enter as a special condition of his parole).

procedural rules. The court cannot decide about the truthfulness of your reasons for violating parole.¹⁵² Courts usually uphold the Parole Commission's decisions. If your parole officer has "reasonable cause to believe that [you have] lapsed into criminal ways, company, or [have] violated one or more of the conditions of [your] release in an important respect,"¹⁵³ he or she may report such conduct to a member of the Parole Board or a designated officer. That individual may then secure a warrant for retaking and temporary detention.¹⁵⁴ A parole violation is called a "delinquency." If it is later proven that you violated your parole, your parole will be revoked from the date of this delinquency.¹⁵⁵ So it is important to know exactly when you allegedly violated your parole because if your parole is revoked, you must serve the prison time dating back to the delinquency date. You will, however, be credited for time spent on parole prior to the delinquency date.¹⁵⁶ If your parole is being revoked, you may contact the Legal Aid Society's Parole Revocation Defense Unit at 199 Water Street, 5th Floor, New York, NY 10038 (phone (212) 577-3300).

If you are being held on a parole warrant, you may not receive bail or release until the parole warrant is lifted.¹⁵⁷ If you are being detained on other charges (which may serve later as the basis for parole revocation), and bail is set on those charges, you cannot be released while the parole warrant is pending.

In *Morrissey v. Brewer*, the U.S. Supreme Court ruled that a paroled convict has a liberty interest protected by due process. This means that the revocation of parole release and re-incarceration must be decided under due process.¹⁵⁸ New York State's parole law provides for two due process hearings: preliminary and final. Within three days of the issuance of a warrant for your retaking, you must receive written notice of what conditions you have violated. The notice must also inform you of the date and location of the preliminary parole revocation hearing.¹⁵⁹ The notice shall be given within three days after the execution of a warrant for retaking and temporary detention. It cannot be given less than forty-eight hours before to the preliminary hearing.¹⁶⁰ If you are out of state, you should be given written notice of the time, place, and purpose of the hearing within five days of the issuance of the warrant for your retaking.¹⁶¹

2. Preliminary Hearing

The purpose of the preliminary hearing is to decide whether there is "probable cause" that you violated one or more of the conditions of your parole release.¹⁶² The Parole Board needs to show

152. *People ex rel. Bayham v. Meloni*, 182 Misc. 2d 831, 832, 700 N.Y.S.2d 649, 650 (County Ct. Monroe County 1999) (quoting *Zientek v. Herbert*, 606 N.Y.S.2d 479, 480, 199 A.D. 2d 1075, 1076 (4th Dept. 1993)) ("A court, when reviewing a determination by the Parole Board to revoke parole, may only 'examine the record to determine if the required procedural rules were followed and if there is any evidence which, if believed, would support the Parole Board's determination, but the court may not make its own determinations based on its assessment of the credibility of the witnesses.'").

153. N.Y. COMP. CODES R. & REGS. tit. 9, § 8004.2(a) (2020).

154. N.Y. COMP. CODES R. & REGS. tit. 9, § 8004.2(c) (2020) ("Reasonable cause exists when evidence or information which appears reliable discloses facts or circumstances that would convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that a releasee has committed the acts in question or has lapsed into criminal ways or company. Such apparently reliable evidence may include hearsay.").

155. N.Y. PENAL LAW § 70.40(3)(a)–(b) (McKinney 2009).

156. N.Y. PENAL LAW § 70.40(3)(c) (McKinney 2009).

157. *See, e.g., People ex rel. Calloway v. Skinner*, 33 N.Y.2d 23, 33–34, 300 N.E.2d 716, 720, 347 N.Y.S.2d 178, 184 (1973) (holding right to bail is statutory, and without statutory direction, prisoners are not entitled to either bail or release pending hearing before the Parole Board).

158. *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484, 495 (1972) (discussing the nature of a parolee's liberty interest and finding that due process is required).

159. N.Y. EXEC. LAW § 259-i(3)(c)(iii) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.3 (2020).

160. N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.3(a) (2020).

161. N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.3(a) (2020).

162. N.Y. EXEC. LAW § 259-i(c)(iv) (McKinney 2018). "Probable cause" means a reasonable ground to believe that a person has committed, is committing a crime, or that a place is connected with a crime. BLACK'S LAW DICTIONARY (11th ed. 2019).

evidence of your alleged violation.¹⁶³ The hearing must be held within fifteen days of the issuance of the warrant of retaking. It also must be conducted by a hearing officer who has not had any prior supervisory involvement over you.¹⁶⁴

At the preliminary hearing, you are entitled to the following rights:

- (1) To speak on your own behalf or to have a lawyer represent you;¹⁶⁵
- (2) To introduce letters and documents;¹⁶⁶
- (3) To present witnesses who may provide relevant information in support of your case;¹⁶⁷ and
- (4) To confront and cross-examine witnesses testifying against you, unless the hearing officer finds good cause for their non-attendance.¹⁶⁸

The rules state that you may be represented by counsel at your preliminary hearing, but it is important to note that you do *not* have an absolute right to be represented by counsel. You also do not have an absolute right to have an attorney appointed if you cannot afford to hire one.¹⁶⁹ If you believe that you need the assistance of counsel at the preliminary hearing, try to get an attorney through the county or supreme court in the district where you are being held. You may also seek an attorney through the Legal Aid Society if you are in New York City. Unless you have a very complicated case, it may be hard to get an attorney assigned at this stage. You do not have to testify at this hearing or at the final hearing. You also do not have to make a statement to your parole officer while he or she is preparing the Parole Violation Report. Any statement you do make may be used as evidence at the final hearing.¹⁷⁰

An important difference between the preliminary hearing and the final hearing is that not all of the charges need to be heard at the preliminary hearing. If the hearing officer decides that probable cause exists after hearing one or more of the charges, the judge may decide that there is enough probable cause to end the preliminary hearing. The judge may then take appropriate action to make a final decision regarding the alleged violation.¹⁷¹ Probable cause means that there are reasonable grounds for the judge to believe that a parole violation occurred. If there is proof of conviction for a crime that was committed after release on parole (for example, a certificate of conviction), the judge will consider that enough to show probable cause.¹⁷² Unlike the final hearing, there is no opportunity

163. This means the Parole Board must create a sufficient case of a violation, which you have to explain or prove wrong. N.Y. EXEC. LAW § 259-i(c)(v) (McKinney 2018).

164. N.Y. EXEC. LAW § 259-i(3)(c)(i) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.4(a) (2020).

165. The attorney must file a notice of appearance. N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.3(c)(1) (2020); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.5(a)–(b)(2020).

166. N.Y. EXEC. LAW § 259-i(3)(c)(iii) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.3(c)(2) (2020).

167. N.Y. EXEC. LAW § 259-i(3)(c)(iii) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.3(c)(3) (2020).

168. N.Y. EXEC. LAW § 259-i(3)(c)(iii) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.3(c)(4) (2020). You may force witnesses against you to attend the hearing through subpoenas, unless you have been convicted of a new crime while under parole supervision, or the hearing officer finds good cause for the witnesses' non-attendance. N.Y. EXEC. LAW § 259-i(3)(c)(iii) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.3(c)(4). If you are proceeding *pro se* (without an attorney) at this stage, you may apply to the hearing officer or Board member presiding at the hearing for the subpoenas. N.Y. C.P.L.R. 2302(a) (McKinney 2010). You may also apply to the local supreme court for subpoenas for necessary witnesses or documents. N.Y. C.P.L.R. 2302(b) (McKinney 2010).

