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EVALUATION AS THE PROPER FUNCTION OF THE PAROLE BOARD: AN ANALYSIS OF NEW YORK STATE'S PROPOSED SAFE PAROLE ACT

Amy Robinson-Oost†

I. INTRODUCTION

On August 17, 1991, George Cruz, a teenager with no prior convictions, unknowingly shot a man during a drunken altercation in a parking lot in upstate New York.¹ The following day, when Mr. Cruz learned he had killed someone, he turned himself in.² He pled guilty to first-degree manslaughter, for which he was sentenced to eight to twenty-four years in prison.³ During his third parole hearing, the New York State Board of Parole (“the Board”) reviewed evidence that Mr. Cruz had voluntarily participated in substance abuse treatment and alternatives to violence programs, and earned forty-five college credits during his fifteen years of incarceration.⁴ Family members, including his wife, promised to help him in his reentry.⁵ Mr. Cruz admitted his guilt and expressed remorse for his action, as he had always done.⁶ Mr. Cruz seemed to be “a prime candidate for parole release.”⁷ Despite these “positive institutional achievements and his exemplary conduct in prison,” the Board denied Mr. Cruz’s parole application on the basis that his actions “led to the death of a male victim.”⁸

Mr. Cruz is one of many New Yorkers who have repeatedly been denied parole on the basis of the severity of the underlying offense despite positive program accomplishments, post-release plans, and strong evidence of rehabilitation.⁹ Although the Board

† CUNY School of Law, Class of 2013. I am grateful to Professor Steve Zeidman, Judith Whiting, and Paul Keefe for their guidance and support. Thank you to Eric Washer, Alfia Agish, Lindsay Cowen, Danny Alicea, Brendan Conner, Erik Oost, and Barbara Robinson for their feedback and encouragement.

¹ Cruz v. N.Y. State Div. of Parole, 39 A.D.3d 1060, 1061 (3d Dep’t 1997).

² *Id.* at 1061.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Cruz v. N.Y. State Div. of Parole, 39 A.D.3d 1060, 1062 (3d Dep’t 1997).

⁸ *Id.* at 1061.

⁹ The New York State Board of Parole’s practice of denying parole based on the severity of the offense was unsuccessfully challenged in federal court recently. *See* Gra-

is instructed to balance specific factors in rendering its opinion,¹⁰ and New York courts have asserted that the role of the Board is not to resentence a prisoner according to personal judgments regard-

ziano v. Pataki, No. 06 Civ. 0480(CLB), 2006 WL 2023082, at *1 (S.D.N.Y. July 17, 2006). The complaint alleged that, under Governor George Pataki, prisoners serving indeterminate sentences were repeatedly denied parole pursuant to an “unofficial policy of denying parole release to prisoners convicted of A-1 violent felony offenses, solely on the basis of the violent nature of such offenses and thus without proper consideration to any other relevant or statutorily mandated factor.” *Id.* at *2. The class members asserted that this unofficial policy violated their rights to due process and equal protection under the Fourteenth Amendment, as well as the ex post facto clause of Article 1, § 1 of the U.S. Constitution. *Id.* at *1. They argued that they were “denied full, fair and balanced parole hearings as required to be conducted pursuant to the provisions of New York State Executive Law § 259-1, and as a result have been subjected to unconstitutional enhancements of their sentences.” *Id.* In a July decision, Judge Charles Brieant denied the State’s motion to dismiss the complaint as to all claims. *Id.* at *13. Eighteen months later, after Governor Pataki left office, the defendants filed a second motion to dismiss, alleging the action was moot. *See* Graziano v. Pataki, No. 06 Cv. 480(CLB), 2007 WL 4302483, at *1 (Dec. 5, 2007). This was also denied. *Id.* at *2. After Judge Brieant’s death in 2008, Judge Cathy Seibel was appointed to replace him. *A Brief Overview of the Graziano v. Pataki Case*, PAROLE NEWS (Sept. 17, 2012), <http://parolenews.blogspot.com/2012/09/a-brief-overview-of-graziano-v-pataki.html>. In December 2010, the action was dismissed. *See* Graziano v. Pataki, 689 F.3d 110, 112–13. The U.S. Court of Appeals for the Second Circuit affirmed the dismissal, with Judge Stefan R. Underhill—sitting by designation of the United States District Court for the District of Connecticut—dissenting. *Id.* at 117.

¹⁰ New York law provides that the following factors must be considered when granting discretionary parole release:

- (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates;
- (ii) performance, if any, as a participant in a temporary release program;
- (iii) release plans including community resources, employment, education and training and support services available to the inmate;
- (iv) any deportation order issued by the federal government against the inmate while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department pursuant to section one hundred forty-seven of the correction law;
- (v) any statement made to the board by the crime victim or the victim’s representative, where the crime victim is deceased or is mentally or physically incapacitated;
- (vi) 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 two hundred twenty or article two hundred twenty-one of the penal law;
- (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and
- (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement.

N.Y. EXEC. LAW § 259-i (2)(c)(A) (West, Westlaw through 2011 legislation).

ing the original crime,¹¹ case law and anecdotes from current prisoners and those formerly incarcerated paint a different picture. They point to a consistent pattern of parole denial that seems to be based purely on the severity of the underlying offense.¹² Reviewing courts rarely overturn such decisions because the standard of review is almost impossible to meet.¹³ The larger problem, however, is that New York's parole guidelines are vague and unwieldy, and unfairly allow the Board to place undue emphasis on the severity of the crime as there is no mandate that equal weight be accorded to each factor.¹⁴ On the contrary, courts have repeatedly endorsed the Board's decision to place excessive weight on the seriousness of the crime.¹⁵ A recent interview with Tom Grant, a retired member of the Board, revealed the flawed nature of the parole process in New York.¹⁶ When asked whether there were any decisions relating to parole that he regretted, the former Board member said:

I happened to see one inmate on two separate occasions during my time on the parole board. He had participated in a heart-breaking crime as a teenager and he had subsequently done remarkably well during his lengthy period of incarceration. I don't believe he had one disciplinary infraction. He had already been denied by two or three parole boards, primarily due to the nature of the offense. It was a fatal shooting and he had an accomplice. During his interview, the other board commissioners and I focused on the logistics because it was unclear who might have actually fired the fatal shot. We denied him. From time to time I thought about the case. I said to myself, "I'll re-examine this, if I ever see this guy again," but it's all random who comes before you at an interview so I didn't know if I would see him again.

¹¹ See *King v. N.Y. State Div. of Parole*, 190 A.D.2d 423, 432 (1st Dep't 1993), *aff'd*, 83 N.Y.2d 788 (1994).

¹² See generally *Sterling v. Dennison*, 38 A.D.3d 1145 (3d Dep't 2007); *Bottom v. N.Y. State Bd. of Parole*, 30 A.D.3d 657 (3d Dep't 2006); see also *Storybank*, NYS PAROLE REFORM CAMPAIGN, <http://nationinside.org/campaign/nys-parole-reform-campaign/storybank/> (last updated Nov. 9, 2011) (providing anecdotes from parole applicants and family members regarding parole denials despite applicants' rehabilitation successes); Judith Brink, Prison Action Network, Letter to the Editor: *The Parole Board Is Not a Resentencing Body*, TIMES UNION, May 10, 2013.

¹³ See, e.g., *Harris v. N.Y. State Div. of Parole*, 211 A.D.2d 205, 206–07 (3d Dep't 1995) (finding a denial of parole arbitrary and capricious where the parole board refused to review the sentencing judge's recommendation, which was favorable to the prisoner, and where the record reflected bias bordering on hostility on the part of the parole board).

¹⁴ See *Watson v. N.Y. State Bd. of Parole*, 78 A.D.3d 1367, 1368 (3d Dep't 2010).

¹⁵ See, e.g., *Gonzalez v. Chair*, N.Y. State Bd. of Parole, 72 A.D.3d 1368, 1369 (3d Dep't 2010); *Smith v. N.Y. State Div. of Parole*, 64 A.D.3d 1030 (3d Dep't 2009); *Sterling*, 38 A.D.3d 1145; *Bottom*, 30 A.D.3d 657.

¹⁶ John Caher, *Q&A: Tom Grant*, N.Y.L.J., Sept. 21, 2012.

Four years go by, and I see him and the same questions come up, as they would. He was still doing well. In my opinion, he had no more likelihood of committing a crime than you or I. This time I voted to release him and the two other commissioners on the panel voted to keep him in. He is still in. He has life at the end of his sentence. I still think about it. We got bogged down with the logistics. He may never go home. That is the one I think about.¹⁷

This Note will examine a proposed law that is currently before both houses of the New York State legislature that would require, among other things, that the Board modify the criteria on which parole decisions are made.¹⁸ Importantly, the Safe and Fair Evaluation Parole Act (“the Act” or “the SAFE Parole Act”) would eliminate as criteria the severity of the offense and the parole applicant’s prior convictions because these static facts fail to serve the rehabilitative goal of incarceration.¹⁹ In Section II, parole is defined, explained, and contextualized within the current United States criminal legal system. This includes statistical data regarding post-release supervision and incarceration rates.²⁰ Section III provides an overview of the history of parole and sentencing in the United States. Section IV introduces and explains parole in New York, with a focus on the text of current New York law and the specific proposed modifications of the SAFE Parole Act. The find-

¹⁷ *Id.*

¹⁸ SAFE Parole Act, S. 1128/A. 4108, Reg. Sess. (N.Y. 2013). The Act was introduced on May 13, 2011 as S. 5374/A. 7939, and reintroduced in 2013, when it was given a new number.

¹⁹ See N.Y. PENAL LAW § 1.05(6) (West, Westlaw through 2011) (providing that one of the purposes of punishment is to “insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, the promotion of their successful and productive reentry and reintegration into society, and their confinement when required in the interests of public protection”); Joel M. Caplan & Susan C. Kinnevy, *National Surveys of State Paroling Authorities: Models of Service Delivery*, 74 FED. PROBATION 34, 41 (2010) (noting that the first official draft of the Model Penal Code provided that one of the principal purposes for the sentencing and treatment of prisoners was rehabilitation, and that the Code created a presumption that prisoners would be released when they first became eligible).

²⁰ The larger issue of mass incarceration is beyond the scope of this paper. For more information on this topic see generally WILLIAM J. STUNZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* (2011); FRANKLIN E. ZIMRING, *THE CITY THAT BECAME SAFE: NEW YORK’S LESSONS FOR URBAN CRIME AND ITS CONTROL* (2011); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE* (2003); Anthony M. Kennedy, Assoc. Justice, Supreme Court of the U.S., Speech at the American Bar Association Annual Meeting (Aug. 14, 2003); Karina Kendrick, Comment, *The Tipping Point: Prison Overcrowding Nationally, in West Virginia, and Recommendations for Reform*, 113 W. VA. L. REV. 585, 586 (2010–2011).

ings from a fifty-state survey of parole laws and procedures are analyzed to place New York's current and proposed laws in their proper context in Section V. Finally, this Note provides recommendations and conclusions.

II. DEFINING AND CONTEXTUALIZING PAROLE

Parole is a period of supervised release in the community following a prison or jail sentence before the full sentence has been served.²¹ It may be required by law, or it may be discretionary, where a government-appointed decision-maker, such as a parole board, determines that it is safe for a prisoner to be released.²² Parole is a privilege, not a right, in that a state may establish a parole system, but it has no duty to do so.²³ However, a statute may create a constitutionally protected expectation of parole if it contains language mandating release under certain circumstances.²⁴ For example, the use of a phrase such as "parole shall be ordered if" creates a presumption that parole release will be granted when the criteria following that phrase are met.²⁵ Presumptive parole has largely fallen out of favor, as most states now employ discretionary parole models,²⁶ which grant broad discretion to parole boards or other governing bodies to determine parole.²⁷ This often requires that the parole board write a set of factors or guidelines to be considered in parole determinations.²⁸ Parole decision-making is an administrative procedure. Thus, the process due is guided by balancing the prisoner's interest in release against the government's interest in public safety, with the express goal of minimizing erroneous decisions.²⁹

²¹ See BLACK'S LAW DICTIONARY 964 (9th ed. 2010).

²² BUREAU OF JUSTICE STATISTICS, DEP'T OF JUSTICE, NCJ-231674, PROBATION AND PAROLE IN THE U.S. 2009 I (2010).

²³ *Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1, 7 (1979).

²⁴ *Id.* at 12; see also *Bd. of Pardons v. Allen*, 482 U.S. 369, 372-73 (1987).

²⁵ *Greenholtz*, 442 U.S. at 19; *Allen*, 482 U.S. at 378-79.

²⁶ See Appendix, *infra*, for comprehensive information about state parole guidelines and laws.

²⁷ See Carolyn Turpin-Petrosino, *Are Limiting Enactments Effective? An Experimental Test of Decision Making in a Presumptive Parole State*, 27 J. CRIM. JUST. 4, 321 (1999).

²⁸ *Allen*, 482 U.S. at 378.

²⁹ *Greenholtz*, 442 U.S. at 13; *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (dictating that three distinct factors must be considered: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail").

Nationwide, more than 800,000 people are currently under criminal justice supervision following their release from prison.³⁰ In New York, approximately 22,000 people are released into parole and post-release supervision each year.³¹ During the 2009–2010 fiscal year, the New York State Board of Parole granted release to 40% of eligible parole applicants.³² However, 78% of first-time applicants were denied parole and only 9% of violent felony offenders were released.³³

Meanwhile, the number of people imprisoned in the United States has increased dramatically over the past forty years.³⁴ In 2010, there were more than 2.2 million people incarcerated in the United States.³⁵ In fiscal year 2010, the average cost of incarceration for federal inmates was \$28,284.³⁶ In stark contrast, the average cost of community-based supervision, through parole or probation, is approximately one-tenth of that amount; probation costs approximately \$1,250 per person annually, while parole costs \$2,750.³⁷ Amid a nationwide fiscal crisis and prison overcrowding, reduced sentencing, parole, probation, and alternatives to incarceration are obvious ways for states to preserve funds. According to one estimate, increasing the availability of parole and probation and decreasing the prison population by 10% would yield \$3 billion annually in cost savings.³⁸

³⁰ *New York State Parole Project*, VERA INST. OF JUSTICE, <http://www.vera.org/project/new-york-state-parole-project> (last visited Dec. 20, 2011).

³¹ N.Y. STATE DIV. OF PAROLE, ANNUAL REPORT FOR FY 2009–10 7 (2010), *available at* <https://www.parole.ny.gov/pdf/parole-annual-report-2010.pdf>.

³² *Id.* at 4.

³³ *Id.* In light of such statistics, it is perhaps unsurprising that Mr. Cruz was denied parole three times despite his rehabilitative efforts.

³⁴ PEW CHARITABLE TRUSTS, PUBLIC SAFETY, PUBLIC SPENDING: FORECASTING AMERICA'S PRISON POPULATION 2007–2011 ii (2007) (calculating a 700% increase in the U.S. prison population between 1970 and 2005).

³⁵ BUREAU OF JUSTICE STATISTICS, DEP'T OF JUSTICE, NCJ-236319, CORRECTIONAL POPULATION IN THE UNITED STATES 3 (2010) (noting that this figure includes jail inmates and prisoners held in privately operated facilities).

³⁶ Annual Determination of Average Cost of Incarceration, 76 Fed. Reg. 57,081–57,082 (Sept. 15, 2011).

³⁷ PEW CTR. ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 12 (2009).

³⁸ AM. BAR ASS'N., TEXAS & MISSISSIPPI: REDUCING PRISON POPULATIONS, SAVING MONEY, AND REDUCING RECIDIVISM (2011), *available at* http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_parole_probation.authcheckdam.pdf.

