No Credit for Time Served: The Fiscal and Equitable Problems with Wyoming's Parole Statutes

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NO CREDIT FOR TIME SERVED: THE FISCAL AND EQUITABLE PROBLEMS WITH WYOMING’S PAROLE STATUTES

Daniel M. Fetsco*

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Mass incarceration in the United States continues largely unabated, as the U.S. imprisons more people than any nation in the world.¹ The U.S. is also the world leader in prison population rate.² Scholars have noted that policies governing criminal punishment in the U.S. are often lacking in public safety rationale, inflicting overly harsh sentences, and disproportionately affecting minorities.³ The financial cost of these policies is staggering. Roughly 2.3 million people are currently incarcerated in America, a five hundred percent increase over the last forty years, costing nearly eighty billion dollars per year.⁴ These astonishing numbers do not begin to shed light on the associated human suffering, not only for the offenders but their family, friends, and community.⁵ An increasing number of Americans are aware of these problems and open to reform.⁶

The State of Wyoming has felt the economic pressures created by the mass incarceration movement.⁷ The economic situation has only worsened as the impact of an oil price war and COVID-19 slashed one-third of Wyoming’s projected state revenue.⁸ Similar to other states, Wyoming sought assistance from the Council on State Governments (CSG) by participating in the Justice Reinvestment Initiative (JRI) to attempt to reduce its prison population, lower recidivism rates, and increase public safety.⁹ Wyoming’s JRI project was a collaborative effort that marshalled input and data from virtually all stakeholders in Wyoming’s criminal justice


² Id.

³ Id.


⁵ See id.


⁸ Id.

system: judges, prosecutors, public defenders, sheriffs, behavioral health treatment providers, probation and parole agents, and other interested groups. After analyzing the data, the CSG ultimately created a report for the Wyoming Joint Judiciary Interim Committee in 2018. The report contained findings for virtually every area of Wyoming’s criminal justice system, from arrest to release on parole. Perhaps most troubling, the report found that Wyoming taxpayers will face a fifty million dollar bill to accommodate projected prison growth by fiscal year 2023. Moreover, the report found that the vast majority of revocations for offenders on supervision in the community “are due to violations of supervision conditions without a new felony conviction, many involving drug use.” For individuals on parole, the report found that eighty-seven percent of Wyoming parolees who returned to prison had violated their parole without a new felony conviction. The CSG report further highlighted specific Wyoming criminal statutes to be reformed for arguably lacking a clear public safety rationale and producing excessive sentences.

This article’s primary purpose is to examine a specific CSG finding—that Wyoming statutes predispose the Wyoming Board of Parole (Board) to impose lengthy periods of incarceration following parole violations. To reduce the expected expansion in Wyoming’s prison population, the CSG report recommended that Wyoming either reduce probation and parole revocations by fifty percent, reduce revocation length of stay by just over fifty percent, or a combination of both. Following the CSG report, the Wyoming Legislature modified the manner in which the Board deals with “street time.” For purposes of this article, “street time” is a colloquial term used to refer to the time that an individual spends on parole after release from prison by a paroling authority. At the time of the CSG report in 2018, Wyoming’s statute favored denying credit for street time if an individual’s parole was revoked:

In computing the remainder of the sentence to be served by a parole violator, no credit shall be given against his original sentence for any

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10 Adu-Num et al., supra note 9, at 11.
11 See generally id.
12 See generally id.
13 Id. at 13.
14 Id. at 73.
15 Id. at 82.
16 See id. at 30, 85–86.
17 Id. at 86.
18 Id. at 91.
20 See Camacho v. White, 918 F.2d 74, 76 (9th Cir. 1990).
portion of the time between his release on parole and his return to the institution unless the board directs otherwise.21

In 2019, the Legislature modified the statute and flipped the presumption regarding street time upon revocation.22 By deleting the word “no” the statute now favors crediting parolees street time, unless the Board exercises its discretion to deny it.23 Prior to this change, any parole revocation in Wyoming resulted in the loss of all street time served by an inmate, unless the Board exercised its discretion to decide otherwise.24 Although the recent statutory amendment has reversed this presumption, the ultimate decision of whether to credit street time upon parole revocation remains discretionary.25 Even under the new version of the statute, the question remains: has the statutory change had any impact upon the length of incarceration following parole revocation?

Before attempting to answer that question, this article first undertakes a review of the historical framework, including policy considerations; various approaches to street time in different jurisdictions; and parole related research.26 This article examines the lack of standards or requirements for appointment to the Wyoming Board, how many jurisdictions also lack similar credentials for parole board members, and neighboring states with modern parole membership requirements.27 Finally, this article recommends Wyoming amend two of its parole statutes.28 First, Wyoming should mandate the Board grant credit for street time to Wyoming parolees who have no new felony convictions and who have not absconded during their time on parole.29 Second, the structure and composition of the Wyoming Board should be redesigned to ensure that members possess the necessary education and expertise relevant to making these crucially important decisions.30

II. The Precarious Nature of Street Time

Living on “the street” while on parole is fraught with peril and contradictions. One school of thought views street time as a luxury, a reprieve from the harsh

