

**Special Commission on Structural Racism in
the Massachusetts Parole Process**

Final Report

December 2021

Commission Membership

*Representative Andy X. Vargas, Co-Chair, Vice-Chair of the Joint Committee on Economic Development and Emerging Technologies

*Senator James B. Eldridge, Co-Chair, Chair of the Joint Committee on the Judiciary

*Representative Kip Diggs, 2nd Barnstable District

*Representative Paul Schmid, Vice Chair of the Joint Committee on Cannabis Policy

*Senator Adam Gomez, Chair of the Joint Committee on Children, Families and Persons with Disabilities

*Ronald Corbett, Appointed by Governor Charles D. Baker Jr.

†Colette Santa, Member, Massachusetts Parole Board

*Patty Garin, Designee, American Civil Liberties Union of Massachusetts, Inc.

*Maurice Powe, Designee, National Association for the Advancement of Colored People New England Area Conference

*Carl Miranda, Designee, Roca, Inc.

*Marwa Sayed, Designee, replaced by Luke Benson, Massachusetts Coalition for the Homeless, Inc.

*Francisco “Tito” Santos-Silva, Designee, UTEC, Inc.

*Kristyn J.E. Henry, Designee, Prisoners’ Legal Services

* Agrees with the final report

† Special circumstances: Commissioner Santa refrained from voting due to active status as a Parole Board Member

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I. Statement from the Chairs

The Commission on structural racism in the parole process was established as part of “An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth” better known as the Police Reform Act (Chapter 253 of the Acts of 2020), enacted by the Massachusetts Legislature and signed by the Governor in December of 2020. This historic law was the product of a pivotal moment in modern American history after the murder of George Floyd, an unarmed Black man killed by a police officer in Minneapolis, Minnesota. Arrested for using a counterfeit \$20 bill, a Minneapolis police officer knelt on the neck of an unarmed George Floyd for more than 9 minutes, resulting in his death. The murder spurred a nationwide movement for policy reform and accountability surrounding law enforcement and the criminal justice system. The movement called legislators to examine existing laws and policies that perpetuate the racial inequality that exists within all areas of our society, most acutely in the criminal justice system. Massachusetts passed the Police Reform Act in 2020 to ensure accountability in the criminal justice system, and secure equitable treatment and protection for all citizens in the state. This Commission, established as one of many to examine different facets of the criminal justice system, serves to examine structural racism in the parole process.

We have been honored to serve as the Chairs of this Commission, and want to thank the commission members for their service, the public for their participation and input, and the presenters for their engagement and expertise. We are also grateful for our respective staff, Mallory Strain and Michael Carr – this report and process would not have been possible without their steadfast work.

Sincerely,



Andy X. Vargas, Co-Chair
State Representative
Third Essex District



James B. Eldridge, Co-Chair
State Senator
Middlesex and Worcester District

II. Charge of the Special Commission

Section 111 of Chapter 253 of the Acts of 2020

(a) There shall be established, pursuant to section 2A of chapter 4 of the General Laws, a special legislative commission on structural racism in the parole process. The commission shall make an investigation and study into disparate treatment of persons of color in the parole process and determine the role of structural racism in those disparities.

(b) The special legislative commission shall consist of 13 members: 3 of whom shall be members of the house of representatives to be appointed by the speaker of the house, 1 of whom shall be a member of the Massachusetts Black and Latino Legislative Caucus and 1 of whom shall be a member of the Massachusetts House Asian Caucus; 2 of whom shall be members of the senate to be appointed by the senate president; 2 of whom shall be appointed by the governor, 1 of whom shall be a member of the parole board; 1 of whom shall be the executive director of the American Civil Liberties Union of Massachusetts, Inc. or a designee; 1 of whom shall be the president of the National Association for the Advancement of Colored People New England Area Conference or a designee; 1 of whom shall be the executive director of Roca, Inc. or a designee; 1 of whom shall be the executive director of the Massachusetts Coalition for the Homeless, Inc. or a designee; 1 of whom shall be the chief executive officer of UTEC, Inc. or a designee; and 1 of whom shall be the executive director of Prisoners' Legal Services or a designee.

(c) The special commission shall conduct a thorough review of the parole process to determine if there are disparities in the treatment of persons of color in the granting or denying of parole and if structural racism is a cause of those disparities. The special commission shall also conduct a thorough review of any disparities in conditions of release placed on persons of color and if structural racism is a cause of those disparities. The special commission shall make recommendations to eliminate any disparities in the treatment of persons of color found in the parole process including policy or legislative changes.

(d) The special commission shall submit its report and recommendations, together with drafts of legislation to carry its recommendations into effect, by filing the same with the clerks of the house of representatives and the senate not later than September 30, 2021.

Section 20A of Chapter 76 of the Acts of 2021

Notwithstanding any general or special law to the contrary, the special legislative commission established in section 111 of chapter 253 of the acts of 2020 is hereby revived and continued to December 31, 2021. The special legislative commission shall file its report pursuant to subsection (d) of said section 111 of said chapter 253 with the clerks of the house of representatives and the senate not later than December 31, 2021.

III. Defining Structural Racism

“A system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity. It identifies dimensions of our history and culture that have allowed privileges associated with “whiteness” and disadvantages associated with “color” to endure and adapt over time. Structural racism is not something that a few people or institutions choose to practice. Instead it has been a feature of the social, economic and political systems in which we all exist.” - The Aspen Institute¹

IV. Introduction

To inform its deliberations, the Commission on structural racism in the parole process, “the Commission”, conducted eleven public hearings over the course of five months. The Commission examined the operation of parole in Massachusetts and racial disparities in outcomes, and how structural racism may create those disparities. The Commission heard presentations from the Massachusetts Parole Board, the Executive Office of Public Safety and Security, Columbia University’s Justice Lab, the Massachusetts Department of Correction, Houses of Correction, and the Massachusetts branch of the American Civil Liberties Union. The Commission also accepted public testimony and heard testimony from the Governor’s Council. The Commission was intentional about hearing testimony from those with lived experience – particularly individuals that have completed or are currently under parole supervision. The Commission examined how the parole board decides who is granted parole, how hearings are conducted, and which variables are considered when parole decisions are made. The Commission was granted an extension moving the original September 30, 2021 deadline to

¹<https://www.aspeninstitute.org/wp-content/uploads/files/content/docs/rcc/RCC-Structural-Racism-Glossary.pdf>

December 31, 2021 via the Fiscal Year 2022 Supplemental Budget. It is important to note that this Commission's report is not an examination of prejudiced individuals, but rather a study of policies, procedures, and structures within the parole process that may reinforce racially disparate outcomes.

The Commission identified five areas of focus that warrant recommendations: addressing financial barriers, reform to conditions of parole, diversifying organizational culture, increasing transparency, and improving protocols and processes. The Commission also designated a section in this report to areas that require further examination. Given the specific scope of this commission and in some cases limited data, the section on further examination seeks to highlight important areas that merit future research. Processes and protocols were cited as a concern particularly when the Commission discovered that many incarcerated individuals eligible for parole opt to waive their hearing and remain in prison. In 2020, 6,470 incarcerated individuals were eligible to seek parole. Of those, 3,625 individuals appeared before the parole board (56%). Moreover 44% of parole eligible individuals did not appear before the parole board. 1,257 individuals eligible for parole (about 19% of total parole-eligible individuals) waived their hearing, 48% of whom waived their hearing because they said they would prefer to “wrap up [their] sentence” and 30% of which were “not interested in parole.” Commissioners discussed concerns that 97% of parole board hearings are not recorded and legal representation is prohibited, prompting recommendations regarding transparency. Financial obstacles and the fines and fees associated with parole are also addressed, as well as concerns about the areas of behavioral health and substance use. Parole conditions are also addressed. The Commission found that there is limited data available on parole, ultimately constraining its abilities to fully examine structural racism in the parole process, therefore the Commission dedicated a section of this report recommending improvements in data collection across the Commonwealth's criminal justice system.

In its deliberations, the Commission found that people of color are over-represented and disproportionately affected by the criminal justice system in the Commonwealth. The Chairs acknowledge that many factors beyond the scope of the parole process affect an incarcerated individual's ability to be granted parole, including their initial sentencing, participation in DOC programming, and the facilities that they serve time in. The Chairs want to acknowledge the

progress that the Parole Board has made to address racial disparities, including implementing Fair and Impartial Policing training and providing funding for transitional housing and other services crucial to reducing recidivism. The Commission found that continued improvements to the parole process are warranted and necessary to improve outcomes for those disproportionately affected by the criminal justice system in the Commonwealth.