III. THE RISE AND FALL OF DISCRETION IN PAROLE DETERMINATIONS

Parole in the United States is more than 100 years old.³⁹ Over the past century, parole and sentencing laws, which often go hand-in-hand, have undergone several significant changes on national and state levels.⁴⁰ The widespread use of indeterminate sentences vested extensive power in the judgment of parole board members. Discretionary parole, which allows paroling authorities to decide releases for eligible prisoners on a case-by-case basis,⁴¹ began to fall out of favor in the 1960s. After the Civil Rights movement, legislatures sought to eliminate or reduce discretion in judicial and executive decision-making to ensure equitable sentencing and post-incarceration releases.⁴² To accomplish this goal, state legislators implemented “limiting enactments” such as determinative sentencing, mandatory minimum sentencing, “truth in sentencing” acts, and presumptive parole.⁴³ Conventional wisdom provided that such measures would reduce disparate sentences and parole determinations based on inappropriate considerations, such as race or age.⁴⁴ However, limiting enactments have failed to achieve their intended effect, as criminal justice practitioners continue to employ discretion in direct contradiction with the goals of limiting enactments.⁴⁵ One explanation is that standardized tools designed to achieve fairness and uniformity may not have been implemented correctly due to either lack of proper training for hearing officers,⁴⁶ or perhaps unrealistic expectations of objectivity in the face of ambiguous guidelines.

The economic collapse of 2008 and ensuing nationwide fiscal crisis prompted many states to reexamine sentencing policy, length of incarceration, and community supervision strategies in an attempt to preserve scarce resources.⁴⁷ One recent survey reveals that

³⁹ Caplan & Kinnevy, *supra* note 19, at 34.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Turpin-Petrosino, *supra* note 27, at 321.

⁴³ *Id.*; see also Dhammika Dharmapala, Nuno Garoupa & Joanna M. Shepherd, *Legislatures, Judges, and Parole Boards: The Allocation of Discretion Under Determinate Sentencing*, 62 FLA. L. REV. 1037, 1038 (2010); James Austin, *The Proper and Improper Use of Risk Assessment in Correction*, 16 FED. SENT'G REP. 3, 195–96 (2004).

⁴⁴ Turpin-Petrosino, *supra* note 27, at 323.

⁴⁵ *Id.* at 330.

⁴⁶ *Id.*

⁴⁷ See, e.g., JAMES AUSTIN, JFA INST., REFORMING MISSISSIPPI'S PRISON SYSTEM 1 (2009), available at <http://www.floridatac.org/files/document/MDOCPaper.pdf>; Brian Mann, *Prison Towns Worry Closures Could Upend Communities*, WNYC NEWS (Feb. 3, 2011), <http://www.wnyc.org/articles/wnyc-news/2011/feb/03/cuomo-consolidate>

in 2009, several states “fine-tuned sentencing laws, expanded community-based diversion programs, and created policies and programs aimed at reducing recidivism.”⁴⁸ Mississippi in particular has been praised for its sentencing reforms during the fiscal crisis.⁴⁹ According to the Pew Center on the States, Mississippi sought to “enhance public safety and control corrections costs by concentrating its prison space on more serious offenders.”⁵⁰ To effect this change, Mississippi changed its truth-in-sentencing law by permitting all nonviolent offenders to become eligible for parole after serving 25% of their prison sentence.⁵¹ Previously, the statute had required prisoners to fulfill 85% of their sentences before they became eligible.⁵²

States have come up with various solutions to the problems caused by determinate sentencing. Many states provide mandatory parole for certain prisoners and discretionary parole for others, depending on the severity of the crime or the date of the conviction.⁵³ These states thus maintain a mix of determinate and indeterminate sentencing in their statutes. Almost every state, including New York, employs a multi-factor approach in order to balance the advantages and disadvantages of release.⁵⁴ Although the overarching goal of such an approach is to assess whether the prisoner continues to be a risk to the general public, the most determinative factors appear to be the severity of the crime, the crime types, and the prisoner’s criminal history.⁵⁵ Many parole boards, often instructed by state legislatures, have developed risk assessment tools to assist in parole determinations.⁵⁶ As one advocate explains, “these devices are used to identify prisoners by risk level

-upstate-prisons-compensate-affected-communities/ (reporting that New York is closing prisons in light of the financial crisis). *See also* *Brown v. Plata*, 131 S. Ct. 1910 (2011) (affirming a three-judge panel’s decision ordering California to reduce its prison population to remedy long-standing constitutional violations arising from prison overcrowding).

⁴⁸ *See, e.g.*, AM. BAR ASS’N., *supra* note 38; *see also Significant State Sentencing and Corrections Legislation in 2009*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/issues-research/justice/sentencing-and-corrections-legislation-in-2009.aspx> (last visited Dec. 29, 2011).

⁴⁹ AM. BAR ASS’N., *supra* note 38; *see also* JFA INST., *supra* note 47, at 1.

⁵⁰ PEW CTR. ON THE STATES, *supra* note 37.

⁵¹ JFA INST., *supra* note 47, at 2.

⁵² *Id.*

⁵³ *See, e.g.*, ALASKA STAT. ANN. § 33.16.010 (West, Westlaw through 2011); ARK. CODE. ANN. § 16-93-615 (West, Westlaw through 2011).

⁵⁴ *See* N.Y. EXEC. LAW § 259-i (2)(c)(A) (West, Westlaw through 2011); *see also* Appendix, *infra*, for full list of state statutes and parole guidelines.

⁵⁵ Caplan & Kinnevy, *supra* note 19, at 35.

⁵⁶ Turpin-Petrosino, *supra* note 27, at 324.

which in turn can be used to better inform the decision to incarcerate, release and supervise.”⁵⁷ When coupled with discretion, such methodologies have proven to be an accurate and reliable way to reduce the prison population and protect public safety.⁵⁸ Nonetheless, critics point to three problems with this method: (1) developing a risk assessment instrument can be complicated and costly; (2) risk assessment is overly rigid; and (3) it is nearly impossible to predict the future behavior of individuals.⁵⁹ Indeed, in its inflexible formulation of a scored matrix, risk assessment seems to hearken back to indeterminate sentencing. The dangers of improper application only increase when parole boards are not permitted to exert any professional judgment to override the risk assessment evaluation.⁶⁰

Despite these flaws and concerns, leading legal organizations that study the criminal legal system, such as the American Bar Association, the Vera Institute of Justice, and the JFA Institute, support the use of risk assessment tools in both sentencing and parole determinations, albeit conditionally.⁶¹ The JFA Institute cautions that “[t]here must be an opportunity to depart from scored risk levels” based on professional judgments and that “no system should rely exclusively on scored risk assessment to make a final risk determination.”⁶² Many states already employ a risk assessment tool in parole determinations, and others are developing such instruments.⁶³

IV. NEW YORK'S SAFE PAROLE ACT

The New York State Division of Parole was established in 1930 with authority granted to the Parole Board to make decisions regarding parole releases from prison.⁶⁴ In 1977, the Division of Parole adopted formal release guidelines to ensure evenhanded decision-making.⁶⁵ Eighteen years later, Governor George Pataki

⁵⁷ Austin, *supra* note 43, at 2.

⁵⁸ *Id.* at 3.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 3–4; AM. BAR ASS'N., ABA URGES STATES TO INCREASE THE USE OF PAROLE AND PROBATION, ALONG WITH GRADUATED SANCTIONS FOR VIOLATIONS, TO DECREASE INCARCERATION RATES, IMPROVE PUBLIC SAFETY, AND SAVE MONEY (2011), available at http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/SP_IP_overview.authcheckdam.pdf.

⁶² Austin, *supra* note 43, at 5.

⁶³ NAT'L INST. OF CORR. INFO. CTR., USE OF RISK ASSESSMENT FOR PAROLE RELEASE CONSIDERATION (2001), available at <http://nicic.gov/Library/017178>.

⁶⁴ N.Y. STATE DIV. OF PAROLE, *supra* note 31, at 5.

⁶⁵ *Id.*

signed into law the Sentencing Reform Act of 1995, which restructured sentencing guidelines and sharply curtailed parole eligibility by eliminating parole release for second-time violent felony offenders.⁶⁶ Three years later, the sentencing laws were reformed once again through the Sentencing Reform Act of 1998 (known as “Jenna’s Law”), which eliminated discretionary parole release for all people convicted of violent felonies.⁶⁷

Currently, in the face of budgetary woes and a declining prison population,⁶⁸ New York has been especially aggressive in restructuring its correctional system.⁶⁹ First, New York merged the Department of Correctional Services and the Division of Parole to create the State Department of Corrections and Community Supervision (“DOCCS”), which was estimated to provide savings of \$17 million in fiscal year 2011–12.⁷⁰ Second, in June of 2011, Governor Cuomo announced the closure of seven New York State prison facilities.⁷¹ Third, New York amended one of its laws to require that the Board establish written procedures incorporating “risk and needs principles to measure the rehabilitation of persons appearing before the board,” and “the likelihood of success of such persons upon release” in order to assist the parole board in its decision-making.⁷² Prior to the amendment of the law, application of such principles was purely discretionary;⁷³ they are now mandatory. Finally, a risk assessment system was recently imple-

⁶⁶ Edward R. Hammock & James F. Seelandt, *New York’s Sentencing and Parole Law: An Unanticipated and Unacceptable Distortion of the Parole Boards’ Discretion*, 13 ST. JOHN’S J. LEGAL COMMENT 527, 527 (1999).

⁶⁷ N.Y. STATE DIV. OF PAROLE, *supra* note 31, at 5.

⁶⁸ JUDITH GREENE & MARC MAUER, SENTENCING PROJECT, JUSTICE STRATEGIES, *Downscaling Prisons: Lessons from Four States* 5 (2010) (calculating a 20% reduction from 72,899 to 58,456 from 1999 to 2009), available at http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf.

⁶⁹ See, e.g., Mann, *supra* note 47; Thomas Kaplan, *Cuomo Administration Closing 7 Prisons*, 2 in *New York City*, N.Y. TIMES, June 30, 2011, available at <http://www.nytimes.com/2011/07/01/nyregion/following-through-on-budget-state-will-close-seven-prisons.html>; Jon Alexander, *Cuomo Grants North Country Clemency on Prison Closures*, THE POST-STAR, June 30, 2011, available at http://poststar.com/news/local/article_61171aee-a358-11e0-adab-001cc4c002e0.html.

⁷⁰ *Factsheet: Merger of Department of Correctional Services and Division of Parole*, DEP’T OF CORR. & CMTY. SUPERVISION (2011), <http://www.doccs.ny.gov/FactSheets/DOCS-Parole-Merger.html>.

⁷¹ Press Release, Governor’s Press Office, Governor Cuomo Announces Closure of Seven State Prison Facilities (June 30, 2011), available at <http://www.governor.ny.gov/press/06302011ClosureOfSevenStatePrisonFacilities>.

⁷² N.Y. EXEC. LAW § 259-c (4) (effective Oct. 1, 2011) (West, Westlaw through 2011).

⁷³ N.Y. EXEC. LAW § 259-c (4) (effective June 22, 2010) amended by N.Y. EXEC. LAW § 259-c (4) (effective Mar. 31, 2011 to Sept. 30, 2011) (West, Westlaw through 2011).

mented in New York.⁷⁴ Through these actions, New York has acted as a leader in the field of progressive criminal justice reform (even if such reforms are financially motivated). New York has the potential to be at the forefront of innovative, forward-thinking parole legislation that properly values a prisoner's rehabilitative efforts if it passes the SAFE Parole Act.

The SAFE Parole Act, a proposed bill in both houses of the New York legislature, was introduced in mid-May 2011 in the New York State Senate by Tom Duane and in the New York State Assembly by Jeffrion Aubry.⁷⁵ At the end of the Legislative Session that concluded in June 2011, the bill had three additional Senate sponsors—Velmanette Montgomery, Bill Perkins, and Gustavo Rivera—and five additional Assembly sponsors—Andrew Hevesi, Eric A. Stevenson, Herman D. Farrell, Jr., Richard N. Gottfried and John J. McEneny.⁷⁶ Since 2011, several additional sponsors have signed on, in both the Senate and Assembly.⁷⁷ The Act's primary goal is to modernize the procedures required of the parole hearing process.⁷⁸ To accomplish this, the Act proposes to modify the criteria by which parole applicants are evaluated during hearings. The legislation would require the Board to focus on what the parole applicant has done since the time of his or her incarceration to rehabilitate himself or herself, rather than on his or her past deeds. Current New York law provides:

Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the procedures adopted [. . .] shall require that the following be considered:

⁷⁴ John Caher, *Effect of Risk Assessment Rule on Parole Decisions Is Unclear*, N.Y.L.J., Apr. 30, 2012 (reporting that early attempts to implement a risk assessment tool have faced resistance from Board members and parole officers); Brendan J. Lyons, *State Tells Parole Officers To Surrender Guns*, TIMES UNION, Feb. 24, 2012, available at <http://www.timesunion.com/local/article/State-tells-parole-officers-to-surrender-guns-3357602.php#ixzz2Rr6zsqNX>; John Caher, *Law Requires Board to Assess Rehabilitation in Parole Rulings*, N.Y.L.J., Sept. 30, 2011, available at <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202517412972&slreturn=1>.

⁷⁵ SAFE Parole Act, S. 1128/A. 4108, Reg. Sess. (N.Y. 2013).

⁷⁶ *September 2011*, PRISON ACTION NETWORK (Sept. 15, 2011), <http://prisonaction.blogspot.com/2011/09/september-2011.html>.

⁷⁷ See generally PAROLE NEWS, parolenews.blogspot.com.

⁷⁸ *Id.*

- (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates;
- (ii) performance, if any, as a participant in a temporary release program;
- (iii) release plans including community resources, employment, education and training and support services available to the inmate;
- (iv) any deportation order issued by the federal government against the inmate while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department [. . .];
- (v) any statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated;
- (vi) the length of the determinate sentence to which the inmate would be subject had he or she received [such a sentence];
- (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and
- (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement.⁷⁹

The relevant portion of the SAFE Parole Act provides the following (proposed new statutory text is in capital letters):

Discretionary release on parole shall be granted for good conduct AND efficient performance of duties while confined, AND FOR PREPAREDNESS FOR REENTRY AND REINTEGRATION INTO SOCIETY, THEREBY PROVIDING A REASONABLE BASIS TO CONCLUDE that, if such PERSON is released, he OR SHE will live and remain at liberty without violating the law, and THEREFORE that his OR HER release is not incompatible with the welfare of society. In making the parole release decision, the procedures adopted [. . .] shall require that the DECISION BE BASED UPON THE FOLLOWING CONSIDERATIONS:

(A) PREPAREDNESS FOR REENTRY AND REINTEGRATION AS EVIDENCED BY THE APPLICANT'S INSTITUTIONAL RE-

⁷⁹ N.Y. EXEC. LAW § 259-i §2 (c)(A) (West, Westlaw through 2011).

CORD PERTAINING TO PROGRAM GOALS AND ACCOMPLISHMENTS AS STATED IN THE FACILITY PERFORMANCE REPORTS, ACADEMIC ACHIEVEMENTS, VOCATIONAL EDUCATION, TRAINING OR WORK ASSIGNMENTS, THERAPY AND INTERACTIONS WITH STAFF AND OTHER SENTENCED PERSONS, AND OTHER INDICATIONS OF PRO-SOCIAL ACTIVITY, CHANGE AND TRANSFORMATION;

(B) performance, if any, as a participant in a temporary release program;

(C) release plans including community resources, employment, education and training and support services available to the PAROLE APPLICANT;

(D) any deportation order issued by the federal government against the PAROLE APPLICANT while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department pursuant to section one hundred forty-seven of the correction law;

(E) any statement, WHETHER SUPPORTIVE OR CRITICAL, made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated, TO ASSIST THE BOARD IN DETERMINING WHETHER AT THIS TIME THERE IS REASONABLE CAUSE TO BELIEVE THAT THE RELEASE OF THE PAROLE APPLICANT WOULD CREATE A PRESENT DANGER TO THE VICTIM OR THE VICTIM'S REPRESENTATIVE, OR THE EXTENT OF THE PAROLE APPLICANT'S PREPAREDNESS FOR REENTRY AND REINTEGRATION AS SET FORTH IN CLAUSE (A);

(F) the length of the determinate sentence to which the inmate would be subject had he or she received a [such a sentence];

(G) PARTICIPATION AND PERFORMANCE, IF ANY, IN A RECONCILIATION / RESTORATIVE JUSTICE-TYPE CONFERENCE WITH THE VICTIM OR VICTIM'S REPRESENTATIVES;

(H) THE PROGRESS MADE TOWARDS THE COMPLETION OF THE SPECIFIC REQUIREMENTS PREVIOUSLY SET FORTH BY THE BOARD FOR THE PAROLE APPLICANT, IN THE CASE OF A REAPPEARANCE; AND

(I) THE PROGRESS MADE TOWARDS ACHIEVING THE PROGRAMMING AND TREATMENT NEEDS DEVELOPED IN THE TRANSITIONAL ACCOUNTABILITY PLAN.

