

Trends & Policies in Criminal Justice

No. 011 February 2021

Dr. Jeongyeon Kim

Research Fellow at Korean Institute of Criminology
(jeongyeon@kic.re.kr)

Dr. Okkyeng Yoon

Professor at Kyonggi University

Dr. Jongjin Cha

Researcher at Law Research Institute of Aju University

Dr. Sangkyun Bae

Research Fellow at Korean Institute of Criminology

A Study on the Operational Status and Improvement of the Parole System

Introduction

To formulate improvement measures related to the parole system different from the provisions of parole requirements

- Current status and problems of the parole system
 - Under the criminal act, the minimum sentence that an inmate must serve to be eligible for conditional release (parole) is “one-third” of the entire period of sentence. However, over the past nine years, more than 99.9% of the parolee has served over 70% of their sentence (92.4% of those on parole served more than 80% of their sentence).
 - Even though the formal requirements for parole are prescribed in the criminal law, guideline on parole applies in practice. As there is a significant difference between the period under the former requirements for parole and the actual period of sentence served by the parolee in practice, it is necessary to deal with controversy over the parole system by reducing the discretion of the administrative disposition for parole.

To overhaul the current provisions of parole to improve the reasonableness of the parole review procedure and criteria, and to address issues associated with correctional treatment

- Measures to strengthen the legal system to enhance the

reasonableness of parole review procedure

- Currently, the parole review system applies in a different way for adult inmates and juvenile inmates. For adult inmates, the parole system is followed by probation by need, and the factors subject to review for parole and probation overlap with each other.
 - It is urgent to establish a reasonable parole system and to deal with the structural problems and inefficiency.
- Future directions for parole requirements and criteria
 - There is a significant difference between the requirements by law for parole and the actual period of sentence being served by the parolee, which means that the opportunities for being released on parole are more limited in practice compared to the legal requirements, and the preventive purpose of parole system to promote voluntary and active social rehabilitation efforts has not been sufficiently achieved yet.
 - To find an appropriate direction for the current parole requirements and review criteria, comparative study on the legal requirement and review procedure related to parole is necessary.
 - Improvement measures for operating correctional facilities and correctional treatment
 - The parole system has two functions. First, it plays an active role in promoting active efforts for social rehabilitation on the condition of the early release of the inmate. Second, it could reinforce the correctional function of correction by alleviating overcrowded correctional facilities.
 - Recently, the Constitutional Court has decided that prison overcrowding is inconsistent with the Constitution on the view that overcrowding itself violates the Constitution by undermining human dignity and values (Constitutional Court 2016. 12. 29. 2013 Heonma Decision 142). Besides the Court decision, many attentions have been drawn to the parole system, to reduce the number of inmates in overcrowding facilities besides simple expansion or utilization of correctional facilities.

- Against this backdrop, it is requested to expand the parole system by systematizing and revitalizing the function of parole in accordance with the purpose of criminal policy.

- Social adaptation training for the prospective parolee should be adjusted and redesigned by reflecting the reality. In addition, the effectiveness of the parole system should be improved by strengthening follow-up measures after parole.

Research Methods

Literature review

- Publications, academic articles, working papers, cases, news articles, etc

Comparative research

- Germany, the United Kingdom, and Japan

- Comparative analysis of relevant legislation, operational status, and practices, as well as the development direction of the system and the judicial reality to derive substantive research outcomes

Analysis of official statistics and data

- Status of parole granting rate

- Status of sentence execution rate of parolee

- Status of probation for the parolee

- Current status of inmates returning to correctional facilities

In-depth interviews with experts and survey related to attitudes and perceptions about the parole system

- In-depth interview and survey on experts regarding the improvement and development measures of the parole system

- Perceptions and attitude differences on parole between law in the book and law in practice