V. Summary of the Parole Board and the Parole Process in Massachusetts

Parole is the process by which incarcerated individuals are released from prison prior to the expiration of their sentences, permitting them to serve the remainder of their sentences in the community under the supervision of the Parole Board in compliance with general, and sometimes specified, conditions. In Massachusetts, a person convicted of a crime may receive a sentence with the possibility of parole, or without the possibility of parole. If a person receives a sentence with a possibility of parole, they are given a parole eligibility date at the time of their sentencing. A person's parole eligibility date is the date that they become eligible to be released into supervision (paroled) if they receive a positive parole vote. This means that should the Parole Board grant the incarcerated individual a positive parole vote, they can be released on or after their parole eligibility date. The parole eligibility date for an incarcerated individual in state prisons (DOC) is determined by statute.² Parole eligibility dates for individuals in Houses of Correction (county correctional facilities) are determined by regulation.³ The parole eligibility date differs for those serving sentences in Houses of Correction, those serving state prison (DOC) non-life sentences, and for those serving life sentences.

Prior to a person reaching their parole eligibility date, members of the Parole Board, at parole release hearings, decide if and when that person will be released to the community on parole. The goal of parole is to equitably promote the successful re-entry of incarcerated individuals into the community by providing them the resources and guidance needed to lead healthy and productive lives.

A. The Structure of the Massachusetts Parole Board and the Standard for Parole

The Massachusetts Parole Board is an agency within the Executive Office of Public Safety and Security (EOPSS). The Board has seven members who are nominated by the governor to

² M.G.L. c. 127, §§ 129C through D; M.G.L. c. 279, § 24; M.G.L. c. 265, § 2(c); M.G.L. c. 279, § 24; M.G.L. c. 265, § 2(b).

³ 120 CMR.

five-year terms. The governor is statutorily required to nominate candidates who are “graduates of an accredited four-year college or university [who] have had at least five years of training and experience in one or more of the following fields: parole, probation, corrections, law, law enforcement, psychology, psychiatry, sociology and social work.”⁴ After the governor makes a nomination, a public hearing is held on the nomination, after which the final appointment must be approved by a majority of the eight elected officials and the lieutenant governor who comprise the Governor’s Council.

The Parole Board is statutorily directed to grant a parole permit when:

The board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society. In making this determination, the parole board shall consider whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs and demonstrated good behavior. The board shall also consider whether risk reduction programs, made available through collaboration with criminal justice agencies, would minimize the probability of the prisoner re-offending once released.⁵

The Parole Board makes the decision on whether to grant or deny parole. A positive parole vote or an approval means that the incarcerated individual may be released on parole, contingent on them meeting conditions and requirements the Parole Board may set for them. When parole is denied, the individual is not granted parole. The denied individual may appeal that decision⁶ which is carried out in “review” hearings⁷ conducted by the Parole Board.

⁴M.G.L ch. 27, § 4. The statute also sets out a nomination procedure whereby a committee of nine people from different agencies and stakeholder groups choose six nominees from specific fields for each vacancy on the Board.

⁵ M.G.L ch. 127, § 130.

⁶120 CMR 304.02.

⁷A “review hearing” is scheduled if the incarcerated person is denied parole at his or her initial parole release hearing or a later review hearing. A “set back” is the period of time the person must serve before that next scheduled parole hearing. For incarcerated persons serving life sentences with parole eligibility, the Parole Board may give the person up to a five-year set back. See M.G.L ch. 127, § 133A. For persons serving non-life sentences, who are not sentenced as “habitual criminals” or civilly committed as “sexually dangerous persons,” the Parole Board may give the person up to a one-year set back. See 120 CMR 301.01(2). In cases involving persons sentenced as “habitual

The Parole Board also makes decisions on the following: whether to reserve⁸ parole; whether to detain a person on parole who is accused of violating a condition of parole; whether to revoke parole upon proof of a parole violation; and whether to terminate parole early, in advance of the expiration of the sentence.

The members of the Parole Board also sit as the Advisory Board of Pardons and, in that role, they decide on Petitions for Commutation and Pardons.⁹ Board members also promulgate the agency's regulations, policies, and procedures.¹⁰

B. Sentencing and Parole Eligibility

State prison sentences imposed for crimes committed after June 30, 1994 have a minimum and maximum sentence imposed, unless it is a natural life sentence. Parole eligibility is set at the minimum term of the sentence (which is determined at the discretion of the sentencing judge), unless it is a crime for which there is a mandatory minimum sentence. The parole eligibility date is subject to reduction by “earned good time.” This means that incarcerated people may reduce the maximum and minimum term of the sentence through voluntary participation in certain authorized activities (educational, rehabilitation and work programs). Earned good time deductions do not reduce mandatory terms of incarceration.

Parole eligibility for persons serving sentences to a house of correction is governed by Parole Board regulations. The regulations provide that an individual serving a total aggregate sentence of imprisonment of 60 days or more to a house of correction is eligible for parole after serving one-half of the total sentence of imprisonment, or after two years, whichever period is less.

C. Parole Hearings

criminals” a parole review hearing occurs two years after the initial parole release hearing and every two years thereafter. See M.G.L ch. 127, §133B; 120 CMR 301.01(3). In cases involving persons civilly committed as sexually dangerous persons who are also serving house of correction or state prison sentences, the Parole Board may give the person up to a three-year set back. See 120 CMR 301.01(4).

⁸ “Reserve parole” occurs when the Board’s grant of parole is contingent upon the incarcerated person satisfactorily fulfilling a specific condition set down by the Parole Board. For example, if a person has lived only in maximum or medium security institutions during their period of incarceration, the Parole Board may require that person to live in a minimum-security institution or pre-release facility with no disciplinary reports for a period of time (e.g., six months or a year) as a condition of release on parole.

⁹ M.G.L ch. 27, § 5.

¹⁰ M.G.L ch. 27, § 5.

In deciding whether to grant parole, members of the Parole Board hold a “release hearing” prior to the parole eligibility date for each person subject to its hearing jurisdiction. The hearing process is different for individuals serving life sentences and individuals not serving life sentences. For persons serving a parole-eligible life sentence, the full Parole Board sits for an initial release hearing and for any subsequent review hearings. These “lifer” hearings are public. They are conducted at the Parole Board office in Natick, Massachusetts and incarcerated persons are permitted to retain their own legal counsel or law students and to call witnesses. Victims and opposition witnesses are permitted to testify.

For persons serving non-life state prison sentences, a panel of three Parole Board members conducts the initial release and subsequent review hearings. For persons serving House of Correction Sentences, one Parole Board member conducts the initial release and subsequent review hearings.¹¹ These non-lifer parole release hearings are conducted at the state institution or county house of correction where the person is in custody. Under Parole Board regulation, non-lifer parole hearings are not open to the public, no witnesses are permitted,¹² and the person is not allowed to have legal representation.¹³ The hearings are not recorded.

Each prison has an institutional parole officer (IPO) who schedules parole hearings and compiles the data the Parole Board requests to see on each parole applicant. By regulation, the IPOs also have responsibilities to “prepare [incarcerated persons] for their parole hearing” and to “assist [incarcerated persons] in formulating plans for parole.”¹⁴

The supervision of persons granted parole is done by field parole officers who work in nine regional parole offices located throughout the state.

¹¹ See M.G.L. ch. 127, § 134(a)(b); 120 CMR 300.03(1).

¹² There are, however, two exceptions to that “no-witnesses” rule at non-lifer hearings. Families of victims are permitted to testify at parole release hearings for persons serving for crimes which resulted in death. M.G.L. ch. 127, § 133C, 120 CMR 401.02. The second exception permits victims of certain violent crimes and sex offenses to testify at the person’s parole release hearings. M.G.L. ch. 127, § 133E. The incarcerated person has no right to call witnesses and no right to legal representation at these non-lifer “victim access hearings.”

¹³ 120 CMR 300.08.

¹⁴ 120 CMR 100.00.

VI. Glossary of Terms

CPO: Correctional Program Officer

DOC: Department of Correction

EOPSS: Executive Office of Public Safety and Security

Graduated sanctions: Requirements or conditions set for a parolee after a violation of a parole condition. Graduated sanctions are used as an alternative to returning a parolee to prison.

Houses of Correction: County Correctional Facilities

Lifers: Individuals who received life sentences with the possibility of parole.

Non-lifers: Individuals who received non-life sentences with the possibility of parole.

Non-technical violation: Parole violation for new arrests/new criminal charges.

Parolee: An individual who has been granted parole and is under supervision.