Although many of the individual factors remain largely unchanged, the modifications are important for several reasons. First,

the proposed Act shifts the overall focus of the parole hearing to evaluation of a prisoner's preparedness for reentry and reintegration. Second, the Act would create the presumption of parole by replacing negative phrasing ("shall not") to positive language ("shall"). Third, it replaces the term "inmate" with the more accurate "parole applicant" as an attempt to remove the stigma of dehumanization of a criminal conviction.⁸⁰ Fourth, the number of factors considered is increased from eight to nine, allowing for a more holistic view of the applicant. Fifth, the nature of the crime and the prisoner's prior convictions are eliminated from the list of factors because these two facts are already considered by the sentencing judge in rendering an indeterminate sentence⁸¹ and they cannot be changed, no matter how brutal the crime or how numerous the prior convictions. Finally, the Act provides the Board with more specific, unambiguous criteria by which to determine the parole applicant's probability of successful reentry if released. One of the effects the Act should have is to place a heavier burden on the Board to establish it has performed more than a mere cursory review of the criteria.⁸² Opponents to the Act and to parole reform generally point to public safety concerns and the political unpopularity of prisoner advocacy.⁸³

V. FINDINGS FROM FIFTY-STATE SURVEY

In order to assess the SAFE Parole Act's strengths, weaknesses, and perhaps its likelihood of passage, it is instructive to compare it with other state parole laws. The following analysis attempts to categorize parole laws and regulations from across the fifty states in order to contextualize the proposed changes to New York's law. Statutory schemes on parole can be extraordinarily complicated, with post-release provisions that vary based on the offense, along with a series of other factors, or can be straightforward and nearly mechanical. Each state is unique in the way it devises its parole laws. For the purposes of this Note, the research focused on two pieces of information: (1) whether states consider the seriousness

⁸⁰ Sam Spokony, *As Parole Reform Looms, Trouble Lingers at Bayview*, CHELSEA NOW, June 15, 2011 (quoting Judith Brink, Director of Prison Action Network).

⁸¹ See N.Y. PENAL LAW § 70.06 (West, Westlaw through 2011).

⁸² SAFE Parole Act, S. 5374 (May 13, 2011); see also Caher, *Law Requires Board to Assess Rehabilitation in Parole Rulings*, *supra* note 74.

⁸³ See, e.g., Sam Spokony, *SAFE Parole Act Backed by Correctional Association of NY*, CHELSEA NOW, July 13, 2011 (quoting J. Soffiyah Elijah, Executive Director of the Correctional Association of New York, who notes the fear among politicians that prisoner advocacy might harm their careers).

of the offense and prior convictions as criteria for deciding parole; and (2) the overall methodology utilized by states to determine parole. Specifically, given that New York recently amended its laws to provide for the utilization of a risk assessment instrument and the use of such a device is underway, the survey sought to assess how many states employ such a tool and how. Following a presentation of the survey data, the statutes are categorized into tiers, based on their use of parole guidelines and risk assessment devices, to evaluate the findings and to situate New York among its peers.

Many states do not provide the substantive or procedural rules within its statutes, but rather require that the state parole board publish such on its website or in guidance documents.⁸⁴ A small handful of states do not currently provide public access to parole guidelines and thus are not included in the statistical findings below. Statutory text, relevant court decisions, and information from parole board documents are provided in the Appendix. Where boxes are left empty in the chart, relevant or satisfactory information was unavailable to the general public.

Before the data is presented and analyzed, it is important to note that two states—New York and New Mexico—are not included in the analysis below. Because New York is the subject of this study and the purpose is to provide a comparative analysis to assess the strengths of the proposed Act, it is not included in the data. New Mexico is also not included because the publicly available data is insufficient to evaluate its parole guidelines. Laws and guidelines from both states are provided in the Appendix.

A. *Data Presentation: Factors Considered and Use of Risk Assessment Devices*

Thirty states consider the nature or the severity of the crime committed among its factors. Eighteen states do not consider this piece of information in their determinations. Although four of these states (Indiana, Ohio, Oregon, and Wisconsin) do not list the seriousness of the offense as an enumerated consideration, they maintain a catch-all provision in their statutes.⁸⁵ This type of vague

⁸⁴ See, e.g., ALA. CODE § 15-22-24(e) (West, Westlaw through 2011) (providing that the Board may adopt policy and procedural guidelines for establishing parole consideration eligibility dockets).

⁸⁵ See IND. CODE § 11-13-3-3 (West, Westlaw through 2011) (providing that “any relevant information submitted by or on behalf of the person being considered” may be evaluated, along with “such other relevant information”); OHIO ADMIN. CODE 5120:1-1-07 (West, Westlaw 2011); OR. REV. STAT. ANN. § 144.185 (West, Westlaw through 2011); WIS. ADMIN. CODE PAC § 1.06 (West, Westlaw through 2011).

statutory language may lead to a parole decision based on the severity of the offense or, worse, on an improper basis, such as personal animus or bias. Similarly, Iowa's parole law, which does not list any factors at all, poses the same risk.⁸⁶ Several states—including Kansas, Maryland, and North Dakota—consider the “circumstances” of the offense rather than the “nature” or “seriousness” of the offense.⁸⁷ This type of nuanced language is important because it demonstrates the state legislatures' recognition that the context of an offense is more than just its severity. If members of the New York legislature are unwilling to eliminate the “seriousness of the offense” as a factor entirely, they should at least consider replacing “seriousness” with “circumstances.”

Thirty-three states consider the parole applicant's prior convictions in a determination of parole eligibility. Fourteen states do not list this as a consideration, although, again, a few states maintain a catch-all provision, which might allow for prior convictions to be considered.⁸⁸

Twenty-four states utilize a risk assessment instrument in parole determinations. These devices vary in the way they are used and in the extent to which parole boards rely on them. By statute, only Nevada seems to rely exclusively on its risk assessment instrument in granting or denying parole.⁸⁹ The following section will analyze, broadly, how states utilize such a tool and whether the use is in conjunction with parole guidelines.

B. *Data Analysis*

Having provided an overview of the findings collected from the fifty-state survey, this Note will now group the states into tiers based on the way their parole laws function. It will begin with states that maintain determinate sentencing laws and thus do not employ parole decision-making procedures and will end with states that

⁸⁶ See IOWA ADMIN. CODE r. 205-8.1(906) (West, Westlaw through 2011).

⁸⁷ See, e.g., KAN. STAT. ANN. § 22-3717 (West, Westlaw through 2011) (providing that the “circumstances of the offense of the inmate” is one of the many pieces of “pertinent information” in making a decision regarding parole); MD. CODE ANN., CORR. SERVS. § 7-305 (West, Westlaw through 2011) (listing the “circumstances surrounding the crime” as one of ten factors it considers); N.D. CENT. CODE § 12-59-05 (West, Westlaw through 2011) (requiring that the board consider “the circumstances of the offense,” along with eight other factors).

⁸⁸ See IND. CODE § 11-13-3-3 (West, Westlaw through 2011); OHIO ADMIN. CODE 5120:1-1-07 (West, Westlaw through 2011); OR. REV. STAT. ANN. § 144.185 (West, Westlaw through 2011); WIS. ADMIN. CODE PAC § 1.06 (West, Westlaw through 2011).

⁸⁹ See NEV. ADMIN. CODE § 213.514 (West, Westlaw through 2011).

employ a combination of dynamic and static factors, including a risk assessment tool, in reaching parole decisions.

1. Tier One: No Parole

Nationwide there appears to be a general trend toward increased individualization of parole decisions, and away from rigid sentencing guidelines and truth-in-sentencing laws that, although popular, do not allow decision-makers to individualize parole decisions. However, three states—Minnesota, North Carolina, and Oklahoma—have essentially abolished parole in that any post-conviction release is based purely on the date of conviction.⁹⁰ Prisoners are often classified along a sentencing grid based on the committed crime. Early release is not an option. These states continue to rely exclusively on such determinate sentencing laws that do not allow for any professional discretion.

2. Tier Two: Presumptive Parole

Several states, including Arizona, California, Florida, New Jersey, and West Virginia, have created presumptive parole by statute.⁹¹ Presumptive parole is understood to mean that a parole applicant is entitled to the assumption that he or she has a legitimate expectation of release on the pre-determined eligibility date.⁹² Upon preliminary examination, presumptive parole appears to be the process most likely to yield a fair release date for prisoners, particularly if the mandatory statutory language is construed to vest in the applicant a constitutionally protected liberty interest in release. However, this assumption of fairness may be somewhat misleading for the following reasons. First, presumptive parole statutes may accompany mandatory or determinate sentencing laws, which

⁹⁰ See MINN. SENTENCING GUIDELINES COMM'N., ADOPTED MODIFICATIONS TO THE MN SENTENCING GUIDELINES AND COMMENTARY, available at [www.msgc.state.mn.us/guidelines/Adopted Modifications to the Sentencing Guidelines August 1 2011 .pdf](http://www.msgc.state.mn.us/guidelines/Adopted%20Modifications%20to%20the%20Sentencing%20Guidelines%20August%201%202011.pdf); N.C. GEN. STAT. ANN. § 15A-1340.16 (West, Westlaw through 2011); OKLA. STAT. ANN. 57 § 332.7 (West, Westlaw through 2011).

⁹¹ See, e.g., ARIZ. REV. STAT. ANN. § 31-412 (West, Westlaw through 2011) (providing that board of executive clemency shall authorize the release of an eligible prisoner); CAL. PENAL CODE § 3041 (West, Westlaw through 2011) (providing that the California parole board shall set a release date); FLA. STAT. ANN. § 937.172 (establishing a presumptive parole release date); N.J. STAT. ANN. § 30:4-123.45 *et. seq.* (West, Westlaw through 2011) (establishing parole eligibility after a prisoner has served one-third of the sentence); W. VA. CODE § 62-12-13 (West, Westlaw through 2011) (providing that a prisoner shall be released on parole when it is in the best interest of the state).

⁹² N.J. STATE PAROLE BD., SENTENCING REFERENCE GUIDE 1 (2005), available at <http://www.state.nj.us/parole/docs/RefGuide.pdf>.

are necessarily more rigid than indeterminate sentencing schemes.⁹³ Second, mandatory parole statutes often contain clauses that vest sole discretion in the parole board to deny a presumptive release, potentially damaging the parole applicant's chances for release.⁹⁴ Further, because most presumptive statutes often do not delineate any discrete factors on which a decision might be based, the parole board's discretion is virtually unlimited. Given these realities, the parole applicant may be rendered virtually powerless in the face of a mandatory release date that is then altered based on a parole board's discretion. Of the five aforementioned presumptive parole laws, New Jersey's statutory scheme is unique and exemplary in that it provides unambiguous factors on which the decision-maker may base his or her decision to parole.⁹⁵

3. Tier Three: Use of Risk Assessment in Parole Determinations

Only one state—Nevada—relies exclusively on a risk assessment instrument to determine parole.⁹⁶ The Nevada Division of Parole and Probation utilizes a sentencing matrix to determine parole. Whether the parole applicant has previously been convicted of a crime is an aggravating factor that is given less weight than the severity of the offense. The Nevada parole statutes provide that the parole board assigns each prisoner considered for parole a likely recidivism risk level—"high," "moderate," or "low"—based on a risk assessment tool.⁹⁷ Then, the Nevada Board applies the severity level of the offense for which the person is imprisoned, along with the established risk level to calculate the overall risk assessment.⁹⁸

⁹³ See, e.g., ARIZ. REV. STAT. ANN. § 31-412 (West, Westlaw through 2011) (citing to ARIZ. REV. STAT. ANN. § 41-1604.09, the statute that governs parole eligibility).

⁹⁴ See, e.g., ARIZ. REV. STAT. ANN. § 31-412 (West, Westlaw through 2011) (providing that parole shall only be granted to an eligible applicant if "it appears to the board, in its sole discretion, that there is a substantial probability that the applicant will remain at liberty without violating the law and that the release is in the best interests of the state").

⁹⁵ See N.J. ADMIN. CODE § 10A:71-3.11 (West, Westlaw through 2011) (listing twenty-three factors to be considered by the parole board).

⁹⁶ See NEV. ADMIN. CODE § 213.514 (West, Westlaw through 2011); NEV. ADMIN. CODE § 213.516 (West, Westlaw through 2011). The Code states that after the "risk level" of each parole applicant is assessed and assigned, the Board will determine whether to grant parole by applying "the severity level of the crime for which parole is being considered . . . and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole." NEV. ADMIN. CODE § 213.516.

⁹⁷ NEV. ADMIN. CODE § 213.514 (West, Westlaw through 2011).

⁹⁸ *Id.* at § 213.516.

No other considerations or factors are taken into account in this calculation.

Twenty-six states have not adopted risk assessment devices and thus do not use them at all when determining whether to release a parole applicant. Most states have struck a middle ground; they consider numerous factors, in addition to utilizing a risk assessment tools. Thus, they provide the combination advocated by JFA Associates. As the Colorado parole statute explicitly states: "Research demonstrates that . . . [t]he best [parole] outcomes are derived from a combination of empirically based actuarial tools and clinical judgment."⁹⁹ States that utilize a risk assessment tool, such as a matrix, often use it as one of several tools in making the final determination. In some states, such as Nebraska, the result from the risk assessment tool is one of many factors examined in a parole determination.¹⁰⁰

Maryland, New Jersey, and Rhode Island provide strong examples of parole laws that incorporate the best practices in parole theory, with Maryland serving as perhaps the gold standard.¹⁰¹ New York should look to these statutory schemes as models of progressive parole legislation and should aspire to match or exceed these models in its own parole laws. The parole laws of these three states share the following exemplary characteristics: (1) they provide specific and numerous guidelines for the parole board to consider; (2) the predominant focus of the factors is on the parole applicant's rehabilitation and progress during his or her incarceration; (3) they do not contain a catch-all provision that might allow the decision-maker to base his or her decision on an unenumerated factor; and (4) they utilize a risk assessment instrument, such as a matrix, yet this instrument does not limit the parole board's discretion. The guidelines thus allow for individualization in decision-making that can be based on consistent, forward-looking factors.

The mere presentation of a risk assessment tool, along with guidelines or factors, is not sufficient on its own. When legislatures provide multi-factored guidelines for determining parole, the considerations should be unambiguous. Nebulous factors such as "whether there is reasonable probability that such inmate will live and remain at liberty without violating the law" and whether the

⁹⁹ COLO. REV. STAT. ANN. § 17-22.5-404 (West, Westlaw through 2011).

¹⁰⁰ See NEB. REV. ST. § 83-1,114 (West, Westlaw through 2011) and NEB. REV. ST. § 83-192 (West, Westlaw through 2011).

¹⁰¹ See MD CODE ANN. CORR. SERVS. § 7-305 (West, Westlaw through 2011); N.J. ADMIN. CODE § 10A:71-3.11 (West, Westlaw through 2011); R.I. GEN. LAWS ANN. § 13-8-14 (West, Westlaw through 2011).

release is in the best interests of the people of this state¹⁰² are not instructive to decision-makers or to parole applicants because they do not provide substantive guidance against which to judge the applicant's preparedness for reentry. Statutes that rely on such factors to the exclusion of others may enable parole board members to exercise improper discretion. Thus, the risk assessment instrument is helpful in guiding the process but cannot and should not be relied on exclusively. One of the many advantages of the SAFE Parole Act over the current parole law is its presentation of unambiguous guidelines.