169. *See, e.g.*, *People ex rel. Calloway v. Skinner*, 33 N.Y.2d 23, 32, 300 N.E.2d 716, 719, 347 N.Y.S.2d 178, 182–183 (1973) (noting that the New York State and Federal Constitutions confer only a conditional or discretionary right to counsel at a preliminary parole revocation hearing).

170. N.Y. COMP. CODES R. & REGS. tit. 9, § 8004.3(c) (2020); *see, e.g.*, *People ex rel. King v. N.Y. State Bd. of Parole*, 65 A.D.2d 465, 468–469, 412 N.Y.S.2d 138, 140–141 (1st Dept. 1979) (holding that admission to parole officer of possession of heroin was admissible in a parole revocation hearing, even though evidence of heroin was suppressed in court proceeding because it had been illegally seized).

171. N.Y. EXEC. LAW § 259-i(3)(c)(viii) (McKinney 2018); N.Y. EXEC. LAW § 259-i(3)(d) (McKinney 2018).

172. N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.2(c)–(d) (2020).

at the preliminary hearing to present evidence of mitigating factors or suggestions for alternatives to incarceration.

3. Final Hearing

The preliminary hearing is like an arraignment (if you have not yet gone to trial) where the court will decide if there is probable cause to continue to hold you for a suspected parole violation. The final hearing is like a trial to decide whether you violated parole. Thus, if the hearing officer finds probable cause at the preliminary hearing (or if you have waived the preliminary hearing), a member of the Parole Board will review your case and decide whether to declare you delinquent.¹⁷³ Depending on the decision of the Board member, a final hearing will be set or you will be returned to supervision. If you are declared delinquent, a final hearing will be less no more than ninety days after the probable cause determination.¹⁷⁴ The final hearing date may only be set for a later date if you request and are granted an adjournment (delay). A final hearing may also be set for a later date if you agree to a postponement of the hearing.¹⁷⁵

Both you and your attorney can receive written notice of the date, time, and place of the hearing at least fourteen days before the hearing.¹⁷⁶ But if the hearing is adjourned or delayed for some reason, there is no additional fourteen-day notice requirement.¹⁷⁷ If the Parole Board does not obey the statutory time requirements, your parole violation warrant will be removed. In addition, your parole status will be restored.¹⁷⁸ Notice of final revocation proceedings will tell you the rights that you have at the hearing.

In a revocation hearing you have the following rights:

- (1) To have a lawyer represent you (if you have pending criminal charges, the attorney representing you in the criminal case is allowed to also represent you at your revocation hearing. If not, a different attorney will be assigned to you);¹⁷⁹
- (2) To appear and speak on your own behalf;
- (3) To confront and cross-examine witnesses testifying against you, unless the presiding officer finds good cause for the witnesses not to attend;
- (4) To present witnesses and documents in defense of the charges against you;
- (5) To present witnesses and documents about whether placing you back in prison is the appropriate action;¹⁸⁰ and

173. Waived means to voluntarily give up a claim or right. In this case, it would be to voluntarily give up your right to a preliminary hearing.

174. N.Y. EXEC. LAW § 259-i(3)(f)(i) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.17(a) (2020).

175. N.Y. EXEC. LAW § 259-i(3)(f)(i) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.17(c) (2020).

176. N.Y. EXEC. LAW § 259-i(3)(f)(iii) (McKinney 2014); N.Y. COMP. CODES R. & REGS. tit. 9 § 8005.17(b) (2020).

177. *See, e.g.,* People *ex rel.* Wentsley v. Hammock, 89 A.D.2d 1058, 1058, 454 N.Y.S.2d 761, 762 (4th Dept. 1982) (holding that “[t]here is no requirement that an additional 14 days’ notice be given for a rescheduled or adjourned final parole revocation hearing.”).

178. *See, e.g.,* People *ex rel.* Levy v. Dalsheim, 66 A.D.2d 827, 828, 411 N.Y.S.2d 343, 344 (2d Dept. 1978), *aff’d*, 48 N.Y.2d 1019, 402 N.E.2d 141, 425 N.Y.S.2d 802 (1980) (“[The] statute . . . makes clear that a delay beyond 90 days after the probable cause determination is unreasonable per se.”).

179. N.Y. EXEC. LAW § 259-i(3)(f)(v) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.16(a) (2020). *See* Morrissey v. Brewer, 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972) (holding a paroled convict has a liberty interest that falls under the 14th Amendment, and its termination requires some due process). *See* Chapter 4 of the *JLM* for information on how to find a lawyer, and Appendix IV for information on how to contact the Legal Aid Society.

180. N.Y. EXEC. LAW § 259-i(3)(f)(v) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.18(b)(1)–(4) (2020).

- (6) To present mitigating evidence relevant to the restoration of parole.¹⁸¹ That is, you can present evidence that might justify or excuse the conduct that is alleged to be a parole violation.

Your rights at the revocation proceeding are almost the same as those in the preliminary hearing. The only exceptions are your right to an attorney and your right to present mitigating factors. The standard for revoking parole at the final hearing is a decision made by a “preponderance of the evidence” (meaning that it is more likely than not) that you violated one or more conditions of release in an important respect.¹⁸²

If you have pending criminal charges, the conduct that resulted in those charges can be considered by the Parole Board when deciding whether you violated your parole. If the parole revocation hearing takes place after any criminal case against you has gone to trial, several rules may apply. For example, if you were convicted or acquitted of those charges by any defense other than an affirmative defense, the Parole Board can consider the conduct underlying the charges.¹⁸³ Affirmative defenses are those explanations that you presented at trial that lessened or defeated the legal consequences of your trial. Examples of these defenses are insanity or self-defense. If you were acquitted through an affirmative defense, then the Parole Board probably cannot consider those charges in its parole revocation decision.¹⁸⁴ Courts have held that there is no denial of due process if the Board refuses to delay the final revocation hearing until after the pending criminal case is handled.¹⁸⁵ This is the case even if there is a lower standard of proof in parole revocation decisions

181. N.Y. EXEC. LAW § 259-i(3)(f)(vi) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.18(b)(5) (2020)..

182. N.Y. EXEC. LAW § 259-i(3)(f)(viii) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8005.19(e) (2020). “Preponderance of the evidence” is a legal standard meaning “more likely than not.” It is a lesser standard than “beyond a reasonable doubt,” the legal standard for conviction of a crime.

183. See, e.g., *People ex rel. Froats v. Hammock*, 83 A.D.2d 745, 745, 443 N.Y.S.2d 500, 501 (4th Dept. 1981) (holding that acquittal of criminal charges does not bar subsequent parole revocation based on underlying charges). As noted, an affirmative defense is an explanation that you provide as evidence to support that mitigates (lessens) or defeats the legal consequences that result from your trial. Examples of affirmative defenses include insanity, self-defense, and statute of limitations (most criminal prosecutions must be brought within a certain number of years after the crime was committed, and, if the prosecutor charges you after that time period, you would have the statute of limitations as a defense).

