**IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT**
**DAVIDSON COUNTY, TENNESSEE**

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| JEFFREY WAYNE HUGHES, | § | |
| | § | |
| *Petitioner,* | § | |
| | § | |
| *v.* | § | Case No.: _____ |
| | § | |
| TENNESSEE BOARD OF PAROLE, | § | |
| | § | |
| *Respondent.* | § | |

**PETITION FOR WRIT OF CERTIORARI**

## I. INTRODUCTION

Petitioner Jeffrey Wayne Hughes is a beneficiary of the Reentry Success Act of 2021—a new statute of statewide effect that significantly alters several components of parole determinations in Tennessee. *See* TN LEGIS 410 (2021), 2021 Tennessee Laws Pub. Ch. 410 (H.B. 785). Most significantly, the Reentry Success Act of 2021 amended Tenn. Code Ann. § 40-35-503 to provide that: "Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing." *Id* at § 12. Thus, an inmate who qualifies under the Reentry Success Act of 2021 has a presumptive statutory right to release "upon the inmate reaching the inmate's release eligibility date" or at any parole hearing after the inmate's release eligibility date. *Id*. Further, unless the Board of Parole meets its evidentiary burden of proving good cause to deny an inmate release on parole at such a hearing, an inmate "must be released on parole[.]" *Id*.

Mr. Hughes' release eligibility date is only months away—likely September 2021 depending on forthcoming credits—but in no case will it be later than January 2022. Accordingly, unless the Board holds a hearing and shows good cause to deny Mr. Hughes release on parole before then, by law, Mr. Hughes "must be released on parole" in a matter of months upon reaching his release eligibility date. *Id.*

The Board does not intend to release Mr. Hughes on parole in the coming months, though. Nor does the Board intend to meet—or even *attempt* to meet—its evidentiary burden of proving good cause to deny Mr. Hughes release before he reaches his release eligibility date. Instead, the Board intends to keep Mr. Hughes incarcerated without a hearing even as his release eligibility date comes and goes. Unless this Court intervenes before then, it will also keep Mr. Hughes incarcerated illegally without affording him a hearing for nearly a year thereafter.

As grounds for this approach, the Board takes the position that despite the fact that the Reentry Success Act of 2021 is effective July 1, 2021, the Board need not comply with the law where Mr. Hughes is concerned until July 2022, since that happens to be the date when the Board scheduled Mr. Hughes' next hearing before the Reentry Success Act of 2021 was enacted. The Board's insistence that the Reentry Success Act of 2021—effective July 1, 2021—does not become effective for Mr. Hughes until July 2022, however, is arbitrary, capricious, and illegal. It also denies him the opportunity to exercise his substantive rights at a meaningful time and in a meaningful manner as due process requires.

Of note, under the Board's theory of the Reentry Success Act of 2021, even if a qualifying inmate is presumptively entitled to release in **2021**, the Board may deny the inmate release without holding a hearing for as long as *ten years*—until **2031**—as long as

that happens to be when an inmate was slated to receive his or her next parole hearing before the Reentry Success Act of 2021 became effective. *See* Tenn. Code Ann. § 40-28-115(i) ("When declining, revoking, or rescinding parole, the board is authorized to set the period of time before the prisoner receives another hearing on the same offense or offenses. However, no period set by the board shall exceed ten (10) years."). The Board's approach is incompatible with the text of the Reentry Success Act of 2021, however, which provides that its benefits accrue "*upon the inmate reaching the inmate's release eligibility date* or any *subsequent* parole hearing" after an inmate's release eligibility date. *See* TN LEGIS 410 (2021), 2021 Tennessee Laws Pub. Ch. 410 (H.B. 785). (emphases added). As a consequence, qualifying inmates are entitled to the benefits of the Reentry Success Act of 2021 upon reaching their release eligibility date, or at any hearing afterward. By contrast, the relevant triggering date is not—as the Board claims—whatever date the Board happened to pick for an inmate's next hearing before the Reentry Success Act of 2021 became effective.

The Board surely knows this. Its contrary, atextual interpretation of the Reentry Success Act of 2021—that it becomes effective for qualifying inmates only at their next scheduled parole hearing, rather than "upon the inmate reaching the inmate's release eligibility date," *id.*—also is not a serious attempt to comply with the governing law. Instead, the Board's position is grounded in its claim that "the Board does not have the ability or resources necessary to identify and reconsider all of those cases, including Mr. Hughes," before inmates who qualify under the Reentry Success Act of 2021 reach their release eligibility dates. *See* **Ex.1** at Attach. 4.

In light of the foregoing, Mr. Hughes has petitioned the Board to update its regulations to comply with the Reentry Success Act of 2021; to afford him a hearing before

his forthcoming release eligibility date in compliance the Reentry Success Act of 2021; and to afford him a hearing before his forthcoming release eligibility date in compliance with due process. *See* **Ex. 1.** The Board has refused. *See* **Ex. 2**. Consequently, because the Board is acting illegally, and because Mr. Hughes has exhausted every administrative remedy available to him, Mr. Hughes has no other plain, speedy, or adequate remedy at law. Accordingly, pursuant to Tenn. Code Ann. § 27-8-101, Mr. Hughes petitions this Court to issue a writ of certiorari and order the Board:

i. To afford Mr. Hughes a parole hearing governed by the standards set forth in the Reentry Success Act of 2021 prior to his forthcoming release eligibility date; or, alternatively:

ii. To grant Mr. Hughes release on parole upon reaching his release eligibility date if the Board fails to demonstrate "good cause" to deny him release at a hearing before then.

## II. PARTIES

1. The Petitioner, Jeffrey W. Hughes (TDOC #00571879), is an inmate at Bledsoe County Correctional Complex. Mr. Hughes is a beneficiary of the Reentry Success Act of 2021, and his release eligibility date is just months away.

2. The Respondent, the Tennessee Board of Parole, "is a creature of statute and is able to exercise only those powers conferred on it by the legislature." Tenn. Op. Att'y Gen. No. 96-143 (Nov. 26, 1996). The Board is composed of seven political appointees appointed by the Governor, *see* Tenn. Code Ann. § 40-28-103(a), and it has "the authority to perform all administrative functions necessary to carry out its duties[.]" *Id*. The Board is thus an administrative agency that is "vested and charged with those powers and duties necessary and proper to enable it to fully and effectively carry out" its

statutory obligations. Tenn. Code Ann. § 40-28-104(a). The Board is located at 500 James Robertson Parkway 4th Floor, Nashville, TN 37243-0850, in Davidson County, Tennessee, and at all times relevant to this Petition, the Board's official actions took place in Davidson County, Tennessee.

## III. JURISDICTION, AUTHORITY, AND VENUE

3. This Court has jurisdiction over and the authority to void the illegal, arbitrary, and capricious actions of the Board of Parole pursuant to Tenn. Code Ann. § 27-8-101, Tenn. Code Ann. § 27-9-101, and Tenn. Code Ann. § 1-3-121. This is the Petitioner's first application for the writ of certiorari.

4. As the jurisdiction where the Respondent resides and where the Respondent's official actions giving rise to this Petition occurred, Tenn. Code Ann. § 4-4-104, venue is proper in this Court pursuant Tenn. Code Ann. § 20-4-101(a).

5. Having been filed within 60 days of the Board's challenged June 25, 2021 action denying Mr. Hughes relief, *see* **Ex. 2**, this Petition is timely filed pursuant to Tenn. Code Ann. § 27-9-102.

## IV. FACTUAL ALLEGATIONS

a. *The Reentry Success Act of 2021*

6. For decades, Tennessee's parole statute has provided that "[p]arole is a privilege, not a right." *Brennan v. Bd. of Parole*, 512 S.W.3d 871, 873 (Tenn. 2017) (citing Tenn. Code Ann. §§ 40-28-117(a)(1), 40-35-503(b)). The Board's regulations have consistently reflected as much, and they continue to do so today. *See* Tenn. Comp. R. & Regs. 1100-01-01-.02(2).

7. Earlier this year, however, the General Assembly enacted the Reentry

Success Act of 2021, which Governor Bill Lee signed into law as Public Chapter No. 410. A critical provision of the Reentry Success Act of 2021—effective July 1, 2021—amended Tenn. Code Ann. § 40-35-503 to provide that: "Notwithstanding subsection (b), **there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date** or any subsequent parole hearing.") (emphasis added). Consequently, effective July 1, 2021, an inmate who qualifies under the Reentry Success Act of 2021 has a presumptive right to release "upon the inmate reaching the inmate's release eligibility date . . . ." *Id.*

8. Given the above provision of the Reentry Success Act of 2021, as a matter of law, it is no longer true that "parole is a privilege, not a right" for all inmates—even though the Board's regulations continue to reflect that since-repealed standard. *See* Tenn. Comp. R. & Regs. 1100-01-01-.02(2).

9. Instead, inmates who are eligible under the Reentry Success Act of 2021 now have a presumptive right to release on parole upon reaching their release eligibility dates—a right that can only be denied to them "for good cause shown[.]" *See* 2021 Tenn. Pub. Acts, 410 § 12.

10. Inmates' presumptive right to release under the Reentry Success Act of 2021 is enforceable as a matter of due process. As the Tennessee Court of Appeals held even before the Reentry Success Act of 2021 was enacted into law:

> Although an inmate has no fundamental right or liberty interest in being released on parole prior to the expiration of his or her sentence, this Court has determined that "the Board of Paroles is obligated to follow the laws of the State of Tennessee as well as its own rules, and that inmates are entitled to whatever due process arises as a result of the proper application of the state statutes and the rules." *Wells v. Tenn. Bd. of Paroles*, 909 S.W.2d 826, 829 (Tenn. Ct. App. 1995).

*Greenwood v. Tennessee Bd. of Parole*, 547 S.W.3d 207, 214–15 (Tenn. Ct. App. 2017).

11. Additionally, "[t]he essence of procedural due process is notice and an opportunity to be heard **at a meaningful time** and in a meaningful manner." *Manning v. City of Lebanon*, 124 S.W.3d 562, 566 (Tenn. Ct. App. 2003) (emphasis added). Consequently, in keeping with this constitutional due process requirement, the Board has a statutory obligation to afford inmates parole hearings at "a reasonable time . . . ." *See* Tenn. Code Ann. § 40-35-503(d)(1) ("The board of parole shall conduct a hearing within a reasonable time prior to or upon the individual's release eligibility date to determine the individual's fitness for parole.").

b. *The Petitioner's Rights Under the Reentry Success Act of 2021*

12. Only certain inmates are eligible to receive the statutory rights created by the Reentry Success Act of 2021, which generally applies only to inmates who: (1) were convicted of lower-level or non-violent felony offenses; and (2) are low risk offenders; and (3) have successfully completed recommended programming; and (4) have not received recent disciplinary offenses. *See* TN LEGIS 410 (2021), 2021 Tennessee Laws Pub. Ch. 410 (H.B. 785) at § 12.

13. The Petitioner, Jeffrey Hughes, is among those inmates who does qualify. Accordingly, Mr. Hughes is entitled to the substantive rights and benefits afforded to him by the Reentry Success Act of 2021.

14. Based on the substantive rights and benefits afforded to Mr. Hughes by the Reentry Success Act of 2021, Mr. Hughes is presumptively entitled to be released on parole upon reaching his release eligibility date, which is just months away.

15. Depending on his forthcoming credits and good time, Mr. Hughes will reach his release eligibility date in September 2021, or—at the latest—January 2022.

16. The Board, however, refuses to afford Mr. Hughes a parole hearing until

July 2022.

17. The Board also will not attempt to demonstrate good cause to deny Mr. Hughes release before then.

c. *The Petitioner's Petition to the Board and appearance before the Board.*

18. Notwithstanding Tennessee's enactment of the Reentry Success Act of 2021 into law, the Board has not amended its regulations to comply with it.

19. Accordingly, the Board's recommendations continue to provide that parole is always a privilege—never a right—and they fail to reflect qualifying inmates' presumptive right to release on parole by their release eligibility dates absent "good cause shown" by the Board.

20. Given the Board's failure to bring its regulations into compliance with the Reentry Success Act of 2021, in advance of the Board's June 23, 2021 meeting, the Petitioner petitioned the Board to amend its regulations to comply with the Reentry Success Act of 2021, *see* **Ex. 1**, and the Petitioner's counsel appeared before the Board in person on the Petitioner's behalf to seek the same relief.

21. The Board adjourned its June 23, 2021 meeting without doing so.

22. The Petitioner is affected and aggrieved by the Board's failure to amend its regulations to reflect the present governing law.

23. The Board has a ministerial duty under Tenn. Code Ann. § 40-35-503(d)(1) to "conduct a hearing within a reasonable time prior to or upon the individual's release eligibility date to determine the individual's fitness for parole," *see id.*

24. The Board additionally has a constitutional obligation to ensure that qualifying inmates may exercise their rights under Tennessee's parole statute "at a meaningful time and in a meaningful manner" in compliance with due process

guarantees. *See Manning*, 124 S.W.3d at 566; *Greenwood*, 547 S.W.3d at 214–15.

25. Based on these obligations, the Board has a legal duty to schedule parole hearings for inmates who qualify under the Reentry Success Act of 2021—including Mr. Hughes—prior to their release eligibility dates in order to enable them to timely and meaningfully vindicate their statutory rights under the Reentry Success Act of 2021. Absent the Board's failure to prove good cause to deny a qualifying inmate release at such a hearing, a qualifying inmate also has a statutory right to be released on parole upon reaching his or her release eligibility date.

26. Despite this known duty, the Board has willfully opted not to comply with its statutory and constitutional obligations in part on the basis that "the Board does not have the ability or resources necessary" to comply with its legal obligations. *See* **Ex. 1** at Attach. 4. Beyond being provably false, though, the Board's illegal action contravenes Mr. Hughes' substantive rights.

27. Prior to the Board's June 23, 2021 meeting, Mr. Hughes petitioned the Board to comply with its aforementioned legal obligations by scheduling prompt parole hearing dates for inmates who qualify under the Reentry Success Act of 2021—including Mr. Hughes—prior to their forthcoming release eligibility dates. *See* **Ex. 1**. Alternatively, Mr. Hughes petitioned the Board to grant all qualifying inmates, including him, release on parole upon reaching their release eligibility dates given the Board's failure and refusal to demonstrate good cause to deny such release in accordance with the Reentry Success Act of 2021. *See id.*

28. The Petitioner's counsel appeared before the Board at its June 23, 2021 meeting seeking the same relief.

29. The Board adjourned its June 23, 2021 meeting without acting on Mr.

Hughes' Petition.

30. Accordingly, Mr. Hughes sought a determination from the Board regarding whether it would grant him the relief he had requested. *See* **Ex. 3**.

31. On June 25, 2021, the Board indicated that it would deny Mr. Hughes the relief he requested. *See* **Ex. 2**.

32. Mr. Hughes is affected and aggrieved by the Board's unlawful decision to deny him release on parole upon reaching his release eligibility date without demonstrating—or even attempting to demonstrate—good cause to do so at a hearing before then.

33. Tennessee's enactment of the Reentry Success Act of 2021 into law represents a significant change in state law governing parole determinations.