VI. RECOMMENDATIONS AND CONCLUSION

The New York State Parole Board's discretion has been allowed to go unchecked for too long. New York parole laws are overdue for a change. In 1999, scholars advised that the Board "from time to time deviates from the Legislature's intent and sometimes even acts outside the scope of the Executive Law."¹⁰³ They noted that the Board "institutes its own brand of sentencing policy [. . .] under the guise of exercising its discretion as to whether or not to release the inmate to parole supervision or to hold him beyond the minimum term."¹⁰⁴

New York's current parole law stands out in the Northeast and among its sister states as one of the most antiquated statutes. Rhode Island, New Jersey, and Maryland have far superior parole models. Fortunately, New York may soon be counted among the states with the most progressive parole laws. Passage of the SAFE Parole Act would make New York a leader nationwide for progressive parole legislation that actually advances the goal of rehabilitative punishment while also providing an accurate assessment of individual parole applicants.

The SAFE Parole Act should be passed in its entirety because it provides clear and fair grounds on which decisions may be based. Rather than attempting to abolish complete objectivity or total subjectivity in decision-making, which have demonstrably failed as goals, legislatures should provide unambiguous guidelines, along with a risk assessment tool, to those with discretion and power to

¹⁰² See, e.g., CONN. GEN. STAT. ANN. § 54-125a (West, Westlaw through 2011) (providing that a person eligible may be paroled if it appears "that there is a reasonable probability that such inmate will live and remain at liberty without violating the law" and that "such release is not incompatible with the welfare of society").

¹⁰³ Hammock & Seelandt, *supra* note 66, at 529.

¹⁰⁴ *Id.* at 531-32.

determine post-release supervision. Under Governor Andrew Cuomo, New York has made steady and impressive progress in its goal of reducing the prison population without threatening public safety; passing the SAFE Parole Act is the next logical step.

By clarifying the language of the law, humanizing the parole applicant, and removing the severity of the offense and the parole applicant's prior convictions from the list of factors considered by the parole board, the SAFE Parole Act shifts the focus from the applicant's past mistakes to his present rehabilitation and readiness. Not every eligible person will be granted parole, but people like George Cruz would be evaluated based on their progress, growth, and ability to contribute to their communities.

APPENDIX: PAROLE LAWS & GUIDELINES FROM THE FIFTY STATES

State	Governing Body	Statute	Case Law	Manual, Policies, Procedures, or Any Other Guidance Document
AL	Board of Pardons and Paroles	(e) The board may adopt policy and procedural guidelines for establishing parole consideration eligibility dockets based on its evaluation of a prisoner's prior record, nature and severity of the present offense, potential for future violence, and community attitude toward the offender. ALA. CODE § 15-22-24(e) (2012).		These Operating Procedures are not intended to, and do not, create any substantive legal rights for any person. Nothing in these Procedures shall be construed to create or recognize any liberty or property interest in an inmate's desire to be paroled. ALA. Bd. OF PARDONS AND PAROLES, RULES, REGULATIONS, AND PROCEDURES, PREAMBLE, <i>available at</i> http://www.pardons.state.al.us/alabpp/main/Rules.html#Article%20Six .
AK	DOC Parole Board	(a) A prisoner who is serving a term or terms of two years or more is eligible for mandatory parole. (b) A prisoner who is eligible under AS 33.16.090 may be granted discretionary parole by the board of parole. (c) A prisoner who is not eligible for discretionary parole, or who is not released on discretionary parole, shall be released on mandatory parole for the term of good time deductions credited under AS 33.20, if the term or terms of imprisonment are two years or more. ALASKA STAT. ANN. § 33.16.010 (Westlaw 2012).	When defendant's sentence is lengthy, law presumes that questions of discretionary release are better left to the Parole Board, since Board evaluates advisability of parole release in light of defendant's tested response to Department of Corrections' rehabilitative measures. <i>Stern v. State</i> , 827 P.2d 442, 450 (Alaska Ct. App. 1992).	Parole guidelines: a process used by the Board to determine a range of months a prisoner should serve. The guidelines are based on the prisoners' risk to the community and the seriousness of the current offense. ALASKA Bd. OF PAROLE, PAROLE HANDBOOK 10 (2001). When making their determination, the Board considers the seriousness of the offense, the offender's criminal record, adjustment and treatment while incarcerated, and an offender's future plans. <i>Victim Resources FAQ</i> , ALASKA DEP'T OF CORR., PROB., & PAROLE, http://www.correct.state.ak.us/corrections/communitycorr/offices/victimresources/faqjsf (last visited Feb. 23, 2013).
AZ	Board of Executive Clemency	(A) If a prisoner is certified as eligible for parole pursuant to § 41-1604.09 the board of executive clemency	Statute requiring parole board to authorize release of parole applicant if it appears to board that applicant	

		<p>shall authorize the release of the applicant on parole if the applicant has reached the applicant's earliest parole eligibility date pursuant to § 41-1604.09, subsection D and it appears to the board, in its sole discretion, that there is a substantial probability that the applicant will remain at liberty without violating the law and that the release is in the best interests of the state. ARIZ. REV. STAT. ANN. § 31-412 (2012).</p>	<p>will remain at liberty without violating the law creates constitutionally protected liberty interest in parole release. Stewart v. Ariz. Bd. of Pardons and Paroles, 156 Ariz. 538, 542-43 (Ariz. Ct. App. 1988). The legislature intended to give the Board "sole discretion" to determine whether to grant or deny parole. Stinson v. Ariz. Bd. of Pardons and Paroles, 151 Ariz. 60, 61 (1986).</p>	
AR	Parole Board	<p>(a) (1) (A) An inmate under sentence for any felony, except those listed in subsection (b) of this section, shall be transferred from the Department of Correction to the Department of Community Correction, subject to rules promulgated by the Board of Corrections and conditions set by the Parole Board. (B) The determination under subdivision (a) (1) (A) of this section shall be made by reviewing information such as the result of the risk-needs assessment to inform the decision of whether to release a person on parole by quantifying that person's risk to reoffend.</p> <p>(b) (1) An inmate under sentence for one (1) of the following felonies shall be eligible for discretionary transfer to the Department of Community Correction by the Parole Board after having served one-third (1/3) or one-half (1/2) of his or her sentence, with credit for meritorious good time, depending on the seriousness de-</p>		<p>Release or discretionary transfer may be granted to an eligible person by the Board when, in its opinion, there is a reasonable probability that the person can be released without detriment to the community or him/herself. In making its determination regarding a inmate's release or discretionary transfer, the Board must consider the following factors: 1. Institutional adjustment in general, including the nature of any disciplinary actions; 2. When considered necessary, an examination and opinion by a psychiatrist or psychologist can be requested and considered; 3. The record of previous criminal offenses (misdemeanors and felonies), the frequency of such offenses, and the nature thereof; 4. Conduct in any previous release program, such as probation, parole, work release, boot camp or alternative service; 5. Recommendations made by the Judge, Prosecuting Attorney, and Sheriff of the</p>

		<p>termination made by the Arkansas Sentencing Commission, or one-half (1/2) of the time to which his or her sentence is commuted by executive clemency, with credit for meritorious good time: (A) Any homicide - (H). (3)(A) Review of an inmate convicted of the enumerated offenses in subdivision (b)(1) of this section shall be based upon policies and procedures adopted by the Parole Board for the review, and the Parole Board shall conduct a risk-needs assessment review. ARK. CODE ANN. § 16-93-615 (Westlaw 2012).</p>		<p>county from which a person was sentenced, or other interested persons; 6. The nature of the release plan, including the type of community surroundings in the area the person plans to live and work; 7. The results of a validated risk/needs assessment 8. The inmate's employment record; 9. The inmate's susceptibility to drugs or alcohol; 10. The inmate's basic good physical and mental health; 11. The inmate's participation in institutional activities, such as, educational programs, rehabilitation programs, work programs, and leisure time activities; 12. The failure of an inmate incarcerated at the Varner Unit Super Max to attain Level 5; 13. When there is a detainer, the Board must pursue the basis of any such detainer and only release the inmate to a detainer where appropriate. A detainer must not be considered an automatic reason for denying parole. ARK. BD. OF PAROLE, POLICY MANUAL 7-8 (2001), available at http://paroleboard.arkansas.gov/AboutUs/Documents/policies/APBManual.pd.</p>
CA	Board of Parole Hearings	<p>(b) The panel or the board, sitting en banc, shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public</p>	<p>California's parole scheme gives rise to a cognizable liberty interest in release on parole. Paddock v. Mendoza-Powers, 674 F.Supp.2d 1123, 1129-30 (C.D. Cal. 2009).</p>	

		safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting. CAL. PENAL CODE § 3041 (Westlaw 2012).		
CO	The Division of Adult Parole, Community Corrections and YOS	<p>(1) The general assembly hereby finds that:</p> <p>(a) The risk of reoffense shall be the central consideration by the state board of parole in making decisions related to the timing and conditions of release on parole;</p> <p>(b) Research demonstrates that actuarial risk assessment tools can predict the likelihood or risk of reoffense with significantly greater accuracy than professional judgment alone. Evidence-based correctional practices prioritize the use of actuarial risk assessment tools to promote public safety. The best outcomes are derived from a combination of empirically based actuarial tools and clinical judgment.</p> <p>(4) (a) In considering offenders for parole, the state board of parole shall consider the totality of the circumstances, which include, but need not be limited to, the following factors: (I) The testimony or written statement from the victim of the crime, or a relative of the victim, or a designee; (II) The actuarial risk of reoffense; (III) The offender's assessed criminogenic need level; (IV) The offender's program participation and progress; (V) The offender's institutional conduct; (VI) The adequacy of the offender's</p>	<p>Statutory scheme requiring the Board of Parole to consider general criteria in exercising its discretion with respect to grant or denial of parole does not create a constitutionally protected entitlement to, or liberty interest in, parole. <i>Thompson v. Riveland</i>, 714 P.2d 1338, 1340 (Colo. App. 1986).</p> <p>State parole board could properly consider nature of crime committed, psychological reports, presentence reports, postconviction behavior, sentence, amount of time already served, risk, efforts for self-improvement, resources available to inmate upon release, results of previous rehabilitation efforts, and whether inmate was available for interview. <i>Schumann v. Colo. State Bd. of Adult Parole</i>, 624 F.2d 172, 173-74 (10th Cir. 1980).</p>	

		<p>parole plan; (VII) Whether the offender while under sentence has threatened or harassed the victim or the victim's family or has caused the victim or the victim's family to be threatened or harassed, either verbally or in writing; (VIII) Aggravating or mitigating factors from the criminal case; (IX) The testimony or written statement from a prospective parole sponsor, employer, or other person who would be available to assist the offender if released on parole; (X) Whether the offender had previously absconded or escaped or attempted to abscond or escape while on community supervision; and (XI) Whether the offender completed or worked toward completing a high school diploma, a general equivalency degree, or a college degree during his or her period of incarceration.</p> <p>(b) The state board of parole shall use the Colorado risk assessment scale that is developed by the division of criminal justice in the department of public safety pursuant to paragraph (a) of subsection (2) of this section in considering inmates for release on parole.</p> <p>COLO. REV. STAT. ANN. § 17-22.5-404 (West 2012)</p>		
CT	Board of Pardons and Paroles	The Department of Correction, the Board of Pardons and Paroles and the Court Support Services Division of the Judicial Branch shall develop a risk assessment strategy for offenders committed to the custody of the	Prisoner failed to prove by a preponderance of the evidence, in his petition for habeas corpus alleging that board of pardons and paroles used quota system favoring black and Hispanic prisoners, that board illegally discrimi-	

Commissioner of Correction that will (1) utilize a risk assessment tool that accurately rates an offender's likelihood to recidivate upon release from custody, and (2) identify the support programs that will best position the offender for successful reentry into the community. Such strategy shall incorporate use of both static and dynamic factors. CONN. GEN. STAT. ANN. § 18-81z (Westlaw 2012). (a) A person convicted of one or more crimes who is incarcerated on or after October 1, 1990, who received a definite sentence or aggregate sentence of more than two years, and who has been confined under such sentence or sentences for not less than one-half of the aggregate sentence. . . may be allowed to go at large on parole in the discretion of the panel of the Board of Pardons and Paroles for the institution in which the person is confined, if (1) it appears from all available information, including any reports from the Commissioner of Correction that the panel may require, that there is reasonable probability that such inmate will live and remain at liberty without violating the law, and (2) such release is not incompatible with the welfare of society. At the discretion of the panel, and under the terms and conditions as may be prescribed by the panel including requiring the parolee to submit personal reports, the parolee shall be allowed to return to

nated against him because of his race when it denied his parole application; evidence showed that prisoner's lengthy criminal record, including serious offenses, poor performance in supervised release programs and probation, and a negative disciplinary record while incarcerated, all suggested a reasonable probability that the he would not be able to live at liberty without violating the law. *Cook v. Warden*, 915 A.2d 935, 940 (Conn. Super. Ct. 2005).

		the parolee's home or to reside in a residential community center, or to go elsewhere. CONN. GEN. STAT. ANN. § 54-125a (Westlaw 2012).		
DE	Board of Parole	(c) A parole may be granted when in the opinion of the Board there is reasonable probability that the person can be released without detriment to the community or to person, and where, in the Board's opinion, parole supervision would be in the best interest of society and an aid to rehabilitation of the offender as a law-abiding citizen. A parole shall be ordered only in the best interest of society, not as an award of clemency, and shall not be considered as a reduction of sentence or a pardon. A person shall be placed on parole only when the Board believes that the person is able and willing to fulfill the obligations of a law-abiding citizen. Among the factors the Board shall consider when determining if a defendant shall be placed on parole are as follows: job skills, progress towards or achievement of a general equivalency diploma, substance abuse treatment and anger management and conflict resolution. DEL. CODE ANN. tit. 11, § 4347 (Westlaw 2012).	Release of an inmate on parole under statute governing eligibility for parole is a matter of discretion for the Parole Board; however, conditional release under statute governing release upon merit and good behavior credits is non-discretionary. <i>Evans v. State</i> , 872 A.2d 539, 554 (Del. 2005).	Risk assessment used in supervising parolees. <i>See</i> http://doc.delaware.gov/BOCC/BOCC.shtml (last visited December 31, 2011).
DC	United States Parole Commission	(a) Whenever it shall appear to the United States Parole Commission ("Commission") that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his or her release	Even though parole board's policy guidelines required board to have some basis for deviating from prescribed set-offs, board was not restricted to considering only enumerated factors, and therefore, guidelines vested sub-	Salient Factor Score, risk assessment device, examines all convictions, present and prior, and is applied to determine parole eligibility. <i>See</i> PETER B. HOFFMAN & JAMES L. BECK, U.S. DEP'T OF JUSTICE, U.S. PAROLE

		is not incompatible with the welfare of society, and that he or she has served the minimum sentence imposed or the prescribed portion of his or her sentence, as the case may be, the Commission may authorize his or her release on parole upon such terms and conditions as the Commission shall from time to time prescribe. D.C. CODE § 24-404 (2012).	stantial discretion in board to deviate; consequently, guidelines lacked substantial limitations on official discretion required for regulation to give rise to liberty interest protected under due process. <i>Hall v. Henderson</i> , 672 A.2d 1047, 1052-53 (D.C. 1996).	COMM'N, THE UNITED STATES PAROLE COMMISSION'S EXPEDITED REVOCATION PROCEDURE app. 1C (2004), available at www.justice.gov/uspc/commission_reports/expedited_apai1.pdf .
FL	Parole Commission	Objective Parole Guidelines Act of 1978 (1) The commission shall develop and implement objective parole guidelines which shall be the criteria upon which parole decisions are made. The objective parole guidelines shall be developed according to an acceptable research method and shall be based on the seriousness of offense and the likelihood of favorable parole outcome. The guidelines shall require the commission to aggravate or aggregate each consecutive sentence in establishing the presumptive parole release date. Factors used in arriving at the salient factor score and the severity of offense behavior category shall not be applied as aggravating circumstances. FLA. STAT. ANN. § 947.165 (Westlaw 2012). Establishment of Presumptive Parole Release Date. (1) The hearing examiner shall conduct an initial interview. This interview shall include introduction and explanation of the objective parole guidelines as they relate to presump-	One purpose for applying aggravating factors in determining presumptive parole release date is to permit parole and probation commission to reflect actual circumstances of the inmate's offense. <i>Callo-way v. Fla. Parole and Prob. Comm'n</i> , 431 So.2d 300 (Fla. Dist. Ct. App. 1983). Prior aggravated convictions may be used as an aggravating factor. <i>Ruzicka v. Fla. Parole and Prob. Comm'n</i> , 480 So.2d 190, 191 (Fla. Dist. Ct. App. 1985).	

