

**RHODE ISLAND GOVERNMENT REGISTER**  
**PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Rhode Island Parole Board

**RULE IDENTIFIER:** 242-RICR-00-00-1

**REGULATION TITLE:** 2017 Standards for Parole

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Repeal

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

Public Notice: March 28, 2018

End of Public Comment Period: May 2, 2018

**SUMMARY OF PROPOSED RULE:**

The Parole Board proposes to repeal in its entirety “2017 Standards for Parole”, 242-RICR-00-00-1 to correct an error by which its 2016 Parole Guidelines were erroneously codified as regulations under the Rhode Island Administrative Procedures Act (APA). Under *L'Heureux v. State Dep't of Corrections*, 708 A.2d 549 (RI 1998) and *Pine v. Clark*, 636 A.2d 1319 (RI 1994), Parole Board hearings do not fall under the APA. Accordingly, the Board will instead promulgate these as Guidelines and resume its use of guidelines as well as public meetings to review, solicit input and/or update these guidelines.

**COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed repeal by May 2, 2018 to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Mailing Address:** RI Parole Board

Mathias Bldg. #56  
40 Howard Ave.  
Cranston, RI 02920

**Email Address:** matthew.degnan@doc.ri.gov

**WHERE COMMENTS MAY BE INSPECTED:**

**Mailing Address:** RI Parole Board

Mathias Bldg. #56  
40 Howard Ave.  
Cranston, RI 02920

**PUBLIC HEARING INFORMATION:**

In accordance with R.I. Gen. Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

**FOR FUTURE INFORMATION CONTACT:**

Matthew Degnan  
Administrator  
RI Parole Board  
Mathias Bldg. #56  
40 Howard Ave.  
Cranston, RI 02920  
401-462-0902

matthew.degnan@doc.ri.gov

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:**

This repeal has no impact on small business.

**Authority for This Rulemaking:** R.I. Gen. Laws § 13-8-14.1

**Regulatory Findings:**

In the development of the proposed repeal consideration was given to binding Rhode Island Supreme Court case law. Alternative approaches; overlap or duplication with other statutory and regulatory provisions; and significant economic impact on small business are not applicable. No alternative approach, duplication, or overlap was identified based upon available information.

**The Proposed Repeal:**

Rhode Island Parole Board proposes to repeal “2017 Standards for Parole” in their entirety as follows:

~~242-RICR-00-00-1~~

## ~~TITLE 242 – Rhode Island Parole Board~~

~~CHAPTER 00 – N/A~~

~~3.1.1 – SUBCHAPTER 00 – N/A~~

~~3.2 – PART 1 – 2017 Standards for Parole~~

### ~~1.1 – PURPOSE~~

- ~~A. The mission of the Rhode Island Parole Board is to enhance public safety, contribute to the prudent use of public resources and consider the safe and successful re-entry of offenders through discretionary parole.~~
- ~~B. The purpose of this document is to adopt standards to be used by the Board in evaluating individual applications for parole and to establish, within the range of parole eligibility set by statute, the portion of a sentence which should be served depending on the likelihood of recidivism as determined by a validated risk assessment and the Board's independent case analysis, and shall serve as guidelines for the Board in making individual parole determinations.~~
- ~~C. The board shall consider the applicable standard before rendering a decision on a parole application, and may make a determination at variance with that standard only upon a finding that the determination is warranted by individualized factors, such as the character, criminal history, and attitudes of the applicant that bear on the likelihood to reoffend, the conduct of the applicant while incarcerated, including meaningful participation in a risk-reducing program and substantial compliance with the rules of the institution, and risk-reducing behavior and the criteria set forth in R.I. Gen. Laws § 13-8-14.~~
- ~~D. In each case where the Parole Board grants an application prior to the time set by the applicable standard or denies an application on or after the time set by that standard, the Board will set forth in writing the rationale for its determination.~~

### ~~3.3 1.2 – STATUTORY AUTHORITY~~

~~These guidelines are promulgated pursuant to R.I. General Laws § 13-8-14.1.~~

### ~~3.4 1.3 – DEFINITIONS~~

~~A. As used herein:~~

1. ~~“Department of Corrections”, “RIDOC”, or “DOC” means the Rhode Island Department of Corrections.~~
2. ~~“Dynamic factors” means factors that may change over time and which reflect characteristics the offender has demonstrated since being incarcerated such as age, education level, custody assignment, prior disciplinary conduct in the prior 24 months.~~
3. ~~“LSI-R” means the Level Service Needs Inventory (Revised).~~
4. ~~“Rhode Island Parole Board”, “Parole Board”, or “Board” means the Rhode Island Parole Board.~~
5. ~~“Risk reducing program” means a program that adheres to those elements that are shown in research to reduce recidivism.~~
6. ~~“Security Risk Group” or “SRG”, as identified and defined by the Department of Corrections, means a member of a Security Risk Group (SRG) because of the nature of the crime(s), associations, institutional records, notoriety, knowledge and/or backgrounds or an exceptionally high level of media attention.~~
7. ~~“Static factors” means those factors that do not change over time such as criminal history, the sentenced/commitment offense, prior felony convictions, history of violent or assaultive convictions, status on probation or parole at the time of admission to the Adult Correctional Institutions.~~

### ~~3.5~~ **1.4 PROCEDURES**

- A. ~~Submission of Materials – Timing – All submissions to the Parole Board by an inmate or on behalf of an inmate from a person or party outside of the Department of Corrections, including submissions by attorneys, must be in writing and must be received by the Parole Board Office prior to the first day of the month of the inmate’s scheduled parole hearing. The Board will be under no obligation to consider any material not submitted within the timeframe under this section.~~
- B. ~~All parole plans should include an updated job offer, which must be notarized, or on official company stationery; a residence letter, which shall contain the address and phone number of the residence with a brief statement by the occupant indicating a willingness to have the parole candidate reside at that location; and, any or all, supportive letters and certificates of program completion.~~
- C. ~~Waivers/Continuances~~

- ~~1. An inmate may continue or waive his/her right to be considered at an Initial Parole Hearing (i.e. the first parole hearing eligibility date as calculated by the Department of Corrections), and may also continue a scheduled Reconsideration Hearing, and must do so in writing, on a waiver form provided by the Department of Corrections. Reconsideration hearings are discretionary and set by the Parole Board and requests to continue such hearings will be subject to approval by the Board, which may adjust a continuance date based on scheduling needs.~~

~~D. Reconsideration – Timing~~

- ~~1. If the Board votes to deny parole, the Board, in its discretion, may deny parole without further reconsideration or the Board may afford an inmate another opportunity, at a reasonable interval, to present evidence of changes in the factors previously used in the formation of the Board's decision. If a majority of the Board sitting as a subcommittee cannot agree on setting a reconsideration hearing or on denying parole without reconsideration, the vote shall default to reconsideration and the Chairperson shall be authorized to schedule a reconsideration hearing at an interval proportionate to the time remaining on the inmate's sentence. In cases where reconsideration is set, the interval time for reconsideration shall not exceed six (6) years.~~
- ~~2. This provision on reconsideration hearings shall operate *prospectively* and not retroactively to any matter adjudicated by the Board prior to December 5, 2015.~~

~~E. Pending Charges – Continuation~~

- ~~1. In order to protect an accused's right against self-incrimination and to allow the Parole Board to fairly consider all information concerning an inmate, the parole consideration hearing for any inmate who has a pending criminal charge(s) shall be continued until disposition of the charge(s) is completed.~~