Parole revocation: The process by which a parolee's parole permit may be permanently or temporarily revoked, as a result of violation of one or more conditions of parole.¹⁵

Record of Decision: The document provided to parole-eligible individuals after a hearing detailing the parole board's decision to grant or deny parole and the explanation of their decision.

Risk assessment: Evaluations done by the DOC and Parole Board where an incarcerated person's likelihood of re-offending is determined.

Technical violation (non-arrest violations): Parole violations of general and special conditions of parole, excluding those that involve new arrests or new criminal charges.¹⁶

*Note: The term client is sometimes used to refer to incarcerated individuals in this document.

¹⁵ <https://www.mass.gov/doc/2020-annual-statistical-report/download>, p. 13.

¹⁶ <https://www.mass.gov/doc/2020-annual-statistical-report/download>, p. 36.

VII. Findings

The Commission found that Black and Hispanic/Latino individuals are significantly overrepresented in and disproportionately affected by the criminal justice system in Massachusetts. A Harvard University study¹⁷ found sentencing disparities for people of color in Massachusetts. The study found that people of color are more likely to serve longer sentences, even after accounting for criminal history, demographics, initial charge severity, court jurisdiction, and neighborhood characteristics. Initial sentencing determines a person's parole eligibility date, demonstrating that people of color are likely at a disadvantage in parole eligibility as a result.

The parole process, which allows incarcerated individuals to complete a portion of their sentence outside of prison, plays a critical role in the criminal justice system in Massachusetts. The Commission did not find evidence that Black and Hispanic/Latino individuals are overrepresented in parole denials; however, paroling rates by race do not provide the whole picture. Approval of parole does not guarantee that the incarcerated individual is actually released due to reasons discussed further below; data on the amount of individuals who are approved for parole but end up completing their sentences in prison may tell us more about where disparities exist, however this data is not currently available. Moreover, there is no data available that shows how many weeks, months, or years individuals wait to be released after receiving a positive parole vote. The evidence available suggests that disparities may exist by race in this regard for reasons discussed further below. Furthermore, data to compare parole approval by race and ethnicity for the same offense or type of offense is also lacking, which limits our analysis. According to 2020 US Census Data,¹⁸ White individuals make up 80.6% of the state's total population, Black individuals make up 9%, Hispanic/Latino individuals 12.4%, and Asian individuals 7.2%.¹⁹ In 2020, 42%²⁰ of the DOC jurisdiction population²¹ were White

¹⁷<https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>

¹⁸ <https://www.census.gov/quickfacts/fact/table/MA,US/POP010220>

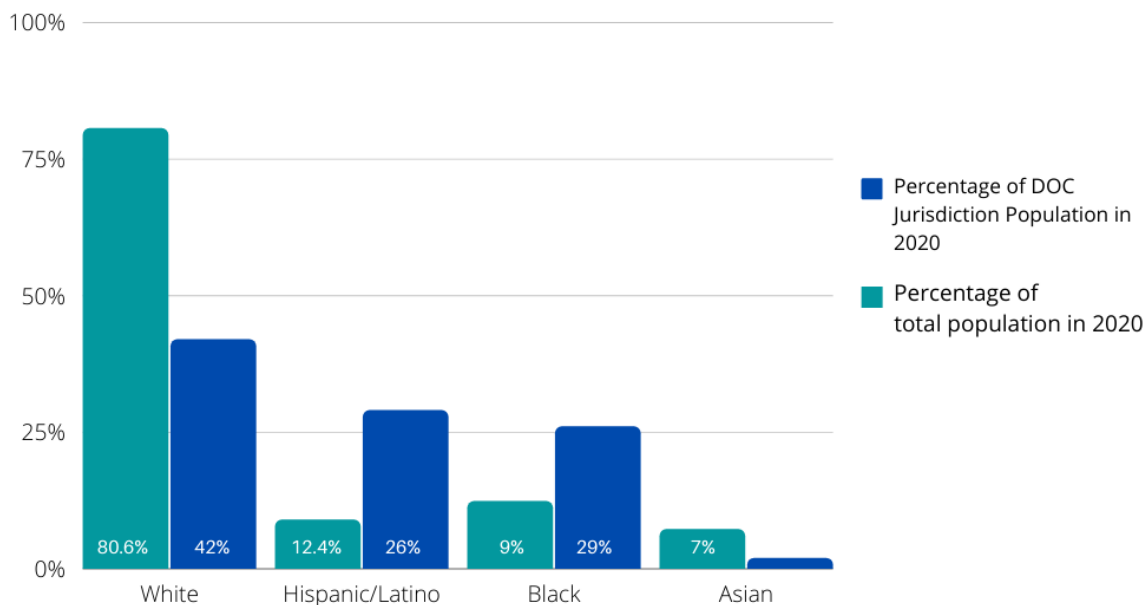
¹⁹ Asian, Pacific Islander, and Native American individuals are discussed less frequently in this report because about 97% of the total prison population are Black, Hispanic/Latino and White individuals. For nearly all the parole metrics that the Commission examined, the amount of Asian/Pacific Islander/Native American individuals reported on were less than 30. Due to the small sample sizes, the Commission is unable to draw conclusions regarding average outcomes for Asian/Pacific Islander/Native American individuals based on this data alone.

²⁰ <https://www.mass.gov/doc/prison-population-trends-2020/download>, page 18.

²¹ An individual is considered to be under DOC jurisdiction when the Commonwealth has legal authority over the individual, regardless of where the incarcerated individual is being held, including those incarcerated in DOC facilities as

individuals, Black individuals made up 29%, and Hispanic/Latino individuals 26%. Asian individuals made up less than 2% of the total incarcerated population.

Massachusetts prison population by race compared with total population by race



*Note: chart does not account for gender.

Data sourced from <https://www.mass.gov/doc/prison-population-trends-2020/download>

The Commission looked at parole releases by race, parole eligibility by race, parole revocation, paroling rates²² by race, and conditions for parolees upon release. Black and Hispanic/Latino individuals made up half of the population released to parole supervision in 2020.²³ The Commission found that White incarcerated individuals are slightly overrepresented in the population eligible for parole, while Black incarcerated individuals are slightly under-represented. The number of Hispanic/Latino incarcerated individuals eligible for parole closely reflects their share of the prison population. Without more data on the types of sentences and crimes of the individuals, the Commission cannot draw any clear conclusions regarding racial disparities from parole eligibility data alone. Paroling rates by race were similar across

well as those housed in correctional facilities outside of the DOC (Houses of Correction), other states' correctional facilities, and the Federal Bureau of Prisons. <https://www.mass.gov/doc/prison-population-trends-2020/download>

²² The percentage of those granted parole and those denied parole.