		<p>tive and effective parole release dates and an explanation of the institutional conduct record and satisfactory release plan for parole supervision as each relates to parole release. FLA. STAT. ANN. § 947.172 (Westlaw 2012).</p>		
GA	State Board of Pardons and Paroles	<p>(c) Good conduct, achievement of a fifth-grade level or higher on standardized reading tests, and efficient performance of duties by an inmate shall be considered by the board in his favor and shall merit consideration of an application for pardon or parole. No inmate shall be placed on parole until and unless the board shall find that there is reasonable probability that, if he is so released, he will live and conduct himself as a respectable and law-abiding person and that his release will be compatible with his own welfare and the welfare of society. Furthermore, no person shall be released on pardon or placed on parole unless and until the board is satisfied that he will be suitably employed in self-sustaining employment or that he will not become a public charge. However, notwithstanding other provisions of this chapter, the board may, in its discretion, grant pardon or parole to any aged or disabled persons. GA. CODE ANN. § 42-9-42 (Westlaw 2012).</p>	<p>Determination of Georgia Board of Pardons and Parole that Georgia parole system does not create liberty interest in parole because of discretion granted to the Board was reasonable and entitled to great deference. <i>Sultenfuss v. Snow</i>, 35 F.3d 1494 (11th Cir. 1994). Parole Board is statutorily vested with much discretionary power and authority with respect to the grant of parole. <i>Massey v. Ga. Bd. of Pardons and Paroles</i>, 275 Ga. 127 (2002).</p>	<p>“[In addition to statutorily mandated guidelines], the Board has recently taken steps to have the newly revised Guidelines formally adopted as an agency rule pursuant to the Administrative Procedures Act.” The Guidelines are comprised of three major components. The new risk instrument, formerly the success factor score, the Time to Serve GRID, and the offense crime severity levels. GA. STATE BD. OF PARDONS & PAROLES, GEORGIA PAROLE DECISIONS GUIDELINES 2 (2007).</p>
HI	Paroling Authority	<p>(8) The authority shall establish guidelines for the uniform determination of minimum sentences which shall take into account both</p>	<p>State paroling authority has broad discretion in establishing minimum terms of imprisonment. <i>Williamson v. Hawai'i Paroling Auth.</i>, 35 P.3d</p>	

		the nature and degree of the offense of the prisoner and the prisoner's criminal history and character. The guidelines shall be public records and shall be made available to the prisoner and to the prosecuting attorney and other interested government agencies. HAW. REV. STAT. § 706-669(8) (Westlaw 2012).	210 (Haw. 2001).	
ID	Commission of Pardons and Parole	<p>c. The commission allows for parole consideration criteria, but no prediction regarding the granting of parole can be based upon any hearing standard or criteria. (3-23-98)</p> <p>i. Seriousness and aggravation and/or mitigation involved in the crime. (3-23-98)</p> <p>ii. Prior criminal history of the inmate. (3-23-98)</p> <p>iii. Failure or success of past probation and parole. (3-23-98)</p> <p>iv. Institutional history to include conformance to established rules, involvement in programs and jobs custody level at time of the hearing, and overall behavior. (3-23-98)</p> <p>v. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. (3-23-98)</p> <p>vi. Information or reports regarding physical or psychological condition. (3-23-98)</p> <p>vii. The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. (3-23-98)</p> <p>IDAHO ADMIN. CODE r. 50.01.01.250 (2012).</p>		<p>"Rules of the Commission of Pardons and Parole": 250.01. Parole Determination. Parole determination is at the complete discretion of the Commission. a. The Commission may release an inmate to parole on or after the date of parole eligibility, or not at all. b. Parole consideration is evaluated by the individual merits of each case. c. The Commission allows for parole consideration criteria, but no prediction regarding the granting of parole can be based upon any hearing standard or criteria.</p> <p>i. Seriousness and aggravation and/or mitigation involved in the crime.</p> <p>ii. Prior criminal history of the inmate.</p> <p>iii. Failure or success of past probation and parole.</p> <p>iv. Institutional history to include conformance to established rules, involvement in programs and jobs custody level at time of the hearing, and overall behavior.</p> <p>v. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen.</p> <p>vi. Information or reports regarding physical</p>

				or psychological condition. vii. The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. 96-11 IDAHO ADMIN. BULL. 195 (1996).
IL	Prisoner Review Board	Hearing and Determination. (c) The Board shall not parole a person eligible for parole if it determines that: (1) there is a substantial risk that he will not conform to reasonable conditions of parole; or (2) his release at that time would deprecate the seriousness of his offense or promote disrespect for the law; or (3) his release would have a substantially adverse effect on institutional discipline. 730 ILL. COMP. STAT. ANN. 5/3-3-5 (Westlaw 2012).	Prisoner Review Board's explanations for denying parole satisfied due process; Board indicated that it considered nature of murder offenses, length of sentences, escape convictions, previous criminal conduct, objections of state's attorney, and objections of other members of community. <i>Goins v. Klinicar</i> , 167 Ill. Dec. 779 (Ill. App. Ct. 1992). Illinois' parole statute does not create a legitimate expectation of parole that would support due process claim, but instead vests complete discretion in parole board outside of those specified instances when denial of parole is mandatory. <i>Heidelberg v. Ill. Prisoner Review Bd.</i> , 163 F.3d 1025 (7th Cir. 1998).	
IN	Parole Board	Sec. 3. (a) A person sentenced under IC 35-50 shall be released on parole or discharged from the person's term of imprisonment under IC 35-50 without a parole release hearing. (b) A person sentenced for an offense under laws other than IC 35-50 who is eligible for release on parole. . .shall, before the date of the person's parole eligibility, be granted a parole release hearing to determine whether parole will be granted or denied.	If an inmate in Indiana had any rights with regards to parole release, they must have emanated from the parole release statute itself; there is no constitutional or inherent right to parole release. <i>Murphy v. Ind. Parole Bd.</i> , 397 N.E.2d 259 (Ind. 1979).	

		<p>Before the hearing, the parole board shall order an investigation to include the collection and consideration of:</p> <p>(1) reports regarding the person's medical, psychological, educational, vocational, employment, economic, and social condition and history;</p> <p>(2) official reports of the person's history of criminality;</p> <p>(3) reports of earlier parole or probation experiences;</p> <p>(4) reports concerning the person's present commitment that are relevant to the parole release determination;</p> <p>(5) any relevant information submitted by or on behalf of the person being considered; and</p> <p>(6) such other relevant information concerning the person as may be reasonably available.</p> <p>IND. CODE ANN. § 11-13-3-3 (Westlaw 2012).</p>		
IA	Board of Parole	<p>The board shall determine whether there is reasonable probability that an inmate committed to the custody of the department of corrections who is eligible for parole or work release can be released without detriment to the community or the inmate. The board shall consider the best interests of society and shall not grant parole or work release as an award of clemency. IOWA ADMIN. CODE R. 205-8.1(906) (2012).</p> <p>The board of parole shall implement a risk assessment program which shall provide risk assessment analysis for the board. IOWA CODE ANN. § 904A.4(8) (Westlaw 2012).</p>		
KS	Prisoner	(h) The Kansas parole	State law or regulations	

Review Board	<p>board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole . . . At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider:</p> <p>(1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional insti-</p>	<p>create a liberty interest in parole only where they create a "legitimate expectation of release" or use "mandatory language which creates a liberty interest and places significant limits on the board's discretion . . . The Kansas statute presumes that the inmate will not be released unless the parole board makes certain affirmative findings. The statute provides that "the Kansas parole board may release on parole those persons . . . who are eligible for parole when: . . . the board believes that" certain requirements are met. Kan. Stat. Ann. § 22-3717 (Supp.2000) (emphasis added). It is hard to conceive how the statute could be more discretionary short of granting the board unbridled discretion." <i>Crump v. Kansas</i>, 143 F.Supp.2d 1256, 1261 (D. Kansas 2001).</p>
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		tutions. KAN. STAT. ANN. § 22-3717 (Westlaw 2012).		
KY	Parole Board	<p>The department shall:</p> <p>(1) Administer a validated risk and needs assessment to assess the criminal risk factors of all inmates who are eligible for parole, or a reassessment of a previously administered risk and needs assessment, before the case is considered by the board;</p> <p>(2) Provide the results of the most recent risk and needs assessment to the board before an inmate appears before the board; and</p> <p>(3) Incorporate information from an inmate's criminal risk and needs assessment into the development of his or her case plan.</p> <p>KY. REV. STAT. ANN. § 439.331 (Westlaw 2012).</p>		<p>Factors Considered When Granting Or Denying Parole:</p> <ul style="list-style-type: none"> • Current offense – seriousness, violence, firearm • Prior record – juvenile, misdemeanor, felony • Institutional conduct / program involvement • Attitude toward authority – before and during incarceration • History of alcohol and drug involvement • Education and job skills • Employment history • Emotional stability • Mental capacities • Terminal illness • History of deviant behavior • Official and community attitudes • Input from victims and others • Review of parole plan – housing, employment, community resources available • Other factors relating to the inmate's need and public safety. 2001 KY. PAROLE BD. BIENNIAL REP. pt. 1, at 13. The Board plans to develop a set of objective based guidelines to use in their decision making process. These guidelines will contain an offense severity index along with a risk assessment component that will provide the Board with guidance as to what action should be taken in a particular case. Parole however will remain discretionary. <i>Id.</i> at 17.
LA	Board of Parole	(D): In accordance with the provisions of this Part, the committee on parole shall have the following pow-	State scheme regarding pardon and parole does not implicate due process rights of inmates incarcerated for	

ers and duties: (6) To consider all pertinent information with respect to each prisoner who is incarcerated in any penal or correctional institution in this state at least one month prior to the parole eligible date and thereafter at such other intervals as it may determine, which information shall be a part of the inmate's consolidated summary record and which shall include:

- (a) The circumstances of his offense.
- (b) The reports filed under Articles 875 and 876 of the Louisiana Code of Criminal Procedure.
- (c) His previous social history and criminal record.
- (d) His conduct, employment, and attitude in prison.
- (e) His participation in vocational training, adult education, literacy, or reading programs.
- (f) Any reports of physical and mental examinations which have been made. LA. REV. STAT. ANN. § 15:574.2 (2012).

C. (1) At such intervals as it determines, the committee or a member thereof shall consider all pertinent information with respect to each prisoner eligible for parole, including the nature and circumstances of the prisoner's offense, his prison records, the presentence investigation report, any recommendations of the chief probation and parole officer, and any information and reports of data supplied by the staff. A parole hearing

life, as parole statutes do not create expectancy of release or liberty interest; parole board has full discretion when passing on application for early release and scheme specifically excludes parole consideration for inmates serving uncommuted life sentences. *Bosworth v. Whitley*, 627 So.2d 629 (La. 1993).

		<p>shall be held if, after such consideration, the board determines that a parole hearing is appropriate or if such hearing is requested in writing by its staff. LA. REV. STAT. ANN. § 15:574.4(C) (2012).</p> <p>A. The Board of Parole shall establish a parole risk assessment pilot program which shall incorporate risk assessment analysis into the parole decision making process. The risk assessment analysis shall be designed to enhance objectivity and consistency in the parole decision making process. The program shall include the development of objective parole criteria consisting of statistical evaluation of the threat to society posed by parole candidates based on past patterns of recidivism.</p> <p>B. The board shall utilize in the program, an offender risk assessment scoring system designed to measure the threat of risk of new criminal activity in general and the specific threat of new violence. LA. REV. STAT. ANN. § 15:574.21 (2012).</p>		
MA	Parole Board	<p>No prisoner shall be granted a parole permit merely as a reward for good conduct but only if the parole board is of the opinion that there is a reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society. Mass. Gen. Laws Ann., ch. 127, § 130 (Westlaw 2012). (1) In making a parole or re-parole determina-</p>	<p>“ . . . a prisoner cannot prevent the board from considering the circumstances of the crime for which he is sentenced merely because he pleaded guilty to a lesser crime than that with which he was charged.” Greenman v. Mass. Parole Bd., 540 N.E.2d 1309, 1312 (Mass. 1989).</p>	<p>[H]aving an offender’s risk determined through the use of an objective instrument would appear to be most beneficial as a component of parole decision making. Presently, the COMPAS risk assessment tool is currently being piloted in collaboration with the Massachusetts Department of Correction. Over time, risk assessment tools will be developed, modified, and improved. In addition, the agency is piloting</p>

		<p>tion, the parole hearing panel may consider, if available and relevant, information such as:</p> <ul style="list-style-type: none"> (a) reports and recommendations from parole staff; (b) official reports of the inmate's prior criminal record, including a report or record of earlier probation and parole experiences; (c) any pending cases; (d) presentence investigation reports; (e) official reports of the nature and circumstances of the offense including, but not limited to, police reports, grand jury minutes, decisions of the Massachusetts Appeals Court or the Supreme Judicial Court, and transcripts of the trial or of the sentencing hearing; (f) statements by any victim of the offense for which the offender is imprisoned about the financial, social, psychological, and emotional harm done to or loss suffered by such victim; (g) reports of physical, medical, mental, or psychiatric examination of the inmate; (h) any information that the inmate may wish to provide the parole hearing panel including letters of support from family, friends, community leaders, and parole release plans; and (i) information provided by the custodial authority, including, but not limited to, disciplinary reports, classification reports, work evaluations, and educational achievements. 120 Mass. Code Regs. § 300.05 (2012). 		<p>the use of the Static-99 risk assessment tool for sex offenders. JOSH WALL, PAROLE DECISION MAKING: THE POLICY OF THE MASSACHUSETTS PAROLE BOARD 17 (2006), available at http://www.mass.gov/eopss/docs/pb/paroledecision.pdf. Ultimately, the Board has discretion. <i>Id.</i> at 4.</p>
ME	Parole Board	The board may grant a parole from a penal or		The Parole Board has discretionary authority

		<p>correctional institution after the expiration of the period of confinement, less deductions for good behavior, or after compliance with conditions provided for in sections 5803 to 5805 applicable to the sentence being served by the prisoner or inmate. ME. REV. STAT. ANN. tit. 34-A, § 5802 (2012).</p>		<p>to grant or deny parole (34-A M.R.S.A. § 5211, § 5802). In making decisions, the Board attempts to balance the interests of society with the interests of the offender and, in each case, it must gauge the risk the granting of parole poses to the community. In evaluating an inmate's case, the Board considers, but is not limited to, the following factors:</p> <ol style="list-style-type: none"> 1. Adequacy of the Parole Plan. 2. Personal History. The Board considers the inmate's education, vocational training, and other occupational skills, employment history, willingness to accept responsibility and history of drug, or excessive alcohol consumption. 3. Criminal History. The Board takes into account the seriousness of prior and instant criminal offenses, their frequency and time span and any pending charges. 4. Institutional Conduct. 5. Previous Probation or Parole. 6. Psychological Evaluations. 7. Recommendations Made by the Sentencing Court. The Board considers sentencing recommendations made by the court. 8. Recommendations and Field Observations. <p>ME. STATE PAROLE BD., 03-208, RULES AND POLICY 4-5 (1996).</p>
MD	Parole Commission	Each hearing examiner and commissioner determining whether an inmate is suitable for parole, and the Commission before entering into a predetermined	Statutory scheme governing the Maryland Parole Commission's (MPC) consideration of parole did not create a liberty interest protected by due process;	