184. The Parole Board is prevented from considering the criminal charges in affirmative defense cases because of the doctrine of *collateral estoppel*, which means that issues brought before a court and decided in one case cannot be re-litigated by the same parties in another case. See *People ex rel. Matthews by Greenberg v. N.Y. State Div. of Parole*, 58 N.Y.2d 196, 201–203, 447 N.E.2d 689, 691–692, 460 N.Y.S.2d 746, 748–749 (1983) (explaining that while underlying conduct from a new criminal trial can be considered for revocation purposes even with an acquittal, collateral estoppel principles mean it cannot be considered when the acquittal is based on an affirmative defense). Whether the Board can use evidence that has been suppressed in a criminal proceeding against you in a parole revocation hearing is unsettled (that is, not certain). In *People ex rel. Piccarillo v. N.Y. State Bd. of Parole*, the Court held that evidence that could not be used in a criminal trial because it resulted from an illegal search or seizure also could not be used in a parole revocation hearing. *People ex rel. Piccarillo v. N.Y. State Bd. of Parole*, 48 N.Y.2d 76, 83, 397 N.E.2d 354, 358, 421 N.Y.S.2d 842, 846 (1979) (stating that the exclusionary rule applies to parole revocation hearings). However, *Pa. Bd. of Probation v. Scott* reached the opposite conclusion, holding that the federal exclusionary rule does not apply to parole proceedings. *Pa. Bd. of Probation v. Scott*, 524 U.S. 357, 364, 118 S. Ct. 2014, 2020, 141 L. Ed. 2d 344, 352 (1998). Some New York courts have interpreted *Scott* as overruling *Piccarillo*, while others have refused to do so. See *People ex rel. Gordon v. O’Flynn*, 3 Misc. 3d 963, 965, 775 N.Y.S.2d 507, 509 (Sup. Ct. Monroe County 2004) (holding that *Scott* overruled *Piccarillo* and that the federal exclusionary rule does not apply to parole proceedings); but see *State ex rel. Thompson v. Harder*, 8 Misc. 3d 764, 766 n.2, 799 N.Y.S.2d 353, 355 n.2 (Sup. Ct. Broome County 2005) (holding that the court will continue to apply the exclusionary rule to parole proceedings).

185. See, e.g., *People ex rel. Matthews v. N.Y. State Div. of Parole*, 58 N.Y.2d 196, 201, 447 N.E.2d 689, 460 N.Y.S.2d 746 (1983) (holding that refusal to adjourn a revocation hearing until criminal charges were tried did not constitute a violation of due process). The Board only needs to find it is more likely than not that you violated your parole; you can only be convicted of the crime if the court finds beyond a reasonable doubt that you committed the unlawful act.

Thus, the Parole Board can find that you violated your parole even if you are not later convicted of the criminal charges.

I. Appeals

You may appeal the revocation of your parole by filing a “Notice of Appeal” within thirty days of the date of the written notice of the Parole Board’s decision.¹⁸⁶ It is important to file your appeal within thirty days of the Board’s decision. If you do not, you will waive, or give up your right to appeal the decision.¹⁸⁷ You may be represented by an attorney during your appeal.¹⁸⁸ Within four months of the date that the notice of appeal was filed, you or your attorney must file the original and two copies of the appeal letter or brief with the Appeals Unit in Albany.¹⁸⁹ Your appeal letter or brief must state the rulings that you are challenging and explain the basis for your appeal.¹⁹⁰ The appeal must be based on the written record. You may get an extension “for good cause” if you request one in writing within the four months after the notice of appeal.¹⁹¹

Among the questions that may be raised on appeal are:

- (1) Whether the proceeding and/or decision was in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious, or was otherwise unlawful;
- (2) Whether the Board member or members making the decision relied on erroneous information as shown in the record of the proceeding, or relevant information was not made available for consideration;
- (3) Whether the determination made was excessive;¹⁹² and
- (4) Whether the decision was supported by a preponderance of the evidence.¹⁹³

In a revocation appeal, you cannot raise an allegation for newly discovered evidence. Such an issue must be raised in an application to the Board for a rehearing.¹⁹⁴ You should prepare for your appeal by first obtaining the minutes of the parole release hearing. You can get these minutes from the New York State Division of Parole at 1220 Washington Avenue, Building 2, Albany, NY 12226-2050.¹⁹⁵ Because the minutes can be expensive to acquire, an attorney may obtain them for you. You also may make a written request for “[a]ll other non-confidential, discoverable documents relating to the appeal.”¹⁹⁶ So, if you believe there is important information in your parole case record that support your appeal, you may ask for permission to access it. However, you will not receive unlimited access.¹⁹⁷

186. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.1(b) (2020).

187. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.1(b) (2020).

188. N.Y. EXEC. LAW § 259-i(4)(b) (McKinney 2018); N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.2(d) (2020).

If an attorney entered a notice of appearance, the Parole Board appeals unit will not act on any correspondence from a prisoner until receiving notice that the attorney is relieved. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.2(e) (2020). A notice of appearance is a document that tells the Parole Board that an attorney will appear on your behalf. Thus, this regulation means that if you have an attorney and the attorney enters a notice of appearance, the Parole Board will not answer mail, calls, or other communication from you unless you decide to not have that attorney represent you and you notify the Parole Board of your decision to relieve the attorney. The Parole Board will only answer contact from your attorney unless you notify them that you are no longer using that attorney.

189. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.2(a)–(b) (2020).

190. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.2(a)–(b) (2020).

191. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.2(a)–(b) (2020).

192. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.3(a)(1)–(3) (2020).

193. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.3(b)(1) (2020). This subsection also notes that “evidentiary or procedural challenges will be considered only if a timely objection was made at the hearing.” N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.3(b) (2020). This means that raising an objection about something like the evidence not meeting the preponderance standard is only allowed if you object on that ground at the revocation hearing itself.

194. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.3(c) (2020).

195. *See* N.Y. EXEC. LAW § 259-i(6)(a) (McKinney 2018) (“The board shall provide for the making of a verbatim record of each parole release interview ... and each preliminary and final revocation hearing. . .”).

196. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.1(e) (2020).

197. Restrictions to access parole records are set forth in this Chapter in Part F(7), “Appealing Denial of Parole Release.” *See also* N.Y. COMP. CODES R. & REGS. tit. 9, § 8000.5 (2020).

The appeal will be decided by three members of the Parole Board. None of these members will have participated in the decision that you are appealing.¹⁹⁸ The Board will send its written decision, including its findings of fact and law, to you or your attorney.¹⁹⁹

If your appeal is unsuccessful, you have several other options. After you have tried all possible administrative remedies with no success, you can file an Article 78 petition in New York state court.²⁰⁰ You only have four months from the date the appeal decision is mailed to you to file a petition in state court.²⁰¹ If you do not file the petition within this time, the court will not hear your case.²⁰² If you are being held only on parole violation charges, and you seek to challenge the legality of your detention, you may file a petition for habeas corpus in the state supreme court.²⁰³ See Chapters 21 and 22 of the *JLM* for more information on New York State habeas corpus and Article 78 petitions.