- Correctional officials and inmates' experiences and needs of the parole system

- Study on the fairness of parole review and granting procedure

Results

Overview and status of the parole system

- Problem analysis on the parole requirements
 - Regarding the former requirements of parole, it has been pointed out that even though parole may be granted to life sentenced inmates, it is not applicable for those who are sentenced to penal detention or detention in a workhouse for non-payment of fines. As the substantive requirements for parole, “well behavior” or “sincere repentance” are abstract and subjective concepts, it is difficult to grasp the practical meaning of these two words. The Correctional Recidivism Prediction Index (Co-Repi), prepared by the Ministry of Justice in 2012 as an evaluation tool for early prediction of the risk of recidivism in inmates has been used as data for prediction of second offense risks. However, generally it considers past crimes, so they were insufficient as judgment data for predicting the risk of recidivism, and the behavior and acts of an inmate highly affect the scores of the Co-Repi. At this point, the problem is that the parole decisions based on scores of the Co-Repi are similarly determined as the ‘security-level’ of the person concerned. Considering all those factors, it is necessary to redesign a more objective evaluation tool for parole eligibility review.
- Problems of the parole review system
 - The level of treatment is determined by the classification of inmates. Those who are excluded from the classification review are not eligible for parole eligibility application by the parole officers. In the past, inmates with short or longer prison sentence were excluded from the preliminary review, but the revised parole guidelines expanded the personal scope of eligibility review. On the other hand, the types subject to parole eligibility review are uniformly classified according to types, nature of offences or crime and as a result, some cases may be excluded or restricted for parole. In practice, the Classification Review Committee, which determines the treatment level at the classification review stage, selects the person who might be eligible for parole review even before the Classification Treatment Committee selects candidates of parole.

- Most of the parole reviews are conducted through written review, which restricts from reaching to a substantive level that considers circumstances such as protection willingness and relationship upon release. On the other hand, as the Parole Review Committee and the Probation Review Committee have similar composition and structure, adult inmates who go through process of each committees face the issues of fairness and efficiency of the procedure, since the investigations and contents of parole and probation reviews are substantially similar and overlapping. Currently, the parole review system is divided for adult inmates and juvenile inmates. Adult inmates are required to have probation by necessity, which means that the review items for parole and probation are duplicated.

- Problems in operating the parole system
 - Regarding the average period that inmates had served from 2008 to 2018, it was found that they generally served mostly 80% to 90% or more of the prison terms, and below 70% of the term was little found. In other words, parole was hardly granted for those who had served their sentence term less than 70%. It could be seen that there was a significant difference between the parole requirements and the actual serving period. The fundamental problem lies not with minimum non-parole period of 1/3 of the sentence term but with correctional programs run by correctional institutions. Abandoning the re-socialization of inmates, or the negative opinion of the general on parole seems to be the main cause of serving longer prison terms than requirements.

Survey on the parole system to understand the current status and to find improvements

- Problems and suggestions based on the results of a survey by inmates
 - The key facts found out by the interview were that the inmates are highly interested in parole, and their ultimate concern was “Can I be released by parole?” They were very interested in requirements of parole, which they thought to be exemplary prison life without disciplinary violations and punishment, execution rate of

their sentence, recidivism or second offense risk level, relations with others who could help them not to reoffend, such as family members, and doing work in the correctional center which others try not to do or not want to do because the work needs much burdensome than others. Also, they were working hard to be released on parole without any unexpected obstacles. One of the frustrating facts was that they “did not have access to information about parole.” Also, they were not able to gain information about the conditions or eligibility for parole unless specifically inquired. Some officers of correctional facility answered that inmates have much information about parole than themselves. However, since the answer was based on a few personal experiences, the reality might be far from the truth. For this reason, it is necessary to publicize general guidelines on parole. Since details, such as the minimum non-parole period or types of reviewers might be changed depending on the situation, providing information on parole requirements might confuse inmates. However, correctional authorities should still help them understand the circumstances rather than not providing any information at all.

- Another problem of the parole system is that certain types of crimes are excluded from parole from the beginning, such as sexual offenses, voice phishing, and offences involving violations of the Act on Special Cases Concerning the Settlement of Traffic Accidents. Rather than excluding certain types of crimes, behavior and risk of recidivism should be the ones to be considered as prerequisite for parole. Inmates with relatively light sexual offense, such as public indecency or light sexual harassment have no chance to be released on parole even though those who committed more serious crimes could be granted parole. Not only inmates but also officers at correctional institutions pointed out not granting parole to certain type of offenses at all as a problem of the parole system. After amendment of the law, sentence execution rate has been adjusted higher due to retroactive effect and there were variations in requirements by region, or certain crimes have been excluded by the public opinion and as a result, respondents

often thought that clear and consistent standard is absent.

