



## **Recommendation 72-3**

### **Procedures of the United States Board of Parole**

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(Adopted June 9, 1972)

The U.S. Board of Parole consists of eight members and employs a staff of eight examiners. It conducts about 17,000 proceedings a year relating to the grant or denial of parole, involving about 12,000 prison interviews, and close to 2,000 proceedings relating to the revocation or continuation of parole. The Board controls approximately two-thirds of the time actually served under fixed-term Federal prison sentences and all of the time served under indeterminate sentences.

1. *Parole.*—The Parole Board has published a list of 27 unweighted factors which guide its decision whether to grant or deny parole. These factors point to the ultimate judgment as to whether release in the case of a particular prisoner is likely to lead to further law violation, with collateral attention to equalizing disproportionate sentences for similar offenses. A more specific formulation of the standards of decision should be possible after the development of a body of reasoned decisions, and after the completion of a pending computer study by the National Council on Crime and Delinquency.

Parole is ordinarily granted or denied largely upon information and impressions obtained from the prisoner's file and a brief personal interview. Under present procedures, the prisoner has no direct knowledge of what is in his file, but will usually be given some indication of the file's contents by the prison counsel or the hearing examiner. The prisoner cannot always be given unrestricted access to this file, because it may contain documents such as psychiatric reports or current criminal investigation reports which, if disclosed, might be damaging to the prisoner or jeopardize the investigative process. In addition, the primary document in the file is usually the pre-sentence report prepared by a probation officer, which may have been withheld from the prisoner or his counsel in the discretion of the sentencing judge.

The Board hearing examiner or, less frequently, a Board member conducts the parole "hearing" or interview at the prison. The interview is conducted, after examination of the file, with only the prisoner, the prison counselor and a stenographer present, and typically lasts 10 to 15 minutes. Counsel for the prisoner is not allowed. The examiner's recommendation is dictated after the prisoner leaves the room, but in the presence of the prison counselor.



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The examiner's recommendation is not made available to the prisoner. The recommendation is considered by a panel of the Board, consisting of two members of the Board who call in a third in the event of disagreement. The members consult together only in cases of difficulty, and typically simply note their conclusion in the file. Under recent practice, the deciding members may grant a "Washington Review Hearing" at which relatives or counsel may supply written or oral statement, but this occurs in only a small portion of the cases. In cases of unusual difficulty or notoriety, an *en banc* decision is made by a quorum of the full Board. Typically advocates or opponents of parole appear before the *en banc* Board. Some notation of the reasons for grant or denial is added to the file after *en banc* consideration but usually not otherwise.

The reasons for Board action are not disclosed to the prisoner. Despite legal requirements of public availability, the Board's orders and opinions are open to public inspection only when the Board determines this to be in the public interest.

2. *Revocation.*—On finding that a probation officer's report of a parole violation seems well-founded, a member of the Parole Board will issue a warrant for the parolee. The Board is in the course of formulating standards to govern this discretionary action. When the parolee is taken into custody and there is a dispute of fact, he is given a hearing either in the locality or at the prison to which he will be returned. The prisoner may retain counsel or, if he is indigent, may request the appointment of counsel by the district court. The hearing is conducted before a Board examiner or, more rarely, before a member of the Board. It rarely lasts more than a few hours. The parolee may be represented by counsel and introduce evidence. While the warrant will specify the charges, neither the parolee nor his counsel may examine the documentary evidence or hear or cross-examine adverse witnesses. At the conclusion of the hearing the examiner prepares a report and recommendation, which are not shown to the prisoner or his counsel. The Board's decision is usually unexplained, and reasons are not given the parolee.

3. *Workload.*—A rough approximation of the Board's workload indicates that it must enter about 80 parole and 10 revocation decisions each working day, and that each examiner must make about 10 parole recommendations each working day. Even a minimal explanation of decisions will put some strain upon the Board's Washington staff. Any provision for more careful examination of the prisoner's file or for more thorough interviewing, both of which seem desirable, will require an increase in the number of examiners.



## Recommendation

### A. Rules and Standards

The U.S. Board of Parole should formulate general standards to govern the grant, deferral, or denial of parole. This articulation of standards can appropriately be deferred until it can reflect both the results of the pending computer study of parole decisions and the accumulation of a usable number of reasoned decisions. The Board in formulating its standards should use typical hypothetical illustrations in significant areas where promulgation of general rules is not yet possible.

### B. The Prisoner's File

1. *Access to the file.*—Under guidelines issued by the Board, the prison counselor should disclose the file to the prisoner or his representative in advance of the parole hearing, except for any information as to which disclosure is clearly unwarranted or which has been determined by the sentencing judge to be improper. The prisoner should be given an oral summary or indication of the nature of any relevant adverse information which is not directly disclosed to him.

2. *The pre-sentence report.*—The Judicial Conference of the United States should be requested to consider directing the sentencing judge to indicate on the face of the pre-sentence report (a) whether it has been shown to the prisoner or his counsel at the time of sentencing and (b) if not, whether it or any designated part should remain undisclosed in connection with parole proceedings. Disclosure of pre-sentence reports should be encouraged except to the extent that the report contains information as to which disclosure is clearly unwarranted.

### C. Right to Counsel at the Parole Interview

The prisoner should be allowed to be assisted by counsel, or other representative of his choice, both in the examination of his file and at the parole interview. The participation of the prisoner's counsel or representative should ordinarily be limited to offering remarks at the close of the interview between the examiner and the prisoner. Bar associations, public interest law firms, and other professional organizations should be urged to offer assistance to indigent prisoners pending evaluation by appropriate governmental institutions of the need for and desirability of public funding of these legal services.



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### D. *The Parole Decision*

1. *Reasons for deferral or denial.*—A statement of reasons for the deferral or denial of parole should in all instances be given the prisoner. In some cases the Board can simply adopt as its own decision the examiner's recommendation. The cases where this is not appropriate may well be so voluminous as to require the use of a check-list form, such as that with which the Board is now experimenting, but there should in each such case be added at least a sentence or two of individualized explanation.

2. *Prototype decisions.*—The Board should develop a body of fully reasoned decisions—whether granting, denying or deferring parole—in typical or recurrent fact situations. These decisions should serve as time-saving precedents and as the raw material for the subsequent formulation of standards.

3. *Public availability.*—The Board's decisions should be open to public inspection. These decisions, including examiners' recommendations which may be adopted by the Board, should be worded impersonally and designed to allow easy deletion of the prisoner's name in order to avoid a clearly unwarranted invasion of privacy.

### E. *Parole Revocation*

1. *Adverse evidence.*—The parolee or his counsel should have access to the written evidence against him, and should be entitled to hear and examine adverse witnesses who appear at the revocation hearing.

2. *Recommended decision.*—A copy of the hearing officer's recommendation should be given the parolee, and he should be given an opportunity to comment or reply in writing before the Board enters its decision.

3. *Board decision.*—The Board should state the reasons for its decisions and make them available to public inspection in the same manner as recommended above for decisions denying or deferring parole.

### F. *Implications for Board Staffing*

Prior to its next budget request, the Board should estimate the additional personnel needed to implement these recommendations or otherwise to improve its procedures, such as, for example, doubling its staff of examiners to permit more thorough consideration of parole



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applications. The Board should then make a vigorous effort to secure the increase in authorization and appropriations which it considers necessary to this important end.

### **Citations:**

\_\_\_ FR \_\_\_\_\_ (2012)

2 ACUS 58

**Notes:** (1) This recommendation was not published previously in the Federal Register. (2) This recommendation has been largely implemented by Pub. L. 94-233 and agency regulation.