J. Parole Violator Reappearances

If your parole is revoked and you have been returned to prison, you will be eligible for release on the date your *time assessment* expires.²⁰⁴ A time assessment is the period of re-imprisonment set by the Parole Board after a final revocation hearing. The Parole Board may also determine that an interview is necessary before release. However, an interview is only necessary if an incarcerated person:

- (1) Has committed a violation of facility rules;
- (2) Has shown a significant change in his mental or emotional condition (such as being transferred to a psychiatric ward or placed on suicide watch);
- (3) Has been arrested or convicted of a new felony after the final parole revocation hearing; or
- (4) Is not fit for release based on other information (such as information about self-destructive or threatening behavior).²⁰⁵

K. Release from Parole Supervision

After your original maximum sentence expires, and you have served your time on parole supervision without interruption, you will be released from parole. The parole statute also allows for discharge from parole only after you have served at least five years of post-release supervision. This statute also requires that you must have served three consecutive years of unrevoked parole.²⁰⁶ You should talk to your parole officer if you believe you might be eligible for a three-year discharge. He or she may apply to the Parole Board for you. The Board will not accept requests for early discharge from a parolee.²⁰⁷

If you have a felony conviction, you may have lost certain rights or privileges. This includes the right to vote, the ability to obtain a driver's license, and the opportunity to be employed in a bank or an establishment that serves liquor. It also includes the ability to get a job, and other rights important to your life.²⁰⁸ You can regain those rights after you serve your parole term. However, you may be able

198. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.4(d) (2020).

199. N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.4(a)(2) (2020).

200. See Chapters 5 and 22 of the *JLM* for information on Article 78 proceedings.

201. N.Y. C.P.L.R. 217(1) (McKinney 2019).

202. See *Carter v. State*, 95 N.Y.2d 267, 272, 739 N.E.2d 730, 733, 716 N.Y.S. 2d 364, 367 (2000) (dismissing a claim by a prisoner who brought an Article 78 claim six months after the decision was mailed to him as untimely because the claim violated the statute of limitations).

203. N.Y. C.P.L.R. 7001–7012 (2013). See Chapter 13 and Chapter 21 of the *JLM* for a more detailed discussion of federal and New York state habeas corpus.

204. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.6(a)–(b) (2020). The Parole Board makes the time assessment after the revocation hearing, and it begins running from the date the parole violation warrant was lodged.

205. N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.6(c) (2020).

206. N.Y. EXEC. LAW § 259-j(3)(a) (McKinney 2018).

207. N.Y. COMP. CODES R. & REGS. tit. 9, § 8007.1 (2020).

208. N.Y. State Dept. of Corr. & Cmty. Supervision, *Community Supervision Handbook*, Questions and

to gain back the rights you have lost by applying for a certificate. If you only have one felony conviction, apply for a “Certificate of Relief from Disabilities” before or after your parole supervision ends.²⁰⁹ If you have more than one felony conviction, but you have completed parole and have shown five years of good conduct in the community, you should apply for a “Certificate of Good Conduct.”²¹⁰ If you have not yet completed your sentence, applications for Certificates of Relief are submitted by parole officers to the Board of Parole. If you have completed your sentence, apply directly to the Executive Clemency Bureau of the Department of Corrections and Community Supervision.

If you are harassed or discriminated against for being an ex-offender after your release from parole, you can seek help. You may contact the Fortune Society at 29-76 Northern Boulevard, Long Island City, NY 11101, or by phone at (phone (212) 691-7554).²¹¹ You may also contact the Legal Action Center at 225 Varick Street, New York, NY 10014, or by phone at (212) 243-1313. The Legal Action Center can also be contacted toll free at (800) 223-4044.²¹² These agencies help ex-offenders with their reentry into society. The New York Public Library publishes a practical handbook for pre-release and recently released incarcerated people called *Corrections III*. It gives information and addresses on topics including jobs, education, housing, finances, health, counseling, addiction, women’s issues, homosexuality, and disability issues. *Corrections III* is free for New York State residents and incarcerated people. You can get *Corrections III* from Institutional Library Services, The New York Public Library, 455 Fifth Ave., New York, NY 10016, or at (212) 340-0863.

L. Parole in California

If you are given a life sentence in California, you must serve at least seven years before you may be eligible for parole.²¹³ However, if you were sentenced under a law that has a minimum period of incarceration for a life sentence, you will not be eligible for parole release until you have served that minimum period.²¹⁴

One year prior to your minimum eligible parole release date, a panel of at least two Commissioners or Deputy Commissioners of the Board of Prison Terms will meet with you to set a parole release date. The Board considers aggravating and mitigating circumstances in its decision of your parole release date. Aggravating circumstances are those that might make the Board view your crime more harshly. For example, if your crime affected a large number of people that is an aggravating circumstance. Mitigating circumstances are those that might make the Board view your crime less harshly. For example, having no prior criminal record is a mitigating circumstance. The Board may choose not to set a parole release date if it finds that the seriousness of the offense presents a danger to public safety. The Board may also choose not to set a parole date if any past offenses are those where the interests of public safety require you to remain in prison longer.²¹⁵

Answers Concerning Release and Community Supervision (2019), at 33–35, *available at* https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Mar. 9, 2020).

209. N.Y. State Dept. of Corr. & Cmty. Supervision, Community Supervision Handbook, Questions and Answers Concerning Release and Community Supervision (2019), at 33, *available at* https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Mar. 9, 2020).

210. N.Y. State Dept. of Corr. & Cmty. Supervision, Community Supervision Handbook, Questions and Answers Concerning Release and Community Supervision (2019), at 34, *available at* https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervision_Handbook.pdf (last visited Mar. 9, 2020).

211. More information about Fortune Society can be located online, *available at* <http://fortunesociety.org/> (last visited Mar. 9, 2020).

212. More information about Legal Action Center can be located online, *available at* <http://www.lac.org/> (last visited Mar. 9, 2020).

213. CAL. PENAL CODE § 3046(a)(1) (West 2018).

214. CAL. PENAL CODE § 3046 (West 2018).

215. CAL. PENAL CODE § 3041 (West 2018).

At the parole hearing, you may present evidence and speak on your own behalf. Only incarcerated people serving life sentences may have a lawyer at parole hearings.²¹⁶ In addition, victims have the right to make statements at parole hearings. These statements include “comments . . . to the effect of the enumerated crimes on the victim . . . and the suitability of the prisoner for parole.”²¹⁷

If you are granted parole, you will be notified of the parole release date within ten days after the hearing. You will also be notified of the conditions that you must meet to be released by that date, and the consequences if you do not meet those conditions.²¹⁸ A decision that you are fit for parole will become final within 120 days after the date of the hearing. During this time, the Parole Board may review the panel's decision. The Parole Board may reject the panel's decision and order a new hearing by majority vote. The Parole Board's decision to reject must be based on an error of the law, an error of facts, or new information that is presented to the Board.²¹⁹

If the Board decides not to set a parole date, you will be notified within twenty days.²²⁰ The Board will send you a written statement explaining why a parole date was not set. In addition, it will recommend activities that you may participate in to improve your chances of receiving a parole date at a future hearing.²²¹ The Board will usually rehear cases every fifteen years after it has declined to set a parole date but the Board has the power to rehear cases sooner. For example, the Board can rehear the case after only three or five years. The Board may choose to rehear the case sooner if it finds by clear and convincing evidence that consideration of the public and victim's safety does not require a longer period of incarceration.²²²