### ~~3.6 1.5 COMPONENTS OF THE PAROLE STANDARDS~~

~~A. Substantial observance of the rules of the institution.~~

- ~~1. The Parole Board will view negatively any significant institutional disciplinary record and generally will not parole an inmate unless he or she has had no infractions in the prior six (6) months. Any inmate, who is in disciplinary confinement at the time of his or her scheduled parole hearing, shall not be considered by the Board for a minimum of three (3) months following his/her scheduled release from disciplinary confinement.~~

~~B. Risk Assessment Instrument~~

- ~~1. The Rhode Island Parole Board has adopted an automated, validated risk assessment instrument as per R.I. Gen. Laws § 13-8-14.1(a). The risk assessment score is not presumptive to parole release or denial but is one factor considered by the Board.~~
- ~~2. The risk assessment instrument takes into consideration static and dynamic factors. The following matrix, adopted by the Board in December 2016, balances the offense severity and risk assessed.~~
- ~~3. The Parole Board will also refer to an inmate's LSI-R needs assessment, when available, to assist with condition setting or program referral.~~
- ~~4. Parole Risk Assessment Matrix~~

Offense Severity	Parole Risk Assessment Score		
	High Risk	Moderate Risk	Low Risk
High	5	4	4
Mod/High	5	4	3
Moderate	4	3	2
Low/Mod	4	3	1
Low	3	2	1

- ~~a. a. 1 — Parole recommended.~~
- ~~b. b. 2 — Parole recommended at next hearing unless significant aggravating factors exist.~~
- ~~c. c. 3 — Parole recommended unless significant aggravating factors exist, provided appropriate parole plan in place. Require appropriate programming in community for moderate or high risk cases (consider LSI-R scores).~~

- d. ~~d. 4~~ Not recommended for parole unless significant mitigations factors present, absence of significant aggravating factors. If granted parole, appropriate programming in community for moderate and high risk cases (consider LSI-R scores). Higher supervision in the community should be considered.
- e. ~~e. 5~~ Not recommended for parole—focus on risk reduction programming (consider LSI-R scores).

### ~~C. Aggravating Factors~~

~~1. In addition to an offender's risk assessment score, the Parole Board may consider any other factor that detracts from serious parole release consideration, including but not limited to~~

- f. ~~a.~~ Negative institutional conduct/behavior.
- g. ~~b.~~ The failure to complete or early termination from required or recommended programming.
- h. ~~c.~~ Failure or termination from in a Work Release Program.
- i. ~~d.~~ Nature of the offense as it relates to the parole candidate's motivation for committing the offense, his/her role in the offense, level of violence used, the amount of loss and/or injury to the victim, and the degree of sophistication evidenced in the offense.
- j. ~~e.~~ Unfavorable re-entry preparation or plan.
- k. ~~f.~~ Pattern of parole supervision failure.
- l. ~~g.~~ Special concerns of the victim(s) or community.
- m. ~~h.~~ Status in a Security Risk Group as it impacts the re-entry plan.
- n. ~~i.~~ Escape
- o. ~~j.~~ Sexual predatory activities
- p. ~~k.~~ Any other factor determined by the Parole Board in its discretion that detracts from serious parole release consideration.

### ~~D. Mitigating Factors~~

~~1. In addition to an offender's risk assessment score, the Parole Board may consider any other factor that enhances serious parole release consideration, including but not limited to:~~

- q. ~~a.~~ Appropriate participation and success in Work Release Program where available.
- r. ~~b.~~ Completion of required or recommended programming.
- s. ~~c.~~ Favorable and realistic re-entry plan.



