

120 CMR: PAROLE BOARD

120 CMR 303.00: REVOCATION OF PAROLE

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303.01: Revocation of Parole: General Provisions

(1) Parole Board members may revoke a parole permit. Parole may be revoked where the parolee is alleged to have engaged in criminal behavior or is about to do so, has violated one or more conditions of parole, or has failed to comply with parole officer requests. Parole Board members may also revoke a parole permit if they determine that such permit was issued, in whole or in part, as the result of false or fraudulent information provided by or on behalf of an inmate or parolee to the Massachusetts Parole Board.

(2) Revocation of parole status and further imprisonment shall occur after consideration of less severe sanctions and alternatives to confinement.

(3) Where revocation of parole status occurs and re-release to the community is denied, Parole Board members shall conduct review hearings in accordance with the provisions of 120 CMR 301, *et seq.*

303.02: Parole Violation Report

When a parolee is alleged to have violated one or more conditions of parole, a parole officer, after review by a parole supervisor or other superior officer, may submit, in accordance with Massachusetts Parole Board policies, a parole violation report to members of the Parole Board.

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303.03: Summons to Appear for Preliminary Parole Revocation Hearing in the Community

If a parolee is alleged to have violated the conditions of parole, and satisfactory evidence thereof is presented in a parole violation report, Parole Board members, a parole supervisor, or other superior officer may authorize a preliminary revocation hearing to be held in the community. In such circumstances, written notice of the date, time, place of the hearing, and the charges of alleged parole violations is given to the parolee at least 48 hours prior to the hearing, as provided in 120 CMR 303.06.

303.04: Issuance of Warrant for Temporary Custody (Detainer)

(1) If a parole officer has reasonable belief that a parolee: engaged or is about to engage in criminal ways; or has associated or is about to associate with criminal company; or has violated the conditions of his parole; the parole officer, with the consent of a parole supervisor or other superior officer, may issue a warrant for the temporary custody of the parolee. M.G.L. c. 127, § 149A; 120 CMR 100.

(2) A warrant for temporary custody authorizes the detention of the parolee named therein for a period no longer than 15 days. The issuance of a warrant for temporary custody does not interrupt the sentence.

(3) When a preliminary revocation hearing is postponed as provided in 120 CMR 303.07, the Chair of the Parole Board or a Board member designated by the Chair may authorize the issuance of a subsequent warrant for temporary custody for not longer than an additional 15 days.

303.05: Scheduling of Preliminary Revocation Hearing

(1) Within 15 days after service of a warrant for temporary custody or the lodging thereof as a detainer, the Massachusetts Parole Board shall afford the parolee a preliminary revocation hearing, unless otherwise postponed under 120 CMR 303.07 or waived under 120 CMR 303.08, or unless no preliminary hearing is required by law. See 120 CMR 303.09. The time limitations contained in this section will apply to parolees incarcerated outside of Massachusetts.

(2) The preliminary revocation hearing is held at the place of incarceration or in the community as provided by 120 CMR 303.03.

(3) Where the parolee is not incarcerated, the preliminary parole revocation hearing is held at the time and place indicated on the hearing notice issued pursuant to 120 CMR 303.03. Where the parolee fails to appear, the parole officer will file a supplemental parole violation report charging the parolee with failing to obey a direct order of the Massachusetts Parole Board and with absconding from supervision if such further charges are warranted after investigation.

303.06: Notice of Preliminary Revocation Hearing and Charges

At least 48 hours prior to a scheduled preliminary parole revocation hearing, the Massachusetts Parole Board shall deliver to the parolee a written notice of the time and place of such preliminary revocation hearing, a list of charges against the parolee, the applicable procedural rights under the Massachusetts Parole Board's regulations, and the possible actions which may be taken by the Massachusetts Parole Board.

303.07: Postponement of Preliminary Revocation Hearing

(1) A parolee may request postponement of the preliminary parole revocation hearing. Such postponement request may be made prior to or at the beginning of the preliminary revocation hearing.

(2) The hearing examiner may postpone the preliminary parole revocation hearing for reasons including, but not limited to:

- (a) in order for the parolee to obtain representation by an attorney;
- (b) in order for the parolee to arrange for the attendance of witnesses;
- (c) the parolee did not receive proper notice;

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(d) the hearing examiner has insufficient information upon which to conduct a meaningful hearing;

(e) to obtain the services of an interpreter; or

(f) the parolee is committed to a facility for mental health treatment or for detoxification. A commitment to such a facility interrupts the running of a warrant for temporary custody of a parolee issued under M.G.L. c. 127, § 149A.

(3) Where such hearing is postponed, a second warrant for temporary custody may issue, as provided in 120 CMR 303.04(3). Postponed preliminary revocation hearings shall be rescheduled as expeditiously as possible.

303.08: Waiver of Preliminary Revocation Hearing

(1) A parolee may waive the preliminary revocation hearing.

(a) Such waiver will only occur after the parolee receives, in writing, notice of the time and place of the preliminary revocation hearing, the charges of alleged parole violation, the due process rights afforded at such hearing, and the possible dispositions.

(b) Such waiver will be in writing, dated, and witnessed by a parole staff member.

