

HOUSE No. 2398

The Commonwealth of Massachusetts

PRESENTED BY:

Lindsay N. Sabadosa

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:	DATE ADDED:
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/19/2023</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/25/2023</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>2/22/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>2/25/2023</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>3/2/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>3/16/2023</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>3/28/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>4/1/2023</i>
<i>Estela A. Reyes</i>	<i>4th Essex</i>	<i>10/31/2023</i>
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>11/21/2023</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>11/21/2023</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/23/2024</i>

HOUSE No. 2398

By Representative Sabadosa of Northampton, a petition (accompanied by bill, House, No. 2398) of Lindsay N. Sabadosa and others relative to access to parole. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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 a formerly
16 incarcerated individual who has completed the parole process three or more years prior and who
17 has a background in at least one of the following areas: psychology, mental health and/or
18 substance use, transitional housing, re-entry after incarceration, public safety, or law. If, at any
19 time, the parole board does not have the above designated five members, then, until the board
20 composition complies with this requirement, every candidate recommended for a parole board
21 position must possess at least one of the qualifications listed above. All members of the Parole
22 Board, parole officers, and transitional service unit employees shall undergo annual cultural
23 competency and implicit bias training, and structural racism education. This provision applies
24 notwithstanding any other provision of law."

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

28 "Every prisoner who is serving a sentence for life in a correctional institution of the
29 Commonwealth, except prisoners serving a life sentence for murder in the first degree who had
30 attained the age of 18 years at the time of the murder and except prisoners serving more than one
31 life sentence arising out of separate and distinct incidents that occurred at different times, where
32 the second offense occurred subsequent to the first conviction, shall be eligible for parole at the
33 expiration of the minimum term fixed by the court under section 24 of chapter 279. The parole
34 board shall, for every person who is eligible for parole, conduct a public hearing no later than 90

35 days before the person's parole eligibility date. The hearing shall be before a panel of at least six
36 members of the board for purposes of granting parole. The Board shall issue its record of
37 decision no later than 30 days before the parole eligibility date for initial parole hearings, and for
38 review hearings, within 60 days of the hearing. If a board member has a conflict of interest to the
39 extent that he or she cannot render a fair and impartial decision or that the appearance of a board
40 member would be unduly burdensome because of illness, incapacitation, or other circumstance,
41 the chair shall appoint another member of the board to the hearing panel. Whether a member is
42 unavailable for the purposes of this section shall be determined by the chair. Board members
43 shall appear unless said chair determines them to be unavailable. Under no circumstances shall a
44 parole hearing proceed pursuant to this section unless at least five members are present at the
45 public hearing, with the sixth member voting after watching a recording of the hearing."

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

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

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

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

63 SECTION 6. Section 130 of chapter 127 of the General Laws, as amended by St. 2018, c.
64 72, § 6, eff. Jan. 13, 2019, is hereby struck and replaced with the following paragraphs:-

65 All parole release and revocation hearings shall be recorded and securely stored, and the
66 recordings shall be available to parole applicants, the victim/survivor, and their respective
67 counsel promptly upon request. All recordings of parole hearings for people serving life
68 sentences shall be public records. Representation of parole applicants by attorneys or law
69 students under attorney supervision shall be permitted.

70 A parole permit shall be granted unless the board determines by clear and convincing
71 evidence that, even if released with appropriate conditions and community supervision, the
72 prisoner will not live and remain at liberty without violating the law. Assessment as low risk on a
73 recent validated risk assessment tool, completion of institutional program plans, or placement in
74 a minimum security or prerelease setting shall indicate readiness for parole release.

75 The board shall consider the prisoner's participation in available work opportunities,
76 educational opportunities and treatment programs and the prisoner's demonstrated good
77 behavior. The board shall also consider whether community-based risk reduction programs,

78 made available through collaboration with criminal justice agencies or with the Department of
79 Mental Health, Department of Developmental Disabilities or Department of Public Health, and
80 other aspects of the prisoner's parole plan would minimize the probability of the prisoner
81 reoffending once released. During any periods of state or public health or other emergency that
82 impact the operations of the prison system, the parole board shall consider any public health or
83 public interest in granting parole and shall consider the impact of continued incarceration on the
84 incarcerated person's own health and safety.

85 The Board shall not consider evidence of conduct, either criminal, juvenile, or
86 institutional, that was dismissed, not charged, or resulted in a disposition other than a guilty
87 finding.

88 The record of the board's decision shall contain a summary statement of the evidence
89 presented at the hearing and shall include specific reasons for the decision that are particular to
90 that parole applicant, including written certification that each board member voting on the issue
91 of granting a parole permit has reviewed the entire criminal record of the applicant, as well as the
92 number of members voting in favor of granting a parole permit and the number of members
93 voting against granting a parole permit. Minority or dissenting votes shall be accompanied by a
94 statement of reasons for that vote written by that board member. Any record of decision denying
95 parole shall specify, in detail and not in conclusory terms, the reasons for the denial, all evidence
96 relied upon, and the particular tasks that the applicant must complete prior to the next hearing in
97 order to gain a parole permit. Any minority or dissenting opinions shall be included in the record
98 of decision. Said record of decision shall become a public record and shall be available to the
99 public except for such portion thereof which contains information upon which said decision was
100 made which said information the board determines is actually necessary to keep confidential to

101 protect the security of a criminal or civil investigation, to protect anyone from physical harm or
102 to protect the source of any information; provided, however, that it was obtained under a promise
103 of confidentiality. All such confidential information shall be segregated from the record of
104 decision and shall not be available to the public. Said confidential information may remain secret
105 only as long as publication may defeat the lawful purposes of this section for confidentiality
106 hereunder, but no longer.