- Both inmates and officers of correctional facilities were skeptical about the recently introduced mandatory parole review.

Inmates initially welcomed the system.

However, as it gradually became clear that this system did not increase the parole grant rate, but only raise the parole application rate, parole is now widely recognized to “give false hope.” When the sentence execution reaches a certain percentage, correctional officers are required to apply for parole. However, the officer in charge of parole must prepare and review the criminal history, prison behavior record, etc., which leads to an increase in workload. In this respect, some people criticized that the mandatory parole review system is only a “waste of administrative expenses.”

- The inmates wanted to attend the preliminary meeting for parole in person and to state their determination and changed mindset. However, parole officials tended to object to inmates’ in-person attendance since it was difficult to judge whether they have genuinely changed, and their attendance in the interview may raise fairness. In particular, some people have pointed out that it was inefficient for inmates to present and make a statement at the preliminary meeting for parole review, during which a decision on acceptance of the application had to be made within a limited time. However, noting that the current parole preliminary meeting is not considered as a substantive review, it would be good to proceed with the in-person attendance as a way of identifying the strengths and weaknesses.

- In addition, the inmates replied that when the parole is disapproved, they would like to know the reasons, and adjust the notification date of the parole decision. In addition, they hoped that the opinions of officers of correctional facilities would be reflected more in the parole eligibility review rather than viewing that inmates do not have the right to ask. It should be considered that prison life and order of the correctional facility depend on whether the inmates remain under stable condition.

- Problems and improvements suggested during the focus group interview (FGI) of officers and e-mail survey

- The mandatory parole review system was introduced with the aim of reducing deviations of correctional institutions on parole, ensuring fairness, and solving the issue of prison overcrowding. The dominant opinion was that the introduction of this system had intensified the workload on the person in charge of parole, while the actual parole grant rate had dropped, thus failing to solve the prison overcrowding issue. Therefore, it might be necessary to introduce a new system and conduct a thorough assessment of achievements and problems, and to formulate an improvement plan based on it.

- The recidivism risk grade (repeat grade) plays an important role as a parole review criterion and is generally determined by the score of the corrective recidivism prediction index. Regarding the corrective recidivism predictive index and the level of the repeat grade, the parole officers answered that the recidivism risk has been reflected in the decision of parole, but pointed out that the repeat grade would be raised if the inmate followed the rule in the facility well and showed sincere repentance.

- As parole system excludes certain crimes, even though first-time offenders lived a so-called exemplary life in the prison, they would not be released on parole. Thus, it is not fair that the inmates of serious crimes with S3, the repeat grade 3 and 4 previous criminal records, The reason for excluding parole for certain crimes is that public opinion was negative for those types of crimes. Even if the public opinion was negative against certain types of crimes, not granting parole to offenders of such crimes would be a problem. It seemed necessary to apply standards in a flexible manner considering the details and contents of each case.

- Regarding the expansion of personal scope for parole, all responses were negative. Currently, the parole system has failed to meet its original goal and the inmates who should not be released are being released on parole. They said that as a way to prevent the early release

of inmates who should not be released, the minimum non-parole term set for each type of crime should be increased. Rather than thinking parole as a solution to prison overcrowding, it is needed to focus on selecting those who were eligible for parole to satisfy the original purpose of parole rather than increasing the number of inmates being released on parole.

- Notifying reasons for disapproval individually may increase the workload of officers. However, it is necessary to consider what could be the most appropriate solution. Rather than insisting that parole is not the right of inmates, and there is no obligation to inform them of disapproval reasons, it is required to come up with a solution considering the net function of parole for the inmates' stable condition and behavior.

- The summary of the interview results of the Parole Review Committee is as follows. The Committee recognized that the role of external members would be very important. Internal members of the Committee belonging to the Ministry of Justice have tendency to focus on the nature and severity of offenses and pay attention to maintaining a consistent parole rate, and they replied that external members should voice their opinions, ask questions, and actively participate in the parole review procedure. They have also pointed out that it is very hard to carefully review the data of all inmates because around 300-700 cases are being reviewed once in a month during the meeting. They have added that increasing the number of committee members to address these issues should be considered as well.

