

Parole and Postprison Conditional Release

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Jessica Hill/Associated Press

Learning Outcomes

After reading this chapter, you should be able to

- Distinguish parole, mandatory release, and term of supervised release as the primary means of conditional release from prison in the United States.
- Discuss milestones in the history and development of discretionary release parole and antecedents to present practices.
- Identify and discuss issues related to discretionary release parole decision making.
- Present and discuss common aspects of conditional release.
- Describe the scope and nature of reentry as a key concern in conditional release.

Introduction

In 2013 approximately one third of the offenders leaving prison in the United States were released unconditionally. That is, they served their full sentences and were released without having to register for parole or another form of supervision. The remaining two thirds were released conditionally—that is, released to discretionary or mandatory parole or to another form of supervision (Petersilia & Threatt, 2017). Those who are released from prison without conditions are free to return to the community and are largely unconstrained by the criminal justice system—as ex-felons, though, they may have certain restrictions, such as not being allowed to carry a firearm. However, as ex-offenders, they may still face de facto restrictions, such as difficulty finding housing, transportation, employment, health care, and other necessities with little or no assistance.

However, those who are released on parole or another form of conditional release supervision are required to report to an agency (in the states, to agents of the state's Department of Corrections; in the federal system, to agents of the U.S. Probation and Pretrial Services) that monitors them for rules violations and can help them integrate into the community. For many offenders, having someone to turn to for assistance is critical to taking care of themselves and to living a law-abiding lifestyle. For members of the community, the offender's accountability is tied to considerations for public safety and may include aspects of restorative justice, appropriately responding to victims, and other concerns.

This chapter discusses conditional release from prison in the United States. As with probation, many of the essential features of parole and other forms of conditional supervised release have been in place since the latter half of the 19th century. In this chapter, we will distinguish parole from mandatory release and term of supervised release (TSR). We will briefly examine the history and development of parole as the antecedent to current forms of conditional release. We then discuss parole decision making and examine common features of conditional release supervision. We conclude the chapter by discussing reentry—a key concern for offenders, agency personnel, and community members.

9.1 Distinguishing Parole, Mandatory Release, and TSR

At the end of 2016, there were 874,800 adult offenders under various forms of conditional release in the United States (Kaeble, 2018). Table 9.1 shows the distribution of this population that was on parole by state and federal systems. Note that the table shows the total numbers of parolees for the federal system, for the states in aggregate, and for each state. This allows you to examine particular states, compare states of interest, and determine changes in the parole population during this time period.

The Bureau of Justice Statistics defines “parole” as “a period of conditional supervised release in the community following a prison term,” and for the bureau’s statistical purposes, “parolees include individuals released through discretionary or mandatory supervised release from prison, released through other types of postcustody conditional supervision [such as from military prisons], or sentenced to a term of supervised release from prison” (Kaeble, 2018, p. 2). It is important to understand that the bureau’s use of the term *parole* to cover such a wide array of release circumstances masks some important distinctions in the forms of conditional release. Keep this in mind as you examine the national information provided by the Bureau of Justice Statistics.

Table 9.1: Adults on parole, 2016

Region and jurisdiction	Parole population, 12/31/2016	Number on parole per 100,000 U.S. adult residents, 12/31/2016
U.S. total	874,777	349
Federal	114,385	46
State/district	760,392	303
Alabama	8,562	227
Alaska	1,812	326
Arizona	7,500	140
Arkansas	23,792	1,038
California	93,598	309
Colorado	10,186	236
Connecticut	3,379	119
Delaware	387	52
District of Columbia	4,025	713
Florida	4,566	27
Georgia	22,386	285
Hawaii	1,367	122
Idaho	5,054	402
Illinois	29,428	298
Indiana	8,385	165
Iowa	6,051	251
Kansas	4,830	220
Kentucky	15,383	448
Louisiana	30,907	864
Maine	21	2
Maryland	10,305	220
Massachusetts	1,851	34
Michigan	...	216
Minnesota	7,075	167
Mississippi	8,645	381
Missouri	17,792	377
Montana	1,074	131
Nebraska	1,088	76
Nevada	5,261	230
New Hampshire	2,436	226
New Jersey	15,128	217
New Mexico	2,780	175
New York	44,426	285
North Carolina	12,726	161

North Dakota	804	138
Ohio	19,634	218
Oklahoma	1,895	64
Oregon	24,711	760
Pennsylvania	111,087	1,097
Rhode Island	460	54
South Carolina	4,347	112
South Dakota	2,687	410
Tennessee	12,092	234
Texas	111,287	537
Utah	3,707	172
Vermont	935	185
Virginia	1,650	25
Washington	11,322	198
West Virginia	3,550	244
Wisconsin	20,401	453
Wyoming	842	189

... Not known.

Source: From "Probation and Parole in the United States, 2016," by D. Kaeble, 2018 (<https://www.bjs.gov/content/pub/pdf/ppus16.pdf> (<https://www.bjs.gov/content/pub/pdf/ppus16.pdf>)).

Offenders who are placed under supervision after prison through **discretionary release** have gone before a parole board or commission. This form of conditional release is usually associated with the term *parole*. A person sentenced to prison applies to a parole board, which can decide whether to allow conditional release. The offender must abide by certain conditions and be supervised by a parole officer, who has the authority to recommend a return to prison if the offender violates the law or the conditions of supervision. In this situation, a return to prison requires a hearing and another decision by the parole board or commission. Approximately 44% of the inmates on conditional release in the United States in 2016 entered supervision through discretionary release (Kaeble, 2018).

Under **mandatory release**, an offender is placed on community supervision as a matter of legislation, rather than because of the actions of a parole board or commission. The offender's prison sentence includes a term on community supervision (usually expressed as a percentage of the total time, or as their total incarceration time minus any time for good behavior and/or automatic reduction, known as "gain time") to follow incarceration. With mandatory release, the sentencing judge does not determine the length of the time on supervision. That is determined as prescribed by the law and is administered through correctional officials. This situation is often referred to as "extended supervision." Sometimes the supervising agent is called a "parole officer," but that can be misleading. The supervising agent has the authority to recommend a return to prison if the offender violates the law or the conditions of supervision. In this situation, a return to prison requires a probable cause hearing before correctional officials or, in the case of the federal system, under the auspices of the U.S. Parole Commission (USPC), which acts as the administering authority. There is no parole board for this offender. The USPC acts as an administrative authority but does not make a discretionary decision to grant conditional release. About 27% of offenders who entered supervision from prison in 2016 in the United States entered through mandatory release (Kaeble, 2018).