²³ <https://www.mass.gov/doc/2020-annual-statistical-report/download>

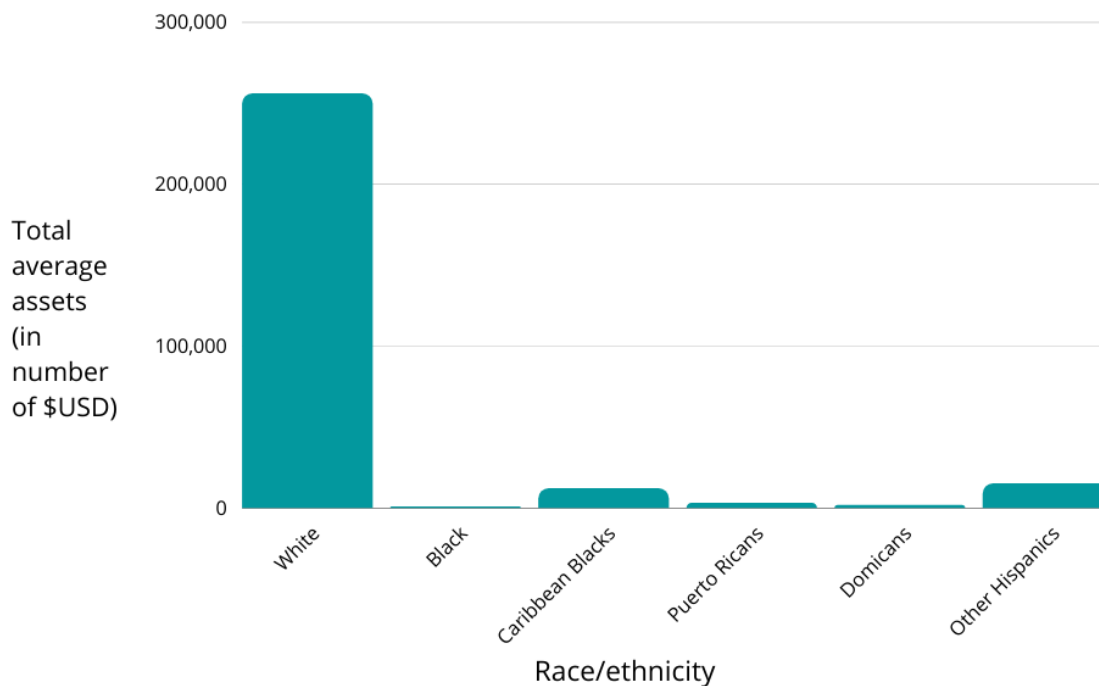
racers in 2020, with the exception of Asian individuals who had a higher paroling rate than White, Black, and Hispanic/Latino individuals; however, the number of Asian individuals who received hearings in 2020 was fewer than 30, therefore the Commission cannot draw any conclusions about this due to the small sample size. Paroling rates do not take into account individuals who are granted parole but end up finishing their sentence in prison. This can happen due to several reasons, including but not limited to the individual being required to serve a period of time in lower custody, a change of vote by the individual requesting modification of conditions, disciplinary infractions or returns to higher custody, interstate compact approval if the individual is being released to another state, District Attorney clearance on a SDP²⁴ referral, and/or waiver/decline to accept parole. However, the primary reason according to the Parole Board is the lack of a sufficient home plan after release or inability to secure a bed in transitional or sober housing. (Transitional housing and home plans are discussed later in this report). In its examination of conditions upon release, the Commission found that fines and fees imposed on individuals create burdens that can disrupt successful re-entry. The Commission found that there is no evidence to support fees as a means for reducing recidivism. While the fines and fees are the same for all parolees, the Commission found that their impact disproportionately affects people of color. In a 2019 study²⁵ the U.S. Federal Reserve estimated that White families had a median wealth of \$188,200 and a mean wealth of \$983,400. Black Americans estimated median and mean wealth was \$24,100 and \$142,500 respectively, and Hispanic/Latino families median and mean wealth was \$36,100 and \$165,500 respectively. The Commission could not find a recent comprehensive study on wealth disparities by race across all of Massachusetts. However, the Federal Reserve Bank of Boston's 2015 study²⁶ on wealth disparities in the Boston Metropolitan Statistical Area indicates that wealth disparities in Massachusetts reflect those at the national level.

²⁴ Sexually dangerous person.

²⁵<https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>

²⁶ <https://www.bostonfed.org/publications/one-time-pubs/color-of-wealth.aspx#collapse2>, page 18.

Total median assets by race/ethnicity in Greater Boston Area



Data source: The Federal Reserve Bank of Boston. <https://www.bostonfed.org/publications/one-time-pubs/color-of-wealth.aspx#collapse2>

The median amount of total assets for Whites was \$256,000, whereas for Blacks the median asset value was \$700, Caribbean Blacks, Puerto Ricans, Dominicans, and Other Hispanics were \$12,000, \$3,020, \$1,724, and \$15,000 respectively. This dataset did not include Asians.

The available data demonstrates that there are significant wealth disparities across race in Massachusetts, most negatively impacting Black and Hispanic/Latino individuals.

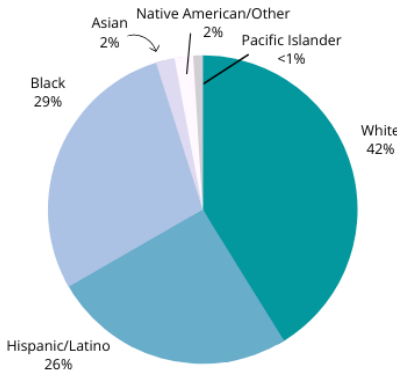
It is important to note that the Commission found that parole outcomes can be greatly influenced by factors outside the scope of the parole process, many of which are precipitated by structural racism. An issue that illustrates this point is the requirement for parolees to secure an approved home plan. Even when the Parole Board grants a positive parole vote to an individual, this is not a guarantee of the individual's release. The client first must have an approved home plan. This can become an obstacle for clients, especially those with limited income and family support. A home plan may be denied because the home is part of Section 8 housing, but the client is not

listed as a tenant on the lease. Section 8 housing (which is occupied by individuals with very low income) has strict federal requirements for its residents making it difficult for parolees to live with family in Section 8 housing. If a client has substance use issues they may not be allowed to live within certain proximity of specific establishments such as a bar or a pub. If a client chooses to live with friends or family, then those individuals are subject to approval as well. If a person in the home plan of the client has a record of criminal history, then the plan may not be approved. Limited financial means narrow options which can prevent a client from securing an approved home plan, preventing their release to supervision.

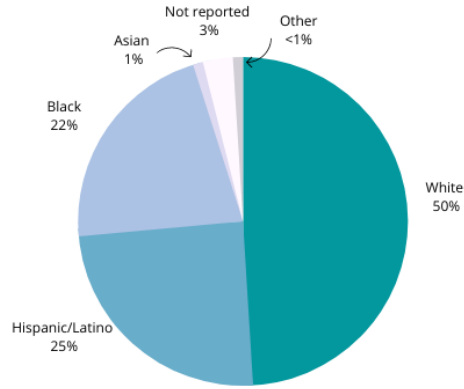
People of color on average have fewer financial resources from which to draw.²⁷ Furthermore, people of color are more likely to have family members with a criminal history. In these ways, people of color are more likely to be at a disadvantage compared to White individuals when securing an approved home plan, which puts them at a greater disadvantage in the parole process on average. The home plan issue demonstrates a prevalent problem in the parole process: even if an individual does everything asked of them and is granted parole, socioeconomic factors beyond their control still influence outcomes, including their ability to be released. Oftentimes people of color are most adversely affected by this because they are more likely to be disadvantaged in areas of income and family support. Even if an individual is approved for parole, they may still have an adverse outcome because of disadvantages promulgated by structural racism.

²⁷<https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>

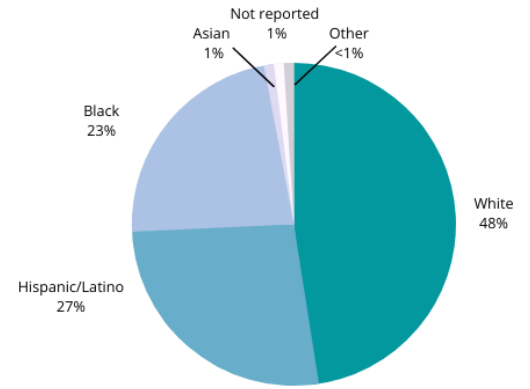
2020 Prison population by race



2020 Population eligible for parole:



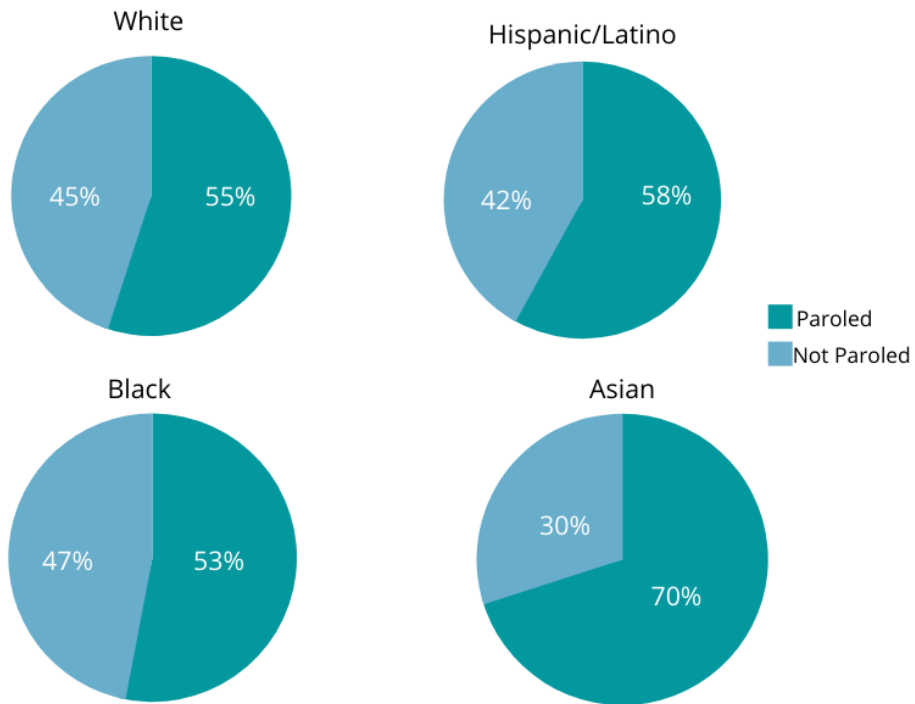
2020 Parole Releases:



*Note: Percentages for all graphs are rounded to nearest hundreth

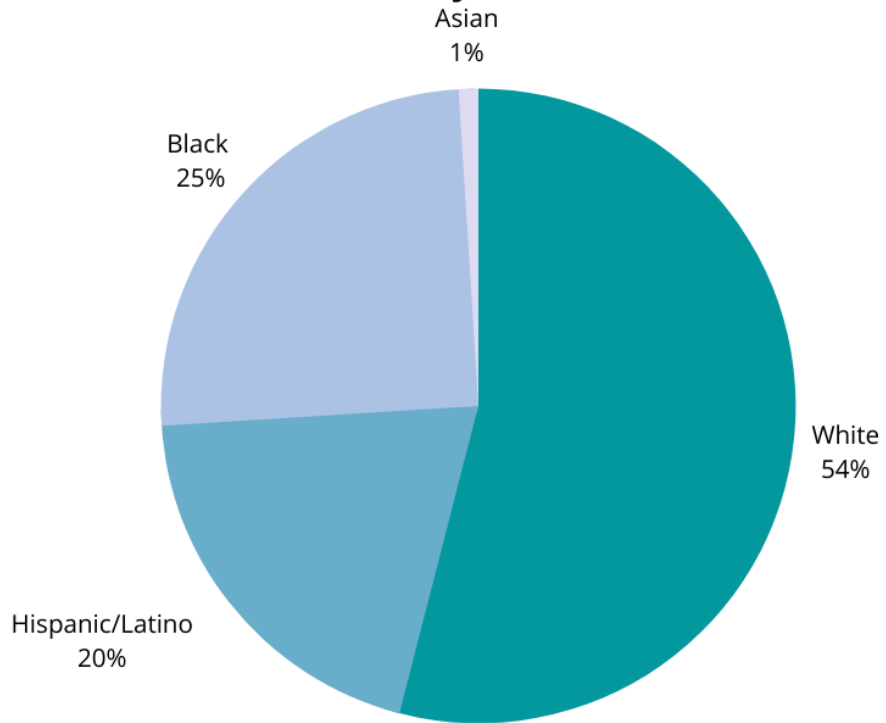
Data Source: <https://www.mass.gov/doc/2020-annual-statistical-report/download>

Massachusetts 2020 Paroling Rates by Race



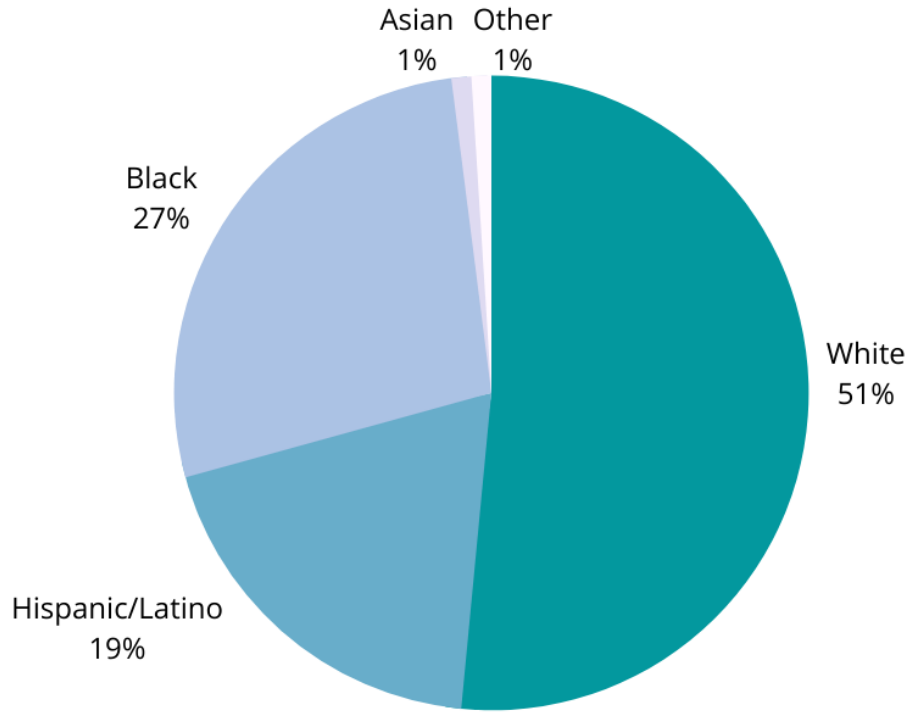
Data Source: <https://www.mass.gov/doc/2020-annual-statistical-report/download>

Revocations by Race in 2020



Data Source: <https://www.mass.gov/doc/2020-annual-statistical-report/download>

Discharges by Race in 2020



Data Source: <https://www.mass.gov/doc/2020-annual-statistical-report/download>

VIII. Conclusions and Recommendations

The Commission makes the following recommendations based on its investigation and study into structural racism in the parole process. Recommendations where funding is requested are estimates, and budgetary requests would require more review than that which is within the capacity of this Commission. Some of the recommendations below can be addressed via regulation and others by statute. The Commission recognizes that each recommendation may be implemented in different stages and timelines, according to their complexity and fiscal impact. The Commission's recommendations aim to improve the overall parole process, which as a function of the correctional system disproportionately impacts communities of color in the Commonwealth. The Commission has identified the following categories as areas of focus where recommendations are made:

1. Address Financial Obstacles
2. Reform Parole Conditions
3. Diversify Organizational Culture
4. Increase transparency
5. Improve protocols and processes

Address Financial Obstacles

The Commission found that fines and fees that exist for persons on parole can add to burdens that prevent successful re-entry and rehabilitation, particularly for people of color. As discussed earlier, people of color on average have much less wealth than White individuals. In addition to creating financial obstacles, these fees create logistical concerns that slow down the process for release. Upon release, parolees must concern themselves with finding stable housing, finding and maintaining legitimate employment, obtaining reliable transportation to attend meetings at their parole office, and more. Socioeconomic status greatly influences parolees' ability to be released into supervision. In particular, a parolee's ability to secure an approved home plan is essential to their release, which can be an insurmountable obstacle for parolees with limited resources and family support. Moreover, parolees must pay an \$80/month supervision fee.²⁸ Parolees also must

²⁸ Parolees can apply for a waiver for this fee.

find and maintain legitimate employment as a condition of their parole (with certain exceptions)²⁹ which can be more difficult for parolees of color.

The available data demonstrates that there are significant wealth disparities across race in Massachusetts, most negatively impacting Black and Hispanic/Latino individuals. Given this, financial barriers and fees imposed on parolees may pose greater problems for parolees of color. Removing these fees where possible will alleviate the burdens placed on parolees and allow them to focus on rehabilitation and re-entry.

To address this issue, the Commission recommends the following:

Recommendation #1: Identify a path towards phasing-out and/or eliminating supervision fees placed upon parolees.

Removal of supervision fees reduces barriers to re-entry and rehabilitation that disproportionately affect people of color. This will also streamline the parole process by reducing administrative costs, increasing efficiency. The Boston Bar Association’s Criminal Justice Reform Working Group recommended the elimination of supervision fees in their report in 2017.³⁰ This report was so compelling that the late Chief Justice Ralph Gants of the Massachusetts Supreme Judicial Court said the report was “required reading for anyone considering criminal justice reform in Massachusetts” in his 2017 State of the Judiciary Address.³¹ Notably, the Parole Board has requested this recommendation to be implemented as a part of the FY2023 budget process, as there is no evidence that the fees have any positive effect towards reducing recidivism.

Recommendation #2: Eliminate the \$25 Registry of Motor Vehicles Mass ID fee for incarcerated individuals eligible for parole. The RMV, the DOC, and the Sheriffs should establish a process to ensure that all incarcerated individuals have valid Mass IDs prior to being released on parole.

²⁹ Exceptions include enrolling in job training or higher education.

³⁰ https://bostonbar.org/docs/default-document-library/no-time-to-wait_web.pdf?sfvrsn=2

³¹ <https://www.mass.gov/doc/2017-state-of-the-judiciary-address-by-sjc-chief-justice-ralph-d-gants-oct-26-2017/download>

The Registry of Motor Vehicles charges a fee for processing a driver's license application. This fee adds an additional obstacle for individuals as they prepare for release, as well as an additional challenge that DOC must overcome. Removing this fee will streamline the process of release and help to alleviate the effects of wealth disparities between incarcerated individuals.

Recommendation #3: Allocate additional funding towards transitional housing and revocation diversion.

Additional funding towards transitional housing and revocation diversion programming for low-income individuals will aid in reducing recidivism by providing more safe and stable housing for parolees upon release, and will help to address income-related obstacles that disproportionately affect people of color.

