

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, SS.

S.J. NO. 2021-

Dorothy Cheek, Leroy Ivey, Dion Young, Khalid Mustafa,
David Giacalone, John Cobb, Arthur Bembury, Mark Collett,
Chris Bradford, and Jermain Carter

Plaintiffs,

v.

MASSACHUSETTS PAROLE BOARD
GLORIANN MORONEY
(In her official capacity as Chairperson)

Defendant.

**PETITION AND COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF
PURSUANT TO G.L. c. 231A, G.L. c. 214 § 1, and G.L. c. 249 § 5**

Introduction

This is a complaint for relief seeking an order declaring, and requiring, that the Massachusetts Parole Board conduct timely and meaningful reviews of petitions to terminate parole pursuant to G.L. c. 127 § 130A.

There are approximately 1,683 persons on parole.¹ Many are on parole for life; many more are on parole for decades. The Legislature, in its wisdom, understood that not everyone on parole must remain on parole. Thus, it enacted a statute authorizing

¹ See Annual Statistical Report 2020, Massachusetts Parole Board (June 2021), pg. 30 < <https://www.mass.gov/doc/2020-annual-statistical-report/download> >

the Parole Board to terminate parole if it is in the “public interest.” *See* G.L. c. 127 § 130A. This statute exists on paper, but not in reality. The Parole Board has effectively repealed § 130A by adopting a blanket practice of denying termination in virtually all cases. (According to a public record response, there was one termination in 2015 and one in 2020). Although the Parole Board has considerable discretion as to which individuals should have their parole terminated, the Board is failing to implement § 130A by categorically refusing to exercise any discretion at all.

Plaintiffs are a diverse group of persons who have successfully been on parole for many years: some are on parole for life, some have an end date; some have been considered for termination and were denied, some are awaiting a decision, others would like to file one day; they vary in age (ranging from 44 to 75 years old); some have been on parole for 5 years and some as much as 30; some are married and have families; some work full-time, others are retired. About the only thing they all have in common is that the Parole Board will never grant them early termination regardless of whether they meet the statutory standard. Accordingly, they bring this lawsuit to breathe life into a dormant statute.

Jurisdiction

1. This Court has original (and concurrent) jurisdiction for cases seeking declaratory judgment pursuant to G. L. c. 231A, § 1, equitable relief pursuant to G.L. c. 214, § 1, and mandamus pursuant to G.L. c. 249 § 5.

Parties

2. The Plaintiffs are all on parole in Massachusetts (or being supervised out of state but still under the jurisdiction of the Massachusetts Parole Board).
3. Dorothy Cheek is a resident of Middlesex County, MA.
4. Leroy Ivey is a resident of Suffolk County, MA.
5. Dion Young is presently a resident of the State of Texas. Although his parole supervision was transferred to Texas, the Massachusetts Parole Board still has jurisdiction over him.
6. Khalid Mustafa is a resident of Suffolk County, MA.
7. David Giacalone is a resident of Plymouth County, MA.
8. John Cobb is a resident of Norfolk County, MA
9. Arthur Bembury is a resident of Norfolk County, MA.
10. Mark Collett is a resident of Middlesex, County, MA.
11. Chris Bradford is a resident of Middlesex MA
12. Jermain Carter is a resident of Worcester County, MA.
13. The Defendant, Massachusetts Parole Board, is an agency of the Commonwealth of Massachusetts, with administrative offices in Natick, MA. The Chairperson is named as a defendant *only* in her official capacity. This is not a suit for monetary damages.

Factual Background

14. “The first legislation in the United States authorizing parole was enacted in Massachusetts in 1837. The duties of the first Massachusetts parole officers included assisting released prisoners in finding jobs and providing them with tools, clothing, and transportation at state expense.”²

15. “Parole provides prisoners with the opportunity to serve the balance of their term of imprisonment outside a prison provided that they comply with the conditions established by the parole board, which, pursuant to G. L. c. 27, § 4, is a board in the Department of Correction, although ‘not subject to its jurisdiction.’” *See Commonwealth v. Cole*, 468 Mass. 294, 298 (2014)

16. “Absent revocation of a prisoner’s parole permit, the board’s jurisdiction over the parolee ends on ‘the expiration of the maximum term’ of the committed sentence, less any deductions for good conduct.” *Id.* at 299; G. L. c. 27, § 5; *see also* G.L. c. 127 § 130.

17. For someone sentenced to a life sentence (with the possibility of parole), if granted parole, they are supervised for their natural life – unless granted a pardon or receive clemency.

² *See Annual Statistical Report 2012, Massachusetts Parole Board (March 2014), pg. 8.* <https://archives.lib.state.ma.us/bitstream/handle/2452/208128/ocn711074206-2012.pdf?sequence=1&isAllowed=y> .

18. Additionally, the Parole Board has the discretion to terminate parole prior to the expiration of a parolee's sentence. In 1955, the Legislature enacted G.L. c. 127 § 130A; it has remained largely unchanged since then:

The parole board may, by a majority vote of all of the members, issue to a parolee under its supervision a certificate of termination of sentence, provided that in the judgment of the board such termination of sentence shall be in the public interest; and provided, further, that in no case will such certificate of termination of sentence be issued unless the parolee has completed at least one year of satisfactory parole; provided, however, that the parole board, by a majority vote of all its members, may grant a certificate of termination if the parolee has successfully completed the so-called special incarceration boot camp program and subsequently completed at least four months of satisfactory parole. The parole board shall furnish to the commissioner of correction and to the judge who pronounced sentence upon the parolee a copy of such certificate of termination of sentence.