Term of supervised release (TSR) means that the law authorizes the sentencing judge to impose both a term of incarceration and a term on supervision in the community. In this case, the judge determines the length of both terms, within parameters set by law. There is a supervising agent who has the authority to recommend a return to prison. In this situation, a return to prison or a change in the supervision status requires a hearing before the judge (or if necessary, before another judge in the same jurisdiction). About 2% of offenders who entered supervision from prison in 2016 in the United States entered through TSR. It is significant, however, that 99% of federal inmates on postprison supervision entered through TSR in 2016, while less than 1% of state inmates were reported to have entered through TSR (Kaeble, 2018). This marks a significant difference between the federal and state prison systems.

The Bureau of Justice Statistics added "term of supervised release" as a category in 2008 to provide information on the federal system and across the states. As stated, ordering TSR has become an important practice in the federal judiciary. However, data concerning states' use of TSR is not as readily available; some states began reporting TSR in 2008, while others were still not reporting as of 2016. Table 9.2 shows adults entering conditional release, by type of entry, in 2016. The table allows us to compare the federal jurisdiction and use of TSR to the states in aggregate and to examine individual states of interest.

Table 9.2: Adults entering parole, by type of entry, 2016

Jurisdiction	Total reported	Discretionary ^a	Mandatory ^b	Reinstatement ^c	TSR ^d	Other ^e	Unknown or not reported
U.S. total	422,975	187,341	116,303	11,575	75,974	5,026	26,756
Federal	45,469	289	0	0	45,180	0	0
State/district	377,506	187,052	116,303	11,575	30,794	5,026	26,756
Alabama*	2,515	2,506	9	...	...	0	0
Alaska*	717	143	325	249	~	0	0
Arizona	11,481	27	11,374	80	0	0	0

Arkansas*	10,868	9,085	1,783	0	0	0	0
California*	26,007	...	...	...	...	0	26,007
Colorado	7,657	2,727	3,305	1,475	0	150	0
Connecticut	2,591	1,235	0	0	1,356	0	0
Delaware*	129	...	...	...	...	0	129
District of Columbia	1,330	199	0	0	1,131	0	0
Florida	6,110	34	5,363	0	700	13	0
Georgia*	9,434	9,434	0	0	0	0	0
Hawaii*	629	629	0	0	0	0	0
Idaho*	3,055	1,701	...	1,347	...	7	0
Illinois*	23,889	18	23,006	90	~	559	216
Indiana	7,056	0	7,056	0	0	0	0
Iowa	3,810	3,810	0	0	0	0	0
Kansas	4,465	0	3	153	4,215	34	60
Kentucky*	10,757	6,618	4,138	0	0	1	0
Louisiana	15,888	575	14,974	285	26	28	0
Maine*	1	0	0	1	0	0	0
Maryland*	4,295	1,962	2,333	...	...	0	0
Massachusetts	2,111	1,998	0	113	0	0	0
Michigan	...	...	...	...	...	...	...
Minnesota*	7,129	2	6,659	0	0	468	0
Mississippi	6,597	4,770	621	0	0	862	344
Missouri*	13,255	10,142	837	1,248	~	1,028	0
Montana	533	533	0	0	0	0	0
Nebraska*	1,537	1,320	0	211	~	6	0
Nevada*	3,365	2,271	1,209	155	~	0	0
New Hampshire*	1,461	785	0	573	~	103	0
New Jersey	5,539	3,339	2,200	~	0	0	0
New Mexico*	2,384	...	...	...	2,133	251	0
New York	20,443	5,272	6,439	0	7,867	865	0
North Carolina*	13,647	31	281	~	13,335	0	0
North Dakota	1,545	1,545	0	0	0	0	0
Ohio	8,085	72	7,809	204	0	0	0
Oklahoma*	383	383	~	~	~	0	0
Oregon	9,561	2,294	7,186	4	11	66	0
Pennsylvania*	61,179	57,542	0	3,637	0	0	0
Rhode Island*	239	239	~	~	~	0	0
South Carolina	2,460	809	1,651	0	0	0	0
South Dakota*	1,788	500	1,175	...	20	93	0
Tennessee	3,353	3,267	6	75	0	5	0
Texas	35,398	34,110	403	509	~	376	0
Utah	2,640	2,452	0	77	0	111	0
Vermont	...	...	...	...	...	...	...
Virginia	711	258	453	0	0	0	0
Washington	5,782	224	5,134	424	0	0	0
West Virginia*	2,113	2,071	42	0	0	0	0
Wisconsin

Wyoming	691	615	0	76	0	0	0
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... Not known.
 ~ Not applicable.
 * Some or all data were estimates.

^aIncludes persons entering due to a parole board decision.

^bIncludes persons whose release from prison was not decided by a parole board and persons entering due to determinate sentencing, good-time provisions, or emergency releases.

^cIncludes persons returned to parole after serving time in a prison due to a parole violation. Depending on the reporting jurisdiction, reinstatement entries may include only parolees who were originally released from prison through a discretionary release, mandatory release, or a combination of both types. May also include those originally released through a TSR.

^dIncludes persons sentenced by a judge to a fixed period of incarceration based on a determinate statute immediately followed by a period of supervised release in the community.

^eSee Methodology in "Probation and Parole in the United States, 2016" for examples of commonly provided categories.

Source: From "Probation and parole in the United States, 2016," by D. Kaebler, 2018 (<https://www.bjs.gov/content/pub/pdf/ppus16.pdf> (<https://www.bjs.gov/content/pub/pdf/ppus16.pdf>)).

There are important factors for us to consider regarding discretionary release parole, mandatory release, and TSR. First, federal or state laws determine which process will be followed. Offenders convicted under federal jurisdiction fall under laws passed by the U.S. Congress. Offenders convicted under a state jurisdiction fall under the laws of that state. Therefore, differing forms of conditional release exist. Even within a single jurisdiction, offenders may fall under different forms of conditional release. This is because there have been changes to both federal and state laws, particularly since the 1980s, regarding conditional release. When changes occur, offenders who were sentenced prior to a change in the law fall under the previous form, and those sentenced after the change fall under the new form.

