

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 to promote equitable access to parole.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/19/2021</i>

SENATE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1390 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to promote equitable access 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:

1 SECTION 1. Section 4 of chapter 27 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by striking out the first paragraph and inserting in place
3 thereof the following paragraph:-

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

10 SECTION 2. Section 4 of said chapter 27, as so appearing, is hereby amended by
11 inserting after the second paragraph the following paragraph:-

12 "At all times, at least four members of the parole board shall have at least five years of
13 experience in fields of psychiatry, psychology, social work, or the treatment of substance use
14 disorder. One of those four members must be a licensed mental health professional, as defined in
15 G.L. c. 123, § 1. And at all times one of the nine members of the board shall be someone who is,
16 or has been, directly impacted by incarceration or parole. If, at any time, the parole board does
17 not have above designated five members, then, until the board composition complies with this
18 requirement, every candidate recommended for a parole board position must possess at least one
19 of the qualifications listed above. This provision applies notwithstanding any other provision of
20 law.”

21 SECTION 3: Section 133A of chapter 127 of the General Laws, as appearing in the 2016
22 Official Edition, is hereby amended by striking out the first paragraph in its entirety and
23 replacing it with the following paragraph:

24 "Every prisoner who is serving a sentence for life in a correctional institution of the
25 Commonwealth, except prisoners serving a life sentence for murder in the first degree who had
26 attained the age of 18 years at the time of the murder and except prisoners serving more than one
27 life sentence arising out of separate and distinct incidents that occurred at different times, where
28 the second offense occurred subsequent to the first conviction, shall be eligible for parole at the
29 expiration of the minimum term fixed by the court under section 24 of chapter 279. The parole
30 board shall, for every person who is eligible for parole, conduct a public hearing no later than 90
31 days before the person's parole eligibility date. The hearing shall be before a panel of at least six
32 members of the board for purposes of granting parole. The Board shall issue its record of
33 decision no later than 30 days before the parole eligibility date. If a board member has a conflict
34 of interest to the extent that he or she cannot render a fair and impartial decision or that the

35 appearance of a board member would be unduly burdensome because of illness, incapacitation,
36 or other circumstance, the chair shall appoint another member of the board to the hearing panel.
37 Whether a member is unavailable for the purposes of this section shall be determined by the
38 chair. Board members shall appear unless said chair determines them to be unavailable. Under no
39 circumstances shall a parole hearing proceed pursuant to this section unless at least five members
40 are present at the public hearing, with the sixth member voting after watching a recording of the
41 hearing."

42

43 SECTION 4. Section 133A of chapter 127 of the General Laws, as so appearing, is
44 hereby further amended by striking out the third paragraph and inserting in place thereof the
45 following paragraph:-

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

53

54 SECTION 5: Section 136 of chapter 127 of the General Laws, as appearing in the 2016
55 Official Edition, is hereby amended by adding after the first paragraph the following:-

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

61 SECTION 6. Section 130 of chapter 127 of the General Laws, as amended by St. 2018, c.
62 72, § 6, eff. Jan. 13, 2019, is hereby struck and replaced with the following paragraphs:-

63 All parole release hearings shall be recorded and the recordings shall be available to
64 parole applicants and their attorneys as requested. All recordings of parole hearings for people
65 serving life sentences shall be public records. Representation of parole applicants by attorneys or
66 law students under attorney supervision shall be permitted.

67 Unless the board determines by clear and convincing evidence that, if the prisoner is
68 released with appropriate conditions and community supervision, the prisoner will not live and
69 remain at liberty without violating the law, a parole permit shall be granted at a prisoner's first
70 date of parole eligibility and at any subsequent review hearing.

71 The board shall consider the prisoner's participation in available work opportunities,
72 educational opportunities and treatment programs and the prisoner's demonstrated good
73 behavior. The board shall also consider whether risk reduction programs, made available through
74 collaboration with criminal justice agencies or with the Department of Mental Health,
75 Department of Developmental Disabilities or Department of Public Health, and other aspects of
76 the prisoner's parole plan would minimize the probability of the prisoner reoffending once
77 released. During any periods of state or public health or other emergency that impact the

78 operations of the prison system, the parole board shall consider any public health or public
79 interest in granting parole, and shall consider the impact of continued incarceration on the
80 incarcerated person's own health and safety.

81 The record of the board's decision shall contain a summary statement of the evidence
82 presented at the hearing and shall include specific reasons for the decision that are particular to
83 that parole applicant, including written certification that each board member voting on the issue
84 of granting a parole permit has reviewed the entire criminal record of the applicant, as well as the
85 number of members voting in favor of granting a parole permit and the number of members
86 voting against granting a parole permit. Minority or dissenting votes shall be accompanied by a
87 statement of reasons for that vote written by that board member. Any record of decision denying
88 parole shall specify, in detail and not in conclusory terms, the reasons for the denial, all evidence
89 relied upon, and the particular tasks that the applicant must complete prior to the next hearing in
90 order to gain a parole permit. Any minority or dissenting opinions shall be included in the record
91 of decision. Said record of decision shall become a public record and shall be available to the
92 public except for such portion thereof which contains information upon which said decision was
93 made which said information the board determines is actually necessary to keep confidential to
94 protect the security of a criminal or civil investigation, to protect anyone from physical harm or
95 to protect the source of any information; provided, however, that it was obtained under a promise
96 of confidentiality. All such confidential information shall be segregated from the record of
97 decision and shall not be available to the public. Said confidential information may remain secret
98 only as long as publication may defeat the lawful purposes of this section for confidentiality
99 hereunder, but no longer.