34. § 1100-01-01-.09(1)(d) of the Board's Rules and Regulations enables the Board to reconsider and reopen, on its own motion, any parole grant case upon the receipt of significant new information.

35. The effectiveness of the Reentry Success Act of 2021 is "significant new information" that requires the Board either to release Mr. Hughes on parole upon reaching his release eligibility date, or else, to hold a hearing and demonstrate good cause to deny him such release before then.

36. Mr. Hughes' last parole hearing occurred in July 2020. After that hearing, Mr. Hughes' Hearing Officer recommended that he be released on parole with conditions.

37. In July 2020, Board Chairman Richard Montgomery similarly provided a minority vote to grant Mr. Hughes release.

38. All of this occurred *before* the Reentry Success Act of 2021 became effective and afforded Mr. Hughes an affirmative right, upon reaching his release eligibility date,

to be released on parole absent good cause shown to deny him release.

39. Since July 2020, significant new information obligates the Board to reconsider its previous denial.

40. Specifically, the Reentry Success Act of 2021 presumptively entitles Mr. Hughes to release as a matter of right at his release eligibility date absent a finding of "good cause shown" by this Board to deny such release—something that this Board has not shown to date.

41. This new information is significant, because unless the Board meets its burden of proving good cause to deny Mr. Hughes' release on parole, every day that Mr. Hughes is incarcerated beyond his forthcoming release eligibility date will be a day that he is incarcerated illegally.

42. Based on the now-effective Reentry Success Act of 2021, Mr. Hughes' parole denial in July 2020 also rests on grounds that are illegal.

43. Specifically, in denying Mr. Hughes parole in July 2020, the Board provided two reasons for its decision: (1) that Mr. Hughes' "release from custody at the time would depreciate the seriousness of the crime of which the offender stands convicted or promote disrespect of the law: T.C.A. 40-35-503(b)(2)"; and (2) that Mr. Hughes needed to complete the cognitive behavioral intervention program pre-release.

44. The Reentry Success Act of 2021, however, renders that denial improper in at least three respects.

45. *First*, the Reentry Success Act of 2021 allows any programming suggested in a Risk and Needs Assessment to be completed in the community when possible, and because Cognitive Behavioral Therapy is available for free in Lawrence County and throughout Tennessee, *see, e.g.,* Centerstone Lawrenceburg-Old Florence Road,

https://centerstone.org/locations/tennessee/facilities/centerstone-lawrenceburg-old-florence-road/ (last visited June 18, 2021); *see also* Centerstone, Our Locations, https://centerstone.org/locations/ (last visited June 18, 2021), it is now both unnecessary and illegal to deny Mr. Hughes parole on this ground.

46. *Second*, absent exceptions not relevant to Mr. Hughes, the Reentry Success Act of 2021 amends Tenn. Code Ann. § 40-35-503(b)(2) to prohibit the Board from denying parole on the sole basis that release would depreciate the seriousness of the crime. *See* 2021 Tenn. Pub. Acts, 410 § 13.

47. *Third*, the evidentiary burden of demonstrating good cause to deny release is now the Board's, and this Board has neither made—nor even attempted to make—this showing where Mr. Hughes is concerned.

48. For all of these reasons, this Board not only "may" afford Mr. Hughes a new parole hearing, which § 1100-01-01-.09(1)(d) of the Board's regulations empowers the Board to do. Instead, consistent with statutory and constitutional mandates, the Board *must* promptly afford Mr. Hughes a new parole hearing and demonstrate good cause to deny him parole if it intends to keep Mr. Hughes incarcerated past his release eligibility date, because due process affirmatively requires as much.

49. Given the above context, based on the significant and material changes in the governing law, Mr. Hughes petitioned the Board, among other things, to update its regulations and afford him a parole hearing in either July or August of 2021 in advance of his likely September 2021 release eligibility date in compliance with the Reentry Success Act of 2021. *See* **Ex. 1**.

50. The Board has now formally indicated that it will not grant Mr. Hughes any of the relief he requested. *See* **Ex. 2**.

d. *The Petitioner is aggrieved by the Board's illegal actions.*

51. Tenn. Code Ann. § 27-8-101 provides that:

> The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.

*Id.*

52. Tenn. Code Ann. § 27-9-101 provides that:

> Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have the order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter.

*Id.*

53. Mr. Hughes' next parole hearing is presently scheduled for July of 2022. However, Mr. Hughes has a substantive right to release on parole upon reaching his release eligibility date long before then—in approximately September 2021—unless the Board demonstrates good cause to deny him release before that time, which it does not intend to demonstrate or even attempt to demonstrate.

54. Accordingly, the Board's unlawful action will result in Mr. Hughes being incarcerated illegally for nearly a year, without good cause, in contravention of his affirmative right to release on parole upon reaching his release eligibility date.

55. Beyond preventing Mr. Hughes from seeing his eldest son before he leaves for U.S. Army basic training in September 2021, keeping Mr. Hughes incarcerated unlawfully without a hearing before he reaches his release eligibility date is illegal.

56. The Board's judgment refusing to afford Mr. Hughes a hearing before July 2022, and its refusal to grant him release on parole—absent a showing of good cause to

deny him release—upon reaching his release eligibility date affects and aggrieves Mr. Hughes.

57. Mr. Hughes has exhausted all other administrative remedies available to him, and he lacks any other plain, speedy, or adequate remedy to vindicate his rights.

## V. CLAIMS FOR RELIEF

**WHEREFORE**, Mr. Hughes petitions this Court:

1. To grant the writ and command the Board, pursuant to Tenn. Code Ann. § 27-9-109(a), to cause to be made, certified and forwarded to this Court a complete transcript of the proceedings in the cause, containing also all the proof submitted before the Board;

2. To order that the Clerk promptly, by registered return-receipt mail, notify the Board of the filing of such transcript pursuant to Tenn. Code Ann. § 27-9-109(b); and

3. To adjudicate this Petition, enter a final judgment declaring that the Board is acting illegally, and order the Board:

i. To afford Mr. Hughes a parole hearing governed by the standards set forth in the Reentry Success Act of 2021 prior to his forthcoming release eligibility date; or, alternatively:

ii. To grant Mr. Hughes release on parole upon reaching his release eligibility date if the Board fails to demonstrate "good cause" to deny him release at a hearing before then.

Respectfully submitted,

By: /s/ Daniel A. Horwitz

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# Attachment #1

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June 21, 2021

**VIA EMAIL**

Tennessee Board of Parole
404 James Robertson Parkway, Suite 1300
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Tel: 615-741-1150
BOP.Webmail@tn.gov

**Re: PETITION OF MR. JEFFREY WAYNE HUGHES, TDOC #00571879, FOR COMPLIANCE WITH THE REENTRY SUCCESS ACT OF 2021 AND TO ENABLE HIM TO EXERCISE HIS RIGHTS UNDER THE REENTRY SUCCESS ACT OF 2021 AT A MEANINGFUL TIME AND IN A MEANINGFUL MANNER.**

Dear Members of the Tennessee Board of Parole:

As you are aware, Tennessee's parole statute has long provided that "[p]arole is a privilege, not a right." *Brennan v. Bd. of Parole*, 512 S.W.3d 871, 873 (Tenn. 2017) (citing Tenn. Code Ann. §§ 40-28-117(a)(1), 40-35-503(b)). This body's regulations have consistently reflected as much, too, and they continue to do so today. *See* Tenn. Comp. R. & Regs. 1100-01-01-.02(2) ("Responsive to requirements of Tennessee law, the Board recognizes that parole is a privilege and not a right, and that no inmate may be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison.") (Attachment #1).

Notwithstanding this longstanding law in Tennessee, though, earlier this year, the General Assembly enacted the Reentry Success Act of 2021, which Governor Bill Lee signed into law as Public Chapter No. 410 (Attachment #2). A critical provision of that statute—which takes effect on July 1, 2021—amends Tenn. Code Ann. § 40-35-503 to provide that: "Notwithstanding subsection (b), **there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date** or any subsequent parole hearing.") (emphasis added). Thus, beginning July 1, 2021, an inmate who qualifies under the Reentry Success Act of 2021 has a presumptive right to release "upon the inmate reaching the inmate's release eligibility date . . . ." *Id.*

Given this provision of the Reentry Success Act of 2021, as a matter of law, it is no longer true that "parole is a privilege, not a right"—even though this Board's regulations continue to reflect that since-repealed standard. *See* Tenn. Comp. R. & Regs. 1100-01-01-.02(2). Instead, beginning July 1, 2021, inmates who are eligible under the Reentry Success Act of 2021 have a presumptive right to release on parole by their release eligibility dates—a right that can only be denied to them "for good cause shown[.]" *See* 2021 Tenn. Pub. Acts, 410 § 12 (Attachment #2).

Critically, this presumptive right to release is enforceable as a matter of due process. As the Tennessee Court of Appeals held even before the Reentry Success Act of 2021 was enacted into law:

> Although an inmate has no fundamental right or liberty interest in being released on parole prior to the expiration of his or her sentence, this Court has determined that "the Board of Paroles is obligated to follow the laws of the State of Tennessee as well as its own rules, and that **inmates are entitled to whatever due process arises as a result of the proper application of the state statutes** and the rules." *Wells v. Tenn. Bd. of Paroles*, 909 S.W.2d 826, 829 (Tenn. Ct. App. 1995).

*Greenwood v. Tennessee Bd. of Parole*, 547 S.W.3d 207, 214–15 (Tenn. Ct. App. 2017) (emphasis added).

Additionally, as you are presumably aware, "[t]he essence of procedural due process is notice and an opportunity to be heard **at a meaningful time** and in a meaningful manner." *Manning v. City of Lebanon*, 124 S.W.3d 562, 566 (Tenn. Ct. App. 2003) (emphasis added). In keeping with this requirement, this Board also has a preexisting statutory obligation to afford inmates parole hearings within "a reasonable time" before their release eligibility dates. *See* Tenn. Code Ann. § 40-35-503(d)(1) ("The board of parole shall conduct a hearing within a reasonable time prior to or upon the individual's release eligibility date to determine the individual's fitness for parole.").

Given the above context, this letter serves three purposes:

*First*, it serves to inform you that beginning July 1, 2021, your regulations—the "Rules and Regulations of the Tennessee Board of Parole," attached to this letter as Attachment #1—will be materially non-compliant with the governing statutory law. As of today's date, they continue to provide that parole is always a privilege—not a right—and they fail to reflect qualifying inmates' presumptive right to release on parole by their release eligibility dates absent "good cause shown" by this Board. *See* 2021 Tenn. Pub. Acts, 410 § 12 (Attachment #2). Because my client—Mr. Jeffrey Hughes, TDOC #00571879—will be affected and aggrieved by this Board's Rules and Regulations if they are not promptly amended to reflect the present governing law, this letter respectfully petitions you to amend this Board's Rules and Regulations and bring them into compliance with the new governing law at your June 23, 2021 meeting, *see Board of Parole June Meeting to be held in Nashville June 23 at 500 James Robertson Parkway, Fourth Floor,* Tenn. Bd. of Parole (Jun. 7, 2021),

https://www.tn.gov/content/dam/tn/boardofparole/June%202021%20Admin.%20Meeting,%20060721.pdf (Attachment #3), or alternatively, by no later than July 1, 2021.

*Second*, as noted above, this Board has a ministerial duty under Tenn. Code Ann. § 40-35-503(d)(1) to "conduct a hearing within a reasonable time prior to or upon the individual's release eligibility date to determine the individual's fitness for parole," *see id.*, and it also has a constitutional obligation to ensure that qualifying inmates may exercise their rights under Tennessee's parole statute "at a meaningful time and in a meaningful manner" in compliance with due process guarantees. *See Manning*, 124 S.W.3d at 566; *Greenwood*, 547 S.W.3d at 214–15. Accordingly, this letter respectfully apprises you of your legal obligation, beginning July 1, 2021, to schedule parole hearings for inmates who qualify under the Reentry Success Act of 2021—including Mr. Hughes—prior to their release eligibility dates to enable them to meaningfully and timely vindicate their newly established statutory rights.

Based on my recent correspondence with this Board's attorney, I am deeply concerned that this Board intends to act in knowing and deliberate violation of its abovementioned statutory and constitutional obligations on the claimed basis that "the Board does not have the ability or resources necessary" to comply with its legal obligations. *See* Attachment #4. Beyond being provably false, though, such illegal action is constitutionally problematic, and if that position is maintained by this Board, Mr. Hughes will be affected and aggrieved by it. Accordingly, this letter petitions this Board to comply with its aforementioned legal obligations by scheduling prompt parole hearing dates for inmates who qualify under the Reentry Success Act of 2021—including Mr. Hughes—prior to their forthcoming release eligibility dates. Alternatively, this letter petitions this Board to grant all qualifying inmates release on parole by their release eligibility dates given this Board's failure to demonstrate good cause to deny such release in accordance with the Reentry Success Act of 2021.

*Third*, pursuant to § 1100-01-01-.09(1)(d) of the Rules and Regulations of the Tennessee Board of Parole, this letter advises this Board of "significant new information" that warrants reconsidering Mr. Hughes' parole grant case. As you are aware, following Mr. Hughes's July 2020 parole hearing, Mr. Hughes' hearing officer recommended his early release with conditions, and Board Chairman Richard Montgomery voted to grant Mr. Hughes early release. *See* Attachment #5. Nonetheless, because three other members of this Board voted against granting Mr. Hughes parole based on the parole criteria that applied in July 2020, Mr. Hughes remains incarcerated.

Since that time, however, significant new information has come to light that warrants reconsidering this Board's denial. Specifically, as of July 1, 2021, the Reentry Success Act of 2021 takes effect, and Mr. Hughes qualifies under it. As a result, as of July 1, 2021, Mr. Hughes will be presumptively entitled to release as a matter of right at his release eligibility date absent a finding of "good cause shown" by this Board to deny such release—something that this Board has not shown to date. This information is significant, because beginning July 1, 2021, unless this Board shows good cause for denying Mr. Hughes parole, every single day that Mr. Hughes is incarcerated beyond his release eligibility date—which will likely be in September 2021 based on forthcoming good time

and educational credits—will be a day that he is incarcerated illegally. *See* 2021 Tenn. Pub. Acts, 410 § 12 ("Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing.").

Further, once the Reentry Success Act of 2021 takes effect, Mr. Hughes's parole denial in July 2020 will rest on grounds that are illegal. In denying Mr. Hughes parole, the Board provided two reasons for its decision: (1) that Mr. Hughes' "release from custody at the time would depreciate the seriousness of the crime of which the offender stands convicted or promote disrespect of the law: T.C.A. 40-35-503(b)(2)"; and (2) that Mr. Hughes needed to complete the cognitive behavioral intervention program pre-release. *See* Offender Hearing Decision Notification (Attachment #6). The Reentry Success Act of 2021, however, renders this denial improper in at least three respects. *First*, the Reentry Success Act of 2021 allows any programming suggested in a Risk and Needs Assessment to be completed in the community when possible, and because Cognitive Behavioral Therapy is available for free in Lawrence County and throughout Tennessee, *see, e.g.,* Centerstone Lawrenceburg-Old Florence Road, https://centerstone.org/locations/tennessee/facilities/centerstone-lawrenceburg-old-florence-road/ (last visited June 18, 2021); *see also* Centerstone, Our Locations, https://centerstone.org/locations/ (last visited June 18, 2021), it is both unnecessary and illegal to deny Mr. Hughes parole on this ground. *Second*, absent exceptions not relevant to Mr. Hughes, the Reentry Success Act of 2021 amends Tenn. Code Ann. § 40-35-503(b)(2) to prohibit the Board from denying parole on the sole basis that release would depreciate the seriousness of the crime. *See* 2021 Tenn. Pub. Acts, 410 § 13 (Attachment #2). *Third*, the evidentiary burden of demonstrating good cause to deny release is now the Board's, and this Board has neither made—nor even attempted to make—this showing where Mr. Hughes is concerned. For these reasons, this Board should promptly afford Mr. Hughes a new parole hearing, which § 1100-01-01-.09(1)(d) unmistakably empowers this Board to do and due process affirmatively requires.