In addition, the process for obtaining conditional release is different for each form, as is the process of revoking or rescinding conditional release and returning the offender to prison. With discretionary release, the parole board or commission must make the decision. With mandatory release, correctional administrators (or in the federal system, the USPC) make the decision. With TSR, a judge makes the decision. Therefore, the locus of control is different with each form.

Discretionary release parole and mandatory release supervision are not judicial functions. With discretionary release, the authority to grant or revoke parole, as well as the authority to establish its conditions, lies with various parole boards and commissions. These organizations are administratively identified with the executive branch of government. Parole authorities make discretionary decisions that affect the nature of sentences imposed on convicted offenders, but their decision making occurs during the execution phase of the sentence. Another way to say this is that parole authorities' decisions influence the convicted offender's effective sentence.

As previously stated, mandatory release is when an offender is released to community supervision as a matter of law. With mandatory release, a judge imposes a sentence of incarceration, but the law specifies the portion of the sentence that is to be served under community supervision. If the offender violates the conditions of supervision, the authority to revoke release rests with the supervising authority: correctional administrators who are part of the executive branch of government. Although these administrators may influence the actual or effective sentence, they are limited in what they are legally allowed to do. They may rescind conditional release or decide to change the conditions of supervision, but they may not add to the sentence.

With TSR, however, a judge imposes both the term of incarceration and the term of supervised release. This makes the conditional release process a judicial function. In this case, judges have the authority to impose sentences; parole boards, commissions, and correctional administrators do not. This allows a judge to exercise additional options that are only available to the judiciary. As previously stated, TSR has not yet become a prominent feature of conditional release in the states, but some state legislatures have amended laws to allow for this form of conditional release. (Refer to Table 9.2 to compare the federal use of TSR to the states in aggregate and to examine particular states of interest.)

These three forms of conditional release have different implications for processes, decision making, and possible outcomes. However, the core notions of conditional release developed from 19th-century origins.

Seabrook's Parole Hearing Grilling

At a parole hearing, the full panel of the parole board questions a convicted murderer, attempting to determine whether he could murder again. The decision on whether or not to release this inmate and any conditions placed on him are entirely up to the parole board. Why do you think parole boards were created rather than leaving parole decisions up to individual judges?

Seabrook's Parole Hearing Grilling

From Title: *Halfway House: Prison without Bars*
 (<https://fod.infobase.com/PortalPlaylists.aspx?wID=100753&xtid=45444>)

9.2 The History and Development of Parole

There are a number of antecedents and milestones in the emergence and establishment of parole and other forms of conditional release. In 1870 conditional release became the basis of a “new penology,” which was articulated at a meeting of the National Prison Association (which later became the American Correctional Association) in Cincinnati, Ohio (Mays & Winfree, 2009; Walker, 1980). This new penology, among other things, focused on gradually releasing inmates from prison. Correctional leaders became advocates of this approach and worked with legislatures to enact laws establishing gradual release and, later, conditional release. These laws were a product of processes that had been in place for years and were finally formalized. They clarified decision-making responsibilities and set up a formal practice for implementing the process of parole (Petersilia, 2003; Walker, 1980).

Walker (1980) explains that parole—which has a somewhat similar history to probation—became established because its conceptual foundations served a number of purposes. These included providing additional avenues for criminal justice officials to practice discretionary leniency and individualize justice, presenting an option that was both less expensive and more convenient than incarceration, and presenting a somewhat palatable strategy for dealing with overcrowding (a perennial problem in corrections).

“Parole” followed other strategies for early discretionary release, which included executive pardons, release for good behavior, and commutations of sentences. Because it was used so liberally, however, the power to pardon became problematic, placing governors in the awkward position of frequently having to address requests for pardons. Also, the liberal use of the pardoning power engendered controversy over its arbitrary application. Parole would promise, at least in principle, to provide a more coherent and politically acceptable means for discretionary release.

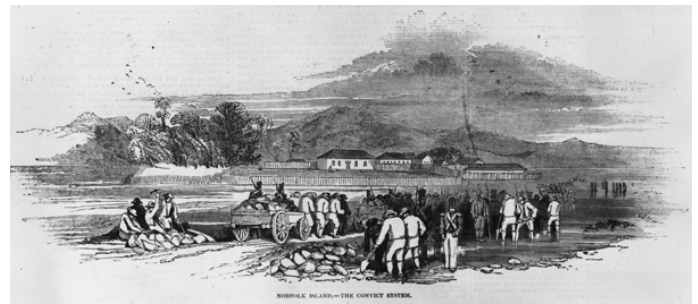
New York passed the first “good time” law in 1817 (Walker, 1980). Gradually, other states followed suit, and Congress passed the first federal good-time law in 1870 (U.S. Parole Commission [USPC], 2003). Good-time laws reduce the length of incarceration in recognition of or exchange for good behavior and adherence to rules. Good-time laws may serve multiple purposes; maintaining control over inmates was perceived to be among the most important (Walker, 1980). Parole promised to serve similar purposes.

Alexander Maconochie and Walter Crofton

Historians generally credit the practice of parole to Alexander Maconochie’s development of the “mark system” during the 1840s at the British penal colony on Norfolk Island, near Australia, and to Walter Crofton’s establishment of the Irish system of parole (“ticket of leave”) during the 1850s.

Maconochie experimented with what is today known as the indeterminate sentence. He assigned a number of “marks” or points (to be earned on the basis of work and good behavior) to each sentence. “Under this arrangement the convict could progress through several grades . . . and in due course earn a ticket of leave” (Walker, 1980, p. 95).

Meanwhile, in 1853 the English Parliament passed an act allowing prison inmates to receive early release (on a “ticket of leave”) under police supervision (Abadinsky, 2012). In Ireland, Walter Crofton, the leader of the Irish prison system, instituted a conditional release program that influenced later developments in the United States. As Abadinsky (2012) summarizes, the Irish system also involved levels or stages:



Hulton Archive/Getty Images

Convicts laboring at the British penal colony on Norfolk Island. It was here that Alexander Maconochie pioneered the “mark system.”