107 For any prisoner with a disability, the parole board must consider whether provision of
108 reasonable accommodations will enable the prisoner to live and remain at liberty without
109 violating the law. Prisoners with disabilities that may impact the likelihood of parole release
110 shall have a right to appointed counsel and shall have the right to expert funds pursuant to
111 chapter 261. The board shall evaluate disability utilizing a qualified screening tool at minimum
112 three times prior to anticipated parole hearing date, including upon incarceration or
113 reincarceration.

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

119 Any and all parole guidelines, policies and practices must be publicly available. The
120 board shall also make adjustments in its guidelines, policies and practices to prevent systemic
121 disparate impact based solely on prisoners' race, ethnicity, sexual orientation, gender identity, or

122 socio-economic characteristics. The board shall produce a public report detailing its assessment
123 of the guidelines, policies and practices adjustments made to each as a result thereof.

124 A prisoner to whom a parole permit is granted shall be allowed to go upon parole outside
125 prison walls and enclosure upon such terms and conditions as the parole board shall prescribe,
126 but shall remain, while thus on parole, subject to the jurisdiction of such board until the
127 expiration of the term of imprisonment to which he has been sentenced or until the date which
128 has been determined by deductions from the maximum term of his sentence or sentences for
129 good conduct and any further deductions for compliance credits granted pursuant to section
130 130C, provided that such combined deductions shall not exceed 35 per cent of the term of
131 imprisonment to which the prisoner has been sentenced, or until such earlier date as the board
132 shall determine that it is in the public interest for such prisoner to be granted a certificate of
133 termination of sentence. Once a person has lived on parole for three years without violating the
134 law, upon application, the Board shall terminate their parole pursuant to MGL c. 127, sec 130A
135 unless there is clear and convincing evidence that it is in the public interest for parole to
136 continue.

137 Each condition of parole imposed by the parole board shall be reasonably related to the
138 crime of conviction of the person placed on parole and no more restrictive than necessary to
139 assure the parolee can live safely in the community. For each condition imposed, the parole
140 board shall state the reasonable relation the condition has to the person's crime of conviction and
141 why no less restrictive conditions would assure the parolee's safety in the community.

142 No person placed on parole shall be prohibited from associating with another person or
143 group of people, except that the parole board may impose a condition prohibiting association

144 with a specific, named person or persons if the prohibition on association is reasonably related to
145 the crime of conviction.

146 No person placed on parole shall be prohibited from using or possessing alcohol or drugs,
147 or subject to testing for alcohol or drug use, unless the use or possession of alcohol or drugs is
148 reasonably related to the crime of conviction.

149 If the parole board requires as a condition of parole that the person reside in alcohol and
150 drug free housing within the commonwealth, the parole board shall require the parole officer to
151 refer the defendant only to alcohol and drug free housing certified under section 18A of chapter
152 17 and the parole officer shall require the defendant to reside in such certified housing in order to
153 satisfy such condition. If accredited alcohol and drug free housing is not available, the parole
154 board shall permit the parole officer to refer the person placed on supervised probation to alcohol
155 and substance free housing that is available and that appropriately supports the recovery goals of
156 the person. If the parole board imposes as a condition of parole that the person reside in alcohol
157 and drug free housing in another state, the parole board may permit the parole officer to refer the
158 person to alcohol and drug free housing that, in the parole board's discretion, appropriately
159 supports the recovery goals of the person.

160 If the parole board requires as a condition of parole that the person enroll in any program,
161 including but not limited to treatment for substance use or an educational program, the parole
162 board shall ensure that such program is available in the county in which the person will reside.
163 The parole board shall require the parole officer to provide support to the person to assist with
164 identifying appropriate programs, applying or enrolling, and other positive supports. A good

165 faith effort to enroll in programs shall not be grounds for a violation notice to issue and shall be a
166 defense to an alleged violation of any parole condition involving program enrollment.

167 No person placed on parole shall be found to have violated a condition of parole solely on
168 the basis of possession or use of a controlled substance that is legal or has been lawfully
169 dispensed pursuant to a valid prescription to that person by a health professional registered to
170 prescribe a controlled substance pursuant to chapter 94C and acting within the lawful scope of
171 the health professional's practice.

172 No person placed on parole shall have a parole permit revoked solely for violating a
173 condition of parole that does not result in a new conviction.

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

181 Section 7 - Section 158 of chapter 127 of the General Laws as appearing in the 2016
182 Official Edition, is hereby amended by adding after the word "employment" in the first
183 paragraph the following: "housing, mental health services, medical care, and treatment for
184 substance use disorders, or any other services necessary for them to live successfully in the
185 community"