If you have been convicted of a violent felony in California, the state Department of Corrections will notify law enforcement agencies and the state attorney in the county that you were convicted of your scheduled release on parole. The Department of Corrections will also notify the county where you are scheduled to be released.²²³ The victim may also be notified of your release.²²⁴ If you have not been convicted of a violent felony, notice of your release on parole will be given only if the county of release requests it.²²⁵

You will usually be returned to the county of your last legal residence, but the Parole Board may send you to another county if that is found to be in the public interest. In making this decision, the Parole Board will consider:

- (1) The need to protect the life or safety of a victim, you (the parolee), a witness, or any other person;
- (2) Public concern that would decrease the chance that your parole would be successfully completed;
- (3) The verified existence of a work offer, or an educational or vocational training program;
- (4) The existence of family in another county with whom you have maintained strong ties and whose support would increase the chance of successful completion of your parole; and
- (5) The lack of necessary outpatient treatment programs for parolees receiving substance abuse treatment pursuant to Section 2960.²²⁶

If you were convicted of a violent felony, you may not go within thirty-five miles of the actual residence of the victim or a witness to the crime during your parole. This is the rule if the victim or

216. CAL. PENAL CODE § 3041.7 (West 2018).

217. CAL. PENAL CODE § 3043(b) (West 2018).

218. CAL. PENAL CODE § 3041.5(b)(1) (West 2018).

219. CAL. PENAL CODE § 3041(b) (West 2018).

220. CAL. PENAL CODE § 3041.5(b)(2) (West 2018).

221. CAL. PENAL CODE § 3041.5(b)(2) (West 2018).

222. CAL. PENAL CODE § 3041.5(b)(3) (West 2018).

223. CAL. PENAL CODE § 3058.6(a) (West 2011).

224. CAL. PENAL CODE § 3058.8(a) (West 2011); CAL. PENAL CODE § 679.03(a) (West 2010).

225. CAL. PENAL CODE §§ 3058.5, 3058.6, 3058.8(a) (West 2011).

226. CAL. PENAL CODE § 3003(a)–(b) (West 2011). Section 2960 is referring to prisoners who have a severe but treatable mental health disorder that was one of the causes of, or was an aggravating factor in, the commission of the crime for which they were incarcerated. CAL. PENAL CODE § 2960 (West 2011).

witness has requested additional distance. You may also not go to a location within thirty-five miles of their actual residence if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds a need to protect the victim or witness.²²⁷

If you violate your parole and there is a long delay between your parole revocation hearing and your placement back in prison, you may request to be restored to parole status. To do so, you must establish that you were prejudiced by the denial of a timely revocation hearing.²²⁸ If the Board decides to revoke your parole, you must receive a written record of the Board's decision. You must also be given the opportunity to pursue an administrative appeal.²²⁹ If your parole is revoked but you do not have a new conviction for a crime committed while you were on parole release, the time you are sent back to prison should not exceed twelve months.²³⁰ However, if you commit acts of misconduct during your time back in prison, you may be held for an additional twelve months.²³¹

M. Parole in Florida

Parole has been abolished in the state of Florida.²³² However, it is still available for certain incarcerated people who committed crimes that occurred prior to the dates provided in the list below. If you are currently in prison for one of the following crimes, you are still eligible for parole, and this Section applies to you:

- (1) First degree murder, a felony murder, or the crime of making, possessing, throwing, projecting, placing, or discharging a destructive device (or the attempt of) before May 25, 1994;
- (2) All other capital felonies before October 1, 1995;
- (3) A continuing criminal enterprise before June 17, 1993;
- (4) Murder of a law enforcement officer (and other specified officers) before January 1, 1990;
- (5) Murder of a judge before October 1, 1990;
- (6) Any felony before October 1, 1983, or you elected to be sentenced “outside the guidelines” for a felony committed prior to July 1, 1984.²³³

You will be given an initial interview with a hearing examiner to set a presumptive parole release date between eight months and five years after you begin your prison term.²³⁴ Within ninety days of your initial interview, the Parole Commission will notify you of the set presumptive parole release date.²³⁵ If your presumptive parole release date is more than two years after the initial interview, a hearing examiner will schedule an interview for review of the presumptive parole release date. This review will normally occur within two years of the initial interview and every two years thereafter.²³⁶ However, if you were convicted of a more serious offense, including murder, attempted murder, sexual battery, or attempted sexual battery, this review will only occur every seven years. It will also occur every seven years if you were sentenced to a minimum twenty-five-year mandatory sentence, and your presumptive release date is more than seven years away.²³⁷ Within ninety days before the presumptive

227. CAL. PENAL CODE § 3003(f) (West 2011).

228. *See In re Shapiro*, 537 P.2d 888, 893, 14 Cal. 3d 711, 720, 122 Cal. Rptr. 768, 773 (Cal. 1975) (“[A] prompt revocation hearing is essential because delay may result in the loss of essential witnesses or ... evidence and the continuation of unnecessary incarceration or other limitations on personal liberty”).

229. *See In re Ruzicka*, 281 Cal. Rptr. 435, 436–439, 230 Cal. App. 3d 595, 597–601 (Cal. Ct. App. 1991) (holding that parolee was entitled to a written record of the Board's parole revocation decision and to pursue an administrative appeal where the parolee filed petition for writ of habeas corpus to challenge parole revocation).

230. CAL. PENAL CODE § 3057(a) (West 2011).

231. CAL. PENAL CODE § 3057(c) (West 2011).

232. *See* FLA. STAT. §§ 3.701(b)(5), (d)(12) (2019).

233. FLORIDA COMMISSION ON OFFENDER REVIEW, *RELEASE TYPES* (2014), *available at* <https://www.fcor.state.fl.us/release-types.shtml> (last visited March 8, 2020).

234. FLA. STAT. ANN. § 947.16(1) (West 2010).

235. FLA. STAT. ANN. § 947.172(2) (West 2010); *see also* FLA. STAT. ANN. § 947.16(1) (West 2010).

236. FLA. STAT. ANN. § 947.174(1)(a) (West 2010).

237. FLA. STAT. ANN. § 947.174(1)(b) (West 2010).

parole release date, a hearing examiner will have a final interview with you to set an effective parole release date and a parole release plan.

If you want to ask for judicial review of the Parole Commission's calculation of your presumptive parole release date, you should file a *writ of mandamus* in circuit court, rather than in district court.²³⁸ A writ of mandamus is a document commanding a public official to perform his or her duty.²³⁹ To file a petition for *mandamus*, go to your facility's law library and ask to see a sample petition. Once you have prepared the petition to include the information in your case, send it to the local circuit court.