1. The first stage involved solitary confinement for nine months. During the first three months, the inmate was on reduced rations and was allowed no labor whatsoever. It was reasoned that after three months of forced idleness, even the laziest prisoner would long for something to do. He would then be given full rations, instructed in useful skills, and exposed to religious influences.
2. In the second stage, the convict was placed in a special prison to work with other inmates, during which time he could earn marks to qualify for a transfer to the third stage.
3. Stage three involved transportation to an open institution, where the convict, by evidencing signs of reformation, could earn release on a Ticket of Leave.
4. Ticket of Leave men were conditionally released and, in rural districts, supervised by police; those residing in Dublin, however, were supervised by a civilian employee who had the title of Inspector of Released Prisoners. He worked cooperatively with the police, but it was his responsibility to secure employment for the Ticket of Leave men. He required them to report at stated intervals, visited their homes every two weeks, and verified their employment: in short, he was the forerunner of the modern parole officer. (p. 145)

The Irish system provided supporters of parole in the United States with several essential elements for the practice. It also provided “new penology” advocates with a milestone undertaking that could indirectly reinforce their support for individualized justice and expanding the discretionary power of those in control of what we presently refer to as “corrections.” Still, it took time to formally institutionalize parole as a feature of U.S. penal practice.

Zebulon Brockway

Zebulon Brockway was a prominent official who advocated making conditional release a formal part of American correctional practice (Petersilia, 2003; Walker, 1980). Brockway was superintendent of Elmira Reformatory (see Chapter 1) from 1877 to 1900, where he introduced a mark system and a set of “innovative” programs (primarily education and industrial programs) intended to individualize the penal effort. Early release was initiated as a part of the inducements and practices supporting the discretionary ideals of the indeterminate sentence. Decisions to grant inmates parole status were made by the institutional board of managers. Parolees remained under the supervision of reformatory officials for 6 months, reporting each month to an assigned “guardian” (Abadinsky, 2012). However, due to the large number of inmates and the demands this placed on the system, Elmira Reformatory could not individually treat its prisoners. As a result, the reformatory was no more successful than other prisons (Walker, 1980) Despite these challenges, Brockway’s system was replicated in several reformatories in other states. However, by 1900 parole remained a limited element of U.S. corrections.

The Progressive Era

During the Progressive era, parole became much more widely used; by 1915, 34 states had adopted it. Parole for federal prisoners became available in 1910 (USPC, 2003).

Parole fit within the strategies of those who saw themselves as Progressives and those who partnered with them (Rothman, 1971). Progressives sought to reform U.S. correctional practices primarily through the use of discretionary and individualized responses to each inmate (Rothman, 1971). That parole was based more on impressionistic logic than “proven” principles did not deter the Progressives. And, for those interested in making corrections options more discretionary, as well as those looking for strategies that might be politically palatable, parole and probation seemed like a good fit. Alliances were formed, and the practices were rapidly adopted.



Spencer Weiner/Los Angeles Times/Associated Press

As overcrowded prisons remain a problem, revoking those who violate conditions yet do not commit a new crime adds to the incarceration problem. How does this represent an issue for supervising agents?

over the past decade. As noted earlier, in 2016 it accounted for roughly 44% of releases nationwide, up from just over 26% in 2008 (Kaeble, 2018; Glaze & Bonczar, 2009).

Current Notions

Today discretionary release parole functions as a set of strategies that serves multiple aims. Discretionary release parole has been said

“to provide a timely release from prison, enhancing the potential that the sentence served will meet the needs of the inmate and adequately protect society” (Culbertson & Ellsworth, 1985, p. 130);

“to lessen the harshness of some long prison sentences” (Culbertson & Ellsworth, 1985, p. 131);

“to provide a ‘safety-valve’ for overpopulated prisons” (Culbertson & Ellsworth, 1985, p. 131); and

“to provide prison authorities with a tool which can be used to maintain social control over prison populations” (Culbertson & Ellsworth, 1985, p. 132).

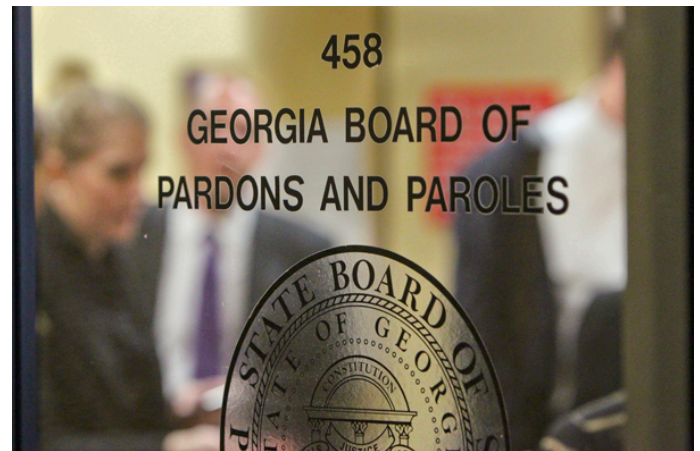
These remain the generally accepted aims of discretionary release parole today.

Parole also presents an opportunity to get offenders involved in programs that can help them be successful after incarceration. Supervising agents conduct risk and needs assessments for those in their caseload. They work with the offender to connect him or her to useful resources. Parole supervision also has the important public safety aim of monitoring a parolee’s adherence to laws and to rules.

Although a large shift toward determinate sentencing laws in the federal system (in 1987) and in many states acted to decrease the use of discretionary release, its use has grown significantly

9.3 “Parole” Decision Making

Brockway’s discretionary early release system vested authority for parole decision making in an institutional board of managers. By the 1920s debates in various states concerning the objectivity and variability of parole decision making led to the establishment of decision-making bodies that were independent of direct institutional management. During this period, there was a general movement to centralize correctional administration (McElvey, 1977). This movement added to the impetus to create decision-making bodies organized with administrative identities that were either independent of the large correctional systems (independent boards or commissions) or within them, as semiautonomous elements (consolidated boards). Institutional boards eventually died away, but since that time there has been a variety of discretionary release parole decision-making arrangements that generally follow the independent and consolidated schemes. Of course, in recent years, mandatory release and TSR have changed the nature of the decision-making function; likewise, changes to these forms of conditional release will eventually result in changes to, or even the elimination of, parole boards or commissions. For example, the USPC still operates, but it will phase out as the last of those persons eligible for parole exit the federal system—that is, those who were imprisoned before the law was changed. In 2010, 658 offenders obtained conditional release through the USPC’s discretionary decisions, out of the 47,873 offenders released to postprison supervision (Bureau of Justice Statistics, 2011c).



John Spink/Atlanta Journal Constitution/Associated Press

Given debate over various parole board practices, some critics are hoping to eliminate them altogether. Do you think that parole boards serve a useful function?