In addition to fees/fines, successful re-entry into the community requires parolees to follow strict conditions of parole. In addition to complying with technical conditions (the full list of most common technical violations is included later in this report) parolees are expected to have a stable and safe home plan, find and maintain approved employment or schooling/training, be able to transport themselves to meet with parole officers at any given time, and in certain cases enroll in counseling or other programming required by the parole board and/or parole officers. These conditions are intended to promote a safe and stable environment for parolees upon release. Certain conditions however, are difficult to meet for low-income parolees that lack substantial family support, such as finding and maintaining employment and securing an approved home plan. These conditions are especially challenging for parolees of color, who on average have less wealth and face more difficulty finding employment after incarceration. Parole conditions and violations will be discussed further later in this report.

Recommendation #4: Allocate an additional minimum of \$1,000,000³² annually towards housing to secure beds in sober housing programs that are certified with the Massachusetts Alliance for Sober Housing³³ for individuals who cannot cover the costs themselves.

³² This estimate was provided by the Parole Board. They estimate that \$1,000,000 in additional funds would support at least 500 individuals in their re-entry.

³³ The Department of Public Health (DPH) has established the MA Alliance for Sober Housing as the certifying body for sober homes, in accordance with Chapter 165, Section 37 of the Acts of 2014.

In addition to the need for more transitional housing, greater funding dedicated to sober housing and medically assisted treatment is warranted. According to the Parole Board, about 46% of parole technical violations in 2020 were conditions related to drugs/alcohol.³⁴ The most common technical violations in 2020 were the following:

Top Standard Condition Violations:	Number of violations
Whereabouts unknown	226
Association with persons with criminal record	147
Uncooperative/disorderly conduct	126
Failure to report to parole office/officer	110
Lied to parole officer	90
Top Special Condition Violations:	Number of violations
Violation no drugs/alcohol	787
Terminated from program	446
GPS/ELMO violation	171
Failure to attend counseling	159

Increased funding for sober housing and re-entry navigators³⁵ will help address the persistent issues of alcoholism and substance use disorder that obstruct successful re-entry. Investments in services that support and improve conditions for maintaining sobriety are necessary to reduce recidivism. Parolees of color, especially those with substance use issues, are less likely to have the financial resources and support necessary for successful transition back into society.

Recommendation #5: Establish a Massachusetts state tax incentive to match the federal Work Opportunity Tax Credit tax credit given to employers that hire ex-offenders, commonly referred to as CORI-friendly employers.

³⁴ Data provided by the Massachusetts Parole Board.

³⁵ Re-entry navigators assist with scheduling appointments, medically assisted treatment (MAT), and other services for parolees.

Another condition of parole is a requirement to maintain legitimate employment. This poses a challenge for incarcerated individuals, who can have difficulty finding employment after incarceration. Job attainment and average earnings after incarceration differ substantially by race in Massachusetts; Black and Hispanic/Latino individuals on average have lower earnings and more difficulty finding employment after incarceration than White individuals in Massachusetts, according to a Harvard University study.³⁶ Furthermore, according to the Boston Bar Association’s criminal justice working group³⁷ “when an individual is convicted of a crime, the fact of the conviction itself can create a stigma that helps drive recidivism.”

Improving financial incentives for employers to hire ex-offenders will alleviate disparities for incarcerated individuals of color who tend to have increased difficulty finding employment upon release by expanding opportunities for employment.

Reform Parole Conditions

Parolees are required to follow specific conditions while under supervision. There are standard conditions placed on all parolees, regardless of the offense or individual case. The standard conditions are as follows:

Standard Parole Conditions
1. I will obey local, state and federal laws; and conduct myself in the manner of a responsible citizen.
2. I will notify my parole officer in writing within 24 hours of any changes in my employment or residence. I will inform my parole officer within 24 hours if arrested.
3. I will make earnest efforts to find and maintain legitimate employment, unless engaged in some other program approved by my parole officer.

³⁶https://scholar.harvard.edu/files/brucewestern/files/racial_inequality_in_employment_and_earnings_after_incarceration.pdf

³⁷ https://bostonbar.org/docs/default-document-library/no-time-to-wait_web.pdf?sfvrsn=2

4. I will not associate with persons I know to have a criminal record, or who are known to be engaged in a violation of law. This prohibition does not apply where such association is INCIDENTAL to my place of residence or employment, or connected with activities of a bonafide political or social organization. However, the parole board retains authority to impose limits to these latter activities as a special condition of parole where such association is inconsistent with my approved parole plan.
5. I will not leave the state of Massachusetts for periods in excess of 24 hours without securing permission from my parole officer. This condition shall not apply to parolees whose travel is restricted by Parole Board Policy.
6. I will pay a monthly supervision fee, monthly victim services fee and comply with all child support due under a support order, as defined in section 1A of chapter 119A of the Massachusetts General Laws, including payment toward any arrearage of support that accrues or has accrued and compliance with any payment plan between myself and a IV-D agency as described in chapter 119A.
7. I will not serve as an informant or special agent for any law enforcement agency.

Under standard conditions, there are rules that parolees must follow. Below are the most common technical violations, which are non-criminal violations of rules that fall under standard conditions of parole. The rules below are standard for all parolees and are listed in no particular order.

**LIST OF MOST COMMON TECHNICAL VIOLATIONS
MASSACHUSETTS PAROLE BOARD**

RULE 1: IRRESPONSIBLE CONDUCT
1A FAILURE TO REPORT TO PAROLE OFFICE/OFFICER
1B LIED TO PAROLE OFFICER
1K POSSESSION OF UNAUTHORIZED CELL PHONE
RULE 2: WHEREABOUTS UNKNOWN
2A. WHEREABOUTS UNKNOWN
RULE 2: FAILURE TO NOTIFY PO OF CHANGE OF HOME OR WORK

2B. FAILURE TO NOTIFY CHANGE OF RESIDENCE
2C. FAILURE TO NOTIFY CHANGE IN EMPLOYMENT
RULE 2: FAILURE TO NOTIFY PO WITHIN 24 HOURS OF NEW ARREST
2D. FAILURE TO NOTIFY PO WITHIN 24 HOURS OF NEW ARREST
RULE 3: FAILURE TO FIND AND MAINTAIN LEGITIMATE EMPLOYMENT
3A. FAILURE TO MAINTAIN EMPLOYMENT
RULE 4: ASSOC. W/PERSONS W/CRIMINAL RECORD
4A. ASSOCIATION WITH PERSON(S) WITH CRIMINAL RECORD ³⁸
RULE 5: LEAVING THE STATE IN EXCESS OF 24 HOURS WITHOUT PO'S PERMISSION
5A. UNPERMITTED OUT-OF-STATE TRAVEL
RULE 6: FAILURE TO PAY SUPERVISION FEE
6A. FAILURE TO PAY SUPERVISION FEES

If a parolee fails to comply with the conditions set for them, they may be cited for those violations and can receive graduated sanctions or they may have their parole revoked and are returned to prison (typically the latter occurs after multiple violations, or as the result of a more severe parole violation, such as re-arrest). 81%³⁹ of parole revocations in 2020 were for technical violations. The Parole Board does not currently disaggregate revocation for solely technical violations from revocations for technical and criminal violations, so this data point is difficult to interpret. This will be discussed further in the data section of this report. These conditions are set with the intention to reduce recidivism. Certain conditions however have adverse effects on Black and Hispanic/Latino individuals because of factors that disproportionately affect people of color. To address the issues that standard conditions pose and ensure that all conditions of parole

³⁸The current language of this condition is the following: “I will not associate with persons I know to have a criminal record, or who are known to be engaged in a violation of law. This prohibition does not apply where such association is INCIDENTAL to my place of residence or employment, or connected with activities of a bonafide political or social organization. However, the Parole Board retains authority to impose limits to these latter activities as a special condition of parole where such association is inconsistent with my approved parole plan.”

³⁹ <https://www.mass.gov/doc/2020-annual-statistical-report/download>

serve a clearly public safety and rehabilitation purpose, the Commission recommends the following:

Recommendation #6: No condition of parole shall be ordered unless that condition specifically addresses the particular characteristics of the person and the offense for which they are being paroled. The Parole Board must consider whether any condition ordered would have a rehabilitative effect or serve a clear and legitimate public safety or rehabilitative purpose. The Parole Board must state the particular facts relative to each individual parolee that justify each condition of parole.

