HOUSE DOCKET, NO. 3151 FILED ON: 1/20/2017

HOUSE . . . . . No. 3121

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act related to parole.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
David M. Rogers	*24th Middlesex*	*1/20/2017*
Denise Provost	*27th Middlesex*	*1/20/2017*
Jason M. Lewis	*Fifth Middlesex*	*1/20/2017*
Ruth B. Balser	*12th Middlesex*	*1/20/2017*
James B. Eldridge	*Middlesex and Worcester*	*1/20/2017*
Mike Connolly	*26th Middlesex*	*1/20/2017*
Jack Lewis	*7th Middlesex*	*1/20/2017*
Daniel Cullinane	*12th Suffolk*	*1/20/2017*
Mary S. Keefe	*15th Worcester*	*1/20/2017*
Paul R. Heroux	*2nd Bristol*	*1/20/2017*
Kay Khan	*11th Middlesex*	*1/20/2017*
Marjorie C. Decker	*25th Middlesex*	*1/20/2017*
Patricia D. Jehlen	*Second Middlesex*	*1/20/2017*
Natalie Higgins	*4th Worcester*	*1/20/2017*
Jonathan Hecht	*29th Middlesex*	*1/20/2017*
Paul Brodeur	*32nd Middlesex*	*1/20/2017*

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HOUSE . . . . . No. 3121

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 3121) of David M. Rogers and others relative to the duties and composition of the parole board. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act related to parole.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 4 of chapter 27 of the General Laws, as it appears in the 2014 Official Edition, is hereby amended by striking out the first paragraph and replacing it with the following:-

"There shall be in the department, but not subject to its jurisdiction, a parole board, consisting of nine members, to be appointed by the governor, with the advice and consent of the council, for terms of five years. The governor may, with the advice and consent of the council, remove members from the board for cause, upon a written certification of such cause; provided that such member shall have the right to notice and the opportunity for a public hearing before the council relative to such removal.";

and by adding after the second paragraph the following new paragraph:-

"At all times, at least three members of the parole board shall have at least five years of experience in fields of psychiatry, psychology, social work, or the treatment of substance use

disorder. One of those three members must be a licensed mental health professional, as defined in G.L. c. 123, § 1. If, at any time, the parole board does not have three such members, then, until the board composition complies with this requirement, every candidate recommended for a parole board position must possess the qualifications listed above. This provision applies notwithstanding any other provision of law. “

SECTION 2. Section 130 of chapter 127 of the General Laws, as it appears in the 2014 official edition, is hereby amended by striking lines 50-69 and inserting in place thereof the following:-

“A parole permit shall be granted at a prisoner’s first date of parole eligibility and at any subsequent review hearing, unless the board determines by clear and convincing evidence that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will not live and remain at liberty without violating the law. The parole board shall make this determination using structured, actuarially-based parole guidelines and the findings of a validated risk and needs assessment tool, both of which must consider the prisoner’s participation in available work opportunities, educational opportunities and treatment programs and the prisoner’s demonstrated good behavior. The board shall also consider whether risk reduction programs, made available through collaboration with criminal justice agencies, and other aspects of the prisoner’s parole plan would minimize the probability of the prisoner re-offending once released.

For any prisoner with a disability, the parole board must consider whether provision of reasonable accommodations will enable the prisoner to live and remain at liberty without

violating the law. If a prisoner has a disability that may impair the ability of the prisoner to be successful on parole, the board shall schedule a psychological or medical examination to ascertain and evaluate the nature of the risk posed by the disability and to identify any services, supports, or programs that might mitigate the risk. The board shall consider the evaluation in making its decision.

The parole guidelines must be publicly available. The guidelines must be based on empirical data and be evidence based. The validated risk and needs assessment tool must be an actuarial tool verified by empirical data. All risk and needs assessment factors considered by the tool and the scoring method must be publicly available; a prisoner shall be entitled to review the complete assessment and findings of the tool regarding his or her risk and needs prior to the parole hearing. The board shall validate the guidelines and risk and needs assessment tool every five years to ensure they accurately reflect the risk of recidivism. The board shall also make adjustments to prevent systemic disparate impact based solely on prisoners' socio-economic characteristics. The board shall produce a public report detailing its assessment of the guidelines and the risk and needs assessment tool and adjustments made to each as a result thereof.