~~t. d. Strong community support.~~

~~u. e. Within 12 months of Sentence Completion Date.~~

~~v. f. Any other factor determined by the Parole Board in its discretion that enhances serious parole release consideration~~

#### ~~E. Sexual Offenses and Child Molestation~~

~~1. An individual found guilty of a sexual offense will not generally be seriously considered for parole until he/she has successfully taken part in the Sex Offender Treatment Program. The Board will consider the recommendation of the Sex Offender Treatment Program when evaluating an inmate for potential release on parole.~~

~~2. The Board will consider the recommended conditions for release and post-release counseling. All offenders sentenced to the crime of child molestation shall be required to cooperate with the parole board psychiatrist/psychologist who may be asked to complete a comprehensive psychiatric/psychological examination to determine if the offender is at high risk to reoffend.~~

### ~~3.7 1.6 REVOCATION OF PAROLE~~

~~A. The Parole Board considers any violation of the conditions of parole to be a very serious matter. After parole revocation, it will be solely within the discretion of the Parole Board to determine whether the inmate will be reconsidered for parole release during the same sentence and, if so, the length of time the inmate will serve before any such reconsideration.~~

~~B. Expedited Procedure: The Parole Board will utilize an expedited revocation procedure for parole violations not involving new criminal offenses, where there is no dispute as to the charged violation, the parolee charged with such violation freely admits to the violation and also accepts the appropriate sanction imposed.~~

### ~~3.8 1.7 ACTIONS BY CHAIR~~

~~— The Chairperson of the Rhode Island Parole Board is authorized to act for the Board between scheduled meetings in rescinding warrants, administratively approving discharge plans ordered by the Board, amending parole permits and otherwise controlling the supervision of parolees. Any such actions are subject to ratification by the Board or a subcommittee thereof at a scheduled meeting.~~

### ~~3.9 1.8 PUBLIC RECORDS~~

~~— It is the policy of the Parole Board not to release any information obtained from documents or records, which are not deemed to be public records pursuant to the~~

~~provisions of R.I. Gen. Laws § 38-2-2 et. seq. Parole Board records are exempt from public disclosure since these records contain personal or medical information relating to an individual.~~

### ~~3.10 1.9~~ **TAPE RECORDINGS**

~~The Rhode Island Parole Board shall record all Parole Board hearings with the use of a tape recording device and tape recorded records of all hearings shall be maintained by the Board Administrator for a period of three (3) years and shall not be deemed a public record.~~

### ~~3.11 1.10~~ **OUT-OF-STATE INMATES**

~~Inmates will be considered in absentia, unless they request tele conferencing or videoconferencing, subject to availability and discretion of the Parole Board. Inmates who have been involuntarily transferred out of state may apply to the Rhode Island Department of Corrections for a return to Rhode Island for their scheduled Board hearing as provided under applicable Rhode Island law.~~

### ~~3.12 1.11~~ **COMMUNITY SUPERVISION FOR CHILD MOLESTATION OFFENSES**

- ~~A. Pursuant to R.I. Gen. Laws §§ 13-8-30 through 33 the Parole Board will impose terms and conditions of community supervision on persons convicted of first and second degree child molestation at the completion of the offender's prison sentence, release from incarceration or commencement of probation and may revise, alter or amend said conditions at any time.~~
- ~~B. The Chairperson of the Parole Board is authorized to set the initial terms of community supervision, subject to amendment or later modification by a subcommittee of the Board.~~

### ~~3.13 1.12~~ **VICTIMS**

- ~~A. In order to ensure that victims who meet with the Parole Board feel free to express their opinions and feelings about an inmate's application for parole and possible release from prison without concern about possible retribution (from the inmate or any other party) or invasion of their privacy.~~
- ~~1. Victims (or immediate family members or minor or deceased victims) who request a meeting with the Parole Board may meet with the Board privately.~~
  - ~~2. The Parole Board will not inform inmates that victims met with the Board, without consent from victims.~~

~~3. Media coverage (television, radio, newspaper) may be present only with the consent of the victim(s).~~

~~B. § 1.12 of this Part is intended to comply with R.I. Gen. Laws § 12-28-2 (Victim's Rights), which requires that all crime victims be treated with dignity, respect and sensitivity in all phases of the process. § 1.12 of this Part is consistent with R.I. Gen. Laws Chapter 42-46, which recognizes as a legitimate exception any discussions of the physical or mental health of a person or persons.~~