The parole system in foreign countries

- The parole system in the UK

- Overcrowding of correctional facilities in the UK has emerged as a serious problem like Korea. Also, parole has been discussed as a solution to reduce the number of inmates in correctional facilities. Besides re-socializing inmates, the British parole system aimed at reducing the number of inmates in prisons to deal with issues of overcrowding of correctional facilities. In the UK, parole cancellation, that is,

the recidivism of parolees has continued to increase. As such, the increase in the number of parolees reveals problems regarding overcrowding of prisons and treatment of inmates. Therefore, the parole system has been changed to harmonize the conflicting goals of efficiency of parole and security of the public.

- One of the features of parole procedures in the UK is that the rights and participation of victims are guaranteed in addition to the criminal justice process. For example, victims of crimes have a chance to make a statement about the impact of the crime in the process of parole, can ask for conditions such as prohibition of access related to parole, and be notified of the result of the parole decision. In carrying out such a procedure, victims are able to receive various types of support, such as assistance from volunteers. As the victim is not the person subject to parole review, it is not possible to directly request a review of the decision. However, they may raise objection upon certain claims.

- In the parole procedure, inmates can actively state their opinions during oral hearing, receive legal assistance from lawyers, and request review on reasons or grounds of disapproval decision of parole. Parole in the UK has changed in the direction of protecting the rights of inmates and ensuring fairness and transparency through due diligence procedures. The Parole Commission in the UK is not a government agency, but works as an independent non-governmental public executive that performs functions of the government. In other words, although it is not a judicial body, the procedure of the Parole Commission shows that the process of submitting data and hearing is similar to that of a court, and it performs corresponding procedures.

- Even if the argument that parole should be decided by the courts as it is similar to suspension of execution of the sentence is not followed, the Parole Board system in the UK has implications on how to improve the current parole system.

- The parole system in Germany

- Under the German parole system, for inmates sentenced to imprisonment, the minimum serving sentence term is two-thirds of the imprisonment term. More specifically, the special provisions applies only when the person who is sentenced to imprisonment for the first time or has served the half of imprisonment term under special circumstances. Even in such cases, the minimum non-parole period of 2 months for the former and 6 months for the latter applies. In the case of life imprisonment, the formal requirements for parole are satisfied only after a period of 15 years of prison term elapse. The reason Germany has a special rule for those who are sentenced to imprisonment for the first time is that effect of the deprivation of freedom as a punishment is very effective for first time offenders. In this regard, it is necessary to take special consideration for the first time offence as an element of parole.

- “Positive expectation of abiding by law (Positive Legalprog-nose)” is used as a key criterion as a practical requirement for a parole decision in Germany. In the court's prediction of legal compliance, the character of the inmate, previous criminal conviction, situation at the time of committing the crime, legal interests threatened by reoffence, behavior in prison, life attitude, and the expected effect of parole should be considered. The practical criteria for permitting parole do not appear to be significantly different in those in relevant law. While the behavior in prison takes up a large proportion in granting parole in Korea, it can be criticized that the negative assessment of the imprisonment behavior may lead to disqualification of applying for parole. Of course, even in Germany, behavior in prison functions as an important criterion for determining parole. In this regard, it is worth considering the German precedent that behavior in prison should not be an absolute criterion, and that individual judgment is required in specific matters. In addition the probation that the parole person receives after release should also be an important factor in

the judgment. If the positive expectation of abiding by law (protektive Faktoren) is considered to have a sufficient effect on re-socializing the inmate after release, it can be a determinant factor to reduce the risk of recidivism, and it would be reasonable consideration from a special preventive perspective.