Criticism and Debates

Over the past century, debates over discretionary board decision making and discretionary release in general have focused on several issues. In an abstract sense, neo-retributionists have questioned whether discretionary release parole is actually punishment, or rather the amelioration of punishment. Neo-retributionists also have questioned whether parole is defensible as a rehabilitative venture.

In an applied sense, many have critically scrutinized the practices of discretionary boards or commissions, particularly their objectivity and attempts at rational decision making. These issues have been present since the 1920s. The composition of discretionary boards/commissions and the manner in which board/commission members acquire their positions have been questioned in various systems, resulting in different arrangements in the states and the federal government. In particular, attention has been paid to whether board members should be directly appointed by a sitting politician (which is the case in some states, where positions are filled by the governor, who determines a candidate’s qualifications), as opposed to more elaborate schemes (which exist in other states, where board members’ general qualifications are predetermined, there is a screening and nominating panel, and the appointment process is governed by established regulations). The latter is thought to result in the appointment of those most qualified to decide parole matters.

Many have questioned the procedures of various discretionary parole authorities. Some are concerned about the fact that most parole boards have not published explicit decision-making criteria, retain a high degree of discretion and/or flexibility in decision-making processes, and conduct activities in the absence of a high degree of public visibility. One point to keep in mind is that parole authorities are required to conduct their activities within parameters established by state legislatures or Congress. Legislative bodies typically provide parole authorities with broad-based autonomy—the idea is and has been discretionary release.

Discretionary Decisions

Today parole boards have the benefit of being able to examine and respond to criticisms that have been levied over time. Where state legislatures have deemed it appropriate, discretionary release parole continues, and where changes have been made, there are still persons who were imprisoned prior to the changes.



John Tlumacki© 2011 The Boston Globe/Getty Images

The Massachusetts Parole Board conducting a parole hearing. What is significant about the board’s policy statement and overall approach to parole decisions?

Parole boards have different numbers of members, different procedures for how offenders can apply for parole, and different decision-making processes, depending on which state they serve (the USPC has its own procedures for these issues). Today most parole boards or commissions publish their procedures, policies, decision-making principles, and other materials that make it clear to inmates, families, and other stakeholders how decisions are made. For example, the Massachusetts Parole Board’s (2012) policy statement on decision making regarding parole includes its general purpose, the statutory and regulatory framework for operation, a statement of values and the beliefs of board members, its principles of operation, and other details. The statement makes clear that the board has a broad legal mandate for discretion, and also lays out the various methods, procedures, and tools that board members may use in making their decisions. It is important to note that the board “recognizes the need for transparency in the decision making process” and encourages board members to exercise “consistency and equity in the discharge of their responsibilities” (Massachusetts Parole Board, 2012, p. 4). The document is instructive in detailing the parole board’s philosophy and operational details, as well as how it exercises its discretionary authority.

Other parole boards have their own procedures. For example, the website of the Michigan Department of Corrections (2013) states the factors the Michigan Parole Board considers when it makes decisions, which include

the crime for which the prisoner is serving; prior criminal record, institutional behavior and adjustment, programming [that is, any programming in which the inmate participated

while incarcerated], the parole guidelines score, any information obtained from the prisoner interview, and information from victims and other relevant sources.

It is common for boards or commissions to enumerate these factors. However, the decisions remain discretionary, in that how these factors are weighted or integrated is up to the members, within the setting of the board's deliberations.

Eligibility for discretionary release parole is a matter of law. For those who are eligible, obtaining parole commonly involves submitting an application, presenting relevant information, participating in prehearing interviews, and appearing before the parole board or commission (or in some cases, a smaller panel of board members). The parole board will usually notify interested law enforcement officials and other criminal justice officials, victims and/or victim's families, and other stakeholders about an inmate's upcoming hearing.

Both the Massachusetts Parole Board and the Michigan Parole Board utilize "parole guidelines" as a tool to help board members make decisions about inmates who apply for parole. In the next section, we discuss parole decision guidelines as a tool for discretionary decisions. As you read, consider the difficulty of predicting human behavior and what bearing this has on designing a tool for making accurate decisions about individuals.

Decision-Making Guidelines

Many parole boards and commissions make use of parole decision-making guidelines. These can help reduce or eliminate problems inherent in discretionary decision making. Adopted by many states, such guidelines are intended to formalize the decision-making process and make decision criteria explicit.

Parole **decision-making guidelines** are suggested decisions based on the development of weighted factors that concern (a) the offense committed and its specific circumstances and (b) the offender and factors specific to his or her personal history. Other factors (such as institutional record) may also be considered when deciding to grant or deny parole, as well as its conditions. Parole decision-making guidelines were initially introduced to reduce discretion and disparity in parole boards' decisions. Advocates also pointed out that the development of such guidelines would require boards to explicitly issue a paroling policy statement (Gottfredson & Gottfredson, 1988). The adoption of such guidelines was not intended to eliminate parole authorities; rather, guidelines were designed to make their decisions more objective and rational.

While parole guidelines are used in many states and the federal system, they do not provide a panacea for problems associated with discretionary release. The primary concern regarding guidelines involves the difficulty of predicting people's behavior. Parole guidelines are based on what can be ascertained about the offense and the offender in terms of what seems relevant to describing (some say predicting) an offender's likelihood of successfully completing the parole sentence and remaining a law-abiding person thereafter. These factors are established by research, conducted on large numbers of offenders and parolees, that assesses variables that are most closely associated with an offender's potential for success or, conversely, those associated with an offender's propensity to act violently (his or her "social dangerousness").

Developing and implementing decision-making guidelines is inherently difficult work; predicting human behavior is complicated and can be inaccurate. The question, then, is how much inaccuracy can be tolerated. Hawkins and Alpert (1989) focus on the prediction of violent behavior to illustrate potential sources of inaccuracy. As they state:

The assessment of the degree of inaccuracy which should be tolerated in predictions of social dangerousness hinges on the ratio of two types of error. The first error involves persons predicted as good risks, but who later prove to commit one or more violent acts. In prediction jargon, they are termed *false negatives*. The second type of error is *false positive*. These individuals are predicted as dangerous but do not commit a violent act, that is, would not offend if released. They have been termed poor risks, but falsely labeled as regards the target behavior—being violent. There would be two types of accurate predictions, true positive (predicted as violent and turns out to be so) and true negative (predicted as not violent and was so). (Hawkins & Albert, 1989, p. 121)

Legislators and other public officials must decide how strongly the decision-making authority must guard against the possibility of such errors. This decision reflects the degree of risk to be tolerated in conjunction with pragmatic concerns, such as overcrowding and budget issues.