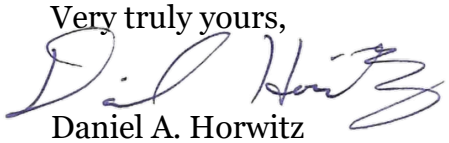
Given the above context, based on the significant and material changes in the governing law, effective July 1, 2021, that affect Mr. Hughes' presumptive right to release on parole at his forthcoming release eligibility date—information regarding which I am now bringing to your attention—this letter petitions this Board to afford Mr. Hughes a parole hearing in July or August of 2021. Mr. Hughes' next parole hearing is presently scheduled for July of 2022, which would result in nearly a year of illegal incarceration in contravention of Mr. Hughes' affirmative right to release on parole upon reaching his release eligibility date absent good cause shown by this Board to deny him release.

In summary: Beyond preventing Mr. Hughes from seeing his eldest son before he leaves for U.S. Army basic training in September 2021, keeping Mr. Hughes incarcerated unlawfully without hearing before September 2021 would be illegal. Thus, having now apprised you of that illegality, pursuant to § 1100-01-01-.09(1)(d), this letter petitions you to exercise your authority to reconsider Mr. Hughes' case in compliance with the provisions of the Reentry Success Act of 2021 and due process guarantees. *See id.* ("Upon receipt of significant new information, the Board may, on its own motion, reconsider any parole grant case prior to the release of the inmate and may reopen and advance or delay

a parole date."). For the reasons set forth above, this Board's failure to afford Mr. Hughes such a hearing and grant him parole, absent a showing of good cause, upon reaching his release eligibility date—as the new governing law, effective July 1, 2021, requires—will affect and aggrieve Mr. Hughes, who, having exhausted all other administrative remedies available to him, lacks any other plain, speedy, or adequate remedy to vindicate his rights.

Please advise whether you intend to grant Mr. Hughes the relief requested by this petition at your June 23, 2021 meeting, or otherwise, by July 1, 2021.

Very truly yours,



Daniel A. Horwitz

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*Enclosures as stated*

# Attachment #1

**RULES**
**OF**
**THE TENNESSEE BOARD OF PAROLE**

**CHAPTER 1100-01-01**
**CONDUCT OF PAROLE PROCEEDINGS**

**TABLE OF CONTENTS**



**1100-01-01-.01 SHORT TITLE.**

(1) These rules shall be known and may be cited as the "Rules and Regulations of the Tennessee Board of Parole."

***Authority**: T.C.A. § 40-28-104.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.02 STATEMENTS OF INTENT.**

(1) It was the intent of the General Assembly in creating the Tennessee Board of Parole that it be autonomous and in all respects functionally and administratively separate from any other state agency.

(2) Responsive to requirements of Tennessee law, the Board recognizes that parole is a privilege and not a right, and that no inmate may be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison.

(3) Although eligibility for parole is set by statute, whether an inmate is actually released on parole is discretionary with the Board.

(4) To avoid even the appearance of impropriety, all decisions of the Board regarding policy, procedures, and rules shall be determined by a majority vote of the members of the Board. Votes taken shall be public.

***Authority**: T.C.A. §§ 40-28-101, 40-28-103 through 40-28-105, 40-28-115, 40-28-116, 40-28-117, 40-28-118, 40-35-303, 40-35-501, and 40-35-503.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.03 DEFINITIONS.**

As used in these rules, unless the context otherwise requires:

(1) "Board" means the Tennessee Board of Parole or a member thereof.

(Rule 1100-01-01-.03, continued)

(2) "Chair" means the Board member appointed by the Governor for a two (2) year term to direct the operations of the Board and to fulfill the functions established by law for such position.

(3) "Executive Director" means the person appointed by the Board to serve as chief administrative officer of the agency.

(4) "Director" means the Director of Probation and Parole employed by the Tennessee Department of Correction (TDOC) to perform the duties established by law for such position.

(5) "District Director" means a TDOC employee responsible for management of one of several districts within the Department.

(6) "Hearing Officer" means an employee appointed by the Chair to conduct parole hearings.

(7) "Probation and Parole Officer" means a TDOC employee who supervises and investigates the conduct, behavior, and progress of offenders assigned to such person.

(8) "Declaration of Delinquency" means a declaration made by the Director of Probation and Parole or designee which prevents an offender's sentence from continuing to expire when such offender is alleged to be in violation of the conditions of his or her parole.

(9) "Detainer" means a warrant or hold placed against an inmate by another jurisdiction (called the "detaining authority") notifying the holding facility of the intention to take custody of the individual when he or she is released.

(10) "Executive Clemency" means broadly, an act of leniency or an instance of mercy, which may be exercised by the Governor in all criminal cases after conviction, except in cases of impeachment. Included within the Governor's clemency powers are:

(a) "Commutation" means a discretionary act of the Governor, which reduces a prisoner's sentence from a greater to a lesser degree with the extent of such reduction being totally within the discretion of the Governor.

(b) "Conditional Pardon" means a pardon granted upon such conditions and with such restrictions and limitations as the Governor deems proper.

(c) "Exoneration" means the discretionary act of the Governor of abolishing a conviction and restoring all rights of a person based upon innocence in the case at issue under T.C.A. § 40-27-109.

(d) "Pardon" means a discretionary act of the Governor which forgives the defendant or extinguishes his crime thereby granting such defendant full relief from all or any portion of his or her sentence remaining at the time of pardon.

(e) "Reprieve" or "Respite" means a discretionary act of the Governor which withholds a sentence for an interval of time or a sentence of death for a stated specific period of time, thus having the effect of suspending the execution of the sentence for the duration of the reprieve or respite.

(11) "Inmate" means a felony offender who is in the custody of the Tennessee Department of Correction, a jail or workhouse, or is serving a Tennessee sentence in another jurisdiction.

(12) "Mandatory Parole" means a parole, which the Board is required to grant to certain inmates who have never been paroled or granted parole of any type prior to the expiration of their

(Rule 1100-01-01-.03, continued)

sentence. All sex offenders must meet the requirements of T.C.A. § 40-28-116 before being released on mandatory parole.

(13) "Offender" means an inmate who has been placed on parole.

(14) "Parole" means the release of an inmate to the community by the Board prior to the expiration of his or her term, subject to conditions imposed by the Board and subject to TDOC supervision; or where a court or other authority has issued a warrant against the offender, and the Board, in its discretion, releases him or her to answer the warrant of such court or authority.

(15) "Parole Hearing" means the process by which a decision is made to grant, deny, revoke, or rescind parole. Such hearing may or may not be in person. This determination is made subject to the classification of offense for which the inmate stands convicted.

(16) "Pre-Parole Rescission" means the procedure by which the Board may terminate an inmate's grant of parole, before the inmate is actually released on parole, due to conduct, violations or omissions committed by such inmate prior to his or her release, or pertinent information that was not available at the time of the hearing.

(17) "Parole Revocation" means the formal procedure by which the Board may terminate or revoke an offender's release on parole for conduct or omissions which violate the conditions of such offender's parole after his or her release.

(18) "Post-Parole Rescission Hearing" means the procedure by which the Board may terminate an offender's grant of parole, after such offender is actually released on parole, due to conduct, violations or omissions committed by such offender, significant information fraudulently given or withheld by the offender or on behalf of the offender, or other information the Board was unaware of at the time of the parole grant.

(19) "Preliminary Hearing" means the initial hearing conducted by a Hearings Officer, to determine whether probable cause exists to believe an offender has violated the conditions of his or her parole in an important respect.

***Authority**: T.C.A. §§ 40-27-101, 40-27-102, 40-27-104, 40-27-109, 40-28-102 through 40-28-105, 40-28-108, 40-28-111, 40-28-117, 40-28-121, and 40-28-122. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.04 ADMINISTRATION OF THE BOARD OF PAROLE.**

(1) Board Structure.

(a) Composition of the Board shall be as provided by law. The appointment of members of the Board, the selection of its Chair, and the quorum requirements shall be those specified by law. (T.C.A. Title 40, Chapter 28).

(b) These regulations are promulgated under the authority of T.C.A. §§ 40-28-101 et seq. and in accordance with the Uniform Administrative Procedures Act. (T.C.A. Title 4, Chapter 5).

(c) The Board shall keep or cause to be kept appropriate records of all of its official actions. Such records shall be made accessible to the public and interested parties in accordance with law and these rules and regulations.

(Rule 1100-01-01-.04, continued)

(2) Administrative Structure.

(a) The administrative structure of the Tennessee Board of Parole is as follows:

1. The Executive Director of the Board is the chief administrative officer of the Board, who shall be appointed by the Board.

2. There shall be other divisions of the Board as established by the Executive Director and the Board. These divisions shall be represented on the organizational chart maintained and updated by the Executive Director.

***Authority**: T.C.A. §§ 40-28-101, 40-28-103 through 40-28-108, and 40-28-119. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.05 GENERAL BOARD POLICY.**

(1) Board Administrative Meetings.

(a) Administrative meetings of the Board are open to the public and to the news media.

(b) Although administrative meetings and hearings are open to the public, the Board reserves the right to make such internal adjustments, rules, and regulations as are necessary to insure that the proceedings remain orderly at all times.

(c) Notices of the Board's administrative meetings will be provided in accordance with the Open Meetings Act.

(2) Information concerning the Board.

(a) The Board shall maintain and will disseminate written information concerning its organization, functions, policies, procedures, rules, regulations, parole criteria, and/or supervision guidelines to any party requesting such information.

(3) Public Records Requests

(a) Personnel of the Tennessee Board of Parole shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of these Rules shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Tennessee Board of Parole shall be protected as provided by current law. Information generated or held by the Board of Parole that is deemed confidential pursuant to Statute and/or Board of Parole Rules and Policies shall not be released to the public.

(b) Public record requests shall be made to the Public Records Request Coordinator ("PRRC") in order to ensure public record requests are routed to the Records Custodian and fulfilled in a timely manner.

(c) Requests for inspection only are not required to be made in writing. Requests for copies shall be made in writing via email or mail.

(Rule 1100-01-01-.05, continued)

(d) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternate acceptable form of identification is required as a condition to inspect or receive copies of public records, unless the requestor is a former offender requesting his/her official record or a victim of a crime requesting the record of the offender who committed the crime against him or her.

(e) The PRRC shall cause a record to be kept of all public record requests, and the date the request was received by the agency. The PRRC shall acknowledge receipt of the request within seven (7) business days and determine the appropriate action(s) to take.

(f) The PRRC shall forward appropriate requests for public records to the records custodian(s) for the requested records.

1. The Records Custodian shall make the requested public records available to the PRRC in accordance with T.C.A. § 10-7-503 and agency policy as practicable. If additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records, or for other similar reasons, the records custodian shall promptly communicate this to the PRRC who shall notify the records requestor within seven (7) business days of receipt of the request.

2. If a record contains confidential information or information that is not open to public inspection, the Records Custodian shall prepare a redacted copy prior to providing the record to the PRRC. If questions arise concerning redaction, the records custodian shall coordinate with the General Counsel and other appropriate parties regarding review and redaction of records.

(g) Fees and charges for copies of public records shall be charged in accordance with Tennessee Board of Parole policies. Cost for copies shall be $.15 per page. Cost for a CD of a parole hearing shall be $10.00. No charges will be assessed for copies and duplicates unless the total fee for the request exceeds $5.00. Costs for labor shall be assessed where time to prepare records exceeds one (1) hour.

***Authority**: T.C.A. §§ 10-7-101, et seq.; 10-7-503; 40-28-104; 40-28-105; 40-28-119; and 40-28-502.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.06 PAROLE HEARINGS.**

(1) The Board will conduct hearings concerning matters of parole release and parole violations. The times, locations, and dockets of such hearings will be announced to the appropriate institutional and parole staff, the inmates or offenders, Judges, Sheriffs, and District Attorney Generals of the county in which the person was convicted, and any other interested parties who have requested to be notified.

(2) At least thirty (30) days prior to a scheduled parole hearing and three (3) days prior to a parole revocation hearing, the Board shall send notice of the date and place of the hearing to the following individuals:

(a) The trial Judge for the Court in which the conviction occurred, or the trial Judge's successor;

(b) The District Attorney General in the county in which the crime was prosecuted;

(Rule 1100-01-01-.06, continued)

(c) The Sheriff of the county in which the crime was committed; and

(d) The victim or the victim's representative, who has requested notification of the date and place of the scheduled hearing and/or notice of the Board's final decision. However, at any time, the victim or victim's representative may withdraw the request for notice by sending the Board a written statement that the request for notice is withdrawn.

(3) A victim of a crime or a victim's representative may submit a victim impact statement.

(4) No later than thirty (30) days after a parole hearing decision has been finalized, the Board shall send notice of its decision to those required to receive notice under subsection (2), together with notice that any victim whom the Board failed to notify as required in subsection (2) has the opportunity to have a written impact statement considered by the Board.

(5) Subject to applicable provisions of law, it is the sole duty of the Board to determine which inmates serving a sentence in state prisons, county workhouses, and/or jails may be released on parole, when they may be released, and under what conditions.

(6) In granting parole, the Board may impose any conditions and limitations that the Board deems necessary, including consent by the offender to submit to search by TDOC staff or law enforcement.

***Authority**: T.C.A. §§ 40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-118, 40-28-119, 40-35-501, 40-28-503, and 40-28-505. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.07 BOARD CRITERIA FOR GRANTING OR DENYING PAROLE.**

(1) Before granting or denying parole, the Board may apply the following factors to each eligible inmate to assist in determining whether such inmate will live and remain at liberty without violating the law or the conditions of his or her parole:

(a) The nature of the crime and its severity;

(b) The inmate's previous criminal record, if any;

(c) The inmate's institutional record;

(d) The views of the appropriate trial Judge and the District Attorney General, who prosecuted the case;

(e) The inmate's circumstances if returned to the community;

(f) Any mitigating or aggravating circumstances surrounding the offense;

(g) The views of the community, victims of the crime or their family, institutional staff, probation and parole officers, or other interested parties;

(h) The inmate's training, including vocational and educational achievements;

(i) The inmate's employment history, his or her occupational skills, including any military experience, and the stability of his or her past employment;

(j) The inmate's past use of narcotics, or past habitual and excessive use of alcohol;

(Rule 1100-01-01-.07, continued)

(k) The inmate's behavior and attitude during any previous experience on probation or parole and the recentness of such experience;

(l) An objective advisory parole predication guideline system to adequately assess the risk an inmate poses to society and his or her potential for parole success;

(m) Any other factors required by law to be considered or the Board determines to be relevant.

(2) In applying the above factors to a particular inmate, the Board may consider the following sources of information:

(a) Reports prepared by institutional staff relative to the inmate's social history and institutional record, including any recommendations the institutional staff may wish to make;

(b) All relevant Department of Correction or other prison, jail, or workhouse reports;

(c) Observations concerning the suitability of releasing the inmate on parole from court officials, law enforcement officials, and other interested community members;

(d) Reports or recommendations resulting from any physical, psychological, or psychiatric examination or evaluation of the inmate;

(e) Any relevant information submitted by the inmate, his or her attorney, representatives on his or her behalf, or other interested parties;

(f) The parole plan, which the inmate has submitted; and

(g) Any other relevant information concerning the inmate.

(3) The Board shall consider written impact statements or other information submitted by the victim or the victim's family.

(4) After applying the various factors for consideration to the individual inmate, the Board shall deny the inmate's release on parole if it determines that:

(a) There is a substantial indication that the inmate will not conform to the conditions of his or her parole;

(b) Release from custody at this time would depreciate the seriousness of the crime of which the person stands convicted or promote disrespect for the law;

(c) Release at this time would have a substantially adverse effect on institutional discipline; or

(d) The person's continued correctional treatment, medical care, or vocational or other training in the institution, will substantially enhance the person's capacity to lead a law-abiding life when given release at a later time.

(5) The Board may revise or modify its parole criteria and factors for consideration, as it deems appropriate.

***Authority**: T.C.A. §§ 40-28-104, 40-28-105, 40-28-106, 40-28-108, 40-28-114, 40-28-116, 40-28-118, 40-28-504, and 40-35-503. **Administrative History**: Original rule filed December 6, 1979; effective January*

(Rule 1100-01-01-.07, continued)
*20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.08 THE PAROLE HEARING PROCESS.**

(1) Parole Eligibility.

(a) Although the decision to release an inmate on parole is discretionary with the Board, parole eligibility is, by law, based upon the completion of a statutorily specified portion of a sentence, less any applicable credits.

(b) The Department of Correction shall notify the Board of an inmate's parole eligibility date.

(c) The Board's staff shall then compile and distribute dockets or lists of the cases to be heard by the Board.

(d) Subject to later alteration, the Board's schedule of dates and locations of hearings shall be available to those requesting it prior to the hearing.

(e) Inmates classified as close custody at the time they would otherwise be eligible for parole, shall not be certified by the Department of Correction, as eligible for a parole grant hearing, other than an initial grant hearing if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as close custody.

(f) This de-certification of inmates classified as close custody shall continue for the duration of the classification and for a period of one (1) year thereafter.

(g) Inmates classified as maximum custody at the time they would otherwise be eligible for parole, shall not be certified by the Department of Correction as eligible for a parole grant hearing, other than an initial grant hearing if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as maximum custody.

(h) This de-certification of inmates classified as maximum custody shall continue for the duration of the classification and for a period of two (2) years thereafter.

(i) Pursuant to T.C.A. § 40-35-503, it is presumed that offenders currently serving only a Class D or Class E non-violent felony, as defined by T.C.A. § 40-36-102, are to be released on parole upon reaching their release eligibility date unless good cause is found on the record for denying release. Good cause shall be based upon application of the Board Criteria for Granting or Denying Parole and the Parole Release Decision Making Guidelines to facts or circumstances contained in an offender's file.

(2) The Parole Hearing Process.

(a) The Board is empowered to employ Hearing Officers to review inmates for any matter concerning a parole. The Hearing Officer's recommendations are advisory only and the Board shall accept, modify, or reject any recommendation made by a Hearing Officer.

(b) If the Board determines that it does not have necessary reports or sufficient information, upon which to base an objective decision in a particular case, it may continue such hearing to a later date. The Board may also continue a hearing to await

(Rule 1100-01-01-.08, continued)

the disposition of untried indictments, disciplinary proceedings, or to investigate the status of an outstanding detainer. Such continued hearings will subsequently be processed as scheduled, unless new commitments or the loss of good and honor time credits, alters the inmate's parole eligibility dates.

(c) Any eligible inmate may request that his or her scheduled parole grant hearing be deferred until a later specific month or year by signing a waiver to that effect, witnessed by correction or probation and parole personnel. The Board or a designated Hearing Officer may accept or reject the waiver and agree to defer the case or proceed to conduct the hearing. An inmate is to sign a waiver asking that his or her parole hearing be continued until a later date.

(3) Findings and Notice of Decision.

(a) The Board shall notify the inmate, in written form, of its final decision and reasons for the decision. Upon receipt of notice of the decision, the inmate shall sign and date a copy of the decision notification.

(b) As soon as practicable after the Board's action, it shall cause to be forwarded to the appropriate standing committee of the General Assembly, a written list of the names of all inmates released on parole.

(4) Appellate Procedure.

(a) An inmate whose parole has been revoked, rescinded, or denied may request an appellate review by the Board. Requests for an appellate review must be received by the Board within forty-five (45) days from the date the inmate signed the decision notification indicating that he or she has received notice of the decision.

(b) If the request for an appeal is not received within forty-five (45) days from the date the inmate signed the decision notification, it will be denied.

(c) The request will be screened by Board Members, or their designee, to decide if it will be forwarded to the Board Members for their review.

(d) Reviews by the Board will be conducted for the following reasons:

1. If there is significant new evidence that was not available at the time of the hearing;

2. If there are allegations of misconduct by the hearing official that are substantiated by the record; or

3. If there were significant procedural errors by the hearing official.

(e) All requests that will be sent to the Board Members for review must be based on one or more of the above stated reasons.

(f) Requests based on the availability of new evidence or information must be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors must clearly indicate the specific misconduct or procedural error(s).

(g) If a case is set for review, it will be conducted from the record of the first hearing and the appearance of the inmate will not be necessary. An appearance appeal hearing may be conducted if there were significant errors on the part of the hearing official or if

(Rule 1100-01-01-.08, continued)

misconduct on the part of the hearing official occurred in the initial hearing, and another hearing is necessary in order to correct the misconduct or significant errors from the first hearing.

(h) If the appeal reviewer believes that a review by the Board is warranted, the file shall be forwarded to Board Members not voting on the original case and not a party to the original decision. If there are not sufficient non-voting members to finalize the appeal, the appeal document shall be circulated randomly to Board Members until a final decision is reached.

(i) A decision to hold an appeal hearing requires three concurring votes of the Board Members. The Board may also vote to grant the appeal without holding a new hearing if the significant new information is sufficient. This decision also requires the concurrence of three (3) Board Members.

(5) Parole Revocation/Rescission Review Pursuant to T.C.A. § 40-28-122(g)

(a) This type of hearing may be requested by an offender if that offender's parole has been revoked or rescinded by the Board of Parole based solely upon the filing of new criminal charges, and those charges are later:

1. Dismissed or retired on the merits;

2. A no true bill is returned by a grand jury;

3. A verdict of not guilty is returned by a judge or jury; or

4. The offender was arrested and released without being charged.

(b) A written or emailed notice of the foregoing must be submitted to the Executive Director of the Board by:

1. The district attorney general (or designee thereof) from the judicial district in which the charges were brought;

2. The judge in the court where the charges were brought;

3. An Assistant Commissioner from the Department of Correction;

4. The offender's attorney, provided that the notification is also signed by one of the first three officials listed herein; or

5. The offender, provided that the notification is also signed by one of the first three officials listed herein.

(c) This written or emailed notice must include documentation of the alleged event and will be verified within ten (10) business days.

(d) If verified and the offender is eligible pursuant to statute, the Board or the Board's designee will conduct a hearing on the record to determine if the criteria have been met, as outlined in T.C.A. § 40-28-122(g), after which the Board may vote, based on the entirety of the record, to release and reinstate parole in accordance with applicable law. This hearing shall be scheduled for the next available docket, and shall be conducted no later than thirty-five (35) days from verification of eligibility.

(Rule 1100-01-01-.08, continued)

(e) If released and reinstated, the Board shall notify TDOC so that any sentence credits that may have been lost while the offender was incarcerated shall also be reinstated.

***Authority**: T.C.A. §§ 40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-119, 40-28-122, 40-35-501, 40-35-503, and 40-36-102. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed December 23, 2019; effective March 22, 2020.*

**1100-01-01-.09 RELEASE ON PAROLE DATE.**

(1) Grant of Parole.

(a) A grant of parole shall not be deemed to be effective until a certificate of parole has been delivered to the inmate, by a Board designee, and the inmate has voluntarily signed the certificate.

(b) If the Board Members have voted to establish a release date, release on that date shall be conditioned upon the continued good conduct of the inmate while remaining incarcerated prior to the effective date, and the approval of a satisfactory release plan.

(c) If the Board has specified in their decision, that the inmate is to complete a program as a pre-parole condition prior to their effective date, the inmate must complete the program prior to that effective date. If the inmate has not completed the program prior to the effective date, a rescission hearing may be scheduled.

(d) Upon receipt of significant new information, the Board may, on its own motion, reconsider any parole grant case prior to the release of the inmate and may reopen and advance or delay a parole date.

***Authority**: T.C.A. §§ 40-28-104 and 40-28-116. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.10 PSYCHOLOGICAL EVALUATIONS.**

(1) The Board may order a psychological evaluation of any inmate, where they believe it appropriate.

(2) Psychological evaluations for sex offenders must meet the standards cited in T.C.A. § 40-28-116 or the standard that was in effect at the time such inmate committed the sex offense for which they are currently serving their sentence. Such certification is required before any inmate convicted of a sex crime is released on parole.

(3) Such evaluations are not required prior to a sex offender's parole hearing but only prior to a sex offender's release on parole.

(4) Prisoners who have been convicted of a sex offense shall not be released on mandatory parole unless they have been evaluated and meet the statutory requirement described in T.C.A. § 40-28-116.

***Authority**: T.C.A. §§ 40-28-104, 40-28-106, 40-28-116, 40-28-117, and 40-35-503. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new*

(Rule 1100-01-01-.10, continued)
*rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.11 DETAINERS.**

(1) A Detainer is a warrant or hold placed against an inmate by another jurisdiction (called the "detaining authority") notifying the holding facility of the intention to take custody of the individual when he or she is released.

(2) The presence of a detainer shall not, in and of itself, constitute a valid reason for the denial of parole.

(3) Parole to Detainers.

(a) As used in this rule, unless the context otherwise requires, 'parole to a detainer' means the release of the inmate to the physical custody of the authority who has lodged the detainer.

(b) Where the detainer is not lifted, the Board may grant parole to such detainer within their discretion.

(c) The Board will cooperate in establishing and maintaining arrangements for concurrent supervision with other jurisdictions, where such arrangements are feasible and where release on parole appears, to the Board, to be justified.

(d) If the Board has granted parole to "detainer only" and the jurisdiction placing the detainer lifts it or fails to take custody of the inmate, a rescission hearing will be scheduled.

***Authority**: T.C.A. §§ 40-28-104 and 40-28-401. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.12 RESCISSION OF PAROLE.**

(1) Pre-parole Rescission.

(a) If an inmate has been granted parole and has subsequently been charged with institutional misconduct, escape, or has been served with a warrant or received a new felony sentence or had the certification of parole eligibility withdrawn by the Department of Correction or has other changes in circumstances sufficient to become a matter of record, the Board shall be promptly notified and advised of such new circumstances.

(b) No inmate about whom notification has been made pursuant to subparagraph (a) of this subsection shall be released on parole until such time as the institution has been properly informed that no change has been made in the Board's order to parole.

(c) Upon receiving notification as required by subparagraph (a) of this subsection, the Board may schedule a parole rescission hearing or notify the institution that the grant of parole remains.

(2) The Pre-Parole Rescission Procedure.

(Rule 1100-01-01-.12, continued)

(a) The rescission hearing may be scheduled, if possible, for the next docket of parole hearings at the institution where the inmate is being held.

(b) The inmate shall be given adequate notice of the reason(s) such rescission hearing is being conducted. Such notice shall be given at least three (3) days prior to the scheduled date of the rescission hearing. The reason(s) for the rescission hearing shall be stated in the notice, with the exception of information that is considered confidential by the Board.

(c) A rescission hearing may be held in order to determine if the inmate's misconduct or other change in circumstances is sufficient to warrant rescission of such inmate's parole grant.

(d) The inmate may appear at his or her rescission hearing and may present documentary evidence and witnesses in his or her behalf at the rescission hearing.

(e) The inmate's presence is not necessary at the rescission hearing if:

1. The institutional misconduct has been established by the institution's disciplinary committee by a finding that the inmate has violated the rules of his or her confinement; or

2. If the misconduct has resulted in a conviction in a court of law.

(f) The Board may delay the parole grant for up to one hundred and twenty (120) days if, in its opinion, it has insufficient information before it to reach an informed and fair decision at the rescission hearing. Awaiting the disposition of institution discipline committees, new charges or indictments, or investigating new detainers shall also be sufficient grounds to continue a rescission hearing under this subparagraph.

(g) If the result of the process is that the inmate's grant of parole is rescinded, he or she shall be given written notice evidencing the reasons for the rescission of the parole grant.

(h) A grant of parole shall not be rescinded except upon the concurrence of two (2) Board Members.

(3) Post-parole Grant Rescission Procedure.

(a) If, after a parole has become effective and the inmate is released on parole, evidence comes to the attention of the Board that significant information was fraudulently given or withheld by the inmate, or on behalf of the inmate, or that the inmate violated the law while on any furlough or other release program prior to being released on parole and such information was not known by the Board, or that the parolee has been arrested, indicted or convicted for an offense that was committed prior to parole, or that the parolee has an unexpired prison term of which the Board was unaware at the time of the hearing, or that a calculation of the parolee's sentence structure would render him or her ineligible for parole, the Director may issue a warrant for the retaking of such parolee.

(b) A grant of parole shall not be rescinded except upon the concurrence of two (2) Board Members.

(c) Upon the execution of the warrant, the offender shall be notified of the reasons for the post parole grant rescission hearing. The provisions of Rule 1100-01-01-.14 with regard to notice and hearings procedures shall be followed.

(Rule 1100-01-01-.12, continued)

(d) At such rescission hearing, the Board may declare that the grant of parole is void and the inmate shall thereupon resume his or her sentence in custody, or the Board may declare that grant of parole void, but decide to re-parole on both the old and new cases if eligibility has been certified by the Department of Correction, or the Board may decide to leave the subject on parole.

(4) Appeal Procedure.

(a) An inmate whose parole has been rescinded may request an appellate review by the Board. Such review shall be in accordance with the procedure outlined in rule 1100-01-01-.08(4).

***Authority**: T.C.A. §§ 40-28-104 and 40-28-105.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.13 DISCHARGE OF PAROLE.**

(1) When the Board is satisfied that a parolee has complied with the conditions of his or her parole in a satisfactory manner, the Board shall cause to be issued to such parolee a certificate of final discharge. Final discharge from parole will be granted only after a parolee has reached the expiration date of his or her sentence(s). This is in no way to be construed as permitting a discharge from parole for parolees with a life sentence.

***Authority**: T.C.A. §§ 40-28-104 and 40-28-125.* ***Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.14 REVOCATION OF PAROLE.**

(1) Parole Revocation

(a) If a Probation/Parole Officer having charge of an offender, has reasonable cause to believe that the offender has violated one or more of the conditions of parole in an important respect, such officer shall present such evidence to the Director or designee.

(b) This report shall be in written form, and shall contain a listing of the violations alleged and the facts and circumstances surrounding each violation.

(c) Upon receipt of a Probation/Parole Officer's report alleging violation of parole, the Director or designee, may issue a warrant for the retaking of the offender and his or her return to a correctional institution in the State of Tennessee, if the Director or designee determines parole has been violated in an important respect.

(d) Any officer authorized to serve criminal process, or any peace officer to whom such warrant is delivered, shall execute the warrant by taking the offender into custody.

(e) In those cases where the offender is confined in another state pending new criminal charges, or is serving a sentence in another state, the warrant may be placed there as a detainer. If it becomes apparent that the Board cannot obtain physical custody of the offender detained in another state, the Director or designee shall withdraw the warrant and issue a letter of notification. The letter of notification shall consist of a letter sent to

(Rule 1100-01-01-.14, continued)

the custodian of the offender being held in another jurisdiction and shall inform such custodian that the named individual is an alleged parole violator in the State of Tennessee.

(f) Such notification shall request that the out-of-state custodian inform the Tennessee Director or designee of the release of the named offender at least ninety (90) days prior to such release from the out-of-state or foreign jurisdiction.

(g) Upon receipt of notification by the custodian that an offender will be released, the Director or designee shall reissue the warrant so that the offender may be returned to Tennessee by execution of such warrant unless parole has expired.

(h) When an offender is returned to the custody of Tennessee authorities from his or her confinement by an out-of-state custodian, such offender shall be afforded prompt parole revocation proceedings.

(i) Nothing in this rule shall be construed to prevent the Director or designee from issuing a letter of notification to the custodian of the offender in the first instance in lieu of placing a warrant as a detainer.

(2) Preliminary Hearing.

(a) Upon execution of a warrant by the Director, the offender shall be given adequate notice of the preliminary hearing or revocation hearing. If a revocation hearing is held within fourteen (14) days after the service of the warrant, a preliminary hearing is not required.

(b) The notice shall state the time and place of the hearing and shall inform the offender that at the hearing he or she will be given the opportunity to present witnesses and documentary evidence in his or her behalf, shall be allowed to cross-examine any adverse witnesses in attendance, and that he or she has a limited right to request legal representation.

(c) Unless waived in writing or a revocation hearing is held within fourteen (14) days of service of the warrant, the offender shall be afforded a preliminary hearing.

(d) The preliminary hearing shall be conducted as scheduled unless the offender voluntarily waives such hearing in writing. For such a waiver to be effective, it must contain the following:

1. A clear statement that the offender is entitled to a preliminary parole revocation hearing; and

2. A clear statement that the offender has the right to present documentary evidence, as well as individual testimony which may give relevant information to the Hearing Officer, and a limited right to request legal representation.

(e) If the offender expresses his or her desire to waive such hearing, a Probation/Parole Officer shall explain the contents of the waiver to the offender and shall not accept such waiver unless he or she is reasonably certain that the offender fully understands the contents and consequences of such a waiver and that the offender knowingly and voluntarily still desires to waive his or her preliminary hearing.

(f) A request to appoint an attorney for an offender may be forwarded to the General Counsel of the Board of Parole under two circumstances:

(Rule 1100-01-01-.14, continued)

1. If a preliminary hearing is held and the Hearing Officer is of the belief that the inmate is incapable of speaking effectively for himself or herself, the Hearing Officer shall continue the hearing and notify the General Counsel for the Board that an attorney appointment is recommended. Upon receiving this recommendation, an attorney may or may not be appointed.

2. The offender may request that he or she be appointed counsel to represent him or her. If the offender has made such a request, the Hearing Officer shall determine whether the request shall be forwarded to the General Counsel under the criteria the General Counsel considers in (g)1.-3.

(g) The General Counsel may appoint attorneys in accordance with applicable case law or in the following situations:

1. The offender has made a timely and colorable claim that he has not committed the alleged violation of the conditions upon which he is at liberty; or

2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

3. The offender is incapable of speaking effectively for himself or herself.

(h) In every case in which a request for counsel at a preliminary hearing is denied, the grounds for such refusal shall be stated succinctly, in writing, by the Hearing Officer.

(i) In every case in which a request for counsel at a preliminary hearing is not made, the Hearing Officer or a Parole Officer shall have the offender sign a statement that he or she has been fully informed of his or her ability to request that he or she be appointed counsel to represent him or her and that he or she has decided not to seek appointed representation.

(j) Nothing in this rule shall be construed to prevent the waiver of the right to a preliminary hearing and the decision not to request counsel at the preliminary hearing from appearing on the same document.

(k) At the preliminary hearing, the offender shall have the right to:

1. Appear at the hearing and speak in his or her own behalf;

2. Produce documents, letters, and individuals relevant to the violation(s) alleged;

3. Confront and cross-examine persons who have given adverse information upon which his or her parole revocation is to be based, unless the Hearing Officer finds good cause exists to disallow such cross-examination and confrontation; and

4. Be represented by retained counsel or an attorney appointed under the conditions noted above.

(l) The Hearing Officer shall conduct the hearing informally, including the presentation of the documents or evidence in support of parole violation and the offender's responses to such evidence. Based on the information presented at the hearing, such Officer shall determine whether probable cause exists to believe that the offender violated the conditions of his or her parole in an important respect.

(Rule 1100-01-01-.14, continued)

(m) If the Hearing Officer determines it is necessary or the offender requests that any witnesses be subpoenaed, such Officer shall employ the following procedure:

1. If the witnesses are requested by the offender, such offender or his or her attorney shall submit a written statement to the Probation and Parole Officer, as well in advance of the scheduled hearing as possible, of the names of the persons requested as well as a brief statement of why their testimony is relevant. The statement requesting witnesses shall be forwarded to the Board of Parole which shall review the request(s) and issue subpoenas for necessary witnesses.

2. If the witnesses are requested by the state, the person representing the state shall comply with the same procedure set out in subpart (1) above, but the request shall be sent directly to the Board of Parole.

3. Failure to comply with this procedure by the parties shall be sufficient grounds for denial of a subpoena request. If the offender is not represented by an attorney the subpoenas may be served by a Probation/Parole Officer or sent by certified mail.

(n) At the preliminary hearing, the Hearing Officer shall select one of the following alternative decisions:

1. No probable cause found, and the offender shall be returned to supervision and the violation warrant withdrawn; or

2. Probable cause found and the offender shall remain in custody under the violation warrant to await a final parole revocation hearing before the Board.

(3) Declaration of Delinquency.

(a) A declaration of delinquency may be issued by the Director of Probation and Parole in revocation proceedings to suspend such credit toward the service of the offender's sentence. Such declaration shall be made by the Director or designee in any case when a parole violation warrant is issued, and the parolee is not in custody.

(b) Except when an offender is declared to be in a delinquent status, the time he or she is on parole is credited toward the service of his or her sentence unless it is taken by the Board after a revocation of parole.

(c) If delinquency is declared, the offender stops earning credit for the service of his or her sentence from the date of declaration, until the parole violation warrant is served and the offender is housed in a correctional facility in Tennessee. Offenders taken into custody in another state will remain in delinquent status from the declaration of delinquency until they are returned to a Tennessee correctional facility or until delinquency is removed by the Board.

(d) During the revocation process, the Board may consider an alleged violation and determine either that parole should not be revoked or that mitigating or compelling circumstances exist for the violation. The Board may then "take" or "grant" the delinquent time. Taking delinquent time requires that the offender lose credit toward service of sentence. The Board may take all of the delinquent time or some lesser amount of time, which is set by the Board. Granting the delinquent time restores all of the offender's credit toward service of sentence as though delinquency had never been declared.

(Rule 1100-01-01-.14, continued)

(4) Notice of Final Parole Revocation Hearing.

(a) Prior to the revocation hearing, the offender shall be notified in writing of the following:

1. The date, time, and location of the hearing;

2. That the offender has the right to appear in person and present such evidence as he or she desires;

3. That he or she has the right to confront and cross-examine any adverse witnesses, unless good cause can be shown for refusing confrontation and cross-examination, such as a significant potential for harm if identities are revealed; and

4. That the offender has a limited right to request that counsel be appointed to represent him or her at the final revocation hearing.

(5) Continuance of Final Revocation Hearing.

(a) Following a finding of probable cause at the preliminary hearing, the Board shall schedule a final revocation hearing as promptly as possible to consider the alleged violation(s) of parole.

(b) On its own motion, the Board may continue the final revocation hearing in order to secure more or necessary evidence or witnesses at the hearing, or to secure counsel to represent the offender.

(6) Final Revocation Hearing.

(a) At the final revocation hearing, the offender shall have the right to appear and be heard in person and to present witnesses and documentary evidence.

(b) The offender shall have the right to confront and cross-examine adverse witnesses, unless the Board specifically finds good cause for not allowing such confrontation and cross-examination.

(c) A request to appoint an attorney to an offender may be forwarded to the General Counsel of the Board of Parole under two circumstances:

1. If at a final revocation hearing, the Hearing Officer is of the belief that the inmate is incapable of speaking effectively for himself or herself, the Hearing Officer shall continue the hearing and notify the General Counsel for the Board, that an attorney appointment is recommended. Upon receiving this recommendation, an attorney may or may not be appointed.

2. The offender may request that he or she be appointed counsel to represent him or her. If the offender has made such a request, the Hearing Officer shall determine whether the request shall be forwarded to the General Counsel under the criteria the General Counsel considers in (d)1.-3.

(d) The General Counsel may appoint attorneys in accordance with applicable case law or in the following situations:

1. The offender has made a timely and colorable claim that he has not committed the alleged violation of the conditions upon which he is at liberty; or

(Rule 1100-01-01-.14, continued)

2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

3. The offender is incapable of speaking effectively for himself or herself.

(e) In every case in which a request for counsel at a final revocation hearing is refused, the grounds for such refusal shall be stated succinctly in the record, in writing.

(f) In every case in which a request for counsel at a final revocation hearing is not made, the Board shall have the offender sign a statement that he or she has been fully informed of his or her ability to request that he or she be appointed counsel to represent him or her and that he or she has decided not to seek appointed representation.

(g) At the final revocation hearing, the Board will initially determine whether the alleged violation of parole is supported by a preponderance of the evidence. In all cases, the burden shall be on the State to establish that a violation occurred.

(h) If the Board determines that a parole violation occurred, or if the offender admits to a violation, the Board shall next consider whether such grant of parole should be revoked for the violation.

(i) In all cases, including those situations in which the offender has been convicted of a new offense, the Board shall consider any mitigating factors advanced by the offender, which suggest that the violation of parole does not warrant revocation.

(j) All parole revocation hearings shall be conducted in a manner as informal as is consistent with due process and the technical rules of evidence shall not apply to such hearings.

(k) All evidence upon which the finding of a parole violation may be based, shall be disclosed to the offender at the revocation hearing unless it has been declared confidential by the Board.

(l) Nothing in this subsection shall be construed to prevent the Board from disclosing documentary evidence by reading or summarizing the appropriate document for the offender.

(m) If the Board sustains the violation and decides to revoke parole, the offender shall be returned to confinement to serve the remaining portion of his or her sentence or such part as the Board directs. The time an inmate spent on parole shall not be considered as service of the sentence unless the Board determines to grant all or part of such “street time” to the inmate.

(n) The Board shall set a review date and record it on a Board Action Sheet.

(o) If the Board finds that the offender did not commit the alleged violation or, if he or she did, finds that mitigating factors dictate revocation is not appropriate, the offender shall be allowed to resume his or her parole status subject to the conditions approved by the Board.

(7) Felony Committed While on Parole.

(Rule 1100-01-01-.14, continued)

(a) If a person is convicted in this state of a felony committed while on parole from a prison, workhouse, or jail in this state, he or she shall serve the remainder of his or her sentence under which parole was granted, or such part of that sentence as the Board may determine before he or she commences serving the sentence fixed for the crime committed while on parole.

(b) If a person on parole from a prison, workhouse, or jail in this state is convicted of a crime under the law of another state or county which, if committed in this state, would be a felony, the Director of Probation and Parole in this state, shall seek to return such offender to this state through the terms of the interstate compact. If such offender is returned, the Board shall require that he or she serve the portion remaining of his or her maximum term of sentence or such part of that term as the Board may determine.

(c) The Board, at its discretion, may recommend to the Commissioner of Correction, the removal of all or any part thereof, of the good and honor time and incentive time such inmate accrued on the sentence under which he or she was paroled. The final decision relative to whether any or all of such time credits will be removed shall be made by the Commissioner of Correction.

***Authority**: T.C.A. §§ 40-28-104, 40-28-105, 40-28-106, 40-28-118, 40-28-120 through 40-28-123, and 40-35-504. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.15 CONFIDENTIALITY OF RECORDS.**

(1) Confidential Information.

(a) The following information may be contained in the Board's file and is considered confidential by the Board and will not be released unless listed as an exception under rule 1100-01-01-.15(3):

1. Psychological evaluations provided, however, that such may be released to mental health officials who are treating the offender if a release of information form signed by the offender is presented with the request.

2. Offense Report.

3. Medical Records.

4. Contents of probation and parole staff chronological records, contact notes.

5. Probation/Parole Officers' statements accompanying violation reports.

6. Written clemency recommendations to the Governor.

7. Statements in opposition of an offender by victims, families of victims, victims' representatives, families of inmates, private citizens, and public officials who request confidentiality.

8. Victim impact statements.

9. Internal Affairs investigative reports.

10 Any reports or information generated by other agencies.

(Rule 1100-01-01-.15, continued)

11. Other information, the release of which the Board specifically finds would be a serious safety risk to the public, staff, parolee or inmate.

(2) Information Available for Release.

(a) The following information may be released:

1. Hearing and decision-making policy and procedures;

2. Whether an inmate is being considered for parole or clemency;

3. Whether parole or clemency has been granted or denied;

4. Effective date for parole;

5. Statements in support of a parole;

6. Clemency applications and supporting documentation;

7. Date, time, and location of hearings;

8. Parole certificates and determinate release certificates;

9. Reasons for the Board decisions listed on the Board Action Sheet;

10. Residential and employment records of offenders;

(b) Requests for information from field supervision files shall be directed to the District Director or his or her designee. The District Director or his or her designee will review the records and release information available under rule 1100-01-01-.15(2)(a).

(3) Upon official request, law enforcement, child support officials, or other governmental entities shall be provided information as necessary to assist in their investigations, in their official capacity. Upon verification of the identity of the requesting official the following information may be released:

(a) Offender’s aliases;

(b) Offender’s M.O. (modus operandi or mode of operation);

(c) Offender’s address;

(d) Offender’s place of employment;

(e) Offender’s photographs and fingerprints;

(f) Offender’s social security number;

(g) Offender’s telephone number;

(h) Offense reports;

(i) Whether a warrant has been issued and whether an offender has been arrested on a warrant;

(Rule 1100-01-01-.15, continued)

(j) Violation reports;

(k) Information on assets of persons currently or previously on parole who owe court fines.

