

Practice Tips

Helping Prisoners Get Paroled: A Vital Part of Public Safety

By Patricia Garin

The Parole Board's mission is to make reliable decisions about the appropriateness of releasing a prisoner on parole. The law requires the Board to grant parole when it is "of the opinion that there is a reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society." M.G.L. c.127, §130. When prisoners are not paroled, the Commonwealth's criminal justice system quickly becomes unbalanced. The system is now in that precarious state.

The BBA's Past Look at Parole in Massachusetts

In 2000, the BBA convened a Task Force on Parole and Community Reintegration to investigate a startling drop in parole rates during the 1990s. The Task Force published its report in August 2002 ("Parole Practices in Massachusetts and Their Effect on Community Reintegration," <http://www.bostonbar.org/prs/reports/finalreport081402.pdf>), finding that for prisoners serving state sentences, the parole rate declined from 69.6% in 1990 to 40.5% in 2000. For prisoners serving county sentences, the parole rate declined from 57.7% in 1990 to 48.7% in 2000. The decline was particularly troubling to the Task Force because one of its critical findings was that parole "works" if success is based on the percentage of people who are recommitted to prison as the result of new convictions. The statistics were compelling: parolees are far



Patricia Garin is a partner at Stern, Shapiro, Weissberg & Garin, LLP. She teaches Prisoners' Rights at Northeastern University School of Law. She is the President of the Board of Directors at Prisoners' Legal Services.

less likely to be recommitted for new convictions than were prisoners who wrapped-up their sentences in prison and left without any supervision. For example, the Task Force found that in 1995, only 5.8% of parolees were recommitted for new convictions, while 16.3% of non-parolees were; and, in 1996, 4.2% of parolees were recommitted for new convictions, compared to 18.2% of persons who wrapped-up. Parole, the Task Force found, reduces recidivism rates. Because 97% percent of those incarcerated will be released to the community, the Task Force concluded that parole is an important public safety tool.

A working parole system provides additional benefits. First, it helps to relieve the crisis of prison overcrowding. As of May 9, 2011, Massachusetts state prisons are at 143% of their design capacity, with some facilities operating at 222% and 295% of capacity. County facilities are at approximately 150% of design capacity, with some facilities operating at 363%, 275% and 239% of their capacity. Second, a working parole system results in significant taxpayer savings. The average cost of one year of incarceration in a state prison is \$47,500; the cost of a year of parole supervision is approximately \$5,000.

In 2002, one of BBA Task Force's major recommendations was for the Governor, the Governor's Council, the Bar, and the public to work to diversify the membership of the Parole Board, consistent with the statutory directive. The statute calls for a seven member Parole Board, appointed by the Governor, with the advice and consent of the Governor's Executive Council, to five year terms. M.G.L. c. 27, §4. Members of the Board must be graduates of a four-year college and have had at least five years training or experience in one or more of the following fields: parole, probation, corrections, law, law enforcement, psychology, psychiatry, sociology, and social work. *Id.* In 2002, all Board members had backgrounds in criminal justice. After the publication of the Task Force Report and changes to Board membership, the parole rates began to rise. By 2009, the county release rate was 68% and the state release rate was 66%.

The Current State of Parole

Parole in Massachusetts appears to be in crisis again. The December 26, 2010 fatal shooting of a Woburn police officer by a parolee led Governor Deval Patrick to demand the resignation of the Board's five members who voted for the man's parole two years earlier. Four of the Governor's replacements have backgrounds in criminal

justice (two former prosecutors, one former probation officer, and one former victims' advocate from a district attorney's office). Since these appointments, the paroling rates plummeted to the troubling numbers of 2000. From January 14, 2011 to May 10, 2011, the paroling rate for the county houses of correction was only 40% — a drop of 28% from the 68% paroling rate of 2009. For that same time period, only 31% of state prisoners were paroled — a drop of 35% from the Board's 66% paroling rate of 2009. This means that more prisoners will complete their sentences in prison and be released to the community without the benefit of parole supervision. Evidence based practice tells us that recidivism rates will rise, compromising public safety, adding to the overcrowded prisons, and costing taxpayers money.

The Bar Can Help Keep the Parole System on Track

Lawyers can help the Parole Board make more informed decisions by participating in the process. Even though only prisoners seeking release on a life-with-parole sentence are allowed to have representation at a parole hearing, there are certain things every criminal defense lawyer can do:

1. At parole hearings, the Board relies on the “official version” of the crime in cross-examining prisoners about the offense. The “official version” is written by a Department of Correction employee and is generally based only on police reports and grand jury minutes. Defense lawyers should request a copy of the “official version” early on in the incarceration and correct the errors, making the “official version” reflect the facts agreed to at the plea colloquy or proven at trial.
2. Defense counsel should write to the Board clarifying the victim's position at sentencing, explaining if a plea had been offered and rejected that would have allowed the client to be released by the time of the parole hearing, and balancing the Board's view of the client by emphasizing particulars about the crime, the defendant's background and family or other mitigating factors that favor parole. The Board should also be informed if the sentence was based in part on the judge's belief that the defendant would likely be paroled on the parole eligibility date.

Public safety in Massachusetts depends on a parole system that paroles. ■