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REVISED GUIDELINES MANUAL

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Pursuant to Executive Law 259-c (4), the New York State Board of Parole has adopted and promulgated decision-making guidelines for minimum period of imprisonment and initial parole release hearings. In accordance with 9 NYCRR 8001.3 (d), the New York State Board of Parole has revised the Guidelines to reflect current decisions.

This manual is designed to facilitate the consistent and accurate application of the Board's Revised Guidelines and, thus, promote fair and equitable decision-making. This manual contains three sections:

- I. Explanation and Authorization of Guidelines
  - A) Purpose
  - B) Procedures and Criteria
  - C) Guideline Usage in Parole Release
- II. Revised Guideline Table and Forms
- III. Appellate Process

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ACQUISITIONS

I. EXPLANATION AND AUTHORIZATION OF GUIDELINES

A. From Title 9 New York Codes, Rules and Regulations Section 8001, Minimum Period of Imprisonment.

Section 8001.3 Guidelines

(a) Purpose. The New York State Board of Parole has adopted a set of guidelines, the purpose of which is to structure its discretion with regard to M.P.I. and release decisions. While the guidelines will be considered in each M.P.I. and release decision, they are based on only two major factors - crime severity and past criminal history. They are intended only as a "guide" and are not a substitute for the careful consideration of the many circumstances of each individual case.

(b) Content. (1) The guidelines adopted by the New York State Board of Parole represent the policy of the Board concerning the customary total time served before release for each category of offense and each category of offender, based on prior criminal history.

- (2) The guidelines are subject to important limitations imposed by law:
  - (i) any court-imposed minimum must be served before parole consideration
  - (ii) all inmates, except those serving life sentences are eligible to have their maximum reduced by one-third for good time; and
  - (iii) statute requires a minimum of one year in State prison, except for those convicted while serving an earlier indeterminate sentence.

(c) Decisions outside the Guidelines. The time ranges devised are merely guidelines. Mitigating or aggravating factors may result in decisions above or below the guidelines. In any case where the decision rendered is outside the guidelines the detailed reason for such decision including the fact or factors relied on shall be provided to the inmate in writing.

(d) Revision of Guidelines. The Board of Parole shall review the guidelines (including factors relating to prior criminal history and offense severity categories) periodically. In its discretion, the Board may revise or modify the guidelines in whole or in part. Periodic revisions shall be made available by the office of the Chairman and shall be filed with the Secretary of State.

B. From Executive Law, Section 259 Article 12-B State Division of Parole

Section 259-i Procedures for the Conduct of the Work of the State Board of Parole

1. Establishment of minimum periods of imprisonment.

(a) In any case where a person is received in an institution under the jurisdiction of the department of correctional services with an indeterminate sentence, and the court has not fixed a minimum period of imprisonment, the board shall cause to be brought before one or more members in accordance with the rules of the board within one hundred twenty days from the date on which such person is received in an institution under the jurisdiction of the department of correctional services pursuant to such sentence or as soon thereafter as practicable, all information with regard to such persons referred to in subdivision three of section two hundred fifty-nine-c of this article. The member or members receiving such information shall study the same and shall personally interview the sentenced person. Upon conclusion of the interview, he shall determine the minimum period of imprisonment to be served prior to parole consideration in accordance with the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article. Such guidelines shall include:

- (i) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest and prior to confinement; and
- (ii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement. Such determination shall have the same force and effect as a minimum period fixed by a court, except that the board may provide by rule for the making of subsequent determinations reducing such minimum period which shall not be reduced to less than one year. Notification of such determination and of any subsequent determinations and of the reasons therefor shall be furnished in writing to the sentenced person and to the person in charge of the institution as soon as practicable. Such reasons shall be given in detail and not in conclusory terms.

(b) In any case where the minimum period of imprisonment is fixed independent of the criteria adopted by the board pursuant to subdivision four of section two hundred fifty-nine-c of this article, written reasons shall be given for such determination in detail and not in conclusory terms.

## 2. Parole

(a) At least one month prior to the expiration of the minimum period or periods of imprisonment fixed by the court or board, a member or members as determined by the rules of the board shall personally interview an inmate serving an indeterminate sentence and determine whether he should be paroled at the expiration of the minimum period or periods in accordance with the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c. If parole is not granted upon such review, the inmate shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms. The board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same. If the inmate is released, he shall be given a copy of the conditions of parole.