19. The Parole Board has promulgated detailed regulations which govern their many functions. They can be found at 120 CMR 1.00-9.00. There are regulations governing, for example, who is eligible for parole, 120 CMR 2.00, how parole hearings function, 120 CMR 300 and 301, when parole can be rescinded, 120 CMR 302, and when it can be revoked, 120 CMR 303.

20. There are no regulations governing parole termination. It is referenced once in the definitions, *see* 120 CMR 100, and then never again.

21. Instead, the Parole Board promulgated a policy to govern termination motions. *See* 120 PAR 552 (Attached as Exhibit 1).

22. The policy is not a formal agency rule adopted through the rulemaking process pursuant to G.L. c. 30A, *et seq.* Although it purports to establish procedures and standards for making termination decisions, a parolee's opportunity to seek and be

afforded termination is, for all practical purposes, illusory even if they meet all the requirements of the Policy.

23. Consistent with § 130A, the policy requires the parolee to have been on parole for at least one year. The policy also creates the following additional requirements before a parolee may be considered for termination. A parolee must:

- Be on “reduced supervision”;
- Have not received one or more written warnings, parole violation reports, court cases, or warrants in the past year;
- Have no substance use issues.

See 120 PAR 552.02.

24. Not every parolee is eligible for reduced supervision – at least not for a few years.

25. Someone serving a life sentence is not eligible for anything less than “maximum” supervision for at least two years; someone convicted of a sex offense (regardless of parole length) is not eligible for anything less than “maximum” supervision for at least three years. 120 PAR 408.05 (attached as Exhibit 2).

26. Even then, no parolee is eligible for “reduced supervision” unless they have already been on “standard supervision” for a period of months. 120 PAR 408.07(III)(E). That extends the time someone serving life, or a sentence for a sex offense, must serve before being eligible for “reduced supervision.”

27. Upon information and belief, some of the named plaintiffs are *still* not on “reduced supervision” despite being on parole for many years (and in some cases, decades).

28. Additionally, the process *must* run through a parole officer. The parole officer first reviews a parolee for suitability when an annual re-assessment “indicates that the parolee is a low risk or very low risk, provided the parolee is otherwise eligible for Reduced Supervision.” 120 PAR 552.04(A). Only if the parole officer determines that the parolee is eligible does the parole officer then submit a consideration request to the Chair, through his/her supervisor. 120 PAR 552.04(B).

29. Each submission must also contain a written addendum from both the parole officer, and the parole officer’s supervisor, “stating agreement or disagreement with the termination consideration requests and the reasons therefore.” 120 PAR 552.04(F). If they are not in agreement, the Chief of the Field Services must submit their own written addendum with their opinion about the request for termination. 120 PAR 552.04(G).

30. Based on public records request, between 2015 to the present, there have been approximately 47 petitions for termination submitted to the Chair. The policy thus enlists parole officers to block implementation of the statute by arbitrarily failing to submit petitions for consideration.

31. Upon information and belief, a parolee may not request termination unilaterally. Rather, even if a parolee submits such a request, it will not be considered

by the Board unless and until the parole officer submits a request pursuant to the policy.

32. For example, Plaintiff David Giacalone recently submitted a petition for termination through counsel directly to the Board. In response, the Parole Board indicated that because the Field Officer had not submitted a petition, it would not be considered.

33. Once a petition is received from the parole officer, the Parole Board is supposed to consider whether to terminate parole. In making its decision, it considers the following criteria:

- The Parolee's criminal history;
- The nature and severity of the underlying offense;
- Whether the parolee is under investigation;
- Parolee's history of violating conditions of release; and
- Parolee's history of adjustments in the areas of social, family, work, and supervision.

120 PAR 552.03.

34. Even when a parolee is eligible for termination, and has a pending application, they are rarely given a response within a reasonable amount of time, if at all.

35. For example, in May of 2016, an attorney filed a petition to Terminate Parole for her client, Betty Williams. Ms. Williams, a lifer who was paroled in 1993, had lived in the community as a loving and nurturing mother and grandmother. She was an

accomplished MSW at On the Rise, Inc. in Cambridge, a talented and caring HIV/ AIDS health educator with the Multicultural AIDS Coalition in Boston, and an active member of the St. Paul African Methodist Episcopal Church in Cambridge. She had led a life of service to others since her parole. Her crime had occurred in 1970, almost fifty years earlier. Ms. Williams was dying of cancer and wanted her parole terminated before her death. Ms. Williams died in May of 2019, never having received a ruling on her petition to terminate parole.

36. When the Board denies termination, it does not issue an individualized written decision. It does not give any specific explanations for why it is rejecting termination. Instead, upon information and belief, everyone receives the same, standard response:

Request denied. No further review by Full Board. Subject meeting requirements of parole supervision but does not establish compelling reason why termination of parole supervision is in the public interest per M.G.L. c. 127 § 130A.

37. That standard decision appears to place the burden on the parolee to establish a “compelling reason” why parole should be terminated. The statute does not indicate the parolee has any burden; nor does the statute say termination is warranted only when there is a “compelling reason.”