- The biggest difference in granting parole between Korea and Germany is that the parole decision is a judicial disposition in Germany while it is an administrative disposition in Korea. In Germany, the court proceeds and decides whether an inmate is eligible for applying for parole or not. In Korea, only the head of correctional facility grants applying for parole to the Parole Review Committee. If the person is excluded from the eligibility review by the head of the prison facility, the review by the Parole Committee is initially blocked. Given these points, it is worth questioning whether the Korean parole system has been designed against inmates. Furthermore, it seems that the judgment of the head of the prison facility plays a significant role in the decision of parole and the inmate himself is not eligible for application. In Korea, the grant rate compared to parole application rate is quite high, exceeding about 90%, which could be interpreted as that the primary determinant right of the inmate's director and the eligibility screening of the confinement facility have a great influence on the decision of parole.
- In Germany, regarding parole grant, the court decides on matters related to probation, such as probation period, imposition of burdens and instructions, and whether to conduct probation supervision. Before determining parole, the conditions of probation imposed on the parole is collectively assessed. In other words, even if it is determined that there is a certain risk of recidivism, parole can be granted when the subject of parole shows potential of such risk could be reduced through the implementation of future instructions or probation supervision. This assessment indicates that a certain part of the sentence for which parole was already sentenced has been executed, the purpose of punishment has been achieved to some extent

from the perspective of special prevention during the period of service, and that the criminals are expected to return to society through measures such as probation in the future. Therefore, it is reasonable to consider factors of protection such as probation measures as positive factors that can contribute to the deterrence of recidivism of parole in the future.

- The parole system in Japan
 - Regarding parole, Japan has made effort to implement it in an effective way with an aim of preventing recidivism. Currently, the number of parolees per year compared to the full-term inmates kept 50% or more, which means that it may assume that Japan operates a parole system as a measure to prevent recidivism in consideration of the balance between treatment within facilities and society.
 - Serious crimes by those with criminal records have grabbed attention since 2004. Moreover, as the number of re-offenders for crimes recorded the high in 2006 at 149,164, the need for more effective measures against re-offenders was recognized. For this reason, a lot of attention was drawn to operation of the parole system and probation system. Since 2012, the government has promoted comprehensive measures to prevent recidivism (再犯防止に向けた総合対策) as a government policy, and endeavored to continuously and efficiently strengthen such preventive measures, for example, by enacting the recidivism prevention promotion law in 2016.
 - It is necessary to unify the parole reviewing agencies into one, like the Japan Local Rehabilitation Protection Committee, to adjust the minimum non-parole period, and to formulate comprehensive supportive measures for those being released on parole, such as housing and employment. Without these measures, it may be difficult to increase beyond the current parole rate. Therefore, the operation of Japan's parole system and the establishment and operation of measures to prevent recidivism have many implications for Korea.

Policy Recommendations

- Policies to improve the current parole system

- This study has conducted an in-depth interview with experts about parole, such as the status of the parole system and its operation, and a survey on inmates' perception. Based on the findings, it points out problems in the current parole system and operation, and suggests the policy direction to improve the system.

- First, it looks into whether determination of parole should be a judicial disposition. Some argues that parole requires a judge's decision because it changes the original sentence and it is substantively similar to a suspension of sentence. However, under the current law, a correctional facility can choose how to execute a sentence determined by a court, and parole represents a replacement of a sentence with a community treatment, which is a weaker form of detention. Then, there exists little grounds for arguing that parole determination should be controled by judicial procedures. However, even if parole would not be a judicial disposition, it is still needed to find a way to protect inmate's rights under the current procedures. In particular, what should be figured out is a way to ensure fairness and equity on the parole review procedure. Therefore, it should ensure procedural fairness and equity, and protection of inmates' rights should be guaranteed.

- Second, parole might be considered as a means to address the overpopulation of prisons. Parole plays an important role in dealing with overcrowding of correctional facilities. However, reducing the number of inmates and controlling prison capacity are not the main functions of parole while they are mere side effects of it. Therefore, the measures to implement parole effectively should focus on achieving the ultimate goals of criminal policies, rather than resolving the overpopulation issue.

- Lastly, this paper addresses the gap between formal eligibility requirements under the law and their actual application in practice. It may consider replacing the unified requirements under the current law with more detailed eligibility requirements that vary depending on sentences.

- Policy direction to improve operation of the parole system

- 1) The formal eligibility requirements under the current Criminal Act states that all parolees should serve at least a third of their imprisonment term. In practice, the current Parole Guidelines imposes restrictions on certain crimes by, for example, excluding them from eligibility reviews. The nature, type, unlawfulness, and liability of criminals are determined during court proceedings. Therefore, rather than considering these elements during the parole review process, it is needed to vary the statutory eligibility requirements based on sentences. As for the substantive requirements for parole, "good behaviors" and "repentance" are abstract and subjective terms with obscure meanings. To address this issue, those two terms should be used to explain more concrete and detailed substantive requirements under the criminal laws.