## C. From Title 9 New York Codes, Rules and Regulations Section 8002, Parole Release.

### Section 8002 Parole Release

#### Section 8002.1

General. Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for the law.

Section 8002.2

Parole Release Interview

- (a) Each inmate shall be scheduled for a parole release interview at least one month prior to the expiration of the minimum period of imprisonment, whether fixed by the court or the Board of Parole, or upon such reconsideration date as has been fixed by the Board of Parole.
- (b) The parole release interview shall be conducted by a panel of at least two members of the Board of Parole.

Section 8002.3

Parole Release Decision

- (a) Cases wherein the Guidelines have not previously been applied. In making the parole release decision for those cases where the guidelines have not previously been applied (i.e. M.P.I.'s set by the Board prior to January 1, 1978 and cases wherein the court imposed the minimum), the Board shall apply the guidelines and in addition the following factors shall be considered:
- (1) the institutional record including program goals and accomplishments, academic achievements, vocational education training or work assignments, therapy and interpersonal relationships with staff and inmates,
  - (2) performance, if any, as a participant in a temporary release program, and
  - (3) release plans including community resources, employment, education and training and support services available to the inmate.
- (b) Cases where the Guidelines have previously been applied. In those cases where the guidelines have previously been applied the Board shall consider the following in making the parole release decision. Release shall be granted unless one or more of the following is unsatisfactory:
- (1) the institutional record including program goals and accomplishments, academic achievements, vocational education training or work assignments, therapy and interpersonal relationships with staff and inmates,

- (2) performance, if any, as a participant in a temporary release program, and
- (3) release plans including community resources, employment, education and training and support services available to the inmate.

(c) Reasons for Denial:

If parole is not granted the inmate shall be informed in writing within two weeks of his interview of the factors and reasons in detail for such denial. A date for reconsideration shall also be specified. Such date shall be within twenty-four months.

II. REVISED GUIDELINES

OFFENSE SEVERITY SCORE			
	0 - 1 GOOD	2 - 5 MODERATE	6 - 11 SERIOUS
8 - 9 MOST SEVERE	Specific ranges are not given due to limited number of cases and the extreme variation possible within the category.		
7	40 - 48 MONTHS	48 - 60 MONTHS	60 - 90 MONTHS
6	32 - 40 MONTHS	40 - 50 MONTHS	50 - 60 MONTHS
4 - 5	26 - 32 MONTHS	32 - 40 MONTHS	40 - 50 MONTHS
2 - 3	18 - 26 MONTHS	26 - 34 MONTHS	34 - 44 MONTHS
1 LEAST SEVERE	12 - 18 MONTHS	18 - 24 MONTHS	24 - 36 MONTHS

PAROLE BOARD MPI DECISION NOTICE

NAME \_\_\_\_\_ TYPE OF HEARING \_\_\_\_\_ MPI \_\_\_\_\_ HEARING DATE \_\_\_\_\_

NYSID \_\_\_\_\_ DIN \_\_\_\_\_ INSTITUTION \_\_\_\_\_

CONTROLLING CONVICTION OFFENSE(S) 1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_ MIN/MAX 1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_ ME \_\_\_\_\_ CR \_\_\_\_\_

SENTENCING JUDGE \_\_\_\_\_ TYPE SENTENCE: single \_\_\_\_\_ concurrent \_\_\_\_\_ consecutive \_\_\_\_\_ both \_\_\_\_\_

CREDIT FOR TIME SERVED \_\_\_\_\_ / \_\_\_\_\_ Jail (days) \_\_\_\_\_ Prison (months) \_\_\_\_\_

GUIDELINE INFORMATION

I. Offense Score

A. Felony Class of Conviction B=4 C=3 D=2 E=1 YO=1 \_\_\_\_\_

B. Weapon Possession Yes=1 No=0 \_\_\_\_\_

C. Forcible Contact None=0 Force/physical injury=1 Serious injury=2 Death=3 \_\_\_\_\_

II. Prior Criminal History Score

A. Number of Prior Misdemeanors 0-2=0 3 or more=1 \_\_\_\_\_

B. Number of Prior Jail Terms 0-1=0 2-3=1 4 or more=2 \_\_\_\_\_

C. Number of Prior Felonies 0=0 1=1 2=2 3 or more=3 \_\_\_\_\_

D. Number of Prior Prison terms 0=0 1=2 2 or more=3 \_\_\_\_\_

E. Prior Probation or Parole Revocations No=0 Yes=1 \_\_\_\_\_

F. On Parole/Probation at the TIME OF CURRENT OFFENSE No=0 Yes=1 \_\_\_\_\_

TOTAL OFFENSE SCORE

TOTAL PRIOR CRIMINAL HISTORY SCORE

GUIDELINE RANGE \_\_\_\_\_

DECISION MPI (months) \_\_\_\_\_

INITIAL APPEARANCE DATE \_\_\_\_\_

REASONS FOR MPI DECISION

INSIDE:  After review of all relevant factors & information presented, a decision outside the guidelines at this consideration is not found warranted