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23 Wyo. Stat. Ann. § 7-13-404. The statute now reads “credit shall be awarded toward his original sentence for any portion of the time that the person has not violated a condition of parole between his release on parole and his return to the institution unless the board directs otherwise.” Id.
25 See supra notes 21–24 and accompanying text.
26 See infra Part II.
27 See infra Part III.
28 See infra Part IV.
29 See infra notes 167–191 and accompanying text.
30 See infra notes 192–198 and accompanying text. Although this article focuses on recommendations for amending Wyoming’s Board of Parole, such recommendations could be easily applied to other jurisdictions seeking solutions to stem the tide of future prison growth.
conditions of prison that any inmate should be grateful to receive.\textsuperscript{31} Another perspective is that parole represents a significant burden on individual liberty, little better than imprisonment.\textsuperscript{32} The United States Supreme Court observed the restrictions a person on parole in Virginia faces:

Petitioner is confined by the parole order to a particular community, house, and job at the sufferance of his parole officer. He cannot drive a car without permission. He must periodically report to his parole officer, permit the officer to visit his home and job at any time, and follow the officer’s advice. He is admonished to keep good company and good hours, work regularly, keep away from undesirable places, and live a clean, honest and temperate life. Petitioner must not only faithfully obey these restrictions and conditions but he must live in constant fear that a single deviation, however slight, might be enough to result in his being returned to prison . . . .\textsuperscript{33}

Although the aforementioned quote from the Supreme Court is nearing sixty years old, very little has changed with regard to the modern legal treatment of individuals on parole.\textsuperscript{34} In a more recent opinion, the Court reiterated that persons on parole have a greatly reduced expectation of privacy from that of ordinary citizens.\textsuperscript{35} \textit{Samson v. California} involved a search of a parolee, who was searched merely because of his status as such.\textsuperscript{36} The search was conducted pursuant to a California state statute which authorized warrantless searches of parolees by law enforcement without any cause.\textsuperscript{37} The search revealed methamphetamine, and in holding the statute constitutional, the Court relied upon precedent upholding the warrantless search of a probationer as a condition of probation.\textsuperscript{38} \textit{Samson} is particularly relevant to the argument that life on parole is only slightly better than prison in terms of individual freedoms.\textsuperscript{39} Accordingly, street time should be considered as time served.\textsuperscript{40}

While probation and parole are similar and often confused, they differ in significant ways.\textsuperscript{41} Probation is generally considered to be a sentence of community supervision imposed by a court for a criminal offense, typically in lieu of a prison

\begin{thebibliography}{99}
\bibitem{Id} \textit{Id.} at 765–66.
\bibitem{SeeInfra} \textit{See infra} notes 35–39 and accompanying text.
\bibitem{Id1} \textit{Id.} at 846.
\bibitem{Id2} \textit{Id.} at 846–47.
\bibitem{Id3} \textit{Id.} at 847, 852.
\bibitem{SeeId} \textit{See id.} at 856; \textit{see supra} notes 32–33 and accompanying text.
\bibitem{SeeSupra} \textit{See supra} notes 32–39 and accompanying text.
\bibitem{SeeInfra1} \textit{See infra} notes 42–46 and accompanying text.
\end{thebibliography}
sentence. Under Wyoming law, probation is defined as “a sentence not involving confinement which imposes conditions and retains authority in the sentencing court to modify the conditions of the sentence or to resentence the offender if he violates the conditions . . . .” Parole, on the other hand, is an administrative function and not a judicial decision. Unlike probation, parole begins after an individual has completed serving some portion of a prison sentence. The Wyoming Legislature defines parole as “permission to leave the confines of the institution in which a person is confined under specified conditions, but does not operate as a discharge of the person . . . .”

Samson ascribed an even greater level of restraint upon parolees than that of probationers, holding that “parolees have fewer expectations of privacy . . . because parole is more akin to imprisonment than probation is to imprisonment.” Clearly, the Court believes that parole is the rough equivalent of living in prison, at least in terms of the individual liberties possessed by parolees. Why then, have so many jurisdictions, Wyoming included, made the legislative decision to predispose parole boards or releasing authorities toward imposing lengthy sentences as punishment for parole violations by denying credit for street time?

A. Policy Issues and Legal Arguments Relative to Street Time

There are several policy and legal arguments favoring granting credit for time spent on parole. Both fiscal responsibility and fairness serve as justifications for crediting street time to parolees. It is only natural that many people would choose parole and life on the street as an alternative to prison. Although some may perceive parole as the equivalent to living life as an ordinary citizen, parolees confront significant obstacles upon release. Many assistance programs including education loans, driving privileges, public housing, and food stamps are often unattainable for parolees. As U.S. prison rates have reached the level of mass incarceration, parole supervision rates similarly increased. The enormity of parole supervision in the U.S. becomes more evident when compared to other countries. For example,

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[48] See id.
[51] Id.
“[a]verage parole-supervision rates in the U.S. are more than four times those in Eastern and Western Europe, and five times those in Australia.”\textsuperscript{54} By 2012, parole violators consisted of twenty-seven percent of U.S. prison admissions, with a slight rise to twenty-eight percent in 2014.\textsuperscript{55} Parole revocations in Europe have had far less of an impact on increasing prison populations than in the United States, making up only 7.4\% of all European prison admissions in 2012.\textsuperscript{56}