If your conduct while in prison has been unsatisfactory, or if you do not have a verified parole release plan, the Parole Commission may extend the presumptive parole release date. It will not be for more than one year.²⁴⁰ Otherwise, the presumptive parole release date will become the effective parole release date. But you will not be released on that date until a satisfactory plan for parole supervision has been completed.²⁴¹

If you have been convicted of certain serious felonies, you may remain under the authority of the trial judge for up to one-third of the maximum sentence set. When you are otherwise eligible for parole, the parole decision will be reviewed by the judge. The judge's decision whether or not to approve the release is not something that you can appeal.²⁴² If the judge refuses to release you on parole, you will be re-interviewed by the Parole Commission at intervals of no longer than two years. However, if you were convicted of a more serious offense, including murder, attempted murder, sexual battery, or attempted sexual battery, this review will only occur every seven years if your presumptive release date is more than seven years away. This is also true if you were sentenced to a minimum twenty-five-year mandatory sentence.²⁴³

You can be released on parole only if:

- (1) The Parole Commission finds with reasonable probability that if you are placed on parole, you will live and conduct yourself as a respectable and law-abiding person; and
- (2) Your release would be compatible with your welfare and the welfare of society.

You must also show the Parole Commission that if you are released on parole, you will be suitably employed, or at least that you will not become a public charge (collect public assistance of any kind).²⁴⁴

You may be eligible for conditional medical release if:

- (1) You are not sentenced to death and are permanently physically incapacitated by an illness, disease or injury, and are therefore no longer a danger to yourself or society; or
- (2) You are terminally ill and your death is imminent.²⁴⁵

If you are given conditional medical release, you will remain under supervision for the remainder of your sentence. This will not reduce your sentence, and nor will sentence will not be reduced by any credit for good behavior. During that period of supervision, you must undergo periodic physical examinations. If it is found that your medical condition no longer incapacitates you, you will be returned to prison. But, reductions for time spent on conditional medical release will be applied.²⁴⁶

Ordinarily, a condition of parole will be restitution to the victim of your offense. Restitution means to reimburse the victim for damages. Failure to make restitution is a violation of parole and may

238. See *Johnson v. Fla. Parole & Prob. Comm'n*, 543 So. 2d 875, 876 (Fla. Dist. Ct. App. 1989) (holding that writ of mandamus to challenge suspension of prisoners' presumptive parole release dates should be filed in the circuit court, rather than the district court of appeal), *overruled on other grounds by Sheley v. Fla. Parole Comm'n*, 720 So. 2d 216 (Fla. 1998).

239. See *Parole & Prob. Comm'n v. Fuller*, 491 So. 2d 275, 275 (Fla. 1986) (holding that judicial review of presumptive parole release dates is available only through writs of mandamus, not through writs of habeas corpus).

240. FLA. STAT. ANN. § 947.1745(2) (West 2010).

241. FLA. STAT. ANN. § 947.1745(4) (West 2010).

242. FLA. STAT. ANN. § 947.16(4)(g) (West 2010).

243. FLA. STAT. ANN. § 947.174(1)(b) (West 2010).

244. FLA. STAT. ANN. § 947.18 (West 2010).

245. FLA. STAT. ANN. §§ 947.149(1)–(2) (West 2010).

246. FLA. STAT. ANN. §§ 947.149(4)–(5) (West 2010).

result in revocation of parole.²⁴⁷ A violation of the terms of parole may also cause you to be arrested and returned to prison to serve out the term of your sentence. However, if your parole is revoked, the Parole Commission has the option to give you credit for any portion of time served while you were on parole release.²⁴⁸

If you are arrested for a suspected parole violation, a preliminary hearing will be held within thirty days of your arrest. You may be represented by a lawyer. At the preliminary hearing, if it is found that under reasonable grounds you have committed a parole violation, a final parole revocation hearing will be held. You may also be represented by a lawyer at the final hearing.²⁴⁹

The parole period of supervision may not exceed the maximum period of your sentence. If you are being paroled from a single or concurrent sentence, the Parole Commission must give reasons for extending the period of supervision beyond two years.²⁵⁰ These reasons must be in writing.

N. Parole in Illinois

Parole has been eliminated in the state of Illinois.²⁵¹ If you were sentenced after February 2, 1978, you will have received a determinate sentence, and this Chapter no longer applies to you. This Chapter only applies to you if you were sentenced prior to February 2, 1978.

The Prison Review Board (Board) sets a fixed release date for all incarcerated people sentenced after 1977. No fixed release date is set if you were given an indeterminate sentence prior to 1977.²⁵² When deciding on a fixed release date, the Board considers the sentencing court's intent, and any aggravating and mitigating factors. The Board will also consider good conduct credit, and your behavior since incarceration.²⁵³ If you accept a release date given by the Board, you are no longer eligible for parole. If you do not accept a fixed release date from the Board, you will be eligible for parole when you have served one of the following:

- (1) The minimum term of an indeterminate sentence minus time credit for good behavior, or twenty years minus time credit for good behavior, whichever is less; or
- (2) Twenty years of a life sentence minus credit for good behavior; or
- (3) Twenty years or one-third of a determinate sentence, whichever is less, minus credit for good behavior.²⁵⁴

In making its determination of parole, the Board considers reports prepared by corrections staff. The Board also considers materials submitted by you, the State's Attorney, and the victim.²⁵⁵ Even if you are eligible for parole, the Board will not parole you if it determines that:

- (1) There is a substantial risk that you will not follow reasonable conditions of parole,
- (2) Your release would minimize the seriousness of the offense or promote disrespect for the law, or
- (3) Your release would have a negative effect on the institution's ability to discipline others.²⁵⁶

If parole is denied, a re-hearing is usually scheduled one year later or up to a maximum of five years after the parole denial (with an exception for certain sexual crimes).

The Board will clearly mention whatever conditions of parole it thinks are necessary to assist you in leading a law-abiding life. However, parole will always put certain requirements on you. And if you were convicted of a sex offense, the Board will assign you more requirements.

As conditions of parole, you may *not* do any of the following:

- (1) Violate a criminal statute in any jurisdiction;

247. FLA. STAT. ANN. § 947.181(2) (West 2010).

248. FLA. STAT. ANN. § 947.21 (West 2010).

249. FLA. STAT. ANN. §§ 947.23(1)–(2) (West 2010).

250. FLA. STAT. ANN. § 947.24(1)(a) (West 2010).

251. 730 ILL. COMP. STAT. ANN. 5/3-3-2 (West 2016).

252. 730 ILL. COMP. STAT. ANN. 5/3-3-2.1(b) (West 2016).

253. 730 ILL. COMP. STAT. ANN. 5/3-3-2.1(e) (West 2016).

254. 730 ILL. COMP. STAT. ANN. 5/3-3-3(a) (West 2016).

255. 730 ILL. COMP. STAT. ANN. 5/3-3-4(d) (West 2016).

256. 730 ILL. COMP. STAT. ANN. 5/3-3-5(c) (West 2016).