(2) A waiver of a preliminary revocation hearing will result in the issuance of a parole violation warrant as provided by 120 CMR 303.15, and a final revocation hearing will be scheduled in accordance with the provisions of 120 CMR 303.17 and 303.18.

303.09: Substitutions for Preliminary Revocation Hearing

The following constitute valid substitutions for a preliminary revocation hearing: conviction for a criminal offense; a finding by the court of sufficient facts to enter a guilty finding; a probable cause finding after a hearing pursuant to M.G.L. c. 276, § 38 and Mass. R. Crim. P. 3; a grand jury indictment; or a finding of preliminary or final violation of probation. In such circumstances, or where there is reliable evidence that the parolee has absconded from supervision, if a single Parole Board member has reasonable belief that one or more conditions of parole were violated, they may issue a parole violation warrant as provided in 120 CMR 303.14.

303.10: Evidentiary Process at a Preliminary Revocation Hearing

(1) Preliminary revocation hearings are conducted by a hearing examiner or other official designated by the Chair of the Parole Board. The person conducting the preliminary hearing may not have been connected with supervising the parolee, authorizing any warrant, or otherwise directly involved with the case.

(2) The rules of evidence which govern in judicial proceedings do not apply to preliminary revocation hearings. The hearing examiner may consider any available, reliable, and relevant information in making a recommendation to the Parole Board members. If the parolee remains silent, the recommendation of the examiner is made on the available information.

(3) The hearing examiner shall disclose to the parolee all evidence upon which the examiner's recommendation may be based unless such information is classified as confidential, and then disclosure will be in summary form. See 120 CMR 500, *et seq.*

(4) The parolee may present witnesses and documentary evidence. However, the hearing examiner may limit or exclude any irrelevant or repetitious evidence.

(5) The parolee may request that the hearing examiner obtain the presence of persons who have given information upon which revocation may be based. The hearing examiner shall request the attendance of such adverse witnesses at the preliminary parole revocation hearing unless: the parolee admits aviolation of any condition; the parolee was convicted of new offense while on parole supervision; or the hearing examiner finds good cause for the witness' non-attendance. As provided in M.G.L. c. 233, § 8, a subpoena may issue for the appearance of adverse witnesses or the production of documents.

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303.11: Procedure at Preliminary Revocation Hearing

- (1) At the beginning of the preliminary revocation hearing, the hearing examiner shall ascertain that the parolee received adequate and timely written notice of the preliminary revocation hearing as required by 120 CMR 303.06.
- (2) The hearing examiner shall advise the parolee of the following:
 - (a) the parolee may have the preliminary revocation hearing postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses; and
 - (b) the parolee may request the presence of persons who have given information upon which revocation of parole may be based.
- (3) The hearing examiner shall review the violation charges with the parolee and apprise the parolee of the evidence presented. The hearing examiner may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing or, where appropriate, by orally reading or summarizing the document. Evaluative and intelligence information may be withheld and summarized as provided in 120 CMR 500, *et seq.*
- (4) The hearing examiner shall allow cross-examination of adverse witnesses unless the examiner finds good cause to disallow cross-examination.
- (5) At the conclusion of the preliminary revocation hearing, the hearing examiner shall inform the parolee that a recommendation as to the disposition of the case will be made to the Parole Board member(s) for final decision, and that the Parole Board will notify the parolee in writing of the final decision forthwith. The hearing examiner may reveal the recommendation to the parolee if appropriate.

303.12: Recommendation of Hearing Examiner after Preliminary Revocation Hearing; Decision of Parole Board Members

- (1) The hearing examiner shall prepare a summary of what occurred at the preliminary revocation hearing. The summary shall contain the substance of the responses of the parolee and the documents or evidence given in support of parole revocation and of the parolee's position.
- (2) Based on the information before the hearing examiner, the hearing examiner shall submit a recommended decision to the Parole Board member(s). The recommendation will contain the following:
 - (a) as to each charge of alleged violations of a condition of parole, an evaluation of whether there exists reasonable grounds to believe that a violation occurred; and
 - (b) upon the entire record, whether there is probable cause to provisionally revoke parole and hold the parolee in custody pending the result of a final revocation hearing.
- (3) If the recommendation of the hearing examiner is that no probable cause exists to hold the parolee pending a final revocation hearing, a Board member shall review such recommended decision as expeditiously as possible following the receipt of the hearing examiner's recommendation. If the Board member concurs with the recommendation of the hearing examiner and if the parolee is incarcerated pursuant to the Massachusetts Parole Board's authority, then the parolee will be released to resume supervision in the community without unnecessary delay.
- (4) If the recommendation of the hearing examiner is that probable cause exists to believe that the parolee has violated the conditions of parole, the reviewing Board member shall render a decision and the Massachusetts Parole Board shall notify the parolee of that decision.
- (5) Where the reviewing Parole Board member disagrees with the recommendation of the hearing examiner, the case is referred to another Board member for review. Where the second Board member disagrees with the previous vote of the Board member, the case is referred to a third Board member. Two agreeing votes as between two Board members shall determine the decision in such circumstances.
- (6) If the Board finds that a final revocation hearing should occur, all charges which were considered at the preliminary revocation hearing will be addressed at the final revocation hearing, notwithstanding that a hearing examiner may not have found reasonable grounds to believe that a

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particular violