

STATE OF CONNECTICUT
BOARD OF PARDONS AND PAROLES



POLICY NUMBER: II.08
TITLE: Parole Revocation Policy and Procedure
EFFECTIVE DATE: January 1, 2020
SUPERCEDES: January 2, 2019

AUTHORITY & REFERENCES: Regulations of State Agencies § 54-124a(j)(1)-1 through § 54-124a(j)(1)-12. Conn. Gen. Stat. § 1-22 et seq. Conn. Gen. Stat. §§ 54-124a, 54-125h, 54-126, 54-126a, 54-127, 54-128. *Morrissey v. Brewer*, 408 U.S. 471 (1972). *Gagnon v. Scarpelli*, 411 U.S. 78 (1973).

1. Policy.

- A. General.** The Board will provide due process to parolees charged with violation of their conditions of parole or special parole as required by applicable law. The Board will administer the parole revocation process in a fair and impartial manner that assures that findings of parole violation are based on a preponderance of the evidence and that the exercise of discretion is informed by accurate knowledge of the parolee's behavior.
- B. Revocations Unit.** Revocation proceedings are conducted by the Revocations Unit, an impartial, non-partisan unit within the Hearings Division. The Revocations Unit is responsible for scheduling and conducting parole revocation hearings.
- C. Scope.** This policy addresses revocation proceedings. It applies to revocation proceedings for all persons under parole supervision, regardless of the method of release.

- 2. Limitation of Rights.** This policy is intended as internal guidance for employees of the Board of Pardons and Paroles. It is not intended to, and should not be construed as, granting, controlling or limiting any rights of any offender or parolee as such rights may be embodied in the Connecticut General Statutes, the Constitution of Connecticut or the Constitution of the United States of America.

3. Definitions.

- A. Board.** Board means the Board of Pardons and Paroles.
- B. Charging Officer.** Charging Officer means the employee of the Department of Correction Parole and Community Services Division presenting the charges of violation and representing the state's interest in revocation proceedings.
- C. Crime.** Crime means an offense for which a person may be sentenced to a term of imprisonment. The term "crime" comprises felonies and misdemeanors.
- D. Earned Time.** Earned Time means any statutory or discretionary reduction of an inmate's sentence including, but not limited to, Risk Reduction Earned Credits issued pursuant to Conn. Gen. Stat. § 18-98f and Good Time Credits issued pursuant to Conn. Gen. Stat. § 18-7a.

- E. Hearing Examiner.** Hearing Examiner means an employee of the Board who conducts revocation and rescission hearings.
- F. Parolee.** Parolee means a person released to any term of parole, transfer parole pursuant to Conn. Gen. Stat. § 54-125h, or special parole.
- G. Preliminary Hearing.** Preliminary Hearing means a hearing to determine whether there is probable cause to believe that the parolee has committed an act in violation of the conditions of parole, whether the act is serious enough to warrant revocation of parole, and whether detention pending further proceedings is warranted.
- H. Revocation Hearing.** Revocation Hearing means a hearing to determine whether the parolee is subject to conditions of parole; whether the parolee has violated the conditions of parole and, if so, whether the violation merits revocation and to determine the appropriate disposition.
- I. Supplemental Hearing.** Supplemental Hearing means a hearing to allow the parolee to respond to the issues the panel determines may justify a period of confinement longer than, or a forfeiture of earned credit in excess of that recommended by the Hearing Examiner.
- J. Waiver.** Waiver means the voluntary relinquishment of a known constitutional right or other right, claim, or privilege.

4. Representation.

- A. General.** A parolee may be represented by a licensed attorney or legal intern under attorney supervision.
- B. Appearance Must Be Filed.** If an attorney represents the parolee, the attorney shall file an appearance form with the Revocations Unit bearing the name of the parolee and the parolee's inmate number, as well as the attorney's name, address, telephone number, and license number.
- C. Requests for Appointment.** If the parolee requests an attorney during a hearing, the Hearing Examiner shall refer the request to the appropriate employee for further review and shall continue the hearing as necessary to complete the review.

5. Decision and Record of Revocation Proceedings.

- A. Hearing Record.** The record in any case includes all notices, parole violation warrants issued by the Board, allegations of violation, motions, and rulings; evidence received or considered; matters administratively noticed; objections, and rulings on them; the official electronic recording of the proceeding; any decision, opinion, or report by the Hearing Examiner conducting the hearing; and the final decision and any supplemental decisions made by a panel of the Board.
- B. Electronic Recording.**
 - 1) The Hearing Examiner shall ensure that all proceedings are electronically recorded in their entirety.
 - 2) The Hearing Examiner shall upload and file electronic recordings no later than five (5) business days after the proceeding adjourned.

C. Memorandum of Decision.

- 1) Except as provided in section fifteen (15), the Hearing Examiner shall prepare a memorandum of decision using the appropriate form for all revocation proceedings no later than five (5) business days after the proceeding adjourned.
- 2) An employee assigned to the Revocations Unit shall send or otherwise transmit the memorandum of decision no later than seven (7) business days after the proceeding adjourned to:
 - a. the parties or their attorneys,
 - b. the Revocations Unit file, and
 - c. if necessary, records staff at the Department of Correction.
- 3) The memorandum of decision shall contain:
 - a. the names of the persons present at the proceeding,
 - b. a statement of the reasoning on which the decision is based,
 - c. a listing of evidence admitted during the proceeding,
 - d. any recommendations,
 - e. any findings of fact and the evidence relied upon to support each finding, and
 - f. the outcome of the proceeding.

6. Evidence.

- A. Identification.** Evidence submitted for consideration at a parole revocation proceeding shall be identified for the record.
- B. Admitting Evidence.** The Hearing Examiner shall review all evidence and determine whether it should be admitted.
- C. Sufficiency.** All evidence must be relevant, material, and sufficiently reliable.

7. Testimony, Witnesses, & Observers.

- A. Oath.** The Hearing Examiner shall take all testimony under oath. The Hearing Examiner shall administer all oaths in the manner required by Conn. Gen. Stat. § 1-22 and § 1-25.
- B. Witnesses.** Non-party witnesses will be allowed in the hearing room at the appropriate time and sworn in. After testifying, the witness will be escorted from the hearing room to a public viewing area.
- C. Adverse Witnesses.** A parolee may request the presence of adverse witnesses.
 - 1) **Presence Required.** Unless the Hearing Examiner finds good cause for their non-attendance, such adverse witnesses shall be made available for questioning in the parolee's presence.
 - 2) **Good Cause.** The Hearing Examiner in his or her discretion may find good cause for the non-appearance of a witness if the Hearing

Examiner determines that the witness would be subjected to risk or harm if his/her identity were disclosed or for other sufficient good cause.

- 3) **Cause to be Documented.** Any such finding of good cause must be documented and made part of the record.

8. Continuances.

- C. General.** Requests for continuances shall be processed in accordance with the Regulations of State Agencies Section 54-124a(j) (1)-1 through Section 54-124a(j) (1)-12 and Board policy.
- D. Requests Prior to Hearing.** An employee assigned to the Revocations Unit shall review any continuance request received prior to a hearing and may grant the request for good cause.
- E. Requests During Hearing.** The Hearing Examiner shall review any continuance request made during a hearing and may grant the request for good cause.

9. Impartiality & Ex Parte Communications.

A. Impartiality of Hearing Examiners. The Hearing Examiner shall serve as an impartial decision maker. The Hearing Examiner shall conduct hearings without bias or prejudice.

- 1) A Hearing Examiner may not present or advocate on behalf of a party.
- 2) A Hearing Examiner may not investigate allegations of violation independently.
- 3) A Hearing Examiner shall consider only evidence presented but may take administrative notice of any facts well-known and undisputed.

Note. A Hearing Examiner may take official notice of facts outside the record ("administrative notice") as long as those facts are well-known and undisputed or common knowledge. For example, a Hearing Examiner may take notice of the fact that water freezes at 32 degrees Fahrenheit.

B. Impartiality of Board Members. A Board Member shall serve as an impartial decision maker. A Board Member shall conduct revocation proceedings without bias or prejudice.

- 1) A Board Member may not present or advocate on behalf of a party.
- 2) A Board Member may not supplement the record of a proceeding with additional information.
- 3) A Board Member may not consider information outside the record.

C. Ex-Parte Communication.

- 1) Members or employees assigned to render a decision or to make findings of fact and conclusions of law, or to make recommendations or decisions in a parole revocation matter may not communicate directly or indirectly, in connection with any issue of fact, issue of law, recommendation, or impending decision with any person or party or the party's representative, without all parties present or notice and opportunity for all parties to participate, except as follows:
 - a. **Exception.** A member or employee may consult with, employees or agents of the agency whose functions are to aid the member or employee in carrying out the member or employee's decision-making

responsibilities if those employees or agents have not received communications prohibited by subsection C of this policy and, provided the member or employee makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate decision-making responsibility.

- b. **Exception.** A member or employee may communicate when expressly authorized by law or this policy to do so.
 - c. **Exception.** A member or employee may communicate with prior notice and written consent of all parties to the hearing.
- 2) A Hearing Examiner may not discuss pending or impending revocation proceedings with a Board Member prior to issuance of his or her written findings and recommendations following the Revocation Hearing.

Note. Generally, members or employees assigned to render decisions in revocation proceedings are prohibited from communicating with any person or one party or side in a parole revocation matter, without the other party also participating in the communication. For example, this means that a Hearing Examiner or Board Member cannot discuss the case with the parole officer, or any other person / witness involved in the case unless the parolee and/or his representative are also participating in the conversation. Similarly, the Hearing Examiner or Board Member should not discuss the case with the parolee or his witnesses, without the parole officer being able to participate in the conversation. This applies to all forms of communication, phone calls, writings, like letters or emails and other types of communications.

10. Role of Hearing Examiner. The Hearing Examiner shall:

- A. make the necessary arrangements relating to the hearing;
- B. assure the presence of any necessary witnesses; and
- C. preside at the hearing in a manner which assures the protection of the interests of the parolee in defending himself or herself against the pending charges, the orderly presentation of relevant evidence, and the protection of victims and informants.

11. Refusal to Appear.

- A. **Preliminary Hearing.** If a parolee refuses to appear at a preliminary hearing, the parolee shall be deemed to have waived his or her right to a preliminary hearing and may be scheduled for a revocation hearing.
- B. **Revocation Hearing.** If a parolee refuses to appear at a revocation hearing, the parolee shall be deemed to have waived his or her right to a revocation hearing. In such a case, the decision will be made on the basis of the record.

12. Preliminary Hearing.

- A. **Preliminary Hearing Required.** Except as provided below, the Revocations Unit shall schedule a preliminary hearing for every parolee charged with violation of the conditions of his or her parole.
 - 1) The Unit is not required to schedule a preliminary hearing for a parolee when the charges of violation are premised upon conviction for a crime.

- 2) The Unit is not required to schedule a preliminary hearing for a parolee where an absconder warrant has been issued.
- 3) Except when requested by the parolee, the Unit is not required to schedule a preliminary hearing for a parolee when the charges of violation are premised upon:
 - a. an arrest for a crime,
 - b. conduct for which a valid arrest warrant was issued, or
 - c. conduct for which a misdemeanor summons was issued.
- 4) Once scheduled, the preliminary hearing shall proceed unless:
 - a. the parolee refuses to appear,
 - b. the parolee affirmatively waives his or her right to a preliminary hearing in the presence of the Hearing Examiner after having been advised of his or her rights,
 - c. the hearing is continued,
 - d. the parolee is convicted, or
 - e. the parolee's attorney certifies in writing that the parolee has waived his or her right to a preliminary hearing after having been advised of his or her rights.

B. Waiver of Preliminary Hearing.

- 1) **Waiver.** A parolee may waive his or her right to a preliminary hearing.
- 2) **Acceptance of Waiver.** The Hearing Examiner may not accept a waiver unless the Hearing Examiner determines that the waiver was knowing, intelligent, and voluntary.

C. Testimony. Formal rules of evidence do not apply at the preliminary hearing. The Hearing Examiner is vested with discretion to conduct the hearing in an orderly manner and may exclude testimony that is not related to the charges pending against the parolee. Generally, witnesses who lack personal knowledge of facts giving rise to the remand of the parolee or who are character witnesses will not be heard at the preliminary hearing.