The disproportionately high number of revocations in the U.S. provides an adequate reason to devote more attention to the issue, whether through legislative or administrative action. Granting parolees credit for street time is a logical and feasible avenue to effect meaningful change in the struggle to reduce mass incarceration.\textsuperscript{57} By enacting laws and policies that favor granting credit for street time for parolees on a wider scale, Wyoming and the country could save considerable amounts of money and resources.\textsuperscript{58}

Beyond the fiscal argument, there is also a fairness issue by refusing to credit time spent on parole to individuals who commit misdemeanors or technical violations.\textsuperscript{59} Granted, in many parole revocations, laws have been broken, and justice must be served. Nevertheless, the return to prison is arguably punishment enough. It makes little sense to deny credit for street time in that instance, particularly when the Court has declared that time spent on parole is essentially equivalent to time in prison.\textsuperscript{60}

Typically, when parole is revoked, the parole board or releasing authority must decide how much (if any) credit the parolee should receive for their street time.\textsuperscript{61} The impact of this decision can be devastating to the parolee. Consider a hypothetical: in 2015 an offender is sentenced to a ten-year prison term, a maximum sentence for the crime committed, and is released on parole in 2019. Without factoring in any possible good time while on parole, assume the offender violates his parole after five years on “the street” and is sent back to prison in 2024. If the hypothetical parole board refuses to credit the parolee with any street time, that five years is added back into the sentence. The offender would then potentially be required to continue serving the sentence until sometime in 2029, for a total of roughly fourteen years, rather than the original maximum of ten years. If paroled and revoked again, the original sentence could be infinitely extended. Such a hypothetical illustrates the
potential for further clogging up the prison system without any justifiable rationale and requiring offenders to serve well over the maximum allowable sentence.

The policy arguments in favor of crediting parolees street time reject the results of the hypothetical posed above and claim that the state should not exert control over offenders in excess of the maximum term of supervision or confinement authorized by law. Street time is considered part of the sentence and a significant restraint on the parolee’s liberty—it should not have to be served again. Conversely, the arguments against granting street time to parolees are rooted in principles of deterrence. The threat of losing street time is a powerful incentive to adhere to the conditions of parole. If street time is automatically credited to the parolee, the temptation to engage in prohibited behavior may also increase as the sentence nears completion. The benefits of reducing Wyoming’s prison population by crediting street time, however, outweigh the loss of the potential deterrent of withholding street time.

B. Categorizing Street Time Jurisdictions

Jurisdictions take varying approaches to determine whether to credit street time to parolees upon parole revocation. Many jurisdictions credit some amount of street time upon parole revocation with certain stipulations. Missouri, for instance, provides that unless the parolee absconds from supervision, time served on parole will be counted as time served for the sentence. Pennsylvania specifies that the parole board may credit a parolee with the time spent at liberty on parole if the parolee has not committed a violent crime or sex offense while on parole. Mississippi imposes certain imprisonment terms for technical violations based on the number of times parole has been revoked in the past.

64 A la Recherche du Temps Perdu, supra note 31, at 763; see also Kuykendall v. Pa. Bd. of Probation & Parole, 363 A.2d 866, 867–68 (Pa. Commw. Ct. 1976); Thomas v. United States, 327 F.2d 795, 797 (10th Cir. 1964) (“The pressure upon the individual during the period of probation is of course the possibility of having to serve the sentence imposed, or of having a sentence imposed.”).
65 See A la Recherche du Temps Perdu, supra note 31, at 763; Kuykendall, 363 A.2d at 867–68.
66 See infra notes 168–191 and accompanying text.
70 Miss. Code Ann. § 47-7-27(6)(a) (2021). Upon revocation “the board shall impose a period of imprisonment to be served in a technical violation center . . . not to exceed ninety (90) days for the first revocation and not to exceed one hundred twenty (120) days for the second revocation. For the third revocation, the board may impose a period of imprisonment to be served
Other jurisdictions, including the federal government, do not credit the parolee with any street time upon revocation.\footnote{\textit{\cite{no-credit-for-time-served}}\textsuperscript{71}} Texas likewise provides that a parolee whose parole is revoked may be required “to serve the remaining portion of the person’s sentence in the institutional division. The remaining portion of the person’s sentence is computed without credit for the time from the date of the person’s release to the date of revocation.”\footnote{\textit{\cite{no-credit-for-time-served}}\textsuperscript{72}}

Several other jurisdictions credit the parolee with all of their street time upon revocation without any stipulations.\footnote{\textit{\cite{no-credit-for-time-served}}\textsuperscript{73}} Kansas, for example, specifies that “the period served on parole or conditional release shall be deemed service of the term of confinement . . . .”\footnote{\textit{\cite{no-credit-for-time-served}}\textsuperscript{74}} Oregon additionally favors crediting street time, legislating that, “[a] person who is ordered to serve a term of incarceration in a state correctional facility as a sanction for a post-prison supervision violation shall receive credit for time served on the post-prison supervision violation prior to the board’s imposition of the term of incarceration.”\footnote{\textit{\cite{no-credit-for-time-served}}\textsuperscript{75}}

Many jurisdictions, like Wyoming, leave the ultimate decision to grant or deny parole street time entirely up to the releasing authority’s discretion.\footnote{\textit{\cite{no-credit-for-time-served}}\textsuperscript{76}} Other jurisdictions have established a hybrid discretionary system balanced with categories of violations that either mandate the award or withholding of street time.\footnote{\textit{\cite{no-credit-for-time-served}}\textsuperscript{77}} Just as the topic of parole has been largely forgotten since the 1970s, so has the subject of parole street time, and there is limited research that explores the subject. There are a variety of approaches to administering parole street time, and state legislatures can modify their approaches as each jurisdiction sees fit, just as Wyoming did in 2021.
III. HISTORY OF PAROLE AND PAROLE RELATED RESEARCH

A. History Surrounding the Discretionary Parole System

Discretionary parole was first introduced in the nineteenth century. In 1870, the National Prison Association gathered in Cincinnati, Ohio, and recommended states adopt an indeterminate sentencing with discretionary parole system. In 1907, New York became the first state to formally adopt an indeterminate sentencing and discretionary parole system, along with post-release supervision and criteria for revocation. By 1942, all other states and the federal government operated a system of discretionary parole. Until the mid-1970s, every state and the federal government operated a parole system that permitted early release from prison for those who could demonstrate evidence of rehabilitation. During this golden age of parole, nearly three quarters of all departures from prison occurred through parole.

The process lost popularity, however, as studies surfaced documenting widespread issues involved with the process. One study found that many parolees continued to violate the terms of their release. The study further found that parole decisions were often idiosyncratic, inconsistent, and subject to race and class biases. James Q. Wilson, a noted expert of the era, claimed that the United States should abandon rehabilitation as a primary goal of corrections and focus its purpose as simply “to isolate and punish.” Wilson maintained that this approach was neither cruel nor barbaric, but rather “a frank admission that society really does not know how to do much else.”

The public largely agreed with Wilson’s assessment. Over the last forty-five years, many jurisdictions around the nation have eliminated parole, not only removing parole board discretion from the release process but disbanding parole boards altogether. By 2013, thirty-four states and the federal government had

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79 Id. at 2.
80 Id.
82 Id.
83 Id. at 63.
84 Id.
85 Id.; Petersilia & Threatt, supra note 78, at 3.
86 James Wilson, Thinking About Crime 172 (1975).
87 Id. at 173.
88 See supra note 83–87 and infra notes 89–91 and accompanying text.
89 See Petersilia & Threatt, supra note 78, at 4.
eliminated or restricted the use of discretionary parole, and the number of state prisoners released early dropped to thirty percent. The abolition of parole and movement toward mass incarceration, has led to the adoption of determinate sentencing and mandatory minimums throughout many jurisdictions.

Wyoming, however, has never wavered in its operation of a truly indeterminate sentencing system. In fact, Wyoming continues to maintain a parole board with a robust amount of discretion. Some jurisdiction’s parole boards still exercise a good deal of discretion regarding parole revocation decisions. Scholars have identified various reasons to favor discretion in parole revocation decisions. For example, the decision to revoke parole is an administrative rather than a legal decision. Even considering this distinction, the discretion incorporated in parole boards has previously confronted opposition. That very discretion was a principal reason why so many states abolished parole in the 1970s and 80s. The conservative viewpoint painted parole boards as soft on crime, while the liberal viewpoint regarded parole boards as racist and punitive. Consequently, discretionary parole boards fell out of favor with the American public.

B. Structural Issues with Wyoming’s Parole Board

The impact that parole boards have on the criminal justice system should not be ignored. While there are few parole board members, they exercise enormous power. In 2013, 340 parole board members in forty-six states granted 187,035 parolees discretionary release. Despite their importance, many parole board members possess little to no experience, education, or training for their jobs. Parole board members are often political appointees, in some cases with little to no legal expertise, and parole revocation hearings use a lower evidentiary standard than in criminal courts—“preponderance of the evidence” rather than “beyond a reasonable doubt.” The gubernatorial appointments are often subject to legislative
confirmation, and account for membership on forty-three of the parole boards in
the United States, including Wyoming.\textsuperscript{102}

A frequently echoed criticism focuses on the few formal credentials required
for appointment to a parole board, whether educational, experience-based, or
otherwise. Wyoming’s statutory scheme for the creation of the state board of parole
does not include any qualifications or background experience as a prerequisite for
membership on the parole board.\textsuperscript{103} There is no requirement that the parole board
member even be a Wyoming resident.\textsuperscript{104} States surrounding Wyoming, however,
have established significantly more requirements for membership on their parole
boards. In Montana, for instance, board appointees must possess “a college degree
in criminology, corrections, or a related social science; at least five years extensive
work experience in corrections, the criminal justice system, or criminal law; or a
law degree.”\textsuperscript{105} The Montana board calls for consideration to be given to “balancing
members’ expertise or knowledge of American Indian culture; serious mental illness
and recovery from serious mental illness; and victim awareness.”\textsuperscript{106} Nebraska
requires that board appointees be of good character and judicious temperament.\textsuperscript{107}
Nebraska also requires that one member be female, one member be from an ethnic
group, and at least one member have a background in corrections.\textsuperscript{108} In Colorado,
the board must be composed of representatives from multidisciplinary areas of
expertise.\textsuperscript{109} Colorado also requires that two members be from law enforcement,
one member be a former probation or parole officer, and the remaining members
have experience in other relevant fields.\textsuperscript{110} South Dakota requires that three of
their board members be attorneys.\textsuperscript{111} Conversely, before their appointment, many
Wyoming Board of Parole members do not have any background in the criminal
justice system, with some unfamiliar with fundamental workings of the criminal
justice system.\textsuperscript{112}