OUTSIDE: the Guidelines  ABOVE  BELOW

A. Offense Related

- (01) Involved weapon usage
(02) Use of excessive violence against person(s)
(03) Caused death of victim
(04) Multiple victims involved
(05) Bizarre nature of offense
(06) Multiple offenses/multiple counts
(07) Offense included sexual abuse
(08) Offense was among a series of offenses
(09) Offense covered long span of time
(10) Victim was particularly vulnerable
(11) High degree of sophistication involved in offense(s)
(12) Victim initiator
(13) Involvement in offense was minimal
(14) Involvement in offense by coercion/duress
(25) Other: \_\_\_\_\_

B. Offender Related

- (26) Lengthy history of drug abuse
(27) Lengthy history of alcohol abuse
(28) Shows no remorse or recognition of guilt
(29) Continuous involvement with the criminal justice system
(30) History of assaultive behavior
(31) Pattern of similar offenses
(32) Escalation of criminal behavior
(33) Negative response to past correctional influences
(40) Other: \_\_\_\_\_

C. System Related

- (41) Imposed Sentence structure
(42) PIE Credit
(43) Present MPI is not the controlling sentence

If you have any question regarding the reasons for determination, please contact your Parole Officer

Senior Parole Officer

BOARD MEMBERS:

Three empty boxes for board members' names.

PAROLE BOARD RELEASE DECISION NOTICE

NAME \_\_\_\_\_ TYPE OF RELEASE HEARING \_\_\_\_\_ HEARING DATE \_\_\_\_\_

NYSID \_\_\_\_\_ DIN \_\_\_\_\_ INSTITUTION \_\_\_\_\_

CONTROLLING CONVICTION OFFENSE (S) 1. \_\_\_\_\_ MIN/MAX 1. \_\_\_\_\_ ME \_\_\_\_\_ CR \_\_\_\_\_  
2. \_\_\_\_\_ 2. \_\_\_\_\_  
3. \_\_\_\_\_ 3. \_\_\_\_\_

SENTENCING JUDGE \_\_\_\_\_ MINIMUM SET BY: JUDGE [ ] BOARD [ ] MPI: \_\_\_\_\_

CREDIT FOR TIME SERVED \_\_\_\_\_ / \_\_\_\_\_ RECOMMENDATION: DA [ ] JUDGE [ ] OTHER \_\_\_\_\_  
Jail (days) Prison (months)

GUIDELINE INFORMATION

- I. Offense Score
A. Felony Class of Conviction A=5 B=4 C=3 D=2 E=1 YO=1
B. Weapon Possession Yes=1 No=0
C. Forcible Contact None=0 Force/Physical injury=1 Serious injury=2 Death=3

TOTAL OFFENSE SCORE [ ]

- II. Prior Criminal History
A. Number of Prior Misdemeanors 0-2=0 3 or more=1
B. Number of Prior Jail Terms 0-1=0 2-3=1 4 or more=2
C. Number of Prior Felonies 0=0 1=1 2=2 3 or more=3
D. Number of Prior Prison Terms 0=0 1=2 2 or more=3
E. Prior Probation or Parole Revocations No=0 Yes=1
F. On Parole/Probation AT TIME OF CURRENT OFFENSE No=0 Yes=1

TOTAL PRIOR CRIMINAL HISTORY SCORE [ ]

GUIDELINE RANGE \_\_\_\_\_

PAROLE DECISION (effective date) \_\_\_\_\_ OROP PAROLED \_\_\_\_\_ CONDITIONS: \_\_\_\_\_ ISDAD \_\_\_\_\_  
OPEN DATE \_\_\_\_\_ BDIS \_\_\_\_\_  
WARRANT/PROGRAM ONLY \_\_\_\_\_ ECTFEP \_\_\_\_\_  
OR EARLIER \_\_\_\_\_ SPECIAL CASELOAD-Lis \_\_\_\_\_  
DENIED \_\_\_\_\_ RULE 5 \_\_\_\_\_  
OTHER \_\_\_\_\_