38. The Board has a *de facto* policy of denying termination in all cases without giving meaningful consideration to the merits of any individual case. Based on public records request, the Board has only terminated parole twice (once in 2015 and once in 2020).

39. Being on parole curtails someone's liberty. Parolees are required to comply with many conditions. They have to submit to polygraph examinations and random drug/alcohol screens. Many are subject to curfews, GPS tracking, limitations on who they may associate with, limitations on where they may live, mandatory counseling, mandatory AA/NA meetings, unannounced home visits, and frequent check-ins with parole officers. Some cannot have cell phones or computers; others who do have them are monitored by various tracking applications. They cannot travel out of state without permission, and there are restrictions on who can travel and for what purpose. They cannot travel out of the country except for the funeral (or related emergency) of an immediate family member. They have to pay fees for parole supervision and GPS tracking

40. Most parolees live in constant fear that even the slightest mistake will result in them being returned to prison. Many have been threatened by parole officers that they could be violated and returned for any transgressions, including "technical violations." Examples of "technical violations" include, having a positive drug/alcohol screen, missing parole meetings, "associating" with a person who has a criminal record (including *dismissed* continuances without a finding of guilt), and failing to pay parole fees. Parolees can be violated for engaging in "irresponsible conduct," a catchall term that can be used to violate a person on parole for a wide range of non-criminal activity. Among the plaintiffs in this lawsuit, some have been returned to prison for technical violations of their parole conditions (violations that did not result in criminal charges).

41. For example, Plaintiff Leroy Ivey was returned to prison for seven months on a criminal charge that was later dismissed. If Mr. Ivey had not been on parole, he would not have been detained, pretrial, for all those months.

42. These fears are well founded. In 2019, 89% of parole revocations were for technical violations (*i.e.* not for a new arrest). In 2018, it was 88%; in 2017, it was 87%.

43. Many of the named plaintiffs even fear the Board might retaliate against them for being a part of this lawsuit. One plaintiff was concerned about retaliation because they believe they are not allowed to attend protests or exercise other similar rights.

44. Thus, a parolee is constantly monitored, cannot travel freely, and lives in fear that they will be returned to prison for conduct that is lawful and common (among the non-parolee population). Terminating parole is the only way they will ever be able to live a life free from these constraints.

Plaintiff's Background Information

45. Dorothy Cheek is 75-years old. She was convicted of second-degree murder and incarcerated at the age of 30. In 1976, the Advisory Board of Pardons unanimously recommended her sentence be commuted; it was not. She went on to serve the minimum 15 years and was released at age 45. She worked as a housekeeper at the Shattuck Hospital for 23 years and is now retired. She has been on parole for 30 years without incident. She was considered for termination twice, once around 2011 and once in 2020. Both times, her motion was denied.

46. Leroy Ivey is 49-years old. He was convicted of second-degree murder in 1993 and incarcerated at the age of 18. He was granted parole in 2006 and ultimately released in 2009 after serving almost 18 years in prison. He has worked for Street Safe, doing gang outreach. He presently works as a coordinator for a harm reduction and needle exchange program. In 2018, he received the Henry L. Shattuck Award in Public Service for his work.

47. Dion Young is 51 years old. He was convicted of second-degree murder and incarcerated at the age of 19. He served over 18 years and was released in 2008. He presently resides in Texas, where he runs a youth program called "redemption" and is also employed full-time. He was considered for termination, over one year ago, which was denied. He presently has a petition for reconsideration pending.

48. Khalid Mustafa is 63 years old. He was convicted of second-degree murder and incarcerated at the age of 18. He served 15 years and was released on parole in 1991. He works as an IT director. He was recently denied termination by the Parole Board.

49. David Giacalone is 57 years old. In 1985., he was convicted of various offenses (committed at age 19), including aggravated rape, and was sentenced to 30-60 years. After serving approximately 22 years in prison, in July 2004, he was granted parole and released from custody. He will be on parole until 2042. He works full time and is married. He submitted a motion for termination through counsel, but it was not even considered by the Board because it did not originate with his parole officer.

50. John Cobb is 65-years old. He was convicted of rape and home invasion in 1974 and sentenced to life with the possibility of parole. He was incarcerated at the age of 17. He served 31 years and was initially paroled in 2005. He was violated twice for using marijuana. He was re-paroled in 2008. He has been on parole for 14 years. He works delivering newspapers.

51. Arthur Bembury is 70 years old. He was convicted of second-degree murder and incarcerated at the age of 19. He was paroled in 2005. He is the Executive Director of Partakers Inc., an organization dedicated to reducing recidivism by educating prisoners, where he has been employed since being paroled. As the E.D. he works closely with the DOC daily and has been an invited guest panelist for staff training for the Department of Corrections as well as invited to film a Program Engagement video for their educational department. Arthur has also established a Reentry Program with Brandeis University that provides essential resources for formerly incarcerated women and men. He was recently denied termination by the Parole Board.

52. Mark Collett is 59-years old. He was convicted of second-degree murder and incarcerated in 1981. He served approximately 19 years before he was paroled. He has been on parole for 20 years. He has worked full time as a drug and alcohol counselor for almost 20 years. He filed a petition for termination through his field parole officer in 2017; he never received an answer and was later told the paperwork was lost. He reapplied in 2019 and, about one year later, was denied.

53. Chris Bradford is 44-years old. He was convicted of second-degree murder. He was incarcerated in 1995, when he was 18 years old. He was paroled in 2010. He is employed full-time as a property manager. He is interested in filing for termination but did not know the process to do so.

54. Jermaine Carter is 48 years old. He was convicted of second-degree murder in 1989. He was incarcerated as a juvenile at the age of 16. He was released in 2006, at the age of 33, and has been on parole for 15 years.

Causes of Action

FIRST CLAIM FOR RELIEF

G.L. ch. 231A (Declaratory Judgment: Violation of Administrative Procedure Act)

55. The Plaintiffs incorporate as if restated here the allegations set forth in all preceding paragraphs.

56. Plaintiffs seek a declaration that 120 PAR 552 is null and void because the Parole Board did not comply with the rulemaking procedures under the Administrative Procedure Act. The policy is not simply a regulation concerning the "internal management" of the agency and thus could not be promulgated, unilaterally, without the protections of G.L. c. 30a *et seq.*

SECOND CLAIM FOR RELIEF

G.L. ch. 231A (Declaratory Judgment: Violations of G.L. c. 123 §130A)

57. The Plaintiffs incorporate as if restated here the allegations set forth in all preceding paragraphs.

58. The Parole Board has failed to implement G.L. c. 127 § 130A because it has adopted a policy of categorically denying termination in virtually all cases regardless of the public interest. Specifically, plaintiffs seek a declaration that:

- A. The Parole Board is in violation of G.L. ch. 127 § 130A by failing to provide meaningful and timely review of termination requests. Instead, its practice is to automatically deny requests for termination without actually exercising discretion to determine whether or not termination is in the public interests.
- B. The Parole Board fails to allow anyone on parole to submit a request (or petition) for early termination.
- C. The Parole Board fails to provide an individualized, written decision when it denies (or allows) a petition for termination.
- D. The Parole Board fails to provide a decision within a reasonable amount of time.

THIRD CLAIM FOR RELIEF
G.L. c. 214 § 1 (Equity)

61. The Plaintiffs incorporate as if restated here the allegations set forth in all preceding paragraphs.

62. Relief is also appropriate under this Court's jurisdiction over cases in equity. *Lahey Clinic Foundation, Inc. v. Health Facilities Appeals Bd.*, 376 Mass. 359, 370 (1978) ("If an administrative agency is acting in violation of law, and irreparable injury is threatened, equitable relief may well be available.").

63. Because the Board does not timely or meaningfully review petitions, does not explain the basis for the decisions it does review, and does not even allow certain parolees to seek termination, there is no method for plaintiffs to obtain relief other than through a claim in equity.

FOURTH CLAIM FOR RELIEF
(G.L. c. 249 § 5 (Mandamus))

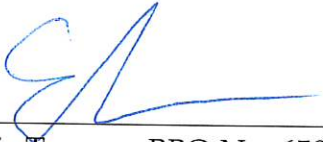
64. The Plaintiffs incorporate as if restated here the allegations set forth in all preceding paragraphs.

65. This case presents an appropriate vehicle in which to issue a writ of mandamus—essentially, an order to perform a non-discretionary action. That is all Plaintiffs are seeking—that the Board perform the non-discretionary functions of giving timely and meaningful review to requests to terminate parole.

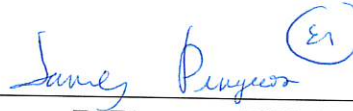
WHEREFORE, plaintiffs respectfully request that this Court grant the following relief:

1. Declare that 120 PAR 552 is void under the Administrative Procedure Act;
2. Declare that the Parole Board's implementation of G.L. c. 127 § 130A is unlawful and issue an injunction mandating:
 - a. The Parole Board cease denying all termination requests;
 - b. The Parole Board exercise appropriate discretion in considering termination requests;
 - c. The Parole Board provide an individualized, written decision when it decides a request for termination;
 - d. The Parole Board provide the written decision within a reasonable amount of time; and
 - e. The Parole Board create a process, consistent with the Administrative Procedure Act, to allow for all parolees eligible under G.L. c. 123 § 130A to be considered for termination.
3. Order any other relief that this Court deems reasonable and just, including injunctive relief, remanding the matter, and damages.

RESPECTFULLY SUBMITTED,
By their attorneys,



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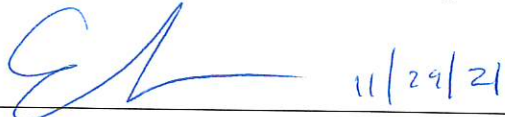
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VERIFICATION OF COMPLAINT AS TO ALL PLAINTIFFS

I, Eric Tennen, counsel for all plaintiffs, hereby affirm under the pains and penalties of perjury that the allegations in the Complaint that relate to all the plaintiffs are true and correct to the best of my information and belief.



Eric Tennen


EXHIBIT 1



MASSACHUSETTS PAROLE BOARD
POLICIES AND PROCEDURES
GUIDELINES FOR TERMINATION REQUESTS
120 PAR 552

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 <p>MASSACHUSETTS PAROLE BOARD</p>	<p>DIVISION:</p> <p>FIELD SERVICES</p>
<p>TITLE: GUIDELINES FOR TERMINATION REQUESTS</p>	<p>NUMBER: 120 PAR 552</p>

Purpose: The purpose of this policy is:

- I. To provide policy and procedures for the termination of certain parolee's sentences.

References: MGL Chapter 27, Section 5(e); Chapter 127, Section 130A;

Related Policy and Procedure:

Applicability: All Staff **Public Access:** Yes

Location: All Parole Board Manuals of Policies and Procedures

Responsible Staff for Implementation and Monitoring of Policy:

- Parole Board Chairman
- Parole Board Members
- Executive Director
- Agency Division Heads
- Unit Directors

Promulgation Date: April 2017

Cancellation: This policy cancels all previous Agency policies, procedures, bulletins, directives, orders, notices and rules regarding termination, which are inconsistent with this policy.

Severability Clause: If any part of this policy is, for any reason, held to be in excess of the authority of the Parole Board Chair, such decision will not affect any other part of this policy.

552.01 General Policy

This policy establishes guidelines for termination for the Massachusetts Parole Board for all parolees who meet the established criteria.

552.02 Criteria for Eligibility:

The parolee must:

1. Have completed at least one year of satisfactory parole supervision;
2. Be on Reduced Supervision;
3. Have not received one or more written warnings, parole violation reports, court cases, or warrants in the past year;
4. Have no active substance abuse issues;

552.03 Standard

The Parole Board may, by a majority vote of all of the members, issue to a parolee under its supervision a certificate of termination of sentence, provided that in the judgment of the Board such termination of sentence shall be in the public interest. Factors taken under consideration by the Parole Board in determining whether a certificate of termination is in the public interest will include, but are not limited to, the following:

1. The parolee's criminal history;
2. The nature and severity of the parolee's underlying offense for which he/she was granted a permit to be at liberty;
3. Whether the parolee is under investigation by a law enforcement authority;
4. The parolee's history of violating the terms and/or conditions of parole;
5. The parolee's history of adjustment in the following areas: social, family, work and attitude toward supervision;

552.04 Procedures:

- A. Parole officers shall review a parolee's suitability for termination if an annual risk re-assessment (120 PAR 112) indicates that the parolee is a low risk or very low risk, provided the parolee is otherwise eligible for Reduced

Supervision. Absent extenuating circumstances, as determined by the Chairman, no parolee will be considered for a certificate of termination more than once in each year for which they are on parole.

- B. Parole officers will review each case upon the parolee's completion of one year of supervision and every year thereafter to determine if the parolee is eligible to be considered for a certificate of termination. If the parole officer determines a parolee meets the eligibility requirements of this policy, the parole officer shall submit a termination consideration request to the Chair of the Parole Board through his/her supervisor.
- C. Prior to completing a termination consideration request, the parole officer will conduct:
 - 1. A Board of Probation Check;
 - 2. Triple III check;
 - 3. NCIC/LEAPS check;
 - 4. Check with local police/authorities
- D. All termination consideration requests shall include a copy of the case notes with any recent home visit notations and any other pertinent correspondence or information.
- E. All termination consideration requests shall be submitted to the parole officer's direct supervisor within 30 days following the parolee's completion of one year of active supervision, provided the parolee meets the criteria. The Parole Supervisor shall ensure the accurate and complete preparation of all termination requests for parole officers under their supervision. The Parole Supervisor shall submit all termination consideration requests to the Chief of the Field Services Division, or his/her designee, no later than one week from the day the termination consideration request was received by the Parole Supervisor.
- F. Each termination consideration request submitted to the Chief of the Field Services Division, or his/her designee, shall include a written addendum from the parole officer and the parole officer's supervisor stating agreement or disagreement with the termination consideration request and reasons therefore. Unless authorized by the Chairman, for good cause shown, a supervising parole officer shall not submit an addendum that does not state a position on the issue of termination. The written addendums and reasons for agreement or disagreement with the termination consideration request will be maintained in the parolee's file as a confidential document.
- G. The Chief of the Field Services Division, or his/her designee, shall ensure the accurate and complete preparation of all termination consideration

requests for parole officers and supervising parole officers under their supervision. For all termination consideration requests in which the parole officer and supervising parole officer are not in agreement on the issue of termination, or the termination consideration request is otherwise incomplete, the Chief of the Field Services Division, or his/her designee, shall submit a written addendum with the termination consideration request, stating their agreement or disagreement with the termination consideration request and the reasons therefore. (For all termination consideration requests in which the parole officer and supervising parole officer are in agreement, no such addendum shall be required unless requested by the Chair.) Only termination consideration requests containing a recommendation for consideration of termination from the parole officer and supervising parole officer or the Chief of the Field Services Division, or his/her designee, shall be submitted to the Chair for consideration by the Chief of the Field Services Division, or his/her designee. Such submissions to the Chair shall be made within one week from the day the termination consideration request was received by the Chief of Field Services Division, or his/her designee. The Chair shall determine whether termination will be taken under consideration by the Parole Board.

- H. When the Chair determines that termination will be taken under consideration by the Parole Board, the Chief of the Victim Services Unit, or his/her designee, shall be informed so appropriate notifications can be made.
- I. The Chair may appoint an employee of the Parole Board, or convene a hearing of the Full Board, to conduct further inquiry and/or additional investigation into whether a certificate of termination is in the public interest.
- J. The Office of General Counsel shall furnish a copy of all certificates of termination to the Commissioner of Correction and the judge who pronounced sentence, in accordance with the terms of G.L. c. 127, § 130A. In the event the judge who pronounced sentence is retired or deceased, a copy of the certificate of sentence shall be forwarded to the Regional Administrative Justice of the Superior Court for the County in which the parolee was sentenced.

552.05 **History of Policy and Procedure:**

05/16/1988: Original promulgation of policy.

05/11/2006: Conversion of policy into new policy format and text editing completed.

EXHIBIT 2

MASSACHUSETTS PAROLE BOARD	DIVISION: FIELD SERVICES
TITLE: CLASSIFICATION AND STANDARDS OF SUPERVISION	NUMBER: 120 PAR 408

Purpose: The purpose of this document is to establish the Parole Board's policy concerning the classification of parolees into levels of supervision and defining the standards of supervision for each level.

References: MGL, Chapter 27, Section 5; Chapter 127, Sections 151H (f)(8) & 158 Risk Needs Assessment, 120 PAR 112.

Applicability: Staff/Parolees

Public Access: Yes

Location: All Parole Board Policy and Procedure manuals

Responsible Staff for Implementation and Monitoring of Policy:

- Parole Board Chairman
- Parole Board Members
- Chief Field Services
- Deputy Chiefs Field Services
- Parole Supervisors
- Assistant Parole Supervisors
- Parole Officers

Promulgation Date: last revised February 2013

Effective Date: December 2018

Cancellation: This document cancels all previous agency policy statement, bulletins, directives, orders, notices, rules and procedures regarding levels of supervision and standards of contact, which are inconsistent with this policy.

Severability Clause: If any part of this policy is, for any reason, held to be in excess of the authority of the Chairman, such decision will not affect any other part of this policy.

408.01 General policy

The agency shall establish and maintain a system of responsive supervision levels and standards of supervision for each level in order to enhance public safety, to set for parole officers the requirements of supervision, and to assist parolees with successful re-entry into the community.

408.02 Definitions

Assessment: Processes that examine the criminal history and other pertinent information regarding an offender. The process includes a formal assessment instrument (either a screening or full assessment) of the risk and needs for each inmate seeking parole and for each parolee which contributes to determining the appropriate supervision level and case plan for parolees.

Case Management: A system used by parole officers to manage their caseloads effectively; to minimize recidivism or relapse, reintegrate parolees into the community, and enhance public safety. The system includes: case assignment, intake, assessment, classification, supervision and documentation.

Case Plan: A document that enhances the probability of successful re-entry by addressing the criminogenic needs of a parolee.

Classification/Reclassification: Systems that provide for the placement of parolees into different levels of supervision according to agency policy, assessment, parole adjustment and any special conditions that may apply.

Community Visit: The parole officer sees the parolee at any location other than the residence or parole office, e.g. work, counseling, etc.

Compliance Measures: Activities conducted by a parole officer to enforce parole conditions and to verify the parolee's compliance with conditions.

Graduated Sanctions: A range of sanctions and interventions that are applied using the risk level of a parolee to re-offend, the severity of the violation and other mitigating/aggravating factors to determine appropriate and effective responses to parole violations.

Home Visit: The parole officer sees the parolee at the residence, preferably unannounced.

Intake and Orientation: Parole officers will conduct an intake and orientation for each parolee upon release. This process will include an initial interview, review of all parole conditions, parolee photograph, and explanation of parolee grievance procedure, explanation of level of supervision, home visits and what is expected of the parolee during supervision. A more complete explanation is given in the Parolee Manual.

Levels of Supervision: Levels of supervision define the requirements of supervision and allocation of resources applicable to a parolee while under supervision. There are five levels of supervision: Intensive (applicable to certain Sex Offenders), Maximum (High Risk), Standard (Medium and Low Risk), Reduced (Low Risk).

Office Visit: The parole officer, assistant parole supervisor, and/or parole supervisor meet with the parolee at the parole office.

Override: The authority of a supervisor or assistant supervisor to classify a parolee to a level of supervision different from that recommended by the Risk/Needs Assessment or a graduated sanction because of aggravating or mitigating factors, or Parole Board Policy.

Reassessment: Use of the assessment process at certain intervals during a parolee's parole period to determine if there has been a change in the parolee's risk or needs that might change the level of supervision.

Risk: The potential for criminal behavior as determined by the assessment instrument.

Sanction: An action taken by the Parole Board, supervisor, assistant supervisor or parole officer in response to a parole violation(s). Sanctions are corrective responses that are designed to adjust parolee behavior and foster compliance with parole conditions.

Standards of Supervision: The quantity and frequency of visits, verifications, substance abuse tests and other supervision strategies used by a parole officer while supervising a caseload of parolees.

408.03 Time Requirements

The time and scheduling requirements for tasks of classification, reclassification, supervision, and documentation are critical components of this policy. Should a parole officer be unable to meet the requirements established within the following sections, he or she should promptly notify the immediate supervisor for the purpose of identifying a solution to the time or scheduling problem. In the event that the parole officer and supervisor cannot resolve the issue, the parole supervisor must immediately contact the Deputy Chief or Chief Parole Supervisor of Field Services for resolution.