(4) The Board shall not release employee personal information such as social security numbers, home addresses, or telephone numbers.

***Authority**: T.C.A. §§ 40-28-104, 40-28-106, 40-28-119, and 40-28-504. **Administrative History**: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019.*

**1100-01-01-.16 DUTIES AND PROCEDURES OF BOARD IN EXECUTIVE CLEMENCY MATTERS.**

(1) The Board shall, upon the request of the Governor, consider and make nonbinding recommendations concerning all requests for commutations or pardons. Such recommendations shall be made according to the following procedures:

(a) Beginning Steps of Clemency Procedure.

1. Upon receipt of a request from an offender or his or her attorney for executive clemency consideration, the Board shall respond by sending to the individual making the request an executive clemency application with a cover letter explaining the application procedure.

(i) If the Board receives a request for clemency on behalf of an individual by a third party who is not the individual's attorney, the Board shall respond and advise the third party that the person for whom clemency is requested must apply directly to the Board unless that person lacks the competency to apply in his or her own behalf.

(ii) Where a request for clemency is referred to the Board from the Governor's office, the Department of Correction, or any other agency, such request shall be handled in the same manner as if the request had been initially addressed to the Board.

(b) Pardon Requests.

1. An application for a pardon must be accompanied by information and evidence sufficient to enable the Board to determine whether the applicant is entitled to consideration for a pardon under the Governor's guidelines. If no such information is included in the application or furnished to the Board, the applicant will be advised that the application cannot be processed further until such information is received.

2. The Board shall review the application and supporting information and determine whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for a hearing. If the applicant is determined not to be eligible for consideration, he or she shall be advised of this and of the reasons he or she is not eligible for consideration.

(c) Commutation Requests.

1. The Board shall review the application and any supporting information and determine whether the applicant falls within the Governor's guidelines and the

(Rule 1100-01-01-.16, continued)

Board's screening factors, and whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for hearing.

2. If the applicant does not fall within the Governor's criteria, the applicant shall be advised as to why he or she is not eligible for consideration and will not be scheduled for a hearing. He or she shall be advised of the date on which he or she will be eligible and may reapply for consideration, provided that none of the Board's screening factors are amended by the Governor to prevent such consideration.

(d) General Procedure for Clemency Requests and Hearings.

1. All requests for executive clemency shall be responded to in a timely manner. After the application is received, the applicant and his or her attorney shall be advised as to whether the case is to be scheduled for a hearing and the date, time, and place of any hearing. All hearings shall be held promptly following the notice to the applicant and his or her attorney, unless it is continued at the Board's discretion, upon the request of the applicant or his or her attorney, or pending receipt by the Board of essential information. The notice shall advise the applicant that he or she is entitled to appear at the hearing and to present witnesses and other evidence on his or her behalf. Such notice shall also include a description of the type of evidence considered by the Board.

2. At the same time that notice is sent to an applicant and his or her attorney, the appropriate Judge and District Attorney General shall be notified that the case has been set for hearing and given the date, time, and place. The notice to the Judge and District Attorney shall indicate that the Board solicits and welcomes their views and recommendations concerning clemency for the applicant.

3. The Board's staff may compile any or all of the following information for the Board's consideration at the hearing:

(i) A reclassification or parole summary completed by the institutional staff, if the applicant is an inmate;

(ii) Information about the facts and circumstances surrounding the offense and conviction. Such information shall be obtained through investigations conducted by a Probation/Parole Officer or other individual designated by the Board;

(iii) A psychiatric or psychological evaluation if the applicant is an individual convicted of a sexual offense or sex related crime;

(iv) Information about medical, mental and/or family problems or needs obtained through investigation by a Probation/Parole Officer or other individual designated by the Board, if appropriate; and

(v) The application, original request, supporting evidence, and any correspondence in the Board's file concerning the application.

4. If the applicant is requesting a pardon, the following additional information shall be obtained:

(i) Information obtained for FBI and local records checks;

(Rule 1100-01-01-.16, continued)

(ii) Information regarding recent social history and reputation in the community; and

(iii) Information verifying reasons for pardon request.

5. Although the Board's staff obtains the above information so that clemency hearings not be completely ex parte in nature, the burden remains on the applicant to establish that he or she is entitled to clemency.

6. At a clemency hearing the Board shall consider, but is not limited to, the following factors:

(i) The nature of the crime and its severity;

(ii) The applicant's institutional record;

(iii) The applicant's previous criminal record, if any;

(iv) The views of the appropriate trial Judge and the District Attorney General who prosecuted the case;

(v) The sentences, ages, and comparative degree of guilt of co-defendants or others involved in the applicant's offense;

(vi) The applicant's circumstances if returned to the community;

(vii) Any mitigating circumstances surrounding the offense;

(viii) The views of the community, victims of the crime or their families, institutional staff, Probation/Parole Officers, or other interested parties; and

(ix) Medical and psychiatric evaluations when applicable.

7. The Board will inform the applicant and his or her attorney, if present, of its recommendation at the end of the hearing or, in its discretion, will take the case under advisement. In either event, the Board shall advise the applicant that its recommendation to the Governor is non-binding and that the Governor will review any recommendation by the Board.

8. The Chair shall designate one member of the Board to write a report to the Governor concerning the case. The report shall include:

(i) A brief statement of the reasons for the recommendation;

(ii) The complete file;

(iii) The views of the various Board Members, if the recommendation is not unanimous; and

(iv) The specifics of the recommendation, whether it is a positive or negative one, and if a positive recommendation is made, any terms and conditions recommended by the Board.

9. If the Governor has granted a pardon to an applicant who did not previously receive a positive recommendation from the Board, the Board shall conduct an administrative vote at the next scheduled Board Meeting, solely for the purpose

(Rule 1100-01-01-.16, continued)

of allowing the applicant to seek expungement pursuant to T.C.A. § 40-32-101. The Board shall consider the applicant's case along with the Governor's statements and clemency action. The Board will inform the applicant and his or her attorney prior to the Board meeting that the vote shall occur, and a decision letter shall be sent to the applicant and his or her attorney.

(e) Emergency Medical Clemency Requests. In a small percentage of cases, it is necessary and appropriate that the Board consider requests by individuals recommended for clemency by the Department of Correction's medical staff. At times, these individuals may lack competency to apply on their own behalf and the request may be made by the medical staff. These requests are made in unusual or emergency medical situations and may require immediate action by the Board. In such cases, a complete medical report and a detailed statement of the emergency situation will accompany the Board's report to the Governor.

(f) As soon as practicable after the Board's clemency recommendation, it shall forward or cause to be forwarded to the appropriate standing committees of the General Assembly, designated by the Speaker of the Senate and the Speaker of the House of Representatives, a written list of the names of all persons receiving both favorable and unfavorable recommendations.

(g) The list required by subsection (f) shall also be furnished to the appropriate Attorney General in whose district any such person was convicted.

(h) Supervision of Commutees.

1. When the Governor of the State of Tennessee commutes an offender's sentence and makes community supervision a condition of such commutation, TDOC shall assign the commutee a Probation/Parole Officer in the same manner as if the offender had been released on parole.

2. If the Probation/Parole Officer supervising such commutee has reasonable cause to believe such person has violated the conditions of his or her commutation, the Officer shall detail the circumstances of the alleged violation in the form of an affidavit and transmit such affidavit to the Director of Probation and Parole. In no event shall the Probation/Parole Officer arrest, detain, or cause the arrest or detention of a commutee unless done on the basis of a warrant from the Governor.

3. The Director shall review and shall immediately transmit, in appropriate cases, affidavits received pursuant to this subsection, to the office of the Governor.

4. At the request of the Governor, the Board shall conduct a commutation revocation hearing to determine if a commutee has violated the conditions of his or her commutation. The Board will conduct such hearings in the same manner and use the same procedures as parole revocation hearings are conducted pursuant to rule 1100-01-01-.14.

5. At the conclusion of the hearing the Board shall transmit the record of such hearing, together with the Board's non-binding findings and recommendations concerning the alleged commutation violation, to the Governor.

***Authority:*** *T.C.A. §§ 40-27-101, 40-27-102, 40-27-104, 40-28-104, 40-28-106, 40-28-107, 40-28-114, 40-28-126, and 40-32-101.* ***Administrative History:*** *Original rule filed May 5, 2009; effective September 28, 2009. Repeal and new rules filed December 14, 2018; effective March 14, 2019. Amendments filed December 23, 2019; effective March 22, 2020.*

# Attachment #2

# State of Tennessee

# PUBLIC CHAPTER NO. 410

## HOUSE BILL NO. 785

**By Representatives Lamberth, Gant, Curcio, Ramsey, Hardaway, Moon, Freeman, White, Faison, Parkinson, Tim Hicks, Hodges, Mannis, Gillespie, Jernigan, Chism, Thompson, McKenzie**

**Substituted for: Senate Bill No. 768**

**By Senators Johnson, Stevens, Yager, Bowling, Akbari, Bailey, Gilmore, Haile, Jackson, Reeves**

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 12; Title 40; Title 41, Chapter 4; Title 41, Chapter 8; Title 49, Chapter 11; Title 49, Chapter 8; Title 55, Chapter 50 and Section 62-76-104, relative to offender reentry.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Reentry Success Act of 2021."

SECTION 2. Tennessee Code Annotated, Section 40-28-503(a), is amended by deleting the subsection and substituting:

(a) The board shall establish a policy governing attendance at board hearings and submission and use of victim impact statements and other impact statements. Copies of the policy shall be available upon request. The policy must govern:

(1) The requirement that those requesting notification of parole and parole revocation hearings keep the board advised of their current addresses and telephone numbers;

(2) Instructions for attending and participating in parole and parole revocation hearings, including instructions for submitting an impact statement video;

(3) The limitations on attendance as set forth in § 40-28-502;

(4) Reasonable limitations on oral presentations and videos; and

(5) Information about board discretion to investigate victim impact statements and other impact statements.

SECTION 3. Tennessee Code Annotated, Section 40-28-503, is amended by adding the following as new subsections:

(c)

(1) The board shall establish a digital function that a victim or other impacted person may use to electronically submit an impact statement video to be considered at an inmate's parole or parole revocation hearing. The digital function must allow the victim or other impacted person to submit a video of the victim or other impacted person presenting an impact statement as otherwise permitted by this part. The board may impose reasonable restrictions regarding the length of impact statement videos.

(2) The digital function must allow a victim or other impacted person to indicate whether the victim or other impacted person would like the impact statement video to be resubmitted to any future parole or parole revocation hearings involving the same inmate and offense. If the victim or other impacted person indicates that the victim or other impacted person would like the video resubmitted to any future parole or parole revocation hearings involving the same

inmate and offense, then the board shall consider the video at future hearings without further request from the victim or other impacted person. Prior to consideration at a subsequent hearing, the board shall notify the victim or other impacted person, in the same manner that notice is provided pursuant to § 40-28-505(b)(4), that the video will be considered at the hearing unless the victim or other impacted person informs the board, in writing or using the digital function, that the victim or other impacted person no longer wishes to have the video considered. A victim or other impacted person may inform the board at any time, in writing or using the digital function, that the victim or other impacted person no longer wishes to have a previously submitted video considered by the board. If a victim or other impacted person informs the board that the victim or other impacted person no longer wishes to have a previously submitted video considered by the board using the digital function, the digital function must provide the victim or other impacted person the opportunity to indicate whether the victim or other impacted person will be submitting a new impact statement video, and whether the victim or other impacted person is opposed to, in favor of, or indifferent to the granting or revoking of parole to the inmate.

(3) Any impact statement video is subject to the board's policies and rules governing the privacy of board records pursuant to §§ 40-28-119 and 40-28-503.

(d) As used in this section, "victim" includes both victims and victim representatives, as those terms are defined in § 40-38-203.

SECTION 4. Tennessee Code Annotated, Section 40-28-504, is amended by deleting the section and substituting:

(a) The board shall accept and consider victim impact statements, including victim impact statement videos.

(b) Written victim impact statements and victim impact statement videos are confidential and must not be made available to the public.

(c) Assertions made in a victim impact statement may be investigated and verified by the board.

(d) As used in this section, "victim" includes both victims and victim representatives, as those terms are defined in § 40-38-203.

SECTION 5. Tennessee Code Annotated, Section 55-50-321(a), is amended by designating the existing language as subdivision (1) and adding the following as a new subdivision (2):

(2) The application fee required under subdivision (a)(1) is not required in the case of applications for restricted driver licenses under § 40-24-105(b).

SECTION 6. Tennessee Code Annotated, Section 40-24-105(b)(3)(D), is amended by deleting the language "and paying the application fee to the department".

SECTION 7. Tennessee Code Annotated, Section 40-24-105(b)(4)(B), is amended by deleting the language ", together with an application fee of sixty-five dollars ($65.00),".

SECTION 8. Tennessee Code Annotated, Section 40-24-105(b)(5)(E), is amended by deleting the language ", together with an application fee of sixty-five dollars ($65.00),".

SECTION 9. Tennessee Code Annotated, Section 40-28-115(i), is amended by deleting the second sentence and substituting instead:

However, the period set by the board shall not exceed six (6) years, unless the prisoner is serving a sentence for multiple convictions for first degree murder, pursuant to § 39-13-202, or facilitation of first degree murder, in which case the period set by the board shall not exceed ten (10) years.

SECTION 10. Tennessee Code Annotated, Section 40-28-116(b), is amended by deleting the period at the end of the subsection and substituting:

, except that the board shall not require a condition or limitation to be completed prior to release on parole unless the department of correction recommends completion of the condition or limitation prior to release on parole.

SECTION 11. Tennessee Code Annotated, Section 40-28-122(c)(1), is amended by deleting the subdivision and substituting:

(1) The board shall, within a reasonable time, act upon the charges, and may, if it sees fit:

(A) For a revocation of parole that does not involve a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding, require the prisoner to serve a term of incarceration not to exceed:

(i) Fifteen (15) days for the first revocation;

(ii) Thirty (30) days for the second revocation;

(iii) Ninety (90) days for the third revocation; or

(iv) The remainder of the sentence, for a fourth or subsequent revocation; or

(B) For a revocation of parole that involves a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding, require the prisoner to serve out in prison the balance of the maximum term for which the prisoner was originally sentenced, calculated from the date of delinquency, or such part thereof, as the board may determine, or impose a punishment as the board deems proper, subject to § 40-28-123.

SECTION 12. Tennessee Code Annotated, Section 40-35-503, is amended by adding the following as new subsections:

( )

(1) Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing.

(2) For purposes of this subsection ( ), "eligible inmate" means an inmate who:

(A)

(i) Is currently serving a sentence for a Class E or Class D felony offense; or

(ii) Is currently serving a sentence for a felony that is not classified as a violent offense under § 40-35-120(b);

(B) Is determined to be low risk to reoffend or most appropriately supervised in the community under the most recent validated risk and needs assessment performed under § 41-1-126;

(C) Has successfully completed the programming recommended by the department of correction based on a validated risk and needs assessment performed under § 41-1-126, or can complete any recommended programming while on parole supervision;

(D) Has not received a Class A or Class B disciplinary offense under department of correction policy within one (1) year of the inmate's parole hearing; and

(E) Has not been convicted of a violent sexual offense, as defined in § 40-39-202; sexual offense, as defined in § 40-24-108(b) or § 40-39-202; or sex offense, as defined in § 39-13-703.