\begin{thebibliography}{11}
\bibitem{102} Rhine et al., \textit{supra} note 98, at 286.
\bibitem{103} \textit{Id.} § 7-13-401.
\bibitem{104} \textit{Id.} § 7-13-401(b).
\bibitem{105} \textit{Id.} § 2-15-2305(2) (2021).
\bibitem{106} \textit{Id.} § 2-15-2305(3).
\bibitem{107} \textit{Id.} § 83-189 (2021).
\bibitem{108} \textit{Id.}
\bibitem{110} \textit{Id.}
\bibitem{111} S.D. Codified Laws § 24-13-1 (2021).
\bibitem{112} In this author’s experience working for the Wyoming Board of Parole, several members
commented that the Board was their last choice of appointments, and that they merely took the job
as a political reward or favor.
\end{thebibliography}
Revocation decisions are also not visible to the public and occur in correctional settings, typically prisons.\textsuperscript{113} The public is not present for these decisions and consequently, parole board members are less likely to be held accountable for their decisions.\textsuperscript{114} In terms of transparency, the Wyoming Board does not currently publish any data on their activities.\textsuperscript{115} A review of the Board’s website and annual report reveals an absence of any publicly accessible information concerning parole hearings, revocations, or other duties of the Board.\textsuperscript{116}

\textbf{C. Research Concerning Technical Violations}

There is minimal research that has examined the parole revocation process. There is even less scholarship pertaining to parole street time. The majority of research related to mass incarceration focuses on the “front-end” of sentencing.\textsuperscript{117} Alternatively, “back-end” sentences include those issued by parole boards to released prisoners whose parole has been revoked.\textsuperscript{118} Such “back-end” sentences comprise of a growing source of overall prison admissions.\textsuperscript{119} The percentage of prison admissions coming from back-end sentences increased dramatically from 1980 to 2008, up from 16.1\% to 36.2\%, and totaling more than a third of all prison admissions.\textsuperscript{120}

Most research into the parole revocation process focuses on the causes behind revocation or the factors behind the parole board’s considerations for making revocation decisions.\textsuperscript{121} This research indicates that the probability of parole failure is highest immediately after release and diminishes over time.\textsuperscript{122} Although there is significant research in this area, little is known about the types of violations that result in parole revocation and back-ended returns to prison.\textsuperscript{123}

\begin{itemize}
  \item \textsuperscript{113} Steen & Opsal, supra note 94, at 347–48.
  \item \textsuperscript{114} Id. at 348.
  \item \textsuperscript{116} Wyoming Board of Parole, supra note 115; Annual Report, supra note 115.
  \item \textsuperscript{117} Jeffrey Lin et al., “Back End Sentencing” and Reimprisonment: Individual, Organizational, and Community Predictors of Parole Sanctioning Decisions, 48 CRIMINOLOGY 759, 761 (2010). “Front-end” of sentencing refers to the sentences pronounced by criminal courts for newly convicted offenders. Id. Probationary sentences are considered “front-end”. Id.
  \item \textsuperscript{118} Id. at 759–60.
  \item \textsuperscript{119} Id.
  \item \textsuperscript{120} Jeffrey Lin, Parole Revocation in the Era of Mass Incarceration, 4 SOCIO. COMPASS 999, 1002 (2010).
  \item \textsuperscript{121} Lin et al., supra note 117, at 761.
  \item \textsuperscript{123} But cf. id. at 8 (providing recidivism study data that includes broad types of offenses committed by prisoners).
\end{itemize}
A question to consider, then, is how do parole violations occur? Individuals released on parole are expected to adhere to numerous requirements which vary greatly between parolees and jurisdictions. At a minimum, requirements generally include abstinence from drug and alcohol use; submitting to testing and treatment; paying fines, fees, and restitution; securing housing and maintaining employment; and avoiding contact with other known felons. Violating many of these conditions, such as alcohol consumption, are not crimes if committed by ordinary citizens. Such transgressions—that do not violate any laws yet constitute a failure to abide by the rules of parole—are commonly referred to as technical violations.

Wyoming statutes employ similar parlance, using the term “compliance violation” to broadly describe a technical violation as an act that does not result in arrest for a misdemeanor or felony, or is not absconding from supervision. Essentially, any violation other than an arrest or absconding while on parole is a “compliance violation” (technical violation) under Wyoming law. When parolees commit technical violations, the parole agent has a number of options: administering sanctions, increasing other requirements, and requiring additional treatment. If the violation is serious enough, such as absconding from supervision or committing a felony, the agent typically has no choice but to seek revocation and return the parolee to prison.

Many parole conditions have yet to be studied or tested to determine if the conditions are accurate predictors of new crimes. Recent research indicates that there are observable, patterned differences between parolees who commit technical violations and those who commit new crimes. A long held belief exists in corrections that technical violations on parole “serve as a proxy of an offender’s potential [for] committing a new crime.” Yet, one study involving parolees in Washington State found technical violations are not proxies for new crimes for male populations on community supervision. With regard to technical violations, parolees with significant mental health needs are, on average, sixty percent more

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125 Id.
127 See id.
129 See Wyo. Stat. Ann. §§ 7-13-403, -1801 (providing that “[t]he system shall provide for graduated responses to compliance violations and other violations of supervision conditions in a swift, certain and proportional manner . . .” (emphasis added)).
130 Zachary K. Hamilton & Christopher M. Campbell, A Dark Figure of Corrections: Failure by Way of Participation, 40 CRIM. JUST. & BEHAV. 180, 182 (2013).
132 Id. at 661 (reporting only on the male population given the small sample size of women).
likely to commit technical violation behaviors than those without such needs.\textsuperscript{133} Additionally, a study of males incarcerated in one southern state found that when comparing parolees who are revoked and returned to prison for either technical violations or new crimes, the technical violators were far less likely to engage in any form of prison misconduct.\textsuperscript{134}

While good conduct in prison may not translate into continued law-abiding behavior in the community, the results of this study suggest that decreasing the number of technical violators returned to prison may be a viable option to reduce the nation’s, and Wyoming’s, prison population while maintaining public safety.\textsuperscript{135} Further, the vast majority of prison inmates will be released at some point, and technical violators are no different.\textsuperscript{136} Using valuable prison resources on technical violators who may only spend a short time in prison is arguably not the most efficient or fiscally responsible course of action.\textsuperscript{137} Instead, those resources should be focused on parolees who have committed new and serious crimes.\textsuperscript{138}

Despite the issues inherent in a discretionary system of parole, this article does not suggest that parole board discretion should be limited beyond this specific area of decision-making. The role that the Wyoming Board and other parole boards around the U.S. plays is vital for maintaining a fair and orderly early release system from prison. The data further supports that critical role.\textsuperscript{139} When comparing offenders released by parole boards to offenders who are released unconditionally, those released unconditionally are more likely to commit new crimes.\textsuperscript{140} While parole boards are often criticized for releasing inmates early, there is greater length of time served in prison in those states with discretionary parole.\textsuperscript{141} For violent crimes, men served sixty months prior to discretionary release compared to forty-eight months for men who received a mandatory sentence with automatic release.\textsuperscript{142} An additional study found “that discretionary parole was associated with longer

\begin{itemize}
\item \textsuperscript{133} Sara Steen et al., \textit{Putting Parolees Back in Prison: Discretion and the Parole Revocation Process}, 38 CRIM. JUST. REV. 70, 88 (2012).
\item \textsuperscript{134} Erin A. Orrick & Robert Morris, \textit{Do Parole Technical Violators Pose a Safety Threat? An Analysis of Prison Misconduct}, 61 CRIME & DELINQ. 1027, 1041 (2015). Although the authors identify the area as a “southern” U.S. state they do not directly identify which state the study focused on. \textit{See id.} at 1027.
\item \textsuperscript{135} \textit{See id.}
\item \textsuperscript{136} \textit{Id.} at 1042.
\item \textsuperscript{137} \textit{See id.} at 1043.
\item \textsuperscript{138} \textit{Id.}
\item \textsuperscript{139} \textit{See supra} notes 121–138 and \textit{infra} notes 140–145 and accompanying text.
\item \textsuperscript{141} Petersilia & Threatt, \textit{supra} note 78, at 6.
\item \textsuperscript{142} \textit{Id.}
\end{itemize}
prison terms, even when offense, prior record, age, gender and conviction crime type were statistically controlled.”143 The same study “found that for almost every offense, especially violent crimes, those released discretionarily served longer prison terms even though they were almost twice as likely to successfully complete parole supervision than those released mandatorily.”144

There may be some concern that modifying Wyoming’s statute as proposed will limit the discretion possessed by the Wyoming Board. Although this may be true where a parolee commits multiple technical violations or is convicted of a misdemeanor, the most important discretionary functions of the Board would remain. This includes the decision whether to grant or deny parole in the first instance and, if necessary, the decision to revoke parole once granted. It is evident that the benefits outweigh any concerns or risks.145

D. Wyoming Parole Revocation Data and Discussion.

To better understand this issue, it is necessary to examine the reported dollar amounts associated with incarcerating an inmate in Wyoming. An examination of the number of days and dollars involved with crediting street time reveals the potential for impactful reform to the current system.146 To gauge the effectiveness of flipping the statutory presumption with regard to street time, the author requested all parole revocation findings from the Wyoming Board beginning in 2016 and ending with the fiscal year 2021.147 The results were quite revealing. Put simply, the amendment has had no effect upon the amount of street time granted to parolees.148 For example, in 2016, the Board considered 39,819 days of street time and granted 13,504 days, for a grant rate of thirty-four percent.149 In 2017, the Board considered 63,315 days of street time and granted 21,739 days, for a second consecutive year with a grant rate of thirty-four percent.150 In 2018, the Board considered 76,388 days of street time and granted 17,298 days, for a grant rate of twenty-three percent.151

After Wyoming’s statutory amendment in 2019, the Board considered 22,251 days of street time and granted 6,404 days, for a grant rate of twenty-nine percent.152

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143 Id.
144 Id.
145 See supra notes 117–144 and accompanying text.
146 See infra notes 147–163 and accompanying text.
148 See id.
149 Id.
150 Id.
151 Id.
152 Id.
In 2020, the Board considered 46,854 days of street time and granted 15,769 days, for a grant rate of thirty-four percent.\footnote{Id.} Lastly, for the first half of 2021, the Board considered 20,397 days of street time and granted 6,399 days, for a grant rate of thirty-one percent. These results are nearly unchanged when compared with the percentages reported before the amendment.\footnote{Id.} These findings are consistent with what the CSG concluded in 2019—Wyoming’s parole revocation statute predisposes the Board to impose lengthy periods of incarceration following parole violations.\footnote{See Adu-Num et al., supra note 9, at 86.}