408.04 Initial Classification

- I. Upon assignment of a parolee to his/her caseload, the field parole officer shall immediately review the case to classify the parolee's level of supervision as determined by this policy.
- II. The level of supervision shall be documented in the SPIRIT database.
- III. Upon classifying the level of supervision, the field parole officer shall supervise the parolee in accordance with the Standards of Supervision required for that level of supervision.
- IV. In accordance with the Risk/Needs Policy, the field parole officer shall complete risk/needs reassessments for all parolees under his/her supervision.

408.05 Levels of Supervision

- I. There are four levels of supervision for parolees.

- A. **Intensive** – The following parolees shall be classified to intensive supervision for at least the first 6 months after release: life sentence parolee, sex offender, medical release, mandatory release to supervision.
 - B. **Maximum** – Any parolee who has not been classified to Intensive Supervision, and who has an assessment of high risk/very high risk, shall be classified to Maximum Supervision. Parolees who have completed at least 6 months of intensive supervision shall be eligible for a reduction to Maximum Supervision provided there are no active warnings or sanctions. Life sentence parolees are not eligible for a supervision level below Maximum for at least 24 months after release. Sex Offenders are not eligible for a reduction below Maximum for at least 36 months after release.
 - C. **Standard** – A parolee with a medium risk, low risk or very low risk assessment shall be classified for Standard Supervision, unless the parolee is required to be placed on Intensive and/or Maximum supervision, as noted above.
 - D. **Reduced** – A parolee who has been on Standard Supervision for at least 6 months, in compliance with parole conditions and whose most recent assessment is low risk or very low risk, may be classified to Reduced Supervision.
- II. Each level of supervision requires a specific number of Visits and Compliance Measures as described in section 408.06.

408.06 Standards of Supervision and Compliance Measures Defined by Level

- I. The Standards of Supervision required for each level of supervision are set forth below. This information is also referenced in the Standards of Supervision Table (attachment II).
 - A. **Intensive** – Two Home Visit per month, preferably unannounced, and two additional Visits per month, with monthly Compliance Measures for the conditions noted in 408.06, III, below. The additional visits can be Home Visit(s), Office Visit(s), or Community Visit(s).
 - B. **Maximum** – One Home Visit per month, preferably unannounced, and one additional Visit per month, with monthly Compliance Measures for the conditions noted in 408.06, III, below. The second monthly Visit can be a Home Visit, Office Visit, or Community Visit.
 - C. **Standard** – One Home Visit per month, preferably unannounced, with monthly Compliance Measures for the conditions noted in 408.06, III, below.

- D. **Reduced** – One Home Visit bi-monthly, preferably unannounced, with bi-monthly Compliance Measures for the conditions noted in 408.06, III, below.

- II. The field parole officer shall supervise each parolee by conducting visits and compliance measures in accordance with the level of supervision in which the parolee is classified.

- III. The Standards of Supervision set forth the requirements for supervision. They do not restrict, and should not restrict a field parole officer, from increasing the number of Visits, Compliance Measures, and other supervision strategies where the field parole officer (or the supervisor, Deputy Chief, or Chief) deems the increase to be advisable or necessary given the circumstances of the case.

- IV. **Conditions Subject to Periodic Compliance Measures**
 - A. Home (via Home Visit)
 - B. Work, Training, and Education
 - C. Treatment and Counseling
 - D. AA/NA attendance

- V. **Acceptable Compliance Measures**
 - A. In-person contact, on-site visits, telephone, email, fax, or any other form of communication with the relevant provider or a person with knowledge of a parolee's progress/compliance with a parole condition, as approved by the Parole Supervisor.
 - B. Obtaining documents that have some indicia of reliability (e.g. pay stubs, tax forms, bank records, counseling reports, attendance sheets signed by a counselor, AA/NA attendance cards/sheets, electronic monitoring data).
 - C. The purpose of compliance measures is to (a) verify the parolee's self-reports, and (b) gather more information about the parolee's conduct, circumstances, or progress. In selecting a compliance measure, the field parole officer should select a measure reasonably designed to accomplish one or both of these objectives. The field parole officer will maintain the contacts necessary to verify and enforce the Compliance Measures.
 - D. As described in the Supervision Manual for Parolees, a parolee is responsible for providing required documentation and proof to the parole officer for the purpose of verifying compliance with parole conditions. A parolee who does not provide required documentation or proof will receive a Graduated Sanction and the situation will be investigated to determine compliance.

VI. Conditions Not Subject to Periodic Compliance Measures

Conditions that are not typically amenable to independent confirmation are not part of the periodic Compliance Measures requirement. These conditions would include, but are not limited to, association, curfew (if there is no electronic monitoring), no contact with victim, and no out-of-state travel more than 24 hours. In connection with enforcement, a parole officer will be alert to issues or possible violations associated with these conditions, and will follow-up when necessary with more specific confirmation or investigation.

- VII. In addition to completing Standards of Supervision, the field parole officer is expected to utilize additional supervision strategies to supervise his/her cases. These strategies include, but are not limited to: alcohol and drug testing; regular contacts with police departments and criminal justice agencies; electronic monitoring; curfews; surveillance; criminal record checks, and warrant checks.

