

SENATE No. 779

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act related to parole.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>2/1/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/2/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/2/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/2/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/3/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/3/2017</i>

SENATE No. 779

By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 779) of William N. Brownsberger, Jack Lewis, Mary S. Keefe, Denise Provost and other members of the General Court for legislation relative to parole. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act related to parole.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 27 of the General Laws, as it appears in the 2014
2 Official Edition, is hereby amended by striking out the first paragraph and replacing it with the
3 following:-

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

10 and by adding after the second paragraph the following new paragraph:-

11 “At all times, at least three members of the parole board shall have at least five years of
12 experience in fields of psychiatry, psychology, social work, or the treatment of substance use

13 disorder. One of those three members must be a licensed mental health professional, as defined
14 in G.L. c. 123, § 1. If, at any time, the parole board does not have three such members, then, until
15 the board composition complies with this requirement, every candidate recommended for a
16 parole board position must possess the qualifications listed above. This provision applies
17 notwithstanding any other provision of law. “

18 SECTION 2. Section 130 of chapter 127 of the General Laws, as it appears in the 2014
19 official edition, is hereby amended by striking lines 50-69 and and inserting in place thereof the
20 following:-

21 “A parole permit shall be granted at a prisoner’s first date of parole eligibility and at any
22 subsequent review hearing, unless the board determines by clear and convincing evidence that, if
23 the prisoner is released with appropriate conditions and community supervision, the prisoner will
24 not live and remain at liberty without violating the law. The parole board shall make this
25 determination using structured, actuarially-based parole guidelines and the findings of a
26 validated risk and needs assessment tool, both of which must consider the prisoner’s
27 participation in available work opportunities, educational opportunities and treatment programs
28 and the prisoner’s demonstrated good behavior. The board shall also consider whether risk
29 reduction programs, made available through collaboration with criminal justice agencies, and
30 other aspects of the prisoner’s parole plan would minimize the probability of the prisoner re-
31 offending once released.

32 For any prisoner with a disability, the parole board must consider whether provision of
33 reasonable accommodations will enable the prisoner to live and remain at liberty without
34 violating the law. If a prisoner has a disability that may impair the ability of the prisoner to be

35 successful on parole, the board shall schedule a psychological or medical examination to
36 ascertain and evaluate the nature of the risk posed by the disability and to identify any services,
37 supports, or programs that might mitigate the risk. The board shall consider the evaluation in
38 making its decision.

39 The parole guidelines must be publicly available. The guidelines must be based on
40 empirical data and be evidence based. The validated risk and needs assessment tool must be an
41 actuarial tool verified by empirical data. All risk and needs assessment factors considered by the
42 tool and the scoring method must be publicly available; a prisoner shall be entitled to review the
43 complete assessment and findings of the tool regarding his or her risk and needs prior to the
44 parole hearing. The board shall validate the guidelines and risk and needs assessment tool every
45 five years to ensure they accurately reflect the risk of recidivism. The board shall also make
46 adjustments to prevent systemic disparate impact based solely on prisoners' socio-economic
47 characteristics. The board shall produce a public report detailing its assessment of the guidelines
48 and the risk and needs assessment tool and adjustments made to each as a result thereof.

49 The record of the board's decision shall contain a summary statement of the case and
50 include written certification that each board member voting on the issue of granting a parole
51 permit has reviewed the entire criminal record of the applicant, as well as the number of
52 members voting in favor of granting a parole permit and the number of members voting against
53 granting a parole permit. Any record of decision denying parole shall also specify, in detail and
54 not in conclusory terms, the reasons why the denial was appropriate based on the structured
55 parole guidelines and the findings of the validated risk and needs assessment tool, and shall
56 identify the particular tasks the applicant must complete prior to the next parole hearing in order

57 to gain a parole permit. Any minority or dissenting opinions shall be included in the record of
58 decision.”;

59 and by inserting at the end thereof the following new paragraphs:

60 “The board shall not revoke parole for violation of a condition of parole that is not a
61 conviction for a new criminal offense unless it determines on the record at a final parole
62 revocation hearing that appropriate intermediate sanctions have been utilized and have been
63 ineffective or that the modifications of conditions of parole or the imposition of less severe
64 sanctions is not consistent with public safety.

65 The board shall keep and aggregate data on grants and denials of parole and rescissions
66 and revocations of parole. This data shall be released to the public on a quarterly basis. The data
67 shall include, but not be limited to, the type of crime, the type of parole hearing including
68 whether a release hearing was an initial hearing, a review hearing or a review after revocation
69 hearing, the length of the prisoner’s sentence and the amount of time served. For release
70 hearings, the data shall include the time elapsed between a grant of parole and the date the
71 prisoner is released on parole.”

72 SECTION 3: Section 133A of chapter 127 of the General Laws, as it appears in the 2014
73 Official Edition, is hereby amended by striking out the first paragraph in its entirety and
74 replacing it with the following:-

75 “Every prisoner who is serving a sentence for life in a correctional institution of the
76 commonwealth, except prisoners serving a life sentence for murder in the first degree who had
77 attained the age of 18 years at the time of the murder and except prisoners serving more than one
78 life sentence arising out of separate and distinct incidents that occurred at different times, where

79 the second offense occurred subsequent to the first conviction, shall be eligible for parole at the
80 expiration of the minimum term fixed by the court under section 24 of chapter 279 . The parole
81 board shall, within 60 days before the expiration of such minimum term, conduct a public
82 hearing before any six members appointed by the chairman to act as the parole board for
83 purposes of granting or revocation of paroles. Notwithstanding the previous sentence, the board
84 may postpone a hearing until 30 days before the expiration of such minimum term, if the
85 interests of justice so require and upon publishing written findings of the necessity for such
86 postponement. If a board member has a conflict of interest to the extent that he or she cannot
87 render a fair and impartial decision or that the appearance of a board member would be unduly
88 burdensome because of illness, incapacitation, or other circumstance, the chair shall appoint
89 another member of the board to the hearing panel. Whether a member is unavailable for the
90 purposes of this section shall be determined by the chair. Board members shall appear unless said
91 chair determines them to be unavailable. Under no circumstances shall a parole hearing proceed
92 pursuant to this section unless a majority of the board is present at the public hearing.”;

93 and by striking out the third paragraph in its entirety and replacing it with the following:-

94 “After such hearing the parole board may, by a vote of two-thirds of the hearing panel,
95 grant to such prisoner a parole permit to be at liberty upon such terms and conditions as it may
96 prescribe for the unexpired term of his sentence. If such permit is not granted, the parole board
97 shall, at least once in each ensuing five year period, consider carefully and thoroughly the merits
98 of each such case on the question of releasing such prisoner on parole, and may, by a vote of
99 two-thirds of the hearing panel, grant such parole permit. By request of the hearing panel, any
100 case may be referred to the full membership of the board for further consideration.”

101 SECTION 4: Section 136 of chapter 127 of the General Laws, as it appears in the 2014
102 Official Edition, is hereby amended by adding after the first paragraph the following:

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