## **SENATE . . . . . . . . . . . . . . . . No. 1544**

#### The Commonwealth of Massachusetts

PRESENTED BY:

Liz Miranda

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:	
Liz Miranda	Second Suffolk	
Mike Connolly	26th Middlesex	12/6/2023

### **SENATE . . . . . . . . . . . . . . . No. 1544**

By Ms. Miranda, a petition (accompanied by bill, Senate, No. 1544) of Liz Miranda for legislation to promote equitable access to parole. Public Safety and Homeland Security.

# [SIMILAR MATTER FILED IN PREVIOUS SESSION SEE SENATE, NO. 1560 OF 2021-2022.]

#### 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:

- SECTION 1. Section 4 of chapter 27 of the General Laws, as appearing in the 2020
- 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."

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

"At all times, at least four 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 four members must be a licensed mental health professional, as defined in G.L. c. 123, § 1. And at all times one of the nine members of the board shall be a formerly incarcerated individual who has completed the parole process three or more years prior and who has a background in at least one of the following areas: psychology, mental health and/or substance use, transitional housing, re-entry after incarceration, public safety, or law. If, at any time, the parole board does not have the above designated five members, then, until the board composition complies with this requirement, every candidate recommended for a parole board position must possess at least one of the qualifications listed above. All members of the Parole Board, parole officers, and transitional service unit employees shall undergo annual cultural competency and implicit bias training, and structural racism education. This provision applies notwithstanding any other provision of law."

SECTION 3: Section 133A of chapter 127 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out the first paragraph in its entirety and replacing it with the following paragraph:

"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, for every person who is eligible for parole, conduct a public hearing no later than 90 days before the person's parole eligibility date. The hearing shall be before a panel of at least six members of the board for purposes of granting parole. The Board shall issue its record of decision no later than 30 days before the parole eligibility date for initial parole hearings, and for review hearings, within 60 days of the hearing. 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 at least five members are present at the public hearing, with the sixth member voting after watching a recording of the hearing."

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

"After such hearing the parole board may, by a vote of a majority 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 three 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 the majority 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 5: Section 136 of chapter 127 of the General Laws, as appearing in the 2020 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."

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

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

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

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

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

The record of the board's decision shall contain a summary statement of the evidence presented at the hearing and shall include specific reasons for the decision that are particular to that parole applicant, including 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. Minority or dissenting votes shall be accompanied by a statement of reasons for that vote written by that board member. Any record of decision denying parole shall specify, in detail and not in conclusory terms, the reasons for the denial, all evidence relied upon, and the particular tasks that the applicant must complete prior to the next hearing in order to gain a parole permit. Any minority or dissenting opinions shall be included in the record

of decision. Said record of decision shall become a public record and shall be available to the public except for such portion thereof which contains information upon which said decision was made which said 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. All such confidential information shall be segregated from the record of decision and shall not be available to the public. Said confidential information may remain secret only as long as publication may defeat the lawful purposes of this section for confidentiality hereunder, but no longer.

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. Prisoners with disabilities that may impact the likelihood of parole release shall have a right to appointed counsel and shall have the right to expert funds pursuant to chapter 261. The board shall evaluate disability utilizing a qualified screening tool at minimum three times prior to anticipated parole hearing date, including upon incarceration or reincarceration.

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

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

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

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

No person placed on parole shall be prohibited from associating with another person or group of people, except that the parole board may impose a condition prohibiting association with a specific, named person or persons if the prohibition on association is reasonably related to the crime of conviction.

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

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

If the parole board requires as a condition of parole that the person enroll in any program, including but not limited to treatment for substance use or an educational program, the parole board shall ensure that such program is available in the county in which the person will reside.

The parole board shall require the parole officer to provide support to the person to assist with

identifying appropriate programs, applying or enrolling, and other positive supports. A good faith effort to enroll in programs shall not be grounds for a violation notice to issue and shall be a defense to an alleged violation of any parole condition involving program enrollment.

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

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

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, race, ethnicity, gender, voluntarily disclosed sexual orientation, disability, 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 7 - Section 158 of chapter 127 of the General Laws as appearing in the 2020 Official Edition, is hereby amended by adding after the word "employment" in the first paragraph the following: "housing, mental health services, medical care, and treatment for substance use disorders, or any other services necessary for them to live successfully in the community".