- (2) Possess a firearm or other dangerous weapon;
- (3) Use or possess narcotics or any other controlled substance or instruments to use such substances;
- (4) Go to places where controlled substances are sold, used, or distributed;
- (5) Spend time with other people who you know are on parole or mandatory supervised release without permission from your parole agent, or with people who are in an organized gang.²⁵⁷

In addition, you *must* do all of the following:

- (1) Report to an agent of the Department of Corrections;
- (2) Allow the agent to visit you at your house, place of employment, or other places when necessary;
- (3) Attend or live at a facility for the instruction or residence of people on parole;
- (4) Obtain permission before writing or visiting a person who is incarcerated in an Illinois prison;
- (5) Report arrests to an agent within twenty-four hours of release from custody;
- (6) Obtain permission from an agent before leaving Illinois;
- (7) Obtain permission from an agent before changing your address or job;
- (8) Consent to a search of your body, property, and place where you live;
- (9) Agree to drug tests when instructed by a parole agent; and
- (10) Provide truthful information to parole agents in response to their questions.²⁵⁸

If you are released on parole and then suspected of having violated a requirement of your parole, you will have a preliminary hearing before an officer to determine whether there is a reason to hold you for a revocation (cancellation of your parole) hearing. A preliminary hearing is not required when the possible revocation is based on new criminal charges.²⁵⁹ You may appear at a revocation hearing before at least one member of the Board to respond to the charge brought against you and bring witnesses on your behalf. If you are found to have violated a condition of your parole, the Board may either (1) order your return to prison for any portion of the maximum term of imprisonment that you were previously sentenced to, or (2) it may take lesser actions that do not involve putting you back in prison, such as allowing you to remain on parole with different requirements or releasing you to a halfway house.²⁶⁰ Even if the Board orders your return to prison, you may still be eligible for future release on parole.²⁶¹

Every felony sentence, except a life sentence, includes a “parole term” which is a mandatory supervised release period that ranges from one to four years (with the exception of certain sex crimes, which have longer release periods).²⁶² The Board may remove your parole requirements when it determines that you are likely to remain a free person without committing another crime.²⁶³ If you have been released on parole, and you believe you are entitled to a final discharge (release) from your sentence, you may file a habeas corpus petition seeking to be fully released while you are on parole release.²⁶⁴ For a discussion on habeas corpus, see Chapter 21 of the *JLM*, “State Habeas Corpus: Florida, New York, and Michigan.”

O. Parole in Texas

Unless you have been convicted of certain serious felonies, including murder, indecency with a child, aggravated kidnapping, or sexual assault, you will be eligible for release on parole. You become

257. 730 ILL. COMP. STAT. ANN. 5/3-3-7 (West 2016).

258. 730 ILL. COMP. STAT. ANN. 5/3-3-7 (West 2016).

259. 730 ILL. COMP. STAT. ANN. 5/3-3-9(c) (West 2016).

260. 730 ILL. COMP. STAT. ANN. 5/3-3-9 (West 2016).

261. 730 ILL. COMP. STAT. ANN. 5/3-3-10 (West 2016).

262. 730 ILL. COMP. STAT. ANN. 5/5-8-1(d) (West 2007).

263. 730 ILL. COMP. STAT. ANN. 5/3-3-8(b) (West 2016).

264. See *Collins v. Sielaff*, 357 N.E.2d 1213, 1214 – 1215, 43 Ill. App. 3d 1022, 1023–1024, 2 Ill. Dec. 770, 771–772 (Ill. App. Ct. 1976) (allowing parolee to maintain a habeas corpus action claiming entitlement to final discharge).

eligible for release on parole when your time served, plus good conduct time, equals one-fourth of the maximum sentence imposed or fifteen years, whichever is less.²⁶⁵ If you are serving a life sentence for a capital felony in Texas, you will not be eligible for release on parole until the actual time that you have served is equal to forty calendar years, not including good conduct time.²⁶⁶ There are exceptions to this if you are serving a life sentence, considered to be a repeat or habitual offender, or convicted of more serious felonies listed in the statute. If these conditions apply, you may be released on parole only after a parole panel establishes that your release will not increase the likelihood of harm to the public.²⁶⁷ A lawyer may represent you at your parole hearing when you appear before the parole panel.

You may be placed on parole only when plans have been made for your employment or maintenance and care, and when the parole panel believes you are able and willing to fulfill the obligations of a law-abiding citizen. If you are released on parole, you may be subject to certain requirements, such as attendance at substance abuse or sex offender treatment programs, electronic monitoring, requirements for the place that you live, and payment towards the cost of parole supervision. Parole may be granted early to elderly, intellectually or physically disabled, mentally ill, or terminally ill prisoners.²⁶⁸

If you are released on parole and are then accused of or arrested for violating parole, you are usually entitled to a hearing within forty days after the arrest or within a reasonable time if you are arrested in another state.²⁶⁹ Proof that you were convicted and sentenced for another crime while out on parole is enough to justify parole revocation. However, you may request a hearing where you can present information in your favor for the later conviction. If your parole is revoked (cancelled), you may not get credit for the time that you were out on parole. If you want to challenge a revocation of parole, you should file a state habeas corpus petition with the court that convicted you of the original offense from which you were paroled.²⁷⁰

To complete the parole period, you must serve out the whole term for which you were sentenced.²⁷¹ Depending on your specific situation, the Paroles and Pardons Division may allow you to serve the remainder of your term without supervision.

P. Parole in Michigan

If you are serving an indeterminate sentence (when a judge did not decide the total time that you are ordered to spend in prison) in a Michigan state prison, and you have served your minimum sentence minus any allowances (such as good time or a disciplinary credit), the Michigan state Parole

265. TEX. GOV'T CODE ANN. § 508.145(f) (West 2012).

266. TEX. GOV'T CODE ANN. § 508.145(b) (West 2012).

267. TEX. GOV'T CODE ANN. § 508.145(b)–(d) (West 2012). Prisoners serving time for any offense listed in Article 42A.054(a) of the Texas Code of Criminal Procedure (except for capital murder), an offense for which the judgment had an affirmative finding of a use of a deadly weapon or firearm, an offense of continuous human trafficking, or an offense of engaging in or directing organized criminal (gang) activity will not be eligible for release on parole until “the inmate’s actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.” TEX. GOV'T CODE ANN. § 508.145(d) (West 2012).

268. TEX. GOV'T CODE ANN. § 508.146 (West 2017).

269. TEX. GOV'T CODE ANN. §§ 508.281–508.282 (West 2012).

270. See Bd. of Pardons & Paroles *ex rel.* Keene v. Court of Appeals for the Eighth District, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995) (noting that when parolee sought state habeas corpus relief following the revocation of his parole, such a claim should be brought before the original convicting court).

271. TEX. GOV'T CODE ANN. § 508.155 (West 2012).

Board may decide to grant you parole.²⁷² You may be granted “special parole” before you finish serving your minimum term, if your sentencing judge gives written approval.²⁷³

If you are serving a sentence for a drug offense, you may be eligible for parole before your minimum term is over—after half your minimum sentence, after five years, after ten years, or after seventeen and a half years—depending on the severity of your offense.²⁷⁴

If you are serving a life sentence, you may still be eligible for parole, unless you were convicted of first degree murder, adulterating medicine/drugs or selling adulterated medicine/drugs, explosives-related offenses, or criminal sexual conduct.²⁷⁵ Depending on the crime for which you were convicted, you may become eligible for parole from a life sentence within as early as ten years.²⁷⁶ See Section 791.234(8) of the Michigan Compiled Laws for additional conditions that will apply.