IF DENIED: How Long \_\_\_\_\_ Next Appearance Date \_\_\_\_\_

REASONS FOR DENIAL OF PAROLE

Guidelines: [ ] Inside [ ] Above [ ] Below

- I. Judge set & old law MPI's
A. Offense Related (01) Involved weapon usage (02) Use of excessive violence against person(s) (03) Caused death of victim (04) Multiple victims involved (05) Bizarre nature of offense (06) Multiple offenses/multiple counts (07) Offense included sexual abuse (08) Offense was among a series of offenses (09) Offense covered long span of time (10) Victim was particularly vulnerable (11) High degree of sophistication involved in offense(s) (12) Victim initiator (13) Involvement in offense was minimal (14) Involvement in offense by coercion/dureas (25) Other:
B. Offender Related (26) Lengthy history of drug abuse (27) Lengthy history of alcohol abuse (28) Shows no remorse or recognition of guilt (29) Continuous involvement with the criminal justice system (30) History of assaultive behavior (31) Pattern of similar offenses (32) Escalation of criminal behavior (33) Negative response to past correctional influences (40) Other:

- II. Judge set, Old Law MPI, New Law and reappearance
A. Discipline (45) Serious Disciplinary Record
B. Correctional Programs (46) Temporary Release failure (47) Failure to participate in available institutional programs (99) Other:
C. Parole Plan (51) Unnatifactory parole plan

If you have any questions regarding the reasons for determination, please contact your Parole Officer.

Senior Parole Officer

BOARD MEMBERS: [ ] [ ] [ ]

III. FROM TITLE 9 NEW YORK CODES, RULES AND REGULATIONS SECTION 8006, APPEALS.  
(STATUTORY AUTHORITY: EXECUTIVE LAW, SECTION 259, SUBDIVISION 2, SECTION 259-b, SUBDIVISION 11)

Section 8006 Appeals

Section 8006.1

General

(a) An appeal may be taken from any final determination of the Board of Parole regarding a minimum period of imprisonment, parole release, final revocation hearing. Upon appeal to the Board the inmate/releasee is entitled to the representation of counsel.

(b) A notice of appeal shall be filed with the State Board of Parole in Albany within thirty days of the date that the inmate or his attorney receives written notice of the final determination.

(c) The notice of appeal shall state the name and identification number of the inmate/releasee, the determination and the present place of incarceration of the inmate/releasee.

Section 8006.2

Taking of the Appeal

(a) The appeal must be perfected within four months of the date of filing the notice of appeal unless an extension is granted for good cause shown. A request for an extension must be in writing, to the Chairman in Albany, must be received within four months of the date of filing the notice of appeal and must state the reason for requesting the extension. If after the expiration of four months or any period of extension, that may be granted, the appeal is not perfected it will be dismissed with prejudice.

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(b) All appeals shall be submitted in writing.

(c) The inmate or his attorney shall make an appeal by filing with the Board in Albany four copies of the appeal. The appeal shall state the rulings challenged and shall explain the grounds for the appeal.

Section 8006.2

Questions on Appeal

(a) The following questions may be raised on appeal from a minimum period of imprisonment or release proceeding:

- (1) whether the proceeding and/or determination was in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious or was otherwise unlawful.
- (2) whether the Board member or members making the determination relied on erroneous information as shown in the record of the proceeding or relevant information was not available for consideration.
- (3) whether the determination made was excessive.

(b) The following questions may be raised on appeal from a final revocation determination subject to the limitation that evidentiary rulings will be considered only if a timely objection was made at the hearing:

- (1) whether the determination was supported by a preponderance of the evidence and
- (2) questions in subdivision (a) of this section.

(c) Allegations of newly discovered evidence will not be considered on appeal from a revocation hearing but must be the subject of an application to the board for a rehearing.

Section 8006.4

Determination of the Appeal

- (a) Appeals shall be considered by at least three members, none of whom participated in the decision appealed from. The appeal shall be decided by a majority vote of the three members.
- (b) The members deciding the appeal may vote to affirm, reverse, or modify the decision appealed from. Factual determinations made by a presiding officer at a final revocation hearing shall not be subject to modification or reversal on appeal unless the members deciding the appeal conclude that the determination was not supported by a preponderance of the evidence.
- (c) Upon reversal, the members deciding the appeal shall state the reasons for their actions and shall take any appropriate action, which may include a rehearing.

**END**