- 2) Under the current law, applying for a parole eligibility review falls under the responsibility of the Chair of the correctional facility. However, in practice, the Classification Treatment Committee determines which inmates to recommend for parole. One of the possible alternatives is to allow for ex-officio parole reviews depending on sentences or criminal history of the offender (first time offence or reoffence), and allow inmates to apply for a parole review under certain circumstances.

- 3) An inmate may be denied parole in two different stages of the process. An inmate may be excluded from a parole eligibility review in the first place, or his/her application may be rejected during a review by the Parole Committee. The issue here is that an inmate has no way of filing an appeal even if he/she is denied parole. A victim's right to present their opinion on parole in the United Kingdom may not be feasible in Korea under the current state. However, it is necessary to provide inmates with a way to appeal a decision to deny parole. Under the current Enforcement Rules of the Criminal Act, only wardens may apply for parole eligibility reviews. However,

inmates need to be able to file applications as well. In addition, the law should provide procedures to appeal rejections by the Parole Review Committee. In sum, it is requested to consider stipulating in relevant laws about appeal or objection procedures in different stages of the parole process.

- 4) Under the current law, the Parole Review Committee and the Probation Review Committee share many similarities in terms of their personnel and structures. In addition, for adult inmates reviewed by each committee, the items and content of investigations are quite similar and largely overlapped between the two review committees, which has caused controversy over the fairness and efficiency of the procedures. In addition, adult inmates and juvenile inmates go through different parole review systems, with the former subjected to mandatory probation. Many of the matters considered during a parole review overlap with those considered during a probation review. Institutional improvements are urgently required to address these structural and efficiency issues with the parole review system.
- 5) The current system restricts parole depending on types and nature of crimes, regardless of inmates' willingness for rehabilitation. It is needed to depart from this practice and improve the parole review rules so that the Parole Review Committee could decide whether to restrict parole case by case. Ultimately, what seems to need is to do away with the unified restriction of paroles so that inmates showing sincere repentance can be granted paroles. In the short term, it is required to adjust the criteria for non-eligible crimes. Also, considering the need to protect the society from crimes and maintain security, the adjustment should be informed by a detailed review of the safety net.
- 6) Assessment of risk of recidivism works as one of the key criteria for parole reviews. In practice, the recidivism risk is determined by the Correctional Recidivism Prediction Index, or Co-RepI. How well an inmate does in the prison may not be related to reduced risk of recidivism. Therefore, the system to prevent

recidivism should pay more attention to dynamic elements related to possibility of improvement, such as recovery of family relationships, restitution and compensation, correction of distorted thoughts, reduced criminality, and sincere repentance, rather than the elements regarding inmates' prison life such as work performance, acquisition of certificates, and period without disciplinary measures.

- 7) For inmates with long imprisonment terms, it takes considerable time to grow the ability to cope with their life outside prison, and various social adaptation programs are required to reduce the impact of re-entry into society. Therefore, it is needed to increase the time of social adaptation training for parolees-to-be, and ensure that those programs provide them with what they need to reenter to society. Continuous education and training are also required to ensure that they could find their places as members of society.
- 8) Parole policies in other countries focus on effectively preventing recidivism by combining paroles with probation and community treatments. Therefore, to help inmates' return to society, it is necessary to ensure sufficient exchange of information and relationship building between those responsible for in-facility treatment and those responsible for community treatment. At the same time the government needs to work with the private sector to build a sustainable support system to prepare inmates for returning to society both in prison and after their release.

Expected Effects of the Policies

Expected effect

- Raise awareness of the parole system through understanding the facts of the provisions on parole requirements and the review system
- Design legal and institutional improvement measures to improve the rationality of parole review procedures
- Come up with policies for correctional facilities operation and correctional treatment

Utilization plan

- A source to reorganize the legal system and formulate basic policy to improve the rationality of the parole system
- Basic data to design effective parole screening procedures
- A good reference in comparing the parole system in other countries

Major Keywords

Parole, Overcrowding in correctional facilities, Correctional Recidivism Prediction Index (Co-Rep), Probation