	<p>parole release agreement, shall consider:</p> <ol style="list-style-type: none"> (1) the circumstances surrounding the crime; (2) the physical, mental, and moral qualifications of the inmate; (3) the progress of the inmate during confinement, including the academic progress of the inmate in the mandatory education program required under § 22-102 of the Education Article; (4) a report on a drug or alcohol evaluation that has been conducted on the inmate, including any recommendations concerning the inmate's amenability for treatment and the availability of an appropriate treatment program; (5) whether there is reasonable probability that the inmate, if released on parole, will remain at liberty without violating the law; (6) whether release of the inmate on parole is compatible with the welfare of society; (7) an updated victim impact statement or recommendation prepared under § 7-801 of this title; (8) any recommendation made by the sentencing judge at the time of sentencing; (9) any information that is presented to a commissioner at a meeting with the victim; and (10) any testimony presented to the Commission by the victim or the victim's designated representative under § 7-801 of this title. Md. CODE ANN. CORR. SERVS. § 7-305 (Westlaw 2012). 	<p>terms "must" and "shall" in statutory scheme created only specific directives to consider the factors and to issue a written decision as prescribed, they did not constitute specific directives instructing the MPC as to when, exactly, it must or must not grant parole. <i>McLaughlin-Cox v. Md. Parole Comm'n</i>, 24 A.3d 235 (Md. Ct. Spec. App. 2011). Since Maryland Parole Commission guideline known as "matrix system" stated that nothing therein was meant to limit discretion of Parole Commission application of guideline in considering prisoners for parole release would not constitute a constitutional violation. <i>Braxton v. Josey</i>, 567 F.Supp. 1479 (D. Md. 1983).</p>
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MI	Parole Board	<p>Sec. 33. (1) The grant of a parole is subject to all of the following:</p> <p>(a) A prisoner shall not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety MICH. COMP. LAWS. ANN. § 791.233 (Westlaw 2012).</p>	<p>In Michigan, a prisoner's release on parole is discretionary with the parole board. <i>Lee v. Withrow</i>, 76 F.Supp.2d 789 (E.D. Mich. 1999). Michigan parole statute does not create a right to be paroled. <i>Id.</i></p>	<p>"The factors considered by the Parole Board in making parole decisions include the nature of the current offense, the prisoner's criminal history, prison behavior, program performance, age, parole guidelines score, risk as determined by various validated assessment instruments and information obtained during the prisoner's interview, if one is conducted . . . The Parole Board uses a numerical scoring system called the parole guidelines to apply objective criteria to the decision-making process. This tool is designed to reduce disparity in parole decisions and increase parole decision-making efficiency." <i>The Parole Consideration Process</i>, MICH. DEP'T OF CORR., http://www.michigan.gov/corrections/0,4551,7-119-1384-22909--,00.html (last visited Mar. 13, 2013).</p>
MN	Sentencing Guidelines Commission			<p>"The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by locating the appropriate cell of the Sentencing Guidelines Grids. The grids represent the two dimensions most important in current sentencing and releasing decisions—offense severity and criminal history." MINN. SENTENCING GUIDELINES COMM'N, GUIDELINES AND COMMENTARY 2 (2011).</p> <p>"[T]he sentence is fixed and there is no parole board to grant early release. When a person receives a prison sentence, it consists of two parts: a term of</p>

				imprisonment equal to two-thirds of the total sentence and a supervised release term equal to the remaining one-third. The amount of time the offender actually serves in prison may be extended by the Commissioner of Corrections if the offender violates disciplinary rules while in prison or violates conditions of supervised release.” <i>Frequently Asked Questions</i> , MINN. SENTENCING GUIDELINES COMM’N, http://www.msgc.state.mn.us/msgc5/faqs.htm (last visited Mar. 13, 2013).
MS	The State Parole Board	(1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections for a definite term, or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the department, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole. . . . Miss. CODE ANN. § 47-7-3 (Westlaw 2012).	Denial of parole did not violate inmates’s due process rights as inmate had no constitutionally recognized liberty interest in parole. <i>Hopson v. Miss. State Parole Bd.</i> , 976 So.2d 973 (Miss. Ct. App. 2008).	Depending on various factors including an inmate’s criminal history, crime, crime commit date, and sentence, some inmates may be eligible for parole consideration after serving a portion of their sentence. Although an inmate may be eligible for parole, it is not guaranteed that an inmate will be granted parole. Whether or not an inmate is released early to parole is within the complete discretion of the Mississippi State Parole Board. When considering whether to grant or deny parole the Board considers a multitude of factors including, but not limited to, the following: <ul style="list-style-type: none"> • Severity of offense • Number of offenses committed • Psychological and/or psychiatric history • Disciplinary action while incarcerated • Community Support or Opposition • Amount of Time Served • Prior misdemeanor or felony conviction(s)

				<ul style="list-style-type: none"> • Policy and/or juvenile record • History of drug or alcohol abuse • History of violence • Crimes committed while incarcerated • Escape history • Participation in rehabilitative programs • Arrangements for employment and/or residence • Whether the offender served in the U.S. Armed Forces and received an honorable discharge. <p>Victims and family members of victims are allowed to make impact statements to the Parole Board. <i>Parole</i>, Miss. DEP'T OF CORR., http://www.mdoc.state.ms.us/parole1.htm (last visited Mar. 13, 2013).</p>
MO	Board of Probation and Parole	<p>1. The board of probation and parole shall be responsible for determining whether a person confined in the department shall be paroled or released conditionally as provided by section 558.011, RSMo. MO. ANN. STAT. § 217.655(1) (Westlaw 2012).</p> <p>1. When in its opinion there is reasonable probability that an offender of a correctional center can be released without detriment to the community or to himself, the board may in its discretion release or parole such person except as otherwise prohibited by law. All paroles shall issue upon order of the board, duly adopted. MO. ANN. STAT. § 217.690(1) (Westlaw 2012).</p>	<p>While nothing in the statute governing parole determinations guarantees parole eligibility, the Board of Probation and Parole has discretion to determine whether release in the future would be appropriate, taking into consideration the seriousness of the crimes committed. <i>Kaczynski v. Mo. Bd. of Prob. and Parole</i>, 349 S.W.3d 354 (Mo. Ct. App. 2011). Sections 217.655 and 217.690 give Board of Probation and Parole almost unlimited discretion to make parole determinations and, thus, do not create a liberty interest protected by due process. <i>Green v. Black</i>, 755 F.2d 687, 688 (8th Cir. 1985). In determining whether to grant prison inmate parole, parole board could properly consider inmate's past convictions. <i>Tomich v. Mo. Bd. of Prob. and Pa-</i></p>	<p>To establish a uniform parole policy, promote consistent exercise of discretion and equitable decision-making, without removing individual case consideration, the Board has adopted guidelines for parole release consideration, using a salient factor scale and time to be served matrices. These guidelines indicate the customary range of time to be served before release for various combinations of offender characteristics and sentence length. Mitigating or aggravating circumstances may warrant decisions outside the guidelines. MO. DEP'T OF CORR., PROCEDURES GOVERNING THE GRANTING OF PAROLES AND CONDITIONAL RELEASE ¶ 11 (2009), available at http://doc.mo.gov/Documents/prob/Blue%20Book.pdf.</p>

			role, 585 F.Supp. 939, 941 (W.D. Mo. 1984).
MT	Board of Pardons and Parole	<p>(1) An eligible offender may apply and come before a board hearing panel or an out of state releasing authority for nonmedical parole consideration within two months of time fixed by law as calculated by the prison records department. During the parole hearing the hearing panel will consider all pertinent information regarding each eligible offender including:</p> <p>(a) the circumstances of the offender's current offense and any other offenses the offender has committed;</p> <p>(b) the offender's social history and criminal record;</p> <p>(c) the offender's prison record including disciplinary conduct, work history, treatment programs, classification and placement, and adjustment to prison; and</p> <p>(d) reports of any physical, psychological and mental health evaluations done on the offender. MONT. ADMIN. R. 20.25.401(1) (2012).</p>	
NE	Board of Parole	<p>(1) Whenever the Board of Parole considers the release of a committed offender who is eligible for release on parole, it shall order his or her release unless it is of the opinion that his or her release should be deferred because:</p> <p>(a) There is a substantial risk that he or she will not conform to the conditions of parole;</p> <p>(b) His or her release would depreciate the seriousness of his or her crime or promote disrespect for law; (c) His or her release</p>	

would have a substantially adverse effect on institutional discipline; or (d) His or her continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his or her capacity to lead a law-abiding life when released at a later date.

(2) In making its determination regarding a committed offender's release on parole, the Board of Parole shall take into account each of the following factors:

(a) The offender's personality, including his or her maturity, stability, and sense of responsibility and any apparent development in his or her personality which may promote or hinder his or her conformity to law; (b) The adequacy of the offender's parole plan; (c) The offender's ability and readiness to assume obligations and undertake responsibilities; (d) The offender's intelligence and training; (e) The offender's family status and whether he or she has relatives who display an interest in him or her or whether he or she has other close and constructive associations in the community; (f) The offender's employment history, his or her occupational skills, and the stability of his or her past employment; (g) The type of residence, neighborhood, or community in which the offender plans to live; (h) The offender's past use of narcotics or past habitual and excessive use of alcohol; (i) The offender's mental or physical makeup, in-

cluding any disability or handicap which may affect his or her conformity to law; (j) The offender's prior criminal record, including the nature and circumstances, recency, and frequency of previous offenses; (k) The offender's attitude toward law and authority; (l) The offender's conduct in the facility, including particularly whether he or she has taken advantage of the opportunities for self-improvement, whether he or she has been punished for misconduct within six months prior to his or her hearing or reconsideration for parole release, whether any reductions of term have been forfeited, and whether such reductions have been restored at the time of hearing or reconsideration; (m) The offender's behavior and attitude during any previous experience of probation or parole and the recency of such experience; (n) The risk and needs assessment completed pursuant to section 83-192; and (o) Any other factors the board determines to be relevant. NEB. REV. STAT. § 83-1,114 (Westlaw 2012).

(1) The Board of Parole shall: . . . (e) Within two years after July 1, 2006, implement the utilization of a validated risk and needs assessment in coordination with the Department of Correctional Services and the Office of Parole Administration. The assessment shall be prepared and completed by the department or the office for use by the board in

		determining release on parole. NEB. REV. STAT. § 83-192 (Westlaw 2012).		
NV	Division of Parole and Probation	<p>1. The Board will assign to each prisoner who is being considered for parole a risk level of "high," "moderate" or "low" according to the level of risk that the prisoner will commit a felony if released on parole.</p> <p>2. To establish the risk level, the Board will conduct an objective risk assessment using a combination of risk factors that predict recidivism. NEV. ADMIN. CODE § 213.514 (2012).</p> <p>In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole. NEV. ADMIN. CODE § 213.516 (2012).</p>		
NH	Adult Parole Board	<p>II. The board shall hold at least 24 parole hearings each year and may hold more hearings as necessary. Each parole hearing shall be held by a hearing panel consisting of exactly 3 members of the board. The board shall establish operating procedures which provide for rotation of board members among hearing panels. N.H. REV. STAT. ANN. § 651-A:3 (2012).</p>	<p>New Hampshire Adult Parole Board's discretion to deny parole is not limited by RSA chapter 651-A, or by its administrative rules. Knowles v. Warden, N.H. State Prison, 140 N.H. 387, 390 (1995).</p>	<p>Per phone conversation of August, 2011, considerations include: discipline history; attitude about the crime; severity of the offense. The Board may also consider priors depending on the crime.</p>
NJ	State Parole Board	<p>(a) Parole decisions shall be based on the aggregate of all pertinent factors, including material supplied by</p>	<p>Parole Act of 1979 shifts burden to state to prove that prisoner is recidivist and should not be released. Tranti-</p>	<p>Under New Jersey law, an inmate becomes eligible for parole consideration after serving one-third of his or her</p>

the inmate and reports and material which may be submitted by any persons or agencies which have knowledge of the inmate.

(b) The hearing officer, Board panel or Board shall consider the following factors and, in addition, may consider any other factors deemed relevant:

1. Commission of an offense while incarcerated.

2. Commission of serious disciplinary infractions.

3. Nature and pattern of previous convictions.

4. Adjustment to previous probation, parole and incarceration.

5. Facts and circumstances of the offense.

6. Aggravating and mitigating factors surrounding the offense.

7. Pattern of less serious disciplinary infractions.

8. Participation in institutional programs which could have led to the improvement of problems diagnosed at admission or during incarceration. This includes, but is not limited to, participation in substance abuse programs, academic or vocational education programs, work assignments that provide on-the-job training and individual or group counseling.

9. Statements by institutional staff, with supporting documentation, that the inmate is likely to commit a crime if released; that the inmate has failed to cooperate in his or her own rehabilitation; or that there is a reasonable expectation that the inmate will violate conditions of parole.

no v. N.J. State Parole Bd., 166 N.J. 113 (2001).

prison sentence, with the exception of cases in which the offender was sentenced to a period of parole ineligibility. An inmate's eligibility for parole, however, does not mean the individual will automatically be granted release to parole supervision. Before a parole decision is made, the inmate must undergo the parole hearing process. The first step in this process is the initial hearing. Hearing officers in the Division of Release conduct this preliminary review of the inmate's appropriateness for parole release. The hearing officer reviews professional reports concerning the inmate's criminal history including the current offense, the inmate's social, physical, educational and psychological progress, and an objective social and psychological risk and needs assessment. The hearing officer then summarizes the case for the designated Board Members' review. *Hearings*, N.J. STATE PAROLE BD., <http://www.state.nj.us/parole/hearings.html> (last visited Dec. 31, 2011).

10. Documented pattern or relationships with institutional staff or inmates.
11. Documented changes in attitude toward self or others.
12. Documentation reflecting personal goals, personal strengths or motivation for law-abiding behavior.
13. Mental and emotional health.
14. Parole plans and the investigation thereof.
15. Status of family or marital relationships at the time of eligibility.
16. Availability of community resources or support services for inmates who have a demonstrated need for same.
17. Statements by the inmate reflecting on the likelihood that he or she will commit another crime; the failure to cooperate in his or her own rehabilitation; or the reasonable expectation that he or she will violate conditions of parole.
18. History of employment, education and military service.
19. Family and marital history.
20. Statement by the court reflecting the reasons for the sentence imposed.
21. Statements or evidence presented by the appropriate prosecutor's office, the Office of the Attorney General, or any other criminal justice agency.
22. Statement or testimony of any victim or the nearest relative(s) of a murder/ manslaughter victim.
23. The results of the objective risk assessment instrument. N.J.