The record of the board's decision shall contain a summary statement of the case and include written certification that each board member voting on the issue of granting a parole permit has reviewed the entire criminal record of the applicant, as well as the number of members voting in favor of granting a parole permit and the number of members voting against granting a parole permit. Any record of decision denying parole shall also specify, in detail and not in conclusory terms, the reasons why the denial was appropriate based on the structured parole guidelines and the findings of the validated risk and needs assessment tool, and shall identify the particular tasks the applicant must complete prior to the next parole hearing in order

to gain a parole permit. Any minority or dissenting opinions shall be included in the record of decision.";

and by inserting at the end thereof the following new paragraphs:

"The board shall not revoke parole for violation of a condition of parole that is not a conviction for a new criminal offense unless it determines on the record at a final parole revocation hearing that appropriate intermediate sanctions have been utilized and have been ineffective or that the modifications of conditions of parole or the imposition of less severe sanctions is not consistent with public safety.

The board shall keep and aggregate data on grants and denials of parole and rescissions and revocations of parole. This data shall be released to the public on a quarterly basis. The data shall include, but not be limited to, the type of crime, the type of parole hearing including whether a release hearing was an initial hearing, a review hearing or a review after revocation hearing, the length of the prisoner's sentence and the amount of time served. For release hearings, the data shall include the time elapsed between a grant of parole and the date the prisoner is released on parole."

SECTION 3: Section 133A of chapter 127 of the General Laws, as it appears in the 2014 Official Edition, is hereby amended by striking out the first paragraph in its entirety and replacing it with the following:-

"Every prisoner who is serving a sentence for life in a correctional institution of the commonwealth, except prisoners serving a life sentence for murder in the first degree who had attained the age of 18 years at the time of the murder and except prisoners serving more than one life sentence arising out of separate and distinct incidents that occurred at different times, where

the second offense occurred subsequent to the first conviction, shall be eligible for parole at the expiration of the minimum term fixed by the court under section 24 of chapter 279 . The parole board shall, within 60 days before the expiration of such minimum term, conduct a public hearing before any six members appointed by the chairman to act as the parole board for purposes of granting or revocation of paroles. Notwithstanding the previous sentence, the board may postpone a hearing until 30 days before the expiration of such minimum term, if the interests of justice so require and upon publishing written findings of the necessity for such postponement. If a board member has a conflict of interest to the extent that he or she cannot render a fair and impartial decision or that the appearance of a board member would be unduly burdensome because of illness, incapacitation, or other circumstance, the chair shall appoint another member of the board to the hearing panel. Whether a member is unavailable for the purposes of this section shall be determined by the chair. Board members shall appear unless said chair determines them to be unavailable. Under no circumstances shall a parole hearing proceed pursuant to this section unless a majority of the board is present at the public hearing.";

and by striking out the third paragraph in its entirety and replacing it with the following:-

"After such hearing the parole board may, by a vote of two-thirds of the hearing panel, grant to such prisoner a parole permit to be at liberty upon such terms and conditions as it may prescribe for the unexpired term of his sentence. If such permit is not granted, the parole board shall, at least once in each ensuing five year period, consider carefully and thoroughly the merits of each such case on the question of releasing such prisoner on parole, and may, by a vote of two-thirds of the hearing panel, grant such parole permit. By request of the hearing panel, any case may be referred to the full membership of the board for further consideration."

SECTION 4: Section 136 of chapter 127 of the General Laws, as it appears in the 2014 Official Edition, is hereby amended by adding after the first paragraph the following:

Any information provided to the board shall also be made available to the prisoner or the prisoner's representative except for such portion thereof which contains information the board determines is actually necessary to keep confidential to protect the security of a criminal or civil investigation, to protect anyone from physical harm or to protect the source of any information; provided, however, that it was obtained under a promise of confidentiality.