Currently, there is no statutory burden of proof requirement for conditions set upon parolees. Certain technical conditions have a disproportionate effect on people of color, without demonstrating significant evidence that the condition prevents recidivism. As an example, one condition of parole prohibits parolees from interacting with individuals with a criminal history. It is important to note that this condition has been amended over time to allow parolees to interact with those with a criminal history if this interaction is incidental to their approved place of work, home plan, and/or with activities of a bonafide political or social organization. Nevertheless, this condition even as amended is more difficult for Black and Hispanic/Latino individuals who are more likely to have family members (who may not be part of their approved home plan) that have a criminal history.⁴⁰ Furthermore, the parole board retains the power to impose special conditions to limit these interactions. This condition's current language demonstrates that standard conditions cannot always take into account specific needs or circumstances of the individuals that they regulate, and can disproportionately affect parolees of color.

By eliminating standard conditions and instead, requiring conditions to be designed to address the individual needs of the parolee and their circumstances, the Parole Board can reduce the unintended consequences of standardized conditions that disproportionately occur for people of color and create a more individualized, needs-based approach to re-entry.

Diversify Organizational Culture

⁴⁰ Enns, P. K., Yi, Y., Comfort, M., Goldman, A. W., Lee, H., Muller, C., Wakefield, S., Wang, E. A., & Wildeman, C. (2019). What Percentage of Americans Have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey (FamHIS). *Socius*. <https://doi.org/10.1177/2378023119829332>

The Commission found that the training of officers and the makeup of the Parole Board is instrumental in determining whether parole is granted and the success of an individual upon release. As stated earlier, Parole Board appointees with a diverse array of backgrounds may be appointed. These areas include backgrounds in parole, probation, corrections, law, law enforcement, psychology, psychiatry, sociology and social work. In recent decades, MA governors' nominees have been largely from law enforcement fields. At present, five of the six members of the Parole Board have backgrounds in law, corrections, and public safety. One member has a background in psychology. There has been a vacancy on the Parole Board since March 2021.

The Commission found a need to ensure a diverse array of expertise and background on the Parole Board in order to address the most prominent needs of incarcerated individuals (discussed further below.) The Commission also found a need for an individual who themselves has completed parole to preside on the Parole Board who can provide first-hand experience from the perspective of someone who has had successful re-entry. Additionally, the Commission found that implementing cultural competency training in addition to their existing Fair and Impartial Policing training is warranted for employees working with parolees.

Recommendation #7: The Parole Board shall be expanded to 9 members and at all times the Board shall have at least three members each of whom 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 section 1 of chapter 123 of the General Laws.

As indicated above, the most frequent parole violations in 2020 were for substance use related issues.⁴¹ The Commission found that the Parole Board is integral in creating case management plans for parolees which often means that Parole Board members make recommendations or set conditions around mental health services and substance use. Accordingly, more expertise on the Parole Board in the fields of behavioral health and substance use can help in promoting re-entry plans that address these concerns using medical standards and best practices.

⁴¹ Data provided by the Parole Board.

Recommendation #8: The Parole Board shall have at least one member who is a formerly incarcerated individual who has completed the parole process; a minimum of 3 years must have passed since the individual completed the parole process and they must have 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.

Requiring that a member of the Parole Board has themselves completed the parole process and has had successful re-entry will ensure diversity of experience and representation from an individual who understands how parole operates in practice for the person under supervision.

Recommendation #9: 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.

Cultural competency and structural racism education and training will help address implicit biases that affect treatment and management of incarcerated individuals and parolees of color. Transitional service unit (TSU) employees are responsible for creating case plans and helping to prepare individuals for their parole hearings, and for life after prison. This makes TSU employees integral to the success of incarcerated individuals being released. Cultural competency and structural racism training will help address implicit bias and promote equitable treatment. The Commission acknowledges that some parole staff currently do receive training.

Recommendation #10: The Parole Board must establish a strategic plan to improve diversity of workforce personnel.

While Black and Hispanic/Latino individuals made up about half of those under supervision in 2020, the Parole workforce is only 18% non-White.⁴² Less than 10% of field parole officers are Black or Latino. Civil service also influences hiring challenges in this regard. In recent years, the Parole Board has engaged in efforts to improve equitable treatment and diversity, however given that the workforce does not reflect the diversity of the clients they serve, the Commission recommends that Parole establishes an initiative to address this. If additional resources are needed to implement strategies to diversify workforce personnel, the Parole Board should work

⁴²<https://www.mass.gov/info-details/state-employee-diversity-dashboard>

with the legislature to secure these needs. The Parole Board should include updates to their workforce diversity initiative in their annual report.

Increase Transparency

The Commission found a need to improve transparency around the hearings process for parole-eligible persons. Non-lifer parole hearings, which make up about 97% of the cases heard by the parole board⁴³ are not recorded. (Non-lifer cases such as revocations, rescission hearings and special accommodations hearings have the option to have an attorney, currently.) Lifer parole hearings are recorded. For non-lifer cases, clients are not permitted to have an attorney, even if they can afford one or obtain one pro-bono. Lifers have the right to representation at hearings. Commissioners and public testimony demonstrated a need to increase access to information used to make parole decisions.

To increase transparency and ensure accountability, the Commission recommends the following:

Recommendation #11: All parole decision hearing audio must be recorded and securely stored, to be made available to the parolee, victim/survivor and their respective attorney(s) upon request. The recordings shall be stored and archived until the person is off parole or dies. The Commission recommends additional funding to be allocated to the Parole Board in order to pay for implementation, recording and storage equipment, and personnel necessary to execute this request.⁴⁴

This recommendation will standardize protocols for recording of parole hearings for all parolees.

Recommendation #12: The DOC, HOCs, and the Parole Board must collect and publish data on the following annually:

- Parole violations broken down by race/ethnicity, gender, and type of violation
- Parole revocations and cause of revocation and demographics of the individuals
- The race/ethnicity of the individuals on parole who are returned to prison for a preliminary hearing on an alleged technical parole violation

⁴³Data provided by the parole board.

⁴⁴ The Parole Board estimates that \$1,000,000 would be sufficient for this funding. Another estimate for cost may be found in looking at the Massachusetts Trial Court expenditures. Trial courts record and store their proceedings; their expenditures in this area may provide more information on costs for how this may be executed. This Commission did not have access to this number. Further review of how much implementation and execution of recording hearings is required.

- The race/ethnicity of the individuals who are found to have violated⁴⁵ a technical condition of parole at a final revocation hearing and are returned to prison
- The race/ethnicity of persons found to have committed a disciplinary infraction after parole is granted
- Race/ethnicity of the workforce of DOC and HOCs, broken down by department
- Race/ethnicity for parole eligible individuals who choose to forego the parole process compared to those who choose to see parole
- The average time between the parole eligibility date, the parole release hearing, the parole decision date, and the actual release date, disaggregated by race/ethnicity and gender, and disaggregated by house of correction prisoner, non-lifer state prisoner and lifers
- The average time between a positive parole vote and the time the client is released into supervision
- The percentage of people with positive votes who are not released on parole
- The percentage of people taken into custody (after a parole violation) before they have a revocation hearing

Additionally, DOC and HOC must report on the percentage of individuals who have had parole revoked and are returned to custody for technical violations that are not associated with criminal activity.

In addition to this, Houses of Correction must collect and publish the following:

- Paroling rates by race/ethnicity (to align with annual reporting on paroling rates by race/ethnicity conducted by DOC and the Parole Board)

The Commission estimates that allocating an additional \$100,000⁴⁶ to the Parole Board, DOC, and HOCs each will help meet these requests and bolster their data collection software, whether through existing use of the State Parole Integrated Record and Information Tracking (SPIRIT) or new software. The Commission acknowledges that the Justice Reinvestment Oversight Board is working in this area, and we suggest they take this Commission's recommendations into consideration in their deliberations.

Further data collection will allow for more clarity on disparities and a deeper understanding of parole in both the DOC and Houses of Correction.

⁴⁵ Violated in this sense means a person has violated a condition of parole.

⁴⁶ This is an estimate.