		ADMIN. CODE § 10A:71-3.11 (2012).		
NM	Corrections Department	D. The parole board shall adopt a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a parolee. N.M. STAT. ANN. § 31-21-25 (Westlaw 2012).	Release on parole is an act of clemency or grace resting entirely within discretion of parole board. <i>Robinson v. Cox</i> , 77 N.M. 55, 59 (1966).	
NY	Division of Parole	(2) (c) (A) Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the inmate; (iv) any deportation order is-		

		<p>sued by the federal government against the inmate while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department pursuant to section one hundred forty-seven of the correction law; (v) any statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated; (vi) 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; (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement. N.Y. EXEC. LAW § 259-i (2)(c)(A) (Westlaw 2012).</p>		
NC	Post-Release Supervision and Parole Commission	Structured Sentencing Act provides three separate sentence ranges in the felony punishment chart (aggravated range, presumptive range, and mitigated range). See N.C. GEN.	A trial court is not required to justify a decision to sentence a defendant within the presumptive range by making findings of aggravation and mitigation. State v. Allen, 684	Structured Sentencing is the method of sentencing and punishing criminals in North Carolina. It classifies offenders on the basis of the severity of their crime and on the ex-

		STAT. ANN. § 15A-1340.16 (Westlaw 2012).	S.E.2d 526 (N.C. Ct. App. 2009).	tent and gravity of their prior criminal record. Based on these two factors, structured sentencing provides judges with sentencing options for the type and length of sentences which may be imposed. Under the law, there is no early parole release so the sentence is truthful. In addition, the law sets priorities for the use of correctional resources and balances sentencing policies with correctional capacity. N.C. SENTENCING AND POLICY ADVISORY COMM'N, A CITIZEN'S GUIDE TO STRUCTURED SENTENCING 1 (2010).
ND	Parole Board	Applications for parole must be reviewed in accordance with the rules adopted by the parole board. The board shall consider all pertinent information regarding each applicant, including the circumstances of the offense, the presentence report, the applicant's family, educational, and social history and criminal record, the applicant's conduct, employment, participation in education and treatment programs while in the custody of the department of corrections and rehabilitation, and the applicant's medical and psychological records. N.D. CENT. CODE § 12-59-05 (Westlaw 2012)		
OH	Adult Parole Authority Board (APA Board)	(B) In considering the release of the inmate, the parole board shall consider the following: (1) Any reports prepared by any institutional staff member relating to the inmate's personality, social history, and adjustment to institutional programs and assignments;	Because neither statute nor regulation created the Ohio Adult Parole Authority's (OAPA) internal guidelines for parole decisions, OAPA need not follow them, they place no substantive limits on official discretion, and an inmate cannot claim any right to have any partic-	In 2006, DRC contracted with the University of Cincinnati, Center for Criminal Justice Research, to develop a universal Ohio-based assessment system that would be utilized at various points in the criminal justice system. This project was recently completed and is

	<p>(2) Any official report of the inmate's prior criminal record, including a report or record of earlier probation or parole;</p> <p>(3) Any presentence or postsentence report;</p> <p>(4) Any recommendations regarding the inmate's release made at the time of sentencing or at any time thereafter by the sentencing judge, presiding judge, prosecuting attorney, or defense counsel;</p> <p>(5) Any reports of physical, mental or psychiatric examination of the inmate;</p> <p>(6) Such other relevant written information concerning the inmate as may be reasonably available, except that no document related to the filing of a grievance under rule 5120-9-31 of the Administrative Code shall be considered;</p> <p>(7) Written or oral statements by the inmate.</p> <p>(8) The equivalent sentence range under Senate Bill 2, for the same offense of conviction if applicable.</p> <p>(9) The inmate's ability and readiness to assume obligations and undertake responsibilities, as well as the inmate's own goals and needs;</p> <p>(10) The inmate's family status, including whether his relatives display an interest in him or whether he has other close and constructive association in the community;</p> <p>(11) The type of residence, neighborhood, or community in which the inmate plans to live;</p> <p>(12) The inmate's employment history and</p>	<p>ular set of guidelines apply. <i>Thompson v. Ghee</i>, 139 Ohio App.3d 195, 200 (Ohio Ct. App. 2000).</p> <p>RC 2967.03 creates no presumption that parole will be granted when designated findings are made. State ex rel. <i>Ferguson v. Ohio Adult Parole Auth.</i>, 45 Ohio St.3d 355, 356 (1989).</p>	<p>called the Ohio Risk Assessment System (ORAS). The ORAS tools can be used at pretrial, prior to or while on community supervision, at prison intake, and in preparation for reentry just prior to release from prison. <i>Ohio Risk Assessment System</i>, OHIO DEP'T OF REHAB. AND CORR., http://drc.ohio.gov/web%5Coras.htm (last visited Dec. 31, 2011).</p>
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		<p>his occupational skills; (13) The inmate's vocational, educational, and other training; (14) The adequacy of the inmate's plan or prospects on release; (15) The availability of community resources to assist the inmate; (16) The physical and mental health of the inmate as they reflect upon the inmate's ability to perform his plan of release; (17) The presence of outstanding detainers against the inmate; (18) Any other factors which the board determines to be relevant. (C) The consideration of any single factor, or any group of factors, shall not create a presumption of release on parole, or the presumption of continued incarceration. The parole decision need not expressly address any of the foregoing factors. OHIO ADMIN. CODE 5120:1-1-07 (2012).</p>		
<p>OK</p>	<p>Pardon and Parole Board</p>	<p>A. For a crime committed prior to July 1, 1998, any person in the custody of the Department of Corrections shall be eligible for consideration for parole at the earliest of the following dates: 1. Has completed serving one-third (1/3) of the sentence; 2. Has reached at least sixty (60) years of age and also has served at least fifty percent (50%) of the time of imprisonment that would have been imposed for that offense pursuant to the applicable Truth in Sentencing matrix; 3. Has reached eighty-five percent (85%) of the midpoint of the</p>	<p>Oklahoma Truth in Sentencing Act did not create due process liberty interest in recalculation of defendant's sentence, and thus defendant failed to make substantial showing of denial of constitutional right, as would entitle him to certificate of appealability to appeal from District Court's denial of his federal habeas corpus petition, where sole purpose of any recalculation under Act was to determine date upon which inmate becomes eligible for consideration for parole. <i>Dugger v. Attorney Gen. of Okla.</i>, 27 Fed.Appx. 992, 994 (10th Cir. 2001).</p>	

		<p>time of imprisonment that would have been imposed for an offense that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of Section 6, Chapter 133, O.S.L. 1997; or</p> <p>4. Has reached seventy-five percent (75%) of the midpoint of the time of imprisonment that would have been imposed for an offense that is listed in any other schedule, pursuant to the applicable matrix.</p> <p>B. For a crime committed on or after July 1, 1998, any person in the custody of the Department of Corrections shall be eligible for consideration for parole who has completed serving one-third (1/3) of the sentence; provided, however, no inmate serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this subsection.</p> <p>F. The Pardon and Parole Board shall promulgate rules for the implementation of subsections A, B and C of this section. OKLA. STAT. ANN., tit. 57, § 332.7 (Westlaw 2012).</p>		
OR	Board of Parole and Post-Prison Supervision	<p>Before making a determination regarding a prisoner's release on parole as provided by ORS 144.125, the State Board of Parole and Post-Prison Supervision may cause to be brought before it current records and information regarding the prisoner, including:</p> <p>(1) Any relevant information which may be submitted by the prisoner, the prisoner's attorney, the victim of the crime, the Depart-</p>		

		<p>ment of Corrections, or by other persons; (2) The presentence investigation report; (3) the reports of any physical, mental, and psychiatric examinations; (4) The prisoner's parole plan; and (5) Other relevant information concerning the prisoner as may be reasonably available. OR. REV. STAT. ANN. § 144.185 (Westlaw 2012).</p> <p>Information the Board Shall Consider (1) The Board Review Packet shall contain: (a) Inmate's notice of rights and notice of administrative appeal; (b) PSI, PAR, PSR or report of similar content; (c) Sentencing/judgment orders; (d) Face sheet; (e) Certification of time served credits; (f) Board Action Forms; (g) Information pursuant to Ballot Measure 10; (h) Material submitted by the inmate or representative relating to the calculation of the prison term; (i) Current psychological/psychiatric evaluations; (j) Other relevant material selected at the Board's discretion. (2) The Board may consider additional information and recommendations from those with a special interest in the case. If considered, the Board Review Packet shall include the information. OR. ADMIN. R. 255-030-0035 (2012).</p>		
PA	Board of Probation and Parole	Parole Act of 1941. (e) Term of imprisonment—All sentences of imprisonment imposed under this chapter shall be for a definite term. 42 PA. CONS. STAT. ANN.	Only constraints placed on sentencing court's discretion are that sentence imposed must be within statutory limits, that record must show consideration of sentencing guidelines in	Prior to the parole interview, a case file must be prepared for the decision makers to review. Central office staff, institutional parole staff and DOC staff contribute to the effort to

		<p>§ 9721 (Westlaw 2012).</p>	<p>light of public protection, gravity of offense, and rehabilitative needs of defendant, and that record must demonstrate contemporaneous statement of reasons for departure. Commonwealth v. Jones, 640 A.2d 914, 917 (Pa. Sup. Ct. 1994). In exercising discretion as to whether to impose sentence within aggravated range, sentencing judge should bear in mind that suggested sentencing ranges were painstakingly developed and take into consideration prior record, offense gravity, and statutory classification of crime. Commonwealth v. Duffy, 491 A.2d 230, 233 (Pa. Sup. Ct. 1985).</p>	<p>compile an accurate and complete case file. The file contains the following:</p> <ul style="list-style-type: none"> • The nature and circumstances of the crime for which the offender was convicted, as well as his/her entire criminal history; • Information regarding the general character and background of the offender; • Notes of testimony of the sentencing hearing; • Emotional stability: physical, mental and behavioral condition and history of the offender; • History of family violence; • Adjustment to prison; • Recommendation of the sentencing judge and prosecuting attorney; • Input from the victim and the victim's family; • Recommendation from the warden or superintendent of the facility where the offender is incarcerated; and • Status of program completion. <p>The Parole Decisional Instrument is used to guide consistency in decision making but does not replace professional discretion and does not bind the Board to grant or deny parole, or create a right, presumption or reasonable expectation that parole will be granted. <i>The Parole Process</i>, PA. BD. OF PROB. & PAROLE, http://pa.gov/portal/server.pt/community/understanding_pennsylvania_parole/5356/the_parole_process/504593 (last visited Mar. 13, 2013).</p>
RI	Rhode Island Parole Board	(a) A permit shall not be issued to any prisoner under the authority	[W]e held not only that the Legislature intended the parole	Risk Assessment Instrument used as part of Parole Board Guide-

		<p>of sections 13-8-9—13-8-13 unless it shall appear to the parole board:</p> <p>(1) That the prisoner has substantially observed the rules of the institution in which confined, as evidenced by reports submitted to the board by the director of the department of corrections, or his or her designated representatives, in a form to be prescribed by the director;</p> <p>(2) That release would not depreciate the seriousness of the prisoner's offense or promote disrespect for the law;</p> <p>(3) That there is a reasonable probability that the prisoner, if released, would live and remain at liberty without violating the law;</p> <p>(4) That the prisoner can properly assume a role in the city or town in which he or she is to reside. In assessing the prisoner's role in the community the board shall consider:</p> <p>(i) Whether or not the prisoner has employment;</p> <p>(ii) The location of his or her residence and place of employment; and</p> <p>(iii) The needs of the prisoner for special services, including but not limited to, specialized medical care and rehabilitative services. R.I. GEN. LAWS ANN. § 13-8-14 (Westlaw 2012).</p>	<p>board to have broad discretionary powers but also that the board may deviate from prescribed guidelines when a particular case warrants. <i>State v. Tillinghast</i>, 609 A.2d 217 (R.I. 1992).</p>	<p>lines. However, the Guidelines are not automatic nor is the parole risk score presumptive as to whether an offender will be paroled. Board members retain the discretion to vote outside the guidelines when the circumstances of an individual case merit. The Board will continue to consider factors such as those listed in RI General Laws § 13-8-14. R.I. PAROLE Bd., GUIDELINES 2-3 (2011), available at http://www.paroleboard.ri.gov/documents/paroleguidelines2011.pdf.</p>
<p>SC</p>	<p>Board of Pardons and Paroles</p>	<p>The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a</p>	<p>If a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty in-</p>	<p>The Parole Board considers several factors, such as: sentence date; present offense and prior criminal record; personal and social history; institutional experience, etc. and applies a set of criteria in making their sole judg-</p>

		disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him. S.C. CODE ANN. §§ 24-21-640 & 24-21-640 (2012).	terest. <i>Cooper v. S.C. Dept. of Prob., Parole and Pardon Servs.</i> , 377 S.C. 489 (2008).	ment. <i>FAQ, S.C. DEP'T OF PROB., PAROLE, & PARDONS</i> , http://www.dppps.sc.gov/ppp_faq.html (last visited Dec. 26, 2011).
SD	Board of Pardons and Parole	Pursuant to chapter 1-26, the Board of Pardons and Paroles may promulgate procedural rules for the effective enforcement of chapters 24-13 to 24-15, inclusive, and for the exercise of powers and duties conferred upon it. Additionally, the Board of Pardons and Paroles may utilize the following standards in granting or denying paroles or in assisting inmates in an assessment of their rehabilitation needs: (1) The inmate's personal and family history; (2) The inmate's attitude, character, capabilities, and habits; (3) The nature and circumstances of the inmate's offense; (4) The number, nature, and circumstances of the inmate's prior offenses; (5) The successful completion or revocation of previous probation or parole granted to the inmate; (6) The inmate's conduct in the institution, including efforts directed towards self-improvement; (7) The inmate's understanding of his or her own problems and the willingness to work towards overcoming them; (8) The inmate's	Parole, "an executive branch function" under SDCL 24-15-8, is a matter of grace, a conditional release. <i>Bergee v. S.D. Bd. of Pardons and Paroles</i> , 608 N.W.2d 636 (S.D. 2000).	

total personality as it reflects on the possibility that the inmate will lead a law-abiding life without harm to society; (9) The inmate's family and marital circumstances and the willingness of the family and others to help the inmate upon release on parole from the institution; (10) The soundness of the parole program and whether it will promote the rehabilitation of the inmate; (11) The inmate's specific employment and plans for further formal education or training; (12) The inmate's plan for additional treatment and rehabilitation while on parole; (13) The effect of the inmate's release on the community; (14) The effect of the inmate's release on the administration of justice; and (15) The effect of the inmate's release on the victims of crimes committed by the inmate. Neither this section or its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any prisoner. S.D. CODIFIED LAWS § 24-13-7 (2012).

When an inmate becomes eligible for consideration for parole, the inmate is entitled to a hearing with the Board of Pardons and Paroles to present the inmate's application for parole. An inmate may decline parole consideration and waive the right to a hearing. The board may issue an order to the Department of Corrections that the inmate shall be paroled if it is satisfied that:

		<p>(1) The inmate has been confined in the penitentiary for a sufficient length of time to accomplish the inmate's rehabilitation;</p> <p>(2) The inmate will be paroled under the supervision and restrictions provided by law for parolees, without danger to society; and</p> <p>(3) The inmate has secured suitable employment or beneficial occupation of the inmate's time likely to continue until the end of the period of the inmate's parole in some suitable place within or without the state where the inmate will be free from criminal influences.</p> <p>Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any prisoner.</p> <p>S.D. CODIFIED LAWS § 24-15-8 (2012).</p>		
TN	Board of Probation and Parole	<p>(b) When acting pursuant to §§ 41-1-503 — 41-1-508, the board is empowered to:</p> <p>(1) Establish criteria by which prisoners shall be considered and selected for release;</p> <p>(2) Impose conditions or limitations upon the parole as it deems necessary; and</p> <p>(3) Authorize individual board members or parole hearing officers to conduct hearings, take testimony and make written proposed findings of fact and recommendations regarding the granting or denial of parole. The recommendations shall be adopted, modified or rejected by the concurrence of three (3) board members. TENN.</p>		<p>In making a parole hearing recommendation, the Hearings Officer reviews the offender's Board of Probation and Parole hearing file and institutional file, as well as other essential information that may impact the outcome of the hearing. This information may include but is not limited to:</p> <ul style="list-style-type: none"> - Recommendations and statements from institutional staff, family members and members of the community in support or opposition; - Testimony of interested parties who are in support or opposition; - Proposed release plan and information provided by the offender; - Offender views on how he or she will be

		<p>CODE ANN. § 41-1-505 (Westlaw 2012).</p>	<p>successful on parole supervision; - Social and criminal history; - Prior supervision history in the criminal justice system; - Circumstances of the current offense(s); - Institutional record and program participation; - Evidence and testimony pertaining to parole revocation; - Other information deemed relevant to the hearing. In addition to the information referenced above, Parole Hearings Officers utilize several advisory instruments in the parole hearing process. The risk assessment instrument is used as one means of assessing the risk level of offenders being considered for release. Other advisory instruments used are the Guidelines for Release and Revocation Guidelines. These instruments, although advisory, are critical to maintaining consistency and credibility in the parole hearing recommendation and decision-making process. Board Members review all recommendations made by the Hearings Officers and may adopt, modify or reject the recommendation. <i>Hearing Officers Division, TENN. BD. OF PROB. & PAROLE</i>, http://www.tn.gov/bopp/bopp_ho.htm (last visited Dec. 26, 2011).</p>
TX	Board of Pardons and Paroles (BPP)	<p>(a) The parole panels are vested with complete discretion in making parole decisions. (b) Parole guidelines have been adopted by the board to assist pa-</p>	<p>Parole panel members look at the circumstances and seriousness of the offense; prior prison commitments; relevant input from victims, family members,</p>

role panels in the selection of possible candidates for release. Parole guidelines are applied as a basis, but not as the exclusive criteria, upon which parole panels base release decisions.