Not only did the statutory change fail to make an impact on street time, the number of parolees who are revoked for new felony convictions remains quite low.\footnote{See Fetsco, supra note 147.} In 2016, only five percent of parole revocations involved new felony convictions.\footnote{Id.} From 2017 to 2021, the percentages of new felony convictions among those who had their parole revoked numbered fifteen percent for 2017, seventeen percent for 2018, nine percent for 2019, ten percent for 2020, and ten percent for 2021.\footnote{Id.}

IV. Recommendations

Not only is Wyoming facing an unprecedented budget crisis, but the State continues to engage in wasteful correctional practices that appear to have minimal benefits to public safety.\(^\text{164}\) Given that the recent statutory changes have failed to produce a higher grant rate of street time, the State continues to burn hundreds of thousands of dollars while needlessly incarcerating low-risk parolees who undergo revocation.\(^\text{165}\) The following recommendations are realistic and feasible ways of halting this practice, freeing up much needed resources, and combatting the forecasted budget crisis that is facing the state.\(^\text{166}\)

A. Recommendation One: Grant Parolees Street Time

The most important recommendation is to modify Wyoming’s current parole statute to require that the Board credit parolees with all of their street time, provided they are not convicted of a new felony offense or abscond from parole supervision.\(^\text{167}\) For instance, in Kentucky, if parole is revoked, the period of time on parole will count as part of the offender’s sentence unless the offender returned to prison on a new felony conviction, or if new felony charges have been filed.\(^\text{168}\) Kentucky also denies crediting street time if the parolee absconds from supervision, if the parolee owes restitution, or if the parolee is classified as a violent offender or sex offender.\(^\text{169}\)

A key finding from the 2018 Wyoming CSG report determined that eighty-seven percent of parolees who return to prison violated their parole with no new felony conviction.\(^\text{170}\) While these particular parolees may indeed deserve a return to prison, they should retain their street time for several reasons. The first rationale, discussed below, is based on the CSG report, demonstrating that denying credit for time served is fiscally irresponsible.\(^\text{171}\) The CSG report recommended that Wyoming reduce probation and parole revocation length of stay by just over fifty percent to slow prison growth.\(^\text{172}\) Presumably, at least concerning parole revocations, this proposal would achieve that result with little to no expense to Wyoming taxpayers.\(^\text{173}\) The second rationale is rooted in fairness, demonstrating that denying credit for time served is an inequitable outcome.

\(^{164}\) See supra notes 7–10, 120–162 and accompanying text.

\(^{165}\) See supra notes 120–162 and accompanying text.

\(^{166}\) See infra notes 167–185 and accompanying text.

\(^{167}\) See infra notes 168–185 and accompanying text.


\(^{169}\) Id. § 439.344(4)–(7).

\(^{170}\) Adu-Num et al., supra note 9, at 82.

\(^{171}\) See id. at 90.

\(^{172}\) Id. at 91.

\(^{173}\) See infra notes 174–187 and accompanying text.
1. Fiscal Responsibility Rationale

The 2018 CSG report findings bluntly concluded that Wyoming taxpayers face a fifty-million-dollar bill to accommodate projected prison growth by 2023.\(^{174}\) One obvious and easy solution lies in Wyoming’s parole statutes. The CSG found Wyoming’s statutes unnecessarily predispose the Board toward imposing lengthy periods of incarceration following parole violations.\(^{175}\) The CSG report also recommended that Wyoming reduce the high cost of revocations “by expanding the sanctions continuum with shorter, cost-effective incarceration periods.”\(^{176}\) The proposal recommended is not a sanction but would serve to produce shorter periods of incarceration for many of the parolees who undergo revocation in Wyoming.\(^{177}\)

The 2019 modification to Wyoming’s parole revocation statute has proven to be largely cosmetic.\(^{178}\) Therefore, a more significant change is needed. Simply flipping the presumption to favor crediting street time upon revocation appears to not have improved the grant rate.\(^{179}\) Consequently, Wyoming should further amend its parole revocation statute to mandate parolees be credited all of their street time.\(^{180}\) Enacting this proposed change would benefit Wyoming taxpayers, and involve little expense or risk to public safety.\(^{181}\) Wyoming Governor Mark Gordon commented in 2020 that the recent budget cuts to the Wyoming Department of Corrections will make Wyoming communities less safe and lead to people spending more time behind bars.\(^{182}\) In that same article, Andrew Graham, a journalist who spent years covering criminal justice reform in Wyoming, observed that Wyoming’s lawmakers “have yet to offer any spending reductions of their own.”\(^{183}\) Virtually everyone in prison will be released someday, especially those who have undergone parole revocation for technical violations or misdemeanors. Keeping this particular class of offenders in prison for extended periods of time is a waste of resources.\(^{184}\)

Wyoming is running out of money, and the economic future does not look promising.\(^{185}\) Nonetheless, Wyoming spends $131 per day per inmate, and many of the state’s inmates are former parolees returned to prison for technical violations.