408.07 Reclassification

- I. Initial classification takes place as described in section 408.04 above. Reclassification by a field parole officer takes place as described in the Risk/Needs Policy (120 PAR 112). The parole supervisor has the authority to approve, deny or modify the level of supervision within the guidelines of this policy and the Risk/Needs Policy.
- II. Reclassification requires a Case Conference between the supervising parole officer and parole supervisor or assistant parole supervisor. They shall consider the parolee's most recent assessment, compliance with conditions, overall performance on parole, and stability in the community as criteria for reclassification. The Case Conference and reclassification decision shall be recorded in SPIRIT.
- III. This section describes the eligibility for reclassification of a parolee.
 - A. A parolee who is assessed as high risk or very high risk, and who is not subject to Intensive Supervision as noted in 408.06, will be classified for Maximum Supervision and is not eligible for reclassification until reassessed.
 - B. A Maximum Supervision parolee serving a life sentence is eligible for reclassification once he or she has successfully completed 24 months of supervision and his or her most recent reassessment is medium, low or very low risk.
 - C. A Maximum Supervision sex offender is eligible for reclassification once he or she has successfully completed 36 months of supervision and his or her most recent reassessment is medium, low or very low risk.
 - D. A Maximum Supervision parolee not serving a life sentence or sex offense is eligible for reclassification if he or she has successfully completed 6

months of maximum supervision and his or her most recent reassessment is medium, low or very low risk.

- E. A parolee is eligible for reclassification to Reduced Supervision at the time he or she meets the criteria for that level and has completed at least months of supervision at the Standard level.
- IV. The field parole officer may, at any time, determine that a reclassification should be completed. The parole supervisor, assistant parole supervisor, Deputy Chief, or Chief of Field Services may, at any time determine that a reclassification should be completed or an override should occur.
- V. In the event a Parole Violation Report is submitted, the parolee's reclassification to Maximum Supervision will be automatic and immediate.

408.08 Planning and Reporting Requirements

- A. In an effort to ensure the completion of the Standards of Supervision directed by section 408.06, each new case should be reviewed by the field parole officer, and levels with appropriate standards of supervision planned and documented accordingly. In all cases, the level of supervision shall be noted in SPIRIT upon acceptance of the case.
- B. The field parole officer should periodically review the Case Notes to verify Standards of Supervision are being met for each parolee on his/her caseload. The parole supervisor shall be responsible for overseeing the levels of supervision's and standards of supervision required for all parolees within the region. This shall be accomplished via periodic Case Conferences and Case Note Audits.
- C. All visits and compliance measures completed in accordance with the requirements outlined in section 408.05 shall be documented by the field parole officer in the parolee's Case Notes in a timely manner, but not to exceed 10 calendar days.
- D. To ensure that visits and contacts provide at least the basic information necessary to maintain ongoing evaluation of parolees' status and stability in the community setting, all Visits and Compliance Measures completed shall be done so in a manner which addresses the factors outlined in section 408.06, IV, above.

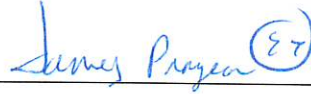
408.09 Case Management

- I. Parole supervisors, in consultation with the Deputy Chief or Chief of Field Services, shall monitor each parole officer's active caseload and overall workload. It is the agency's goal to maintain caseloads between 30 and 40 parolees, excluding parolees assigned to Intensive Supervision. The standards of supervision described herein are designed for a parole officer with 40 or fewer parolees to complete in a standard work month. The purpose of this Case Management Section is to address any need to adjust a parole officer's caseload and workload once his or caseload exceeds 40 cases.
- II. The agency will seek to allocate one region-wide Parole Officer per regional office. The Parole Supervisor may assign Intensive Supervision and/or other cases to the region-wide Parole Officer based on workload and geographic factors. Intensive Supervision cases may also be assigned district Parole Officers based on geographic and workload considerations. Intensive Supervision cases assigned to any Parole Officer shall be counted as two cases for the purpose of determining caseload. Decisions concerning Intensive Supervision caseload will be made in conjunction with the Regional Parole Supervisor and in consultation with the Chief and Deputy Chief of Field Services.
- III. If a parole officer's caseload exceeds the above parameters for three consecutive months, then the parole supervisor and assistant parole supervisor shall evaluate the parole officer's workload to determine any necessary adjustments. Supervisory staff shall pursue reasonable and appropriate solutions to assist the parole officer in meeting the Standards of Supervision. Reassigning cases to other parole officer(s) within the region or to the assistant parole supervisor, or adjusting district boundaries are permissible solutions. The Deputy Chief or Chief of Field Services will be contacted regarding the situation and, if needed, will assist the parole supervisor in reassignment of cases, adjustment of district/regional boundaries, and/or authorization of overtime as determined by funding.
- IV. If the Chief and/or Deputy Chief of Field Services determine that all of the above available measures have been exhausted without resolution of caseload issues, then they shall consult with the Executive Director and/or Chairman of the Parole Board regarding further action.

RESPECTFULLY SUBMITTED,
By their attorneys,



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VERIFICATION OF COMPLAINT AS TO ALL PLAINTIFFS

I, Eric Tennen, counsel for all plaintiffs, hereby affirm under the pains and penalties of perjury that the allegations in the Complaint that relate to all the plaintiffs are true and correct to the best of my information and belief.



11/29/21

Eric Tennen