D. Findings.

- 1) If the Hearing Examiner does not find probable cause to believe that the parolee has violated the conditions of parole, the Hearing Examiner shall order the parolee released immediately.
- 2) If the Hearing Examiner finds probable cause to believe that the parolee has violated one or more conditions of parole and determines that the act is not serious enough to warrant revocation of parole, the Hearing Examiner shall order the parolee released immediately.
- 3) If the Hearing Examiner finds probable cause to believe that the parolee has violated one or more conditions of parole and that the act is serious enough to warrant revocation, the parolee may be held in custody pending a revocation hearing.

13. Revocation Hearing.

- A. Standard of Proof.** Revocation of parole must be based upon finding of violation by a preponderance of the evidence.
- B. Revocation Hearing.** A revocation hearing shall be held for each case, except as otherwise provided.
- C. Findings and Recommendations.**
 - 1) At the conclusion of the fact-finding, the Hearing Examiner shall consider all evidence admitted and announce his or her findings.
 - 2) If the Hearing Examiner does not find the charges to be supported by a preponderance of admissible evidence, the Hearing Examiner shall order the parolee released immediately.
 - 3) If the Hearing Examiner finds that the parolee violated a condition of parole, the Hearing Examiner shall consider the parolee's background and history to recommend appropriate disposition. The Hearing Examiner shall hear from the parolee and charging officer—if present—regarding background and history.
 - 4) At the conclusion of the hearing, the Hearing Examiner shall announce his or her recommendation.

14. Board Action.

- A.** No later than ten (10) business days from the date of the revocation hearing, a panel of the Board shall consider all recommendations to revoke parole or modify the conditions of parole.
- B.** The Hearing Examiner shall present his or her recommendations to the panel.
- C.** Following consideration of the recommendation, the panel may:
 - 1) approve and adopt the recommendation as the decision of the Board;
 - 2) disapprove the recommendation and, using the evidence presented at the hearing, impose a shorter period of reincarceration or lesser amount of earned time forfeiture than that proposed, or reinstate, with or without modifications; or
 - 3) impose a period of reincarceration longer than or impose a forfeiture of earned time in addition to that recommended in accordance with section fifteen (15) below.

15. Supplemental Hearing.

- A. Exceeding a Recommended Sanction.** Except where proper notice and opportunity for a supplemental hearing has been provided, no panel or individual Board Member may impose a period of confinement longer than or impose a forfeiture of earned time in excess of that recommended by the Hearing Examiner.
- B. Basis for Order.** The panel may order a supplemental hearing if, after considering the Hearing Examiner's written recommendation, determines that information in the record could justify such a departure from that recommendation.

C. Form of Notice. The Board Member acting as panel chair shall issue the order for supplemental hearing on a form prescribed by the Chairperson. The order shall serve as notice of the supplemental hearing and shall:

- 1) include a detailed description of the issue or issue(s) that the panel determined may justify departure from the Hearing Examiner's recommendation;
- 2) explain why those issues may justify departure notwithstanding the Hearing Examiner's written recommendations; and
- 3) identify the specific documents or information relied on.

D. Panel Composition. Except as otherwise provided by the Chairperson of the Board, the panel of Board Members that ordered the supplemental hearing shall convene and conduct the supplemental hearing.

E. Hearing. The panel may consider only those issues listed in the notice and hearing order in accordance with this policy.

F. Written Decision. Following the supplemental hearing, the panel chair shall prepare a written decision on behalf of the panel.

1) The written decision shall include:

- a. a detailed description of the issue or issues that justified or failed to justify departure from the Hearing Examiner's recommendation;
- b. consideration of any response provided by the parolee during the supplemental hearing; and
- c. the Board's decision.

16. Final Decision. The Board shall issue a final written decision and shall notify the offender and the Commissioner of Correction or his or her designee.

17. Forms and Attachments. The following forms are applicable to this policy and shall be utilized for their intended function:

- A. BOPP 2081, Notice of Preliminary Hearing;
- B. BOPP 2082, Appearance Form;
- C. BOPP 2083, Continuance Form; and
- D. BOPP 2084, Waiver of Preliminary Hearing.

18. Exceptions. Any exceptions to this policy shall be in writing signed by the Chairperson.


Carleton J. Giles, Chairperson

10.30.2019
Date