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174 Adu-Num et al., supra note 9, at 13.
175 Id. at 86.
176 Id. at 89.
177 Id.
179 Fetsco, supra note 147.
180 See supra notes 19–25, 146–165 and accompanying text.
181 See supra notes 117–163 and accompanying text.
182 See Graham, supra note 7.
183 Id.
184 See supra notes 130–145, 159–163 and accompanying text.
185 See supra notes 7–16 and accompanying text.
or misdemeanors. Amending Wyoming’s parole revocation statute could alleviate some of the economic hurdles Wyoming currently faces.

2. Fairness and Equity Rationale

Crediting parolees with street time, particularly when the violations are technical or misdemeanor convictions, would be both equitable and fiscally responsible. While it may seem fitting punishment to return parolees to prison for violating parole, to deny street time credit for time spent on parole without absconding or committing a serious crime ignores the hardships that one endures every day while on parole.

As the Court made abundantly clear in Samson v. California, life on parole is the closest legal status that one can live under compared to the liberty restraints imposed by prison, short of actually being confined behind bars. James Binnall, an ex-parolee, practicing attorney, and professor of Criminal Justice at California State Long Beach, observed that life on parole not only strips the individual of their Fourth Amendment protections, but hampers the reentry process:

Police will search without suspicion and without objectively verifiable knowledge that one is on parole. This final piercing strike to a parolee’s Fourth Amendment protections frustrates what many proponents of the parole system view as the principal objective of supervised release: reintegration. Courts no longer consider parole a reduction of liberty or a diminution of protection; now the legal system treats us and those with whom we come into contact, as if we were still in prison.

If the goal of early release from prison is to promote reintegration into society, it makes little sense to equate parole with prison. Further, to deny an offender credit for time spent on parole, while deeming it akin to incarceration, is fundamentally unfair and exposes an area of the law that can be aptly described as hypocritical.

Thus, for moral, pragmatic economic, and legal reasons, Wyoming should credit parolees with their street time if they are revoked.

186  Graham, supra note 7; see also Wyoming is an Expensive Place, supra note 161.
187  See Adu-Num et al., supra note 9, at 13.
189  Id.
191  See supra notes 188–190 and accompanying text.
B. Recommendation Two: Implement Standards

There are currently no standards or requirements to be a Wyoming Board member.192 This recommendation proposes implementing eligibility standards into the Board’s statutes governing member appointment. Experts in the field have highlighted the significance of including such formal eligibility standards as fundamental to ensuring “greater competency and balance in parole board memberships.”193 Wyoming should modify the institutional structure of its Board to ensure members have the requisite education and expertise necessary to make effective release decisions.194 “The state should maintain gubernatorial approval, but the candidates should be recommended for appointment by a special nonpartisan panel.195

Specifically, the eligibility standards should require a college degree in criminology, corrections, or a related social science or a law degree.196 Additionally, Board members should have at least five years of work experience in corrections, the criminal justice or community corrections field, or criminal law.197 While each facet of the member eligibility proposal may not be practical for Wyoming, adopting any formal eligibility standards for appointment to the Board would be a step in the right direction help guarantee consistent and informed decisions.198

V. Conclusion

The arbitrary and inconsistent treatment of parole street time in Wyoming must end. By amending the statutes as recommended, our Legislators would uphold Wyoming’s Constitutional directive that “[t]he penal code shall be framed on the humane principles of reformation and prevention.”199 When discretionary parole and indeterminate sentencing began to fade, so did most of the scholarly attention to the subject of parole. That is unfortunate given the large number of individuals on parole that contribute to mass incarceration levels in the United States.200 Wyoming has been wise to maintain indeterminate sentencing and discretionary

193 Rhine et al., supra note 98, at 288.
194 Id. at 285–89.
195 Id. The author advocates for the creation of a special panel that would recommend candidates to Wyoming’s governor for appointment to the Wyoming Board of Parole. Although the author does not explicitly recommend any criteria for appointment to the special panel, the panel’s primary purpose should be to recommend candidates based on the author’s proposed statutory amendments. The specifics of the panel’s make up and membership are outside the scope of this article.
196 Id. at 287–88.
197 Id.
198 See supra notes 192–197 and accompanying text.
199 Wyo. Const. art. 1, § 15.
200 Reitz & Rhine, supra note 52, at 287.
parole, resisting the ill-conceived movement to abolish parole. The current treatment of parole street time, however, is an economic drain on the State and needs reformation, as mandated by the state constitution.

Although little attention has been given to prison release as an area of reform, parole boards play a vital role in the criminal justice system. Wyoming’s parole statutes are anachronistic and in need of change. The first recommendation would bring relief to Wyoming’s burgeoning prison population and reduce the State’s incarceration costs. The second recommendation would ensure that Board members are appointed with the requisite skill and experience to make consistent and informed decisions. Additionally, any amendment to Wyoming’s parole practices would be enhanced by creating comprehensive criteria for Board membership to strike a balance between relevant backgrounds of appointees. To guide the Board into the future and provide refinement and improved decision-making, the State should adopt both of these recommendations.

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201 See Petersilia & Threatt, supra note 78, at 3.
202 Wyo. Const. art. 1, § 15; see also supra notes 7–16 and accompanying text.
204 See supra notes 167–191 and accompanying text.
205 See supra notes 192–198 and accompanying text.
206 See supra notes 192–198 and accompanying text.