(1) The parole guidelines consist of a risk assessment instrument and an offense severity scale. Combined, these components serve as an instrument to guide parole release decisions.

(2) The risk assessment instrument includes two sets of components, static and dynamic factors.

(A) Static factors include: (i) Age at first admission to a juvenile or adult correctional facility; (ii) History of supervisory release revocations for felony offenses; (iii) Prior incarcerations; (iv) Employment history; and (v) The commitment offense.

(B) Dynamic factors include: (i) The offender's current age; (ii) Whether the offender is a confirmed security threat group (gang) member; (iii) Education, vocational and certified on-the-job training programs completed during the present incarceration; (iv) Prison disciplinary conduct; and (v) Current prison custody level.

(3) Scores from the risk assessment instrument are combined with an offense severity rating for the sentenced offense of record to determine a parole candidate's guidelines level.

(c) The adoption and use of the parole guidelines does not imply the creation of any pa-

and trial officials; adjustment and attitude in prison; the offender's release plan; and factors such as alcohol or drug use, violent or assaultive behavior, deviant sexual behavior, use of a weapon in an offense, institutional adjustment, and emotional stability. Based on the entirety of the available information, the parole panel then determines whether the offender deserves the privilege of parole.

TEX. BD. OF PARDONS & PAROLES, PAROLE IN TEXAS: ANSWERS TO COMMON QUESTIONS 41-42 (2008), available at http://www.tdcj.state.tx.us/bpp/publications/PIT_eng.pdf.

		<p>role release formula, or a right or expectation by an offender to parole based upon the guidelines. The risk assessment instrument and the offense severity scale, while utilized for research and reporting, are not to be construed so as to mandate either a favorable or unfavorable parole decision. The parole guidelines serve as an aid in the parole decision process and the parole decision shall be at the discretion of the voting parole panel. 37 TEX. ADMIN. CODE § 145.2 (2012).</p>		
<p>UT</p>	<p>Board of Pardons and Parole</p>	<p>(1) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date. UTAH. CODE ANN. § 77-27-7 (Westlaw 2012).</p>		<p>The Utah Sentencing Commission, established by the Legislature, has developed non-binding, advisory sentencing guidelines for use by Courts and the Board. The guidelines do not have the force and effect of law, but provide only an estimate of the time an inmate may expect to be incarcerated, always subject, however, to the individual facts and circumstances of a case, the characteristics of an offender and the discretion of the Board. By employing a number of factors, such as the offender's criminal record, supervision history, nature and severity of the offense and other fact specific details, the Board calculates a sentence guideline, usually in terms of months, which provides a starting point for the Board in its determinations and decisions. The Board considers the nature and severity of the crime(s) committed, including the harm done to the victim and</p>

				<p>society, the continued risk posed by the inmate, and the inmate's behavior and programming efforts while incarcerated. <i>FAQ, UTAH BD. OF PARDONS & PAROLE</i>, http://bop.utah.gov/board-top-public-menu/organization/86-bop-faq-category.html (last visited Dec. 26, 2011).</p>
VT	Vermont Parole Board	<p>(a) The board shall interview each inmate eligible for parole consideration under section 501 of this title before ordering the inmate released on parole. The board shall consider all pertinent information regarding an inmate in order to determine the inmate's eligibility for parole. . . . VT. STAT. ANN. tit. 28, § 502 (Westlaw 2012).</p>		<p>The Board considers the following factors according to policy when making decisions concerning offenders eligible for parole:</p> <ul style="list-style-type: none"> Seriousness of the crime committed. Danger to the public The offender's risk of re-offending. Any input given by the victim, including, but not limited to the emotional damage done to the victims and the victim's family. The offender's parole plan – including housing, employment, need for Community treatment and follow-up resources. Recommendation of the Department of Corrections. The Board may according to policy consider all pertinent information including the following factors: <ul style="list-style-type: none"> History of prior criminal activity. Prior history on probation, parole, or other form of supervised release. Abuse of drugs or alcohol. Poor institutional adjustment. Success or failure of treatment. Attitude toward authority - before and during incarceration. Comments from the prosecutor's office, the

				<p>Office of the Attorney's General's Office, the judiciary or other criminal justice agency. Education and job skills. Employment history. Emotional stability. Mental status - capacity and stability. History of deviant behavior. Official and community attitudes toward accepting an inmate back into the community. Other factors involved that relate to public safety or the offender's needs. VT. PAROLE BD., 2009 ANN. REP. 6 (2009), available at http://www.doc.state.vt.us/about/parole-board/pb-annual-report. In 2007, Vermont successfully implemented a risk assessment tool. <i>Id.</i> at 3.</p>
VA	Parole Board	<p>In addition to the other powers and duties imposed upon the Board by this article, the Board shall: 1. Adopt, subject to approval by the Governor, general rules governing the granting of parole and eligibility requirements, which shall be published and posted for public review. VA. CODE ANN. § 53.1-136 (Westlaw 2012).</p>	<p>"[P]ursuant to Virginia law, the Parole Board is accorded the broadest discretion to grant or deny parole." Jennings v. Parole Bd. of Va., 61 F.Supp.2d 462, 465 (E.D. Va. 1999). "[T]he Parole Board is entitled to consider seriousness of the inmate's offense, the circumstances surrounding the crime of conviction, and the amount of time served relative to each offense in denying parole." <i>Id.</i> at 466.</p>	
WA	Washington Department of Corrections Indeterminate Sentence Review Board	<p>(3) the indeterminate sentence review board shall give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole. WASH. REV. CODE ANN.</p>	<p>"The Court of Appeals found a liberty interest was created here by certain procedural regulations for parolability hearings. The court's reasoning was as follows: the Board's setting of Cashaw's minimum term to coincide with his maximum term was essentially a decision on Cashaw's paro-</p>	<p>Factors considered for Parole Decisions: - The original recommendation of the sentencing Judge and Prosecutor to the ISRB. - The length of time an offender has served so far. - Any aggravating or mitigating factors or circumstances relative to the crime of conviction.</p>

		<p>§ 9.95.009 (Westlaw 2012).</p>	<p>lability; the Court of Appeals then noted that the Board's own rules (WAC 381-60-070 and -120) call for an in-person parolability hearing and detailed written notice as to the substance and procedures involved in that hearing; finally, the court held that these rules created for inmates a liberty interest, such that a failure to follow these procedures violates due process." Matter of Cashaw, 123 Wash.2d 138, 144 (1994).</p>	<p>tion. - The offender's entire criminal history. - All available information from the victim or the victim's family, including comments on the impact of the crime, concerns about the offender's potential release, and requests for conditions if the offender is released. - The offender's participation in or refusal to participate in available programs or resources designed to assist in reducing the risk of re-offense. - The risk to public safety. - Serious and repetitive disciplinary infractions during incarceration. - Evidence of the offender's continuing intent or propensity to engage in illegal activity (e.g., victim harassment, criminal conduct while incarcerated, use of illegal substances.) - Statements or declarations that the offender made about intending to re-offend or not intending to comply with conditions of supervision. - Evidence that the offender presents a substantial danger to the community if released. <i>ISRB - Frequently Asked Questions</i>, WASH. STATE DEP'T OF CORR., http://www.doc.wa.gov/isrb/faq.asp (last visited Mar. 13, 2013).</p>
<p>WV</p>	<p>West Virginia Parole Board</p>	<p>(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations hereinafter provided, shall release any inmate on parole for terms and upon conditions as</p>	<p>"Our statute governing granting parole makes a prisoner eligible (with some exceptions) when he has served the minimum term of his indeterminate sentence or one-third of his definite term sentence, is not under punishment or in solitary confine-</p>	

		<p>are provided by this article. (b) Any inmate of a state correctional center is eligible for parole if he or she: (1)(A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or (B) He or she: (i) Has applied for and been accepted by the Commissioner of Corrections into an accelerated parole program; (ii) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child; (iii) Has no record of institutional disciplinary rule violations for a period of one hundred twenty days prior to parole consideration unless the requirement is waived by the commissioner; (iv) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child; and (v) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment. W. VA. CODE ANN. § 62-12-13 (Westlaw 2012).</p>	<p>ment for any infraction of prison rules, has maintained a good conduct record for at least three months prior to his parole release, and has satisfied the board that he will act lawfully when released, and his release is compatible with the best interests and welfare of society. The first three criteria are objective. A prisoner knows whether he has or has not met those criteria. The last factor involves subjective, discretionary evaluation by the board, and due process rights, which attempt to limit malevolent, arbitrary or reckless decisions, apply. We hold that our parole statute creates a legitimate reasonable expectation that parole will be granted." <i>Tasker v. Mohn</i>, 267 S.E.2d 183, 187 (W. Va. 1980).</p>	
WI	Wisconsin	(2)(b) Except as pro-	In general, Wisconsin's	

Parole Commission	<p>vided in s. 961.49(2), 1999 stats., sub. (1m), the parole commission may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year or more in a county house of correction or a county reforestation camp, when he or she has served 25% of the sentence imposed for the offense, or 6 months, whichever is greater. Wis. STAT. ANN. § 304.06 (Westlaw 2012).</p> <p>(8) The commissioner's decision shall be based on information available, including file material, victim's statements if applicable, and any other relevant information.</p> <p>(16) A recommendation for a parole grant or release to extended supervision order may be made after consideration of all the following criteria: (a) The inmate has become parole or release to extended supervision eligible under s. 304.06, Stats., and s. PAC 1.05. (b) The inmate has served sufficient time so that release would not depreciate the seriousness of the offense. (c) The inmate has demonstrated satisfactory adjustment to the institution. (d) The inmate has not refused or neglected to perform required or assigned duties. (e) The inmate has participated in and has demonstrated sufficient efforts in required or recommended programs which have been made available by demonstrating one of the following: 1. The inmate has gained maximum bene-</p>	<p>parole system provides for a discretionary parole scheme⁴ and a mandatory parole scheme. Under the <i>Greenholtz</i> analysis, Wisconsin's discretionary parole scheme does not create a protectible liberty interest in parole. . . . On the other hand, Wisconsin's mandatory parole scheme does create a protectible liberty interest. <i>Gendrich v. Litscher</i>, 632 N.W.2d 878, 882 (Wis. Ct. App. 2001). The presumptive mandatory release scheme does not create a protectible expectation of parole for several reasons. First, in making the presumptive mandatory release determination, the Commission's discretion is virtually unlimited. Wisconsin Stat. § 302.11(1g)(b) explicitly requires the Commission to proceed under Wis. Stat. § 304.06(1), which grants the Commission discretionary powers to administer the parole scheme. Second, the statute uses discretionary language (e.g., "may deny presumptive mandatory release") rather than mandatory language (e.g., "shall") <i>Id.</i> at 824.</p>
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fit from programs. 2. The inmate can complete programming in the community without presenting an undue risk. 3. The inmate has not been able to gain entry into programming and release would not present an undue risk. (f) The inmate has developed an adequate release plan. (g) The inmate is subject to a sentence of confinement in another state or is in the United States illegally and may be deported. (h) The inmate has reached a point at which the commission concludes that release would not pose an unreasonable risk to the public and would be in the interests of justice. WIS. ADMIN. CODE WIS. PAROLE COMM'N § 1.06 (2012). (1) The warden or superintendent shall keep a record of the conduct of each inmate, specifying each infraction of the rules. Except as provided in subs. (1g), (1m), (1q), (1z), (7) and (10), each inmate is entitled to mandatory release on parole by the department. The mandatory release date is established at two-thirds of the sentence. WIS. STAT. ANN. § 302.11 (Westlaw 2012). (1) For an inmate who is subject to Presumptive Mandatory Release and who has been deferred to the mandatory release date of the PMR offense, a commissioner shall conduct a review two months prior to the mandatory release date. (7) The commissioner's decision shall be based on information available, including file material

		and any other relevant information. Wis. ADMIN. CODE Wis. PAROLE COMM'N § 1.09 (2012).		
WY	Wyoming Board of Parole	(a) The board may grant a parole to any person imprisoned in any institution under sentence, except a sentence of life imprisonment without parole or a life sentence, ordered by any district court of this state, provided the person has served the minimum term pronounced by the trial court less good time, if any, granted under rules promulgated pursuant to W.S. 7-13-420. WYO. STAT. ANN. § 7-13-402 (Westlaw 2012).	“The Due Process Clause applies to parole proceedings only when the state parole statute creates a legitimate expectation of release. . . . Wyoming’s parole statute provides that the parole board “may grant parole to any person . . . provided the person has served the minimum term pronounced by the trial court less good time.” Wyo. Stat. Ann. § 7-13-402(a) (emphasis added). Such permissive language does not give rise to a liberty interest protected by the Due Process Clause.” <i>Seavolt v. Escamilla</i> , 17 Fed.Appx. 806, 807 2001 WL 815570, Unreported (10th Cir. 2001).	Parole Eligibility I. Policy Parole may be granted at the sole discretion of the Board when in the opinion of the Board there is a reasonable probability that an inmate of a correctional facility can be released without a detriment to the community or himself/herself. Parole shall be ordered only with the best interests of society being considered and not as an award of clemency; nor shall it be considered as a reduction in sentence or a pardon. II. Criteria: The inmate must have served his/her minimum term, less any special good time earned. The inmate must not be serving a life sentence or a death penalty sentence. The inmate will not be eligible for parole on the sentence from which he/she made an assault with a deadly weapon upon an officer, employee, or inmate of any institution. An inmate who has escaped, attempted to escape or assisted others to escape from an institution while on inmate status, on probation, on parole, or on pre-release status, will not be eligible for parole on the sentence from which he/she escaped, attempted to escape or assisted others to escape. When an inmate is unavailable for his/her annual review hearing due to escape status, the inmate auto-

			<p>matically waives his/her right to a board appearance for that year. An inmate will not be granted parole to the street if he/she has had a major predatory disciplinary infraction as listed on page [38] within the year preceding the hearing, unless, on a case by case basis:</p> <ol style="list-style-type: none">1. The inmate is paroled to his/her detain-er;2. The Board deter-mines that extenuating or extraordinary cir-cumstances exist re-garding the major predatory disciplinary. <p>For lesser disciplinaries the Board will use its discretion in reaching its decision on the ap-propriate impact of the behavior.</p> <p>The Board will consid-er whether there is a reasonable probability that the inmate is able and willing to fulfill ob-ligations as a law abid-ing citizen.</p> <p>The inmate must sub-mit a written parole plan prior to the hear-ing. This plan shall in-clude living arrange-ments, employment op-portunities, program-ming/treatment and medical considerations if applicable.</p> <p>WYO. BD. OF PAROLE, POLICY AND PROCEDURE MANUAL 36 (2011), available at http://boardofparole.wy.gov/pdf/Policy%20and%20Procedure%20Manual.pdf.</p>
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