Overprediction describes a situation in which the paroling authority tries to reduce the potential for false negatives obtaining parole and in doing so denies parole to an unknown number of false positives, who would not have committed a violent act but cannot demonstrate that fact. This situation can in turn compound the difficulty for further research in a jurisdiction and is unpalatable to those who think it is unjust to unnecessarily retain an inmate.

Conversely, **underprediction** involves making decisions that grant parole to those who, according to the prediction scheme, are likely to engage in a violent act. Underprediction presents a higher degree of risk to society, can cause image problems for the paroling authority, and can call the validity of the decision-making scheme into question. In some states (see Chapter 7), "third-level alternatives" (such as intensive parole supervision schemes or electronic monitoring) are employed to grant parole to "marginal cases."

Violent behavior is even more difficult to predict because, relative to other behaviors, it is actually quite rare. Statistical prediction techniques are most accurate when the analyzed behaviors approach a 50–50 ratio of occurrence/nonoccurrence (Walker, 2011). From a statistical perspective, the rarer an occurrence, the greater the margin for error. Since a small number of offenders commit a large number of offenses, it is difficult to determine who will commit the next crime. The logic of making statistical predictions is based on averages of large numbers and is not always an accurate indicator of future individual behavior. This introduces another qualification to the type of analysis that contributes to guideline development.

Guideline development depends on the analysis of aggregated data; that is, looking at a large group of offenders in a given jurisdiction. Conclusions are drawn from this data that inform the guidelines, which are in turn applied to decisions about offenders.

Guidelines can be used to structure discretionary release decisions. Where guidelines have been implemented and discretionary release has continued, there are generally provisions that enable parole boards to make decisions that fall outside the guidelines. In this event, decision makers are usually required to state their reasons for doing so. Additionally, guidelines may be modified and updated, giving some flexibility to the process. Advocates argue in favor of some flexibility; critics argue that too much of it undercuts the effort to reduce potential disparity in decision making.

9.4 Common Aspects of Conditional Release

Conditional release into the community involves a number of factors. The conditions of the release are among the first things to consider.

Conditions

The conditions to be observed by those placed on supervised release vary from jurisdiction to jurisdiction. However, as Chapter 8 covered, jurisdictions usually have general conditions of supervision—which all those on conditional release in the jurisdiction must follow—and special conditions of supervision—which are particular to individuals and ordered by the parole board, commission, or judge. As an example, the *Applying Criminal Justice: Standard (General) Conditions for Parole in New Mexico* feature box presents the general conditions for persons on parole in New Mexico.



Jason Olson/Deseret Morning News/Associated Press

Besides the general conditions all parolees need to follow, some are required to fulfill specific conditions, such as polygamist Tom Green having to swear fidelity to only one woman.

Applying Criminal Justice: Standard (General) Conditions for Parole in New Mexico

- **Reporting:** I will report to my Parole Officer as directed. I will not abscond from parole, as evidenced by my failure to report where I cannot be located, after reasonable efforts, at my place of approved residence and employment.
- **Other State:** If I am paroled or transferred to the custody of another State, I will abide by the rules in effect in that State, as well as the parole conditions imposed by the New Mexico Adult Parole Board.
- **Travel/Personal Status:** I must seek and obtain permission from my Parole Officer before changing residence. I must secure a travel permit from my Parole Officer before any travel out of the county to which I am being supervised.
- **Conduct:**
 - a. I will demean myself as a law-abiding citizen. I will notify and advise my Parole Officer of any arrest within 24 hours (felony or misdemeanor).
 - b. I must maintain acceptable behavior and conduct which shall justify the opportunity granted to me by the New Mexico Adult Parole Board.
- **Controlled Substances:** I will not illegally possess, use, or sell any narcotic drug, controlled or synthetic substance, or drug paraphernalia. I will not consume or buy intoxicating beverages, nor will I enter what is commonly known as a bar or lounge where intoxicants are sold.
- **Drug Test:** I will submit to substance testing at my Parole Officer's discretion.
- **Association:** I will not knowingly associate with any person who is a detriment to my parole. I will have no gang contact, attire, or paraphernalia.
- **Weapons:** I will not buy, sell, own or have in my possession, at any time, firearms, ammunition, or other deadly weapons of any kind.
- **Employment:** I will seek and maintain verifiable employment, education, or community service (if not employed) and notify my Parole Officer immediately in the event of termination or change of employment.
- **Home Visits:** I will permit my Parole Officer or Corrections Officials to visit me at all reasonable times, places, and will submit to reasonable warrantless searches per New Mexico Corrections Department policy.
- **Driving:** I will refrain from driving any motor vehicle without a valid NM driver's license, registration, and insurance.
- **Compliance:** I will comply with all conditions and fines imposed by the judgment and sentence, as ordered by the court.

Source: "Standard Probation Supervision," by New Mexico Corrections Department, *Probation & Parole*, 2013 (<https://cd.nm.gov/ppd/ppd.html> (<https://cd.nm.gov/ppd/ppd.html>)).

Special conditions could include being placed on GPS tracking; needing to complete certain programming, such as substance abuse or domestic violence programming; and other possibilities. Again, special conditions are intended to fit individuals' particular needs or requirements. The extent to which conditions are enforced may also vary by jurisdiction, even across individual agents. This makes the experience of conditional release vary for individual offenders.

Supervision

Conditional release supervision is a function of the state governments and the federal government. In other words, supervision is carried out by organizations at these levels of government. Although a few states have parole supervision specialists, most states, and the federal government, employ those who supervise offenders on conditional release as well as probationers. In the federal structure, probation and parole officers are part of the U.S. Probation and Pretrial Services, under the Administrative Office of the U.S. Courts. At the operational level they work with the U.S. District Courts, with the supervising agent reporting to the presiding judge of the district court. In a few states, parole

agencies are organized outside the Division or Department of Corrections and are directly subordinate to the governor. In most states the supervision element is organized as a major subunit of the Division or Department of Corrections.