Improve Protocols and Processes

The Commission found in its deliberations that inefficiency in the parole process and at times, stringent restrictions set for those granted parole, contribute to a system that keeps more people in prison than necessary and prevents successful rehabilitation and re-entry. These inefficiencies have led to a distrust in the parole process from incarcerated individuals. Almost half of parole eligible incarcerated individuals in 2020 did not see the parole board. About 19% of incarcerated individuals eligible for parole in 2020 waived their hearing, 48% of which waived their hearing because they said they would prefer to “wrap up [their] sentence” and 30% of which were “not interested in parole.”⁴⁷ These individuals opted to forgo their opportunity for freedom via parole and to instead remain in prison, demonstrating a significant amount of mistrust in parole as a means for rehabilitation and re-entry. Recurring themes of inefficiency and burdensome costs and restrictions placed on parolees were discussed at Commission meetings. These inefficiencies have a disproportionate effect on Black and Hispanic/Latino communities and individuals who in total made up 55% of the state’s DOC jurisdiction population in 2020⁴⁸ and 50% of those released to supervision.⁴⁹

Timelines for parole decisions and limited communication between the Parole Board and DOC were discussed frequently at Commission meetings. Parole decisions for lifer cases currently take between 8 and 9 months, and expedited decisions with an abbreviated record of decision⁵⁰ take between 5 and 6 months. At times, the Commission found that the Parole Board may inadvertently set standards for individuals up for parole that cannot be met by the DOC , leading to longer wait times for incarcerated individuals to be released or granted a positive parole vote. To address these issues, the Commission recommends the following:

Recommendation #13 : At each parole hearing, a correctional program officer (CPO) or correctional facility staff member must be present and specifically inform the Parole Board of which services are available at a given time. The designee may weigh in on reserve restrictions

⁴⁷ Data provided by the Parole Board.

⁴⁸ <https://www.mass.gov/doc/prison-population-trends-2020/download>

⁴⁹ <https://www.mass.gov/doc/2020-annual-statistical-report/download>

⁵⁰ Record of decision refers to the document issued to incarcerated individuals who’ve received a parole hearing detailing the Parole Board’s decision and their explanation for the decision. In June of 2020, the Parole Board began offering expedited decisions for lifers upon completion of their hearings. Expedited decisions come in the form of an abbreviated decision document, which describes the reasoning behind the Parole Board’s decision to grant or deny parole.

set by the Parole Board to verify that the incarcerated individual will be able to qualify, comply with classification, or complete terms, services, and requisites requested by the parole board, given classification status and availability of program. Additionally, the Commission reinforces the existing DOC classification regulation requiring that when a reserve vote to lower security is made, the person must appear before a classification board in 30 days.

The Commission found that because the Parole Board is independent of other agencies, conditions set for parolees at hearings are not always able to be met because of limitations or conditions at DOC or EOPSS that may change daily. For example, as a requisite for parole, an incarcerated individual may be required to complete one month in a minimum security facility, despite not being eligible due to DOC classification. To ensure that the conditions that the Parole Board sets for incarcerated individuals are able to be met by DOC, the Commission recommends having a representative from DOC present for meetings to verify that DOC can meet the requirements set for the incarcerated individual. This recommendation also applies to Houses of Correction, where the Commission also received evidence supporting the need to improve communication between the Parole Board and facilities.

Recommendation #14: The Parole Board should issue a detailed Record of Decision for all cases, including non-lifers, which includes individual details and facts about the case that have led the board to either approve or deny parole. In the case of denial, clear instructions should be provided to become a better candidate for parole.

Issuing a more detailed Record of Decision to non-lifer parolees will give those who are denied parole more detailed information on programs and activities that they can participate in to become a better candidate for parole in the future. The instructions provided from parole should consider DOC and HOCs programming availability.

Recommendation #15: Polygraph testing shall not be permitted as a condition for parole, unless research from accredited institutions deems them effective in predicting risk for a particular offense. The Parole Board shall review the latest peer reviewed research every 2 years.

Currently, polygraph testing is sometimes imposed as a special condition of parole. While the use of polygraph testing is minimal in Massachusetts, there is little scientific consensus around the reliability of polygraph testing.⁵¹ In the vast majority of cases, polygraph testing should not be used. However, some evidence suggests that polygraph testing should be permitted for sex offenders.⁵² Therefore to comply with existing research, the Commission recommends only using polygraph testing in case of sex offenders. Evidence from a polygraph test should not be the sole or main reason to revoke parole. Regular review of the research in this area is warranted.

Recommendation #16: The Parole Board must issue a determination on lifer cases no more than 90 days after the parole hearing.

The Commission found that currently, decisions for lifer cases take close to 9 months to be made. For expedited decision lifers typically wait 5 to 6 months for a decision. Across parole boards there has been no standard timeline to issue parole decisions. Setting standard timeframes for parole decisions ensures that decisions are carried out in a reasonable period of time. Section 7 of Chapter 27 of the General Laws⁵³ demonstrates legislative intent to take reasonable steps to have parole board decisions issued within 60 days and outlines the process for ensuring that caseloads are met in a timely fashion.

Areas for Further Examination

In its deliberations, the Commission found four areas that require further examination: legal representation for non-lifer parole hearings, commutation deadlines, the Medicaid Inmate Exclusion Policy, and caps on supervision of parolees with no violations.

Legal Representation at Non-Lifer Parole Hearings

Legal representation for non-lifers at hearings was discussed frequently at Commission meetings. Continued review and evaluation of the issue of representation for clients at non-lifer hearings is

⁵¹ FAIGMAN, D. L., FIENBERG, S. E., & STERN, P. C. (2003). The Limits of the Polygraph. *Issues in Science and Technology*, 20(1), 40–46. <http://www.jstor.org/stable/43312397>

⁵²Levenson, J. S. (2009). Sex Offender Polygraph Examination: An Evidence-Based Case Management Tool for Social Workers. *Journal of Evidence-Based Social Work*, 6(4), 361-375. doi:10.1080/15433710902911147; Wilson, D. B., Batye, K., & Riveros, R. (2008). (rep.). *TESTING AND EVALUATION OF THE USE OF POLYGRAPHS TO COMBAT VIOLENCE AGAINST WOMEN*. National Institute of Justice.

⁵³ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter27/Section7>

warranted. Commissioners discussed that given that parole hearings are a legal proceeding, non-lifers should have the right to legal representation. However, some concerns were raised that allowing representation for non-lifers could exacerbate existing racial and class inequities by giving advantages to those who are able to afford better representation. Furthermore, given the high volume of parole hearings conducted every month, it is unclear if the demand for legal representation could realistically match the limited supply of attorneys and law students currently available. The Commission suggests the establishment of a working group or task force of relevant stakeholders to examine allowing legal representation for non-lifer parole eligible incarcerated individuals and how this may be equitably executed in Massachusetts. Additionally, the Commission suggests that as an interim measure the Parole Board should create an online mechanism that allows families/friends of clients and victims and their families to provide testimony that can be included at parole board hearings. The Parole Board currently accepts testimony via written mail, but those submitting testimony have no confirmation of receipt. An online form or website to submit testimony can help provide reassurance that testimony was received.

Commutation Deadlines

Petitions for clemency in Massachusetts are reviewed by the Parole Board (in their capacity as the Advisory Board of Pardons) and submitted to the Governor for a final decision. Concerns have been raised that lack of deadlines for the Advisory Board of Pardons and the Governor's office regarding clemency prevent petitions from being reviewed. This can erode the efficacy of the clemency process. This issue does not fall within the scope of the Commission's charge, but the Commission recommends further examination of this process. The Massachusetts Bar Association released a report making recommendations in this area which should receive due consideration.⁵⁴

Medicaid Inmate Exclusion Policy

The Federal government's Medicaid Inmate Exclusion Policy⁵⁵ "[generally] prohibits the use of federal Medicaid funds to pay for the health care of an "inmate of a public institution" according

⁵⁴ <https://www.massbar.org/docs/default-source/mba-reports/mba-clemency-task-force-report-2021.pdf>

⁵⁵ https://www.ssa.gov/OP_Home/ssact/title19/1905.htm

to a congressional report.⁵⁶ Because incarcerated individuals are largely excluded from Medicaid coverage, they often lack access to critical behavioral health and medical services. This is a federal issue that reaches beyond the scope of this Commission’s charge, however there is a waiver process that states can apply for that would allow incarcerated individuals in Massachusetts to receive MassHealth benefits. The Commission suggests further examination and due consideration towards Massachusetts applying for this waiver.

Caps on Supervision of Parolees With No Violations

Currently, there are parolees that will go decades or life under supervision despite years without violations. The Commission finds merit in examining these lengthy supervision periods. Specifically, there should be an inquiry into the process of removing supervision for parolees that have gone at least 5 years minimum without significant violations. At the federal level parole supervision is terminated after five years unless the Federal Parole Commission (the federal parole board) “determines, after a hearing, that it is likely that the parolee would still commit another crime.”⁵⁷ While a process for termination of supervision does exist currently in Massachusetts, termination is rare. Developing a process to address this will require collaboration between the judiciary, legislature and parole board, given that parole length is set by sentencing.

⁵⁶ <https://crsreports.congress.gov/product/pdf/IF/IF11830>

⁵⁷ <https://www.justice.gov/uspc/sentencing-incarceration-parole-offenders>