100 For any prisoner with a disability, the parole board must consider whether provision of
101 reasonable accommodations will enable the prisoner to live and remain at liberty without
102 violating the law. If a prisoner has a disability that may impair the ability of the prisoner to be
103 successful on parole, the board shall refer the case to the Committee for Public Counsel Services
104 for the appointment of counsel and ascertainment of psychological or medical examination to
105 identify and evaluate the nature of the risk posed by the disability and to identify any services,
106 supports, or programs that might mitigate the risk. The board shall consider the evaluation in
107 making its decision.

108 Upon issuance of a grant of parole to anyone who needs specialized care due to bodily
109 infirmity or disease and who is unable to secure a home plan, the parole board shall notify the
110 Commissioner of the Department of Public Health who shall secure a medically appropriate
111 placement for such prisoner within 60 days. No individual who has been granted parole shall
112 remain incarcerated for failure to secure an appropriate home plan.

113 Any and all parole guidelines, policies and practices must be publicly available. The
114 board shall also make adjustments in its guidelines, policies and practices to prevent systemic
115 disparate impact based solely on prisoners' race, ethnicity, sexual orientation, gender identity, or
116 socio-economic characteristics. The board shall produce a public report detailing its assessment
117 of the guidelines, policies and practices adjustments made to each as a result thereof.

118 A prisoner to whom a parole permit is granted shall be allowed to go upon parole outside
119 prison walls and inclosure upon such terms and conditions as the parole board shall prescribe,
120 but shall remain, while thus on parole, subject to the jurisdiction of such board until the
121 expiration of the term of imprisonment to which he has been sentenced or until the date which

122 has been determined by deductions from the maximum term of his sentence or sentences for
123 good conduct and any further deductions for compliance credits granted pursuant to section
124 130C, provided that such combined deductions shall not exceed 35 per cent of the term of
125 imprisonment to which the prisoner has been sentenced, or until such earlier date as the board
126 shall determine that it is in the public interest for such prisoner to be granted a certificate of
127 termination of sentence. Once a person has lived on parole for three years without violating the
128 law, upon application, the Board shall terminate their parole pursuant to MGL c. 127, sec 130A
129 unless there is clear and convincing evidence that it is in the public interest for parole to
130 continue.

131 In every case, such terms and conditions shall include payment of any child support due
132 under a support order, as defined in section 1A of chapter 119A, including payment toward any
133 arrearage of support that accrues or has accrued or compliance with any payment plan between
134 the prisoner and the IV-D agency as set forth in chapter 119A, provided, however, that the board
135 shall not revise, alter, amend or revoke any term or condition related to payment of child support
136 unless the parole permit itself is revoked. If the terms and conditions prescribed by the board
137 include residence in alcohol and drug free housing, the board shall refer and require that the
138 prisoner to whom the permit is granted reside in alcohol and drug free housing that is certified
139 under section 18A of chapter 17 in order to satisfy those terms and conditions. In no event shall
140 conditions prescribed by the board include a ban on association with other persons who have
141 been convicted of a felony or misdemeanor offense, or other persons under supervision of
142 probation or parole, unless there is a particularized and individualized reason for such condition.

143 The board shall not issue a warrant for the detention of persons on parole who are
144 charged with a non-criminal violation of their parole. Such persons shall await their initial and
145 final parole revocation hearings in the community.

146 The board shall not revoke parole for violation of a condition of parole that does not
147 result in a new conviction unless it determines on the record at a final parole revocation hearing
148 that: (1) modification of parole conditions would be inconsistent with the public interest, (2)
149 appropriate intermediate sanctions have been utilized and have been ineffective and (3)
150 revocation is consistent with the public interest, public health and public safety. The board shall
151 not revoke parole for violation of a condition of parole where the violation stems from substance
152 use disorder relapse or where reasonable accommodation for a disability would enable the
153 prisoner to live and remain at liberty without violating the law.

154 The board shall keep and aggregate data on grants and denials of parole and rescissions
155 and revocations of parole. This data shall be released to the public on a quarterly basis. The data
156 shall include, but not be limited to, race, ethnicity, gender, voluntarily disclosed sexual
157 orientation, disability, the type of crime, the type of parole hearing including whether a release
158 hearing was an initial hearing, a review hearing or a review after revocation hearing, the length
159 of the prisoner's sentence and the amount of time served. For release hearings, the data shall
160 include the time elapsed between a grant of parole and the date the prisoner is released on parole.

161 Section 7 - Section 158 of chapter 127 of the General Laws as appearing in the 2016
162 Official Edition, is hereby amended by adding after the word “employment” in the first
163 paragraph the following:”housing, mental health services, medical care, and treatment for

164 substance use disorders, or any other services necessary for them to live successfully in the
165 community”