(3) This subsection ( ) does not eliminate or otherwise affect the requirements of subsection (c) or § 40-28-116(a)(2).

( ) Upon declining to grant parole in any case, the board must state in writing the reason for declining parole and how the inmate can improve the inmate's chance of being released on parole in the future.

SECTION 13. Tennessee Code Annotated, Section 40-35-503(b)(2), is amended by redesignating the current subdivision as subdivision (b)(2)(A) and adding the following language before the semicolon:

, except that the board's finding shall not be the sole basis for denying parole unless the individual is serving a sentence for any of the following offenses, in which case the board may deny parole for seriousness of the offense:

(i) First degree murder or an attempt to commit, solicitation of, or facilitation of first degree murder;

(ii) Second degree murder or an attempt to commit or facilitation of second degree murder;

(iii) Voluntary manslaughter;

(iv) Aggravated vehicular homicide;

(v) Vehicular homicide;

(vi) Especially aggravated kidnapping or an attempt to commit or facilitation of especially aggravated kidnapping;

(vii) Trafficking for a commercial sex act;

(viii) A human trafficking offense;

(ix) Advertising commercial sexual abuse of a minor;

(x) Especially aggravated robbery or an attempt to commit or facilitation of especially aggravated robbery;

(xi) Aggravated rape of a child or an attempt to commit or facilitation of aggravated rape of a child;

(xii) Aggravated rape or an attempt to commit or facilitation of aggravated rape;

(xiii) Rape of a child or an attempt to commit or facilitation of rape of a child;

(xiv) Rape;

(xv) Aggravated sexual battery;

(xvi) Especially aggravated burglary;

(xvii) Aggravated child abuse;

(xviii) Aggravated sexual exploitation of a minor;

(xix) Especially aggravated sexual exploitation of a minor;

(xx) Aggravated vehicular assault;

(xxi) Aggravated abuse of an elderly or vulnerable adult, or

(xxii) Vehicular assault;

(B) If the board denies parole for the seriousness of the offense, then the board shall state in writing how the inmate can improve the inmate's chances of being released on parole at the inmate's next hearing

SECTION 14. Tennessee Code Annotated, Section 40-35-503(g), is amended by deleting the second sentence of the subsection.

SECTION 15. Tennessee Code Annotated, Title 40, Chapter 35, Part 5, is amended by adding the following as a new section:

**40-35-506.**

(a) As used in this section, "eligible inmate" means an inmate who:

(1) Is serving a felony sentence for an offense that occurred on or after July 1, 2021;

(2) Is eligible for parole consideration;

(3) Is calculated to have one (1) year or less remaining until expiration of all sentences that the inmate is serving or set to serve, or is calculated to reach the inmate's release eligibility date with less than one (1) year remaining until expiration;

(4) Does not have an active detainer for new or untried charges or sentences to serve in other jurisdictions;

(5) Has not been classified as maximum or close custody for disciplinary reasons in the previous two (2) years; and

(6) If the inmate has previously had the inmate's probation or parole revoked, has served at least six (6) months since returning to custody after revocation of probation or parole.

(b)

(1) The department of correction shall determine whether an inmate is an eligible inmate. Notwithstanding § 40-35-503, an eligible inmate must be released on mandatory reentry supervision one (1) year prior to the inmate's sentence expiration date as calculated by the department or, if the inmate is not eligible for parole one (1) year prior to the inmate's sentence expiration date, upon reaching the inmate's release eligibility date. Upon release, an eligible inmate is subject to mandatory reentry supervision until the inmate's sentence expiration date. The release must be under the terms and conditions established by the department of correction. The board of parole shall issue a certificate of mandatory reentry supervision to such offenders.

(2) Eligible inmates released on mandatory reentry supervision must be considered released on parole and must be supervised and subject to violations or revocation under chapter 28 of this title to the same extent as discretionary parolees. All provisions relative to imposition of graduated sanctions under chapter 28 of this title apply to eligible inmates released on mandatory reentry supervision.

(3) Upon the issuance of a violation warrant regarding an eligible inmate, the inmate does not earn credit toward completion of the sentence until the removal of the delinquency.

(4) Mandatory reentry supervision for eligible inmates is not a commutation of sentence nor any other form of executive clemency.

(c) Notwithstanding § 40-35-111, upon expiration of a sentence of confinement for a person who is not an eligible inmate, the inmate must be released and subject to mandatory reentry supervision for a period of one (1) year following the inmate's sentence expiration date under conditions to be prescribed by the department of correction. Noncriminal, technical violations of supervision conditions by ineligible inmates must not result in revocation of supervision or incarceration. The mandatory reentry supervision period must be calculated by the department of correction.

(d) Mandatory reentry supervision under this section constitutes release into the community under the direct or indirect supervision of any state or local governmental authority or a private entity contracting with the state or a local government for purposes of § 40-35-114(13).

SECTION 16. Tennessee Code Annotated, Section 40-35-210, is amended by adding the following as a new subsection:

( ) When the court accepts a plea of guilty or nolo contendere or imposes a sentence on a defendant who has been convicted of a felony offense that occurred on or after July 1, 2021, the court shall specify in its order that the defendant may be subject to an additional year of mandatory reentry supervision pursuant to § 40-35-506 if, at the time of release, the defendant is not an eligible inmate as defined in § 40-35-506.

SECTION 17. Tennessee Code Annotated, Title 40, Chapter 29, Part 1, is amended by adding the following as a new section:

**40-29-108.**

(a) A cause of action may not be brought against an employer or contracting party for negligent hiring, training, retention, or supervision of an employee or independent contractor based solely upon the fact that the employee or independent contractor has been previously convicted of a criminal offense.

(b) In a cause of action against an employer or contracting party for negligent hiring, training, retention, or supervision of an employee or independent contractor, evidence that the employee or independent contractor has been previously convicted of a criminal offense is not admissible.

(c) Subsections (a) and (b) do not apply when:

(1)

(A) The employer or contracting party knew or reasonably should have known of the employee's or independent contractor's prior conviction; and

(B) The employee or independent contractor was previously convicted of:

(i) An offense that was committed while performing duties substantially similar to those reasonably expected to be performed in the employment or under the contract, or under conditions substantially similar to those reasonably expected to be encountered in the employment or under the contract; or

(ii) A violent offense, as defined in § 40-35-120(b), or a violent sexual offense, as defined in § 40-39-202; or

(2)

(A) The cause of action concerns the misuse by an employee or independent contractor of the funds or property of a person other than the employer or contracting party;

(B) On the date the employee or independent contractor was hired, the employee or independent contractor had been previously convicted of an offense an element of which includes fraud or the misuse of funds or property; and

(C) The employer or contracting party should have reasonably foreseen that the position for which the employee or independent contractor was being hired would involve managing the funds or property of a person other than the employer or contracting party.

(d) This section does not create a cause of action or expand an existing cause of action.

SECTION 18. Tennessee Code Annotated, Section 41-8-106, is amended by adding the following as a new subsection:

(i)

(1) In addition to the reimbursement or compensation provided under subsection (c) and subdivision (g)(2), the department shall pay an accreditation stipend to eligible counties for each convicted felon housed by the county for which the county receives reimbursement or compensation provided under subsection (c) and subdivision (g)(2), as provided in subdivision (i)(3).

(2) For purposes of this subsection (i):

(A) "Eligible county" means a county that applies to the department for the accreditation stipend and that the department determines meets the following eligibility criteria:

(i) The county houses convicted felons pursuant to a contract with the state or houses felons awaiting transfer to a state facility;

(ii) All felons housed by the county are administered a department-approved validated risk-needs assessment within forty-five (45) days of admission to the county facility;

(iii) The county provides evidence-based programming;

(iv) All felons housed by the county and deemed to be in good behavioral standing, as determined by facility policy, are eligible to participate in evidence-based programming that is matched to each felon's risks and needs and are not required to participate in programs not indicated as needed by the evidence-based risk and needs assessment;

(v) The county makes reasonable efforts to select evidence-based programming that fits the demonstrated needs of the county's felony offender population by serving a substantial portion of the felons, rather than a narrow subset of felons;

(vi) The county is compliant with, or is making reasonable efforts to comply with, the federal Prison Rape Elimination Act of 2003 (34 U.S.C. § 30301 et seq.); and

(vii) The county achieves tier 1 or tier 2 accreditation from the Tennessee corrections institute pursuant to subdivision (i)(3); and

(B) "Evidence-based programming" means a program or programs shown by scientific research to effectively reduce recidivism rates and increase an offender's likelihood of success following release from incarceration, including programs focused on education, vocational training, mental health, substance abuse rehabilitation, or building healthy relationships. The department shall maintain a resource information center webpage that provides resources regarding approved evidence-based programming.

(3)

(A) The amount of the accreditation stipend provided to eligible counties under this subsection (i), which is in addition to the amount set annually in the appropriations act for each convicted felon housed by the county for which the county receives reimbursement or compensation provided under subsection (c) and subdivision (g)(2), is:

(i) Three dollars ($3.00) per day for each convicted felon housed by the county for which the county receives reimbursement or compensation under subsection (c) and subdivision (g)(2), if the county has achieved tier 1 accreditation from the Tennessee corrections institute; and

(ii) Six dollars ($6.00) per day for each convicted felon housed by the county for which the county receives reimbursement or compensation under subsection (c) and subdivision (g)(2), if the county has achieved tier 2 accreditation from the Tennessee corrections institute.

(B) For purposes of subdivision (i)(3)(A), the board of control of the Tennessee corrections institute shall determine tier 1 and tier 2 accreditation standards by rule. The rules must be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(C) In order to change the amount of reimbursement or compensation provided under subdivision (i)(3)(A), a county must achieve the accreditation tier warranting the change in the fiscal year prior to the fiscal year in which the change in reimbursement or compensation will occur and provide the department notice of the proposed change in reimbursement or compensation at least six (6) months prior to the proposed effective date of the change in reimbursement or compensation.

(4) In order to maintain the accreditation stipend, an eligible county must provide annual documentation to the department showing the percentage of the felons who enroll in the evidence-based programming and complete the programming in a timely manner. The department must determine whether that percentage is satisfactory based on the historical completion outcomes for the particular programming. The department shall establish the documentation and reporting requirements and provide the requirements to each eligible county receiving an accreditation stipend.

(5) A county's receipt of an accreditation stipend is conditioned upon the county maintaining eligibility and compliance with this subsection (i) warranting the stipend. If a county fails to maintain eligibility and compliance with this subsection (i) warranting the stipend, then the department may withhold stipend payments to the county or adjust the amount of such payments, as appropriate. In the case of material noncompliance or ineligibility under this subsection (i), as determined by the commissioner, the department may require the county to repay any stipend payments made to the county during the period of material noncompliance or ineligibility.

(6) After an accreditation stipend has been paid to a county for three (3) years, the department shall annually review the recidivism rates of felons housed

in that county to determine whether the implementation of the programming has been effective in reducing recidivism rates. If the evidence-based programming at issue does not impact the recidivism rate by a satisfactory percentage, as determined by the department based upon the length of time that the programming has been utilized and the program's historical outcomes, then the department may require that the county develop a corrective action plan that is satisfactory to the department in order to continue receiving the accreditation stipend.

(7) When implementing evidence-based programming for the felony offender population, an eligible county may implement more than one (1) evidence-based program.

(8) The office of criminal justice programs in the department of finance and administration shall provide information to eligible counties regarding federal grant dollars that may be available to support the implementation of evidence-based programming or other programs or projects to improve offender outcomes.

(9) A county shall not prohibit the county's misdemeanor offender population from participating in evidence-based programming when programming capacity remains following the enrollment of felons whose risks and needs correspond to the programming. The state is not responsible for any costs of incarceration or programming for misdemeanor offenders. However, misdemeanor offenders may utilize evidence-based programming capacity that has been paid for using the accreditation stipend provided under this subsection (i).

(10) The commissioner is authorized to promulgate rules to implement and effectuate this subsection (i), pursuant to the Uniform Administrative Procedures Act compiled in title 4, chapter 5.

(11) Tennessee's community colleges, established pursuant to title 49, chapter 8, and Tennessee's colleges of applied technology, established pursuant to title 49, chapter 11, part 4, are authorized to assist counties with the development of evidence-based programming for felons housed by counties. A county may work with the department and the board of regents established in title 49, chapter 8, part 2, to develop and implement such programming.

SECTION 19. Tennessee Code Annotated, Section 41-4-140(a), is amended by adding the following as a new subdivision (4) and redesignating the current subdivision (a)(4) accordingly:

(4) Inspect local jails, lock-ups, and workhouses to determine whether a county merits tier 1 or tier 2 accreditation by the Tennessee corrections institute pursuant to § 41-8-106(i) and report such determination to the department of correction;

SECTION 20. Tennessee Code Annotated, Title 49, Chapter 8, Part 2, is amended by adding the following as a new section:

In addition to all other authorized functions of the community colleges and state colleges of applied technology within the board of regents, each institution is authorized to contract and partner with local governments for the purpose of providing educational and workforce development programs to assist with reducing recidivism rates of criminal offenders held in local correctional facilities and improving opportunities for successful reentry upon release from incarceration.

SECTION 21. Tennessee Code Annotated, Section 49-11-404(a), is amended by adding the following as a new subdivision:

( ) Sheriff's department or other official or department charged with oversight of a county jail, lock-up, or workhouse for the purpose of developing reentry programs to effectively reduce the recidivism rate of criminal offenders and increase the likelihood of successful reintegration into society following release of individuals from incarceration.

SECTION 22. Tennessee Code Annotated, Section 62-76-104(b)(4), is amended by deleting the subdivision and substituting:

(4) In considering whether to deny an application for a license, certificate, or registration to an applicant pursuant to subdivision (b)(1), or whether to refuse to renew a license, certificate, or registration on the basis of a criminal conviction, the licensing authority must consider:

(A) The relationship between the nature of the crime and the purposes of regulating the occupation, profession, business, or trade;

(B) The relationship between the crime and the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation, profession, business, or trade;

(C) Any evidence of rehabilitation or treatment undertaken by the individual that might mitigate against the relationship of crime to the occupation, profession, business, or trade; and

(D) Any applicable federal laws regarding an individual's participation in the occupation, profession, business, or trade.

SECTION 23. Tennessee Code Annotated, Section 62-76-104(b), is amended by deleting the language "subdivision (b)(4)(A)" wherever it appears and substituting "subdivision (b)(4)".