The discussion in Chapter 8 regarding potential variation in probation supervision may be applied to parole supervision, with some caveats. It is important to keep in mind that by virtue of having served time in prison and having at least one felony conviction, parolees are generally thought to require more intense supervision than most probationers (remember, though, that felony probation is increasing). Supervising agents usually have smaller caseloads than probation officers, but in many jurisdictions officers have large caseloads composed of both probationers and parolees—the nature and intensity of supervision may depend on caseload size, the orientation of the agency, whether leaders emphasize surveillance and community protection more than assistance and successful reintegration, or other concerns.

Reporting on a large-scale study, Solomon (2006) notes that in most cases parole supervision is minimal. She observes that caseloads are packed, leaving limited time for direct supervision (or assistance). Given burdensome caseloads and agency leaders' desire to emphasize public safety, such an observation is not surprising.

Yet much is made of the relatively high degree of discretion afforded parole officers in carrying out their responsibilities. For many, discretion offers the capacity to individualize justice. Given this context of large caseloads, scant time for interaction, and significant time and task requirements, consider the question posed in *Applying Criminal Justice: Taking an Agent's Perspective* regarding how much individualization can actually be accomplished.

Applying Criminal Justice: Taking an Agent's Perspective

In 2016, 94% of the parole population had been sentenced to incarceration for more than a year (Kaeble, 2018). Going back to the community setting after serving time can be difficult. Consider the job of a supervising agent with a caseload of 60 offenders and 40 hours a week to tend to them. Perhaps three fourths of those in the caseload will have multiple issues and needs upon reentering the community. They may need education; they may have histories of drug or alcohol abuse; and nearly all need a job, though they are not equally prepared to search for one. Some may lack interviewing and other job application skills. Some may never have held a job. All are felons.

How would you approach those in such a caseload? How would you balance their need to obtain a job with the need to protect society? How would you help them find work where jobs are scarce and nonfelons are competing for them as well? What would be your biggest concerns if you were the supervising officer? How would you address those concerns?

Parole Agent

Parole agents assist parolees in adjusting to life after prison. They also assess whether a parolee is a threat to the community. What are the greatest challenges of this profession? The greatest rewards?

Parole Agent

From Title: *Careers in Criminal Justice*

(<https://tod.infobase.com/PortalPlaylists.aspx?wID=100753&xtid=29135>)

Discretion

Parole officers tend to act as “street-level bureaucrats” (Lipsky, 1980). At times they use their discretion to deal with individuals in their caseloads, but most often they defer to their agency’s “ways of doing business.” While both laws and agencies’ formal policies set broad parameters for parole officers’ actions and judgments, officers tend to act in a similar fashion, occasionally manifesting differences but overall basing their similarities in discretionary authority.

Each group of officers abides by informal policies, expectations, and norms. These provide the substance of practice. Like other work groups, parole officers assimilate these informal expectations and reinforce the norms and policies through their own discretionary behavior. The result is that practices tend to be more similar than different.

Assessment and Classification

Formal attempts to make the supervision function more coherent include assessing and classifying those who will be supervised. The general aims of assessment and classification provide rational means for estimating an offender’s risk of violating probation/parole and level of danger and for determining his or her needs while under supervision. Although assessment and classification strategies have the potential to significantly contribute to the probation and parole decision-making process, the realities of caseload size, the limits of time, and options for assistance or referral often make such assessments more a matter of paperwork than a substantial tool with which to improve the offender.

Assessment and classification have not been definitively shown to make parole supervision more rational, objective, or ultimately effective. Solomon (2006) observes that parole officers are “driven by making their contacts and monitoring compliance” and that “the ultimate goal . . . changing parolees’ lives . . . [is] more elusive” (p. 26). However, it may be argued that classification represents one avenue for imparting coherence to the supervision process in that it systematizes offender behaviors, making it easier to discern offending patterns and enhance supervision as needed. Classification efforts and linking classification decisions to implementation may at least force consideration of expected outcomes and make it more likely that community supervision can achieve positive outcomes. Whether classification contributes much to a coherent supervision process remains unclear, given the potential problems discussed above, the variation in agencies’ operating contexts, and what agency leaders choose to emphasize.

9.5 Reentry Into the Community

In 2016 state and federal prisons released 641,027 offenders to return to various communities; 426,755 were on conditional release (Carson, 2018). Consider these numbers for a moment. On the simplest level, that means 641,027 people needed a new place to live and some way to support themselves. Finding a job can be challenging for those *without* a criminal record; for convicted felons, it is even harder. Moreover, think about how this cycle happens every year. The numbers fluctuate somewhat but are always substantial. Those released were in prison for on average just over 2 years.

Challenges Posed by Reentry

Reentry, the process of an offender leaving prison and returning to the community, is quite complex. One reason is that the hundreds of thousands of offenders who are reentering society are disproportionately distributed across the United States. They are concentrated in a relatively small number of disadvantaged neighborhoods in America's inner cities (Travis, Solomon, & Waul, 2001). The areas to which the majority of offenders are released are the areas from which they departed. This cycle of offenders departing and returning to specific communities in itself contributes to numerous social challenges (Petersilia, 2003). Exploring these is beyond the scope of this book, but it is important to understand that among the challenges involved with reentry is that correctional personnel cannot control the contexts in which they must monitor and assist those on conditional release. See the feature box *Applying Criminal Justice: Reentry and Success* for more on this topic.

The release of prisoners back into their communities poses two fundamentally interrelated challenges: First, how to protect the safety of the public, and second, how to foster an individual's transition from life [as it is] in prison to life as a productive citizen. (Travis et al., 2001, p. 6)

The largest study ever conducted of parolees took place in California and followed 254,468 individuals over a 2-year period. Researchers found that the first 90 days after release were the most critical for any violation of parole, including technical violations (Grattet, Petersilia, & Lin, 2008). This study also showed that a parolee's risk of committing a violent offense during those first 90 days was relatively small compared to his or her risk of committing any violation.

Concerning public safety, it is important to understand that some parolees pose a greater risk than others. Also, those who pose the greater risk are disproportionately concentrated in certain areas. Travis et al. (2001) suggested adapting place-based policing strategies to address safety and offender reentry, associating patterns of place-based crime with reentering offenders. McGarrell, Zimmerman, Hipple, Corsaro, and Perez (2004) noted, in relation to ensuring safety: "Successful reentry is most likely to be the product of multi-agency, multi-sector collaborative problem-solving coalitions" (p. 41). They further suggest, "No single entity ultimately 'owns' the reentry problem" (McGarrell et al., 2004, p. 41). This perspective is important.