If you have been sentenced for consecutive (back to back) terms, you become eligible for parole when you have served the total time of the added minimum terms, minus any good time and disciplinary credits, if you are not subject to added disciplinary time.²⁷⁷ If you have remaining consecutive terms to serve and have not received added disciplinary time while in prison, the Parole Board is allowed to end the time left in the sentence you are currently serving once you have served the minimum term of your present sentence.²⁷⁸

The Michigan Parole Board will not give you parole until you have made plans for employment, education, and any necessary mental health or medical care.²⁷⁹ Unless you were sentenced before December 15, 1998 or your minimum sentence was less than two years, you *must* have earned your high school diploma or GED if you were not employed when you committed the crime.²⁸⁰

The Parole Board must interview you at least one month before your minimum sentence has ended, minus applicable good time and disciplinary credits and as long as you are not subject to disciplinary time.²⁸¹ However, the Parole Board does not have to interview an incarcerated person in order to grant parole if it “determines that the prisoner has a high probability of being paroled and the parole board therefore intends to parole the prisoner.”²⁸² You may also waive your right to (decide not to do) an interview, but the waiver must be in writing and no later than thirty days after the notice of intent to conduct an interview is issued.²⁸³

If the Parole Board decides to interview you, you should receive a notice from the Parole Board at least one month before the interview date.²⁸⁴ The notice must state the specific issues and concerns that will be discussed at the interview and that may cause them to deny you parole. The board cannot deny your parole for a reason that is not stated in the notice, except for good cause as stated to you at or before your interview, and as listed in the required written explanation.²⁸⁵ Read the interview notice

272. MICH. COMP. LAWS ANN. § 791.234(1) (West 2007). Michigan does not require that every prisoner be eligible for parole. *See, e.g.,* *People v. Merriweather*, 447 Mich. 799, 809, 527 N.W.2d 460, 464 (Mich. 1994) (“We find no basis, however, to conclude . . . the Legislature intended . . . all defendants, or even simply this defendant, must be eligible for parole”).

273. MICH. COMP. LAWS ANN. § 791.233(1)(b) (West 2007).

274. MICH. COMP. LAWS ANN. §§ 791.234(7)(b)–(c), (8), (12) (West 2007).

275. MICH. COMP. LAWS ANN. §§ 791.234(6)–(7) (West 2007).

276. MICH. COMP. LAWS ANN. § 791.234(7) (West 2007).

277. MICH. COMP. LAWS ANN. §§ 791.234(3)–(4) (West 2007).

278. MICH. COMP. LAWS ANN. § 791.234(5) (West 2007).

279. MICH. COMP. LAWS ANN. § 791.233(1)(e) (West 2007).

280. MICH. COMP. LAWS ANN. § 791.233(1)(f) (West 2007). You are exempt from this requirement if you are over 65, have a learning disability, are not proficient (very capable) in English, or some other reason outside your control.

281. *See* MICH. COMP. LAWS ANN. § 791.235(1) (West 2007).

282. MICH. COMP. LAWS ANN. § 791.235(1) (West 2007).

283. MICH. COMP. LAWS ANN. § 791.235(6) (West 2007).

284. MICH. COMP. LAWS ANN. § 791.235(4) (West 2007).

285. MICH. COMP. LAWS ANN. § 791.235(4) (West 2007).

carefully, and be prepared to challenge and present evidence on any incorrect issues stated in the notice.

During the interview, you may be represented by an individual of your choice, but your representative cannot be a fellow prisoner or an attorney.²⁸⁶ You or your representative can present relevant evidence to support your release and challenge any inaccurate information in the notice. When making a parole determination, the Parole Board cannot consider an expunged (erased) juvenile record or any information it determines is incorrect.²⁸⁷ The Parole Board can consider—but cannot base a parole denial *solely* on—your marital history, or prior arrests that did not result in conviction or adjudication of delinquency.²⁸⁸ The Parole Board must consider any statements made by a victim.²⁸⁹ In addition, the Parole Board member conducting your interview must review information relevant to the notice of intent to conduct an interview, such as the parole eligibility report prepared by the institutional staff. The parole eligibility report includes information such as all the major misconduct of which you have been found guilty, your work and education record during confinement, and the results of any physical, mental, or psychiatric examinations performed on you during your time in prison.²⁹⁰

If the Michigan Parole Board decides not to release you, you will receive a written explanation of the reason for the denial, which may include specific recommendations for action that you may take to improve your future chances of release.²⁹¹ Only the prosecutor or crime victim can appeal a decision made by a Parole Board; your ability to appeal the Parole Board's decision has been eliminated.²⁹² The appropriate standard of review for the Parole Board's determination is an abuse of discretion standard.²⁹³ Habeas corpus is available only under extreme circumstances, such as where parole has been denied based on your race, religion, or national origin.²⁹⁴ The law does not require that you be re-interviewed within the next twelve months—the Court of Appeals of Michigan has held that there is “no statutory impediment” (restriction imposed by the law) to a Parole Board's decision not to reconsider a prisoner's eligibility for parole for two years.”²⁹⁵

Q. Conclusion

This Chapter provides a detailed summary of New York State parole procedures, from the release hearing to the revocation process. It also includes a brief overview of parole procedures and practices in these states: California, Florida, Illinois, Texas, and Michigan. Additionally, we hope that incarcerated people in states not specifically covered in this Chapter will get a better understanding of parole policies. In general, this Chapter may serve as a model for ideas on how to research and whom to contact when learning about the parole system in your own state. Note, however, many states

286. MICH. COMP. LAWS ANN. § 791.235(6) (West 2007).

287. MICH. COMP. LAWS ANN. §§ 791.235(1)(a)–(b) (West 2007).

288. MICH. COMP. LAWS ANN. §§ 791.235(3)(a)–(b) (West 2007).

289. MICH. COMP. LAWS ANN. § 791.235(1) (West 2007).

290. MICH. COMP. LAWS ANN. §§ 791.235(5), (7)(a)–(g) (West 2007).

291. MICH. COMP. LAWS ANN. § 791.235(20) (West 2007).

292. *Morales v. Mich. Parole Bd.*, 260 Mich. App. 29, 36, 676 N.W.2d 221, 227–228 (Mich. 2003) (noting that, “[b]y eliminating the phrase, ‘shall be appealable by the prisoner’ . . . the Legislature clearly intended” to eliminate the prisoner's right to appeal a parole board's decision).

293. *Wayne County Prosecutor v. Parole Board*, 210 Mich. App. 148, 153, 532 N.W.2d 899, 901 (Mich. 1995) (holding that the appropriate standard of review when a court reviews a Parole Board's decision to grant parole is abuse of discretion). This discretion is restricted by MICH. COMP. LAWS ANN. §§ 791.233(1), 791.235(1), (3), (4), (7)–(9) (West 2012). The abuse of discretion is a difficult standard to meet because in order for the Parole Board's decision to be overturned, you must show that the Board's decision was unsupported by the evidence, unlawful, or clearly incorrect.

294. *Morales v. Mich. Parole Bd.*, 260 Mich. App. 29, 40, 676 N.W.2d 221, 230 (Mich. 2003) (“[T]he writ of habeas corpus deals only with radical defects which render a judgment or proceeding absolutely void”). A radical defect would be if the Parole Board did something that was clearly against what is required by law.

295. *In re Parole of Roberts*, 232 Mich. App. 253, 256, 591 N.W.2d 259, 260 (Mich. 1998).

have eliminated parole and now impose determinate (fixed) sentences. All incarcerated people, even where the information is clear, should refer directly to the applicable statutes and regulations of their state to see if there have been changes made following the *JLM*'s publication.