SECTION 24. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

SECTION 25. Sections 2 through 4 of this act take effect upon becoming a law for purposes of establishing the digital function for electronically submitting an impact statement video, and for all other purposes, take effect January 1, 2022, the public welfare requiring it. Sections 5 through 8 of this act take effect July 1, 2021, the public welfare requiring it. Sections 9 through 15 of this act take effect July 1, 2021, the public welfare requiring it, and apply to parole determinations made on or after that date. Section 17 of this act takes effect upon becoming a law, the public welfare requiring it. Section 18 of this act takes effect upon becoming a law, the public welfare requiring it, for the purpose of promulgating rules, and for all other purposes, takes effect October 1, 2021, the public welfare requiring it. All other sections of this act take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 785

PASSED: April 28, 2021

CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES

RANDY MCNALLY
SPEAKER OF THE SENATE

APPROVED this 12th day of May 2021

BILL LEE, GOVERNOR

# Attachment #3

Tennessee State Government

**FOR IMMEDIATE RELEASE**
Monday, June 7, 2021

**CONTACT:** Dustin Krugel
**OFFICE:** 615-532-8149

# Board of Parole June Meeting to be held in Nashville

## *June 23 at 500 James Robertson Parkway, Fourth Floor*

**NASHVILLE –** The Tennessee Board of Parole will hold its next administrative board meeting at 9 a.m. Wednesday, June 23 at 500 James Robertson Parkway in the Davy Crockett Tower, located on the fourth floor in downtown Nashville.

The meeting is open to the public. Individuals interested in addressing the board should notify the Board via email at BOP.Webmail@tn.gov to be placed on the agenda by 12 p.m. CT, June 22.

The public will also be able to view the meeting live via the internet at Board of Parole June 2021 Board Meeting (tn.gov).

The next administrative meeting is scheduled for Sept. 22, 2021.

The Board of Parole is an independent seven-member board whose members are appointed by the Governor. The Board makes decisions about which eligible offenders will be granted parole and placed on community supervision for the remainder of their sentences. The Board also can revoke parole of those offenders who do not abide by the conditions of their supervision. In addition, the Board reviews applications for executive clemency and makes non-binding recommendations to the Governor.

###

# Attachment #4

Gmail Daniel Horwitz <daniel.a.horwitz@gmail.com>

# Reentry Success Act of 2021

**Rachel Hitt** <Rachel.Hitt@tn.gov> Thu, May 13, 2021 at 11:14 AM
To: "Daniel A. Horwitz" <daniel@horwitz.law>
Cc: Lindsay Smith <lindsay@horwitz.law>

Mr. Horwitz,

The Reentry Success Act applies to parole determinations made on or after the effective date. It does not retroactively apply such that the Board must rehear the thousands of offenders that were previously heard and declined but may be eligible under the Act upon reaching their review dates. Unfortunately, the Board does not have the ability or resources necessary to identify and reconsider all of those cases, including Mr. Hughes.

Rachel A. Hitt

Staff Attorney

Tennessee Board of Parole

500 James Robertson Parkway, 4th Floor

Nashville, Tennessee 37243-0850

Phone: 615-532-8148

Fax: 615-253-5677



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**From:** Daniel A. Horwitz <daniel@horwitz.law>
**Sent:** Thursday, May 13, 2021 10:01 AM
**To:** Rachel Hitt <Rachel.Hitt@tn.gov>
**Cc:** Lindsay Smith <lindsay@horwitz.law>
**Subject:** Re: [EXTERNAL] Reentry Success Act of 2021

Ms. Hitt,

Thank you for your correspondence. However, it does not answer my question or address my concern.

I agree with your assessment below. The as-yet-unaddressed issue, though, is this: Beginning on July 1, 2021, as a matter of law, Mr. Hughes will be presumptively entitled to release at his rapidly approaching RED date. That is a significant change in circumstances. Forcing him to wait until **July 2022** in order to vindicate his presumptive entitlement to release in **Fall 2021** is also self-evidently problematic for reasons that I do not think require much explanation.

Given this context, once the relevant portion of the Reentry Success Act of 2021 takes effect, we are asking the BOP to exercise its authority to schedule Mr. Hughes' next parole hearing prior to his forthcoming RED date. In other words, based on the significant change in circumstances created by the Reentry Success Act of 2021, we are asking the BOP to advance Mr. Hughes' next hearing date and afford Mr. Hughes a parole hearing in the summer or early fall of 2021. The purpose of my correspondence is to ask whether the BOP is willing to do that.

All the best,

-Daniel Horwitz

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Daniel A. Horwitz, Esq.

Horwitz Law, PLLC

daniel@horwitz.law

www.Horwitz.Law

On Thu, May 13, 2021 at 9:35 AM Rachel Hitt <Rachel.Hitt@tn.gov> wrote:

> Mr. Horwitz,
>
> Thank you! I hope you've also been well, especially during this past year.
>
> Thank you for contacting me regarding your client, Mr. Hughes. As you are aware, the portion of the Reentry Success Act that creates a presumption of parole for qualified offenders takes effect on July 1, 2021 and applies to parole determinations made on or after that date. Mr. Hughes' next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.
>
> Best,
>
> Rachel A. Hitt
>
> Staff Attorney

Tennessee Board of Parole

500 James Robertson Parkway, 4th Floor

Nashville, Tennessee 37243-0850

Phone: 615-532-8148

Fax: 615-253-5677



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**From:** Daniel A. Horwitz <daniel@horwitz.law>
**Sent:** Wednesday, May 12, 2021 7:15 PM
**To:** Rachel Hitt <Rachel.Hitt@tn.gov>
**Cc:** Lindsay Smith <lindsay@horwitz.law>
**Subject:** [EXTERNAL] Reentry Success Act of 2021



Ms. Hitt,

I hope you've been well since we last corresponded.

We represent inmate Jeffrey Wayne Hughes (TOMIS 00571879). Mr. Hughes is a beneficiary of the Reentry Success Act of 2021, which Governor Lee signed into law today: https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB0768. Various provisions of the law take effect immediately, while others take effect later on this year.

As you probably know better than I do, the Board's regulations permit the Board to reconsider previous decisions and to advance a parole date upon the receipt of significant new information. *See* Rules of the Tennessee Board of Parole § 1100-01-01-.09(1)(d). Based on the General Assembly enacting the Reentry Success Act of 2021 into law, Mr. Hughes, an eligible inmate, is now presumptively entitled to release later this year unless good cause is shown as to why he should not be released. During Mr. Hughes' previous parole hearing, although he was denied parole by a majority of the Board, it is also my understanding that one of the members voted to grant him early release even under the previously applicable statutory criteria. I also understand that Mr. Hughes' release eligibility date is sometime this coming fall depending on his good time.

Under these circumstances, we are asking the BOP to advance the date of Mr. Hughes' next parole hearing under § 1100-01-01-.09(1)(d). As mentioned, the circumstances governing Mr. Hughes' eligibility have now changed dramatically, and he is now presumptively entitled to release this coming fall based on a statutory change that is both significant and new. Once you have had an opportunity to review the details of this inquiry, based on the information presented above, will you please kindly let me know if the Board will agree to advance Mr. Hughes' next hearing date based on the Reentry Success Act of 2021 so that a fresh determination regarding his parole can be made under the current criteria that now apply to him?

Thank you in advance for your time.

All the best,

-Daniel Horwitz

--

Daniel A. Horwitz, Esq.

Horwitz Law, PLLC

daniel@horwitz.law

www.Horwitz.Law

# Attachment #5

eTomis

Menu Favorites Tools Other Applications Reports Help PROD

# Parole Board Action

Links Suspend

TOMIS ID 00571879 Hughes, Jeffrey W. Status ACTV

Reset key fields

Inquire

Refresh

Modify

FastPath Go

Recmd Reasons | Recmd Conditions | Parole Conditions | Future Action | Voting Summary

Hearing Dte 07/22/2020 Hearing Type IP Initial Parole

Hearing Officer ID FRAZMA01 Frazier, Mark Pre 1998 Hearing (3 Votes Only)

Recommendation ER Rec Early Releas Dt

Parole Conditions

| | |
|---|---|
| CB | Comp Cog Behav Intervent Prog-pre-rel |
| CW | Community Service Referral |
| PR | Pay Restitution As Ordered By Court |

Alt RIse Date

Comments

eTomis

Menu Favorites Tools Other Applications Reports Help PROD

# Parole Board Action

Links Suspend

TOMIS ID 00571879 Hughes, Jeffrey W. Status ACTV

Reset key fields

Inquire

Refresh

Enter

FastPath Go

Recmd Reasons | Recmd Conditions | Parole Conditions | Future Action | Voting Summary

Hearing Dte 07/22/2020 Hearing Type IP Initial Parole

| Board Member ID | Board Member Name | Region | Dcsn | Final |
|---|---|---|---|---|
| BEAVMA01 | BEAVERS, MAE | 0 | DS | Y |
| DUNCZA01 | DUNCAN, ZANE | 0 | DS | Y |
| FAULGA01 | FAULCON, GARY | 0 | DS | Y |
| GOBBTI01 | GOBBLE, TIM | 0 | | |
| KUSTRO01 | KUSTOFF, ROBERTA | 0 | | |
| MONTRI02 | MONTGOMERY, RICHARD | 0 | ER | |
| RICHBA02 | RICH, BARRETT | 0 | | |

# Attachment #6

STATE OF TENNESSEE
**BOARD OF PAROLE**
404 JAMES ROBERTSON PARKWAY SUITE 1300
NASHVILLE, TENNESSEE 37243-0850
Phone: (615) 741-1150 * Fax: (615) 741-5337

# Offender Hearing Decision Notification

July 24, 2020

To: JEFFREY WAYNE HUGHES, 00571879
BLEDSOE COUNTY CORRECTIONAL COMPLEX, U12, 27

This is to serve as your official notification regarding your parole hearing on 7/22/2020 held at Bledsoe County Correctional Complex. The Tennessee Board of Parole made a final decision on 7/23/2020 as follows, decline parole. The following information is related to their decision:

- The release from custody at this time would depreciate the seriousness of the crime of which the offender stands convicted or promote disrespect of the law: T.C.A. 40-35-503(b)(2)
- Comp Cog Behav Intervent Prog-Pre-Rel

The next review date is currently set for 07/2022.

**Appeal Rights**

Pursuant to Tennessee Code Annotated 40-28-105 offenders have appeal rights if their final parole decision is to decline, revoke or rescind parole. Appeals may be granted based on the following criteria:

1. Significant new evidence or information that was not available at the time of the hearing.
2. Allegations of misconduct by the hearings official and is substantiated by the record.
3. Significant procedural errors by the hearings official.

In order to be considered for an appellate review, a written request must be received within forty-five (45) days from the date this decision notice is signed. The request must be mailed to: Board of Parole, Attn: Appeals Unit, 404 James Robertson Parkway, Suite 1300 Nashville, TN 37243-0850.

I,_____, received this notification on _____.
Signature of Offender Date

Witness Name _____ Witness Signature _____ Date _____
Please Print

**Officials Only (Jails, Prisons and all PPOs):**

If the offender is not at this location please specify reason when you sign and date this document before returning.
Reason_____ Sign _____ Date _____
This document must be returned to the Board of Parole, Board Operations within **three business days** of date signed by the offender and witness.

# Attachment #2

Gmail

Daniel Horwitz <daniel.a.horwitz@gmail.com>

# Letter to BOP on Behalf of Jeffrey Hughes (6-24-21)

**BOP Webmail** <BOP.Webmail@tn.gov> Fri, Jun 25, 2021 at 2:55 PM
To: "Daniel A. Horwitz" <daniel@horwitz.law>
Cc: Lindsay Smith <lindsay@horwitz.law>, BOP Webmail <BOP.Webmail@tn.gov>

Mr. Horwitz,

Mr. Hughes has already had a hearing before his Release Eligibility Date in 2020 which complies with the requirements in T.C.A. 40-35-503(d). Mr. Hughes' next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.

BOP Webmail

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**From:** Daniel A. Horwitz <daniel@horwitz.law>
**Sent:** Thursday, June 24, 2021 10:26 AM
**To:** BOP Webmail <BOP.Webmail@tn.gov>
**Cc:** Lindsay Smith <lindsay@horwitz.law>
**Subject:** [EXTERNAL] Letter to BOP on Behalf of Jeffrey Hughes (6-24-21)



Dear BOP and Ms. Hitt:

Please see the attached correspondence on behalf of Mr. Jeffrey Hughes.

Best,

-Daniel Horwitz

--

Daniel A. Horwitz, Esq.

Horwitz Law, PLLC

daniel@horwitz.law

HORWITZ
LAW PLLC

# Attachment #3

HORWITZ
LAW PLLC

DANIEL A. HORWITZ
DANIEL@HORWITZ.LAW

4016 WESTLAWN DR.
NASHVILLE, TN 37209
WWW.HORWITZ.LAW
O: (615) 739-2888

LINDSAY B. SMITH
LINDSAY@HORWITZ.LAW

June 24, 2021

**VIA EMAIL**

Tennessee Board of Parole
404 James Robertson Parkway, Suite 1300
Nashville, TN 37243
Tel: 615-741-1150
BOP.Webmail@tn.gov

**Re: BOARD ACTION REGARDING JUNE 21, 2021 PETITION OF JEFFREY HUGHES, TDOC #00571879, FOLLOWING JUNE 23, 2021 HEARING**

Dear Members of the Tennessee Board of Parole:

As you know, on June 21, 2021, I submitted a petition on behalf of Mr. Jeffrey Hughes, TDOC #00571879, seeking certain relief arising out of the newly enacted Reentry Success Act of 2021. That petition requested, among other things, that you "[p]lease advise whether you intend to grant Mr. Hughes the relief requested by this petition at your June 23, 2021 meeting, or otherwise, by July 1, 2021."

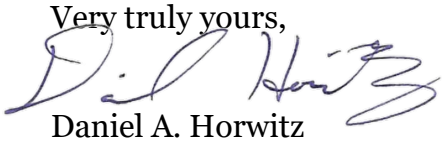
On June 23, 2021, I appeared before this Board at this Board's public hearing to reiterate and present the claims presented in Mr. Hughes' June 21, 2021 petition for relief. That meeting adjourned, however, with no decision being made on the claims presented in Mr. Hughes' petition.

For the reasons presented previously, Mr. Hughes' claims are time-sensitive. Mr. Hughes asserts—with substantial basis—that he is entitled to have a parole hearing in the next several months, or else, that he is entitled to be released by his forthcoming release eligibility date, which is only months away. Notwithstanding those substantive rights, though, this Board has not scheduled Mr. Hughes' next parole hearing until July 2022, which will result in approximately a year of unlawful incarceration if relief is not provided to him by this Board before then.

Given the above context, the purpose of this letter is to determine whether and when this Board intends to act on Mr. Hughes' petition for relief, and to determine whether and when it intends to grant Mr. Hughes the relief that he has sought.

Accordingly, please provide me the courtesy of a response to this matter at your earliest possible convenience, and in no case later than July 1, 2021. As detailed in Mr. Hughes' petition, Mr. Hughes has made and continues to make a good faith effort to exhaust all administrative remedies available to him, but unless this Board promptly acts on his claims, Mr. Hughes lacks any other plain, speedy, or adequate remedy to vindicate his rights.

Very truly yours,



Daniel A. Horwitz

Cc: Lindsay Smith
lindsay@horwitz.law

Rachel Hitt
Rachel.Hitt@tn.gov

Jeffrey Hughes, #571879
1045 Horsehead Rd.
Pikeville, TN 37367