The challenges of fostering transition and ensuring public safety are interrelated. Offenders reentering communities face multiple issues. Nearly three fourths have histories of alcohol and substance abuse (Petersilia, 2003). There is a high prevalence of health-related issues, including mental health needs and, for some, hepatitis C and HIV infections (Stojkovic, 2005). As noted, employment is also an issue, and those on conditional release likely will be required to at least look for a job. Because all offenders present different safety risks, not all of those reentering society are equally employable. Some have little experience working and are underprepared to seek employment. Most lack an education beyond the high school level, if that, and only about one third will have had occupational training while in prison (Petersilia, 2003). Furthermore, each bears the label of "felon."

All reentering offenders have an immediate and continued need for housing. While some will have families or others to return to, most will not. The large majority will lack money, transportation, clothing, and other material goods and resources. Given these needs, and the contexts to which they reenter, the statements by McGarrell et al. are precisely on point. Female offenders may have additional needs. Travis et al. (2001) note that "female prisoners are more likely to come from lesser economic circumstances than male prisoners," "female prisoners are less likely to be married than the general population," "female prisoners are likely to be parents . . . [65% of female prisoners have a child below age 18]," "many women are released with serious health problems," "many women [released] have serious, long-term substance abuse problems," and "reestablishing relationships with children after incarceration is difficult" (p. 13). These problems remain prevalent among women released from prison.

Efforts to Address Reentry Concerns

Given the enormity of reentry issues, many types of solutions are being formulated at federal, state, and local levels. At the federal level, the White House, through the attorney general and the U.S. Department of Justice, has established the National Reentry Resource Center, which provides information and assistance to those designing and undertaking reentry programs. The website for the center can be found at <http://www.nationalreentryresourcecenter.org> (<https://csgjusticecenter.org/nrrc/>). The site profiles many current efforts and presents research on what programs are most promising.



Rich Pedroncelli/Associated Press

Parolees reentering society face numerous obstacles, including joblessness and homelessness. Here a parole agent checks up on a homeless parolee wearing a GPS locator. How can some of the obstacles of reentry be alleviated?

Women Paroled From Prison

At Valley State Prison, women on parole leave with their personal belongings and \$200. Unless they step into a supportive network of families or friends, more than half will return to prison. Many are afraid of what they will do on the outside. What do you think can be done to help ensure that these women's reentry into society is successful?

Women Paroled From Prison

From Title: *Return to Valley State* (<https://fod.infobase.com/PortalPlaylists.aspx?wID=100753&xtid=39088>)



Haraz Ghanbari/Associated Press

Transition centers, like this one in Alabama, help parolees reenter society by providing counseling and job training. Should resources like this be given priority in federal and state budgets? Why or why not?

These efforts face enormous challenges. Resources continue to be limited in relation to the scope of the problem. As with many aspects of crime and criminal justice, identifying and addressing the factors of importance are difficult yet critical.

Applying Criminal Justice: Reentry and Success

In 2016, according to the Bureau of Justice Statistics, 428,022 persons exited or left parole status. This includes persons who were in a supervised status as the result of discretionary release parole, mandatory release, or TSR (Kaeble, 2018). Of those exiting parole status, roughly 57% left because they completed their terms; 27% were returned to incarceration (with 7% returned for a new offense and 16% returned with revocation); and 3% represented other types of unsatisfactory exits (with 2% absconding, or fleeing from supervision) (Kaeble, 2018).

From the standpoint of information and research, we know more about those who recidivate, or “fail” on supervision, than those who “succeed.” These figures show that 57% of offenders in 2016 completed their supervision. Yet there is little information about just why they were successful in doing that. There are few large-scale studies that follow up on successful supervision experiences, especially those trying to determine what factors are most important to remaining law abiding. Imagine that you were on conditional release. Consider the difficulties associated with reentry. Which factors would be most important for you to successfully complete supervision and remain law abiding? How would you go about successfully transitioning and reintegrating into a community?

Think about supervision following incarceration. How would you describe the national picture in terms of parole “success” for 2016? What advantages are there to placing offenders on parole or postprison supervision? What disadvantages are there? Should the United States continue this practice?

Revocation

When an offender on discretionary release parole does not complete the parole terms, his or her parole officer may initiate revocation proceedings. As with probation, parolees who commit a new crime, or parolees who violate the general or specific conditions of their parole, may face revocation, even if their acts or omissions would not constitute a new crime (that is, they are technical violations of parole). Similar to probation revocation, with discretionary release parole, revocation proceedings are subject to the minimum due process guarantees outlined by the U.S. Supreme Court (*Morrissey v. Brewer*, 1972).

Unlike probation, the decision to revoke discretionary release parole is made by the paroling authority (board or commission), not a judge. Usually, parole revocation follows this general process:

1. The parole officer initiates the process by making a formal allegation of violation of parole.
2. This allegation is typically accompanied by a request that the parolee be arrested and detained in jail until a determination is made.
3. The allegation is reviewed by senior agency officials, who conduct a preliminary examination. The purpose of this review is “to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee had committed acts which would constitute a violation of parole condition” (*Morrissey v. Brewer*, 1972).
4. If sufficient reason is found to continue the revocation process, the discretionary paroling authority holds a revocation hearing. At this stage, the due process guarantees established in *Morrissey v. Brewer* (1972) apply. These include (a) written notice of the claimed violation, (b) disclosure to the parolee of evidence against him or her, (c) opportunity to be heard in person and to present witnesses and documentary evidence, (d) the right to confront and cross-examine adverse witnesses (unless the hearing body specifically finds good cause for not allowing confrontation), (e) provision of a neutral and detached hearing body, and (f) a written statement of the fact finders as to the evidence relied on and the reasons for revoking parole. Parole boards/commissions have been considered sufficiently neutral and detached to conduct revocation hearings, and these bodies have discretionary authority concerning the disposition of the proceedings.
5. If a parolee is found to have violated parole, the parole board/commission may decide to return the offender to prison (often the outcome) or may settle on other options (such as imposing special conditions).

For those on community supervision as a result of mandatory release, revocation-related decision making will follow similar steps. However, rather than an external discretionary authority, the decision to revoke from mandatory release is administrative and involves the supervising agency. With revocation of those reaching supervision through TSR, the initiating process will be similar to probation revocation, and the decision returns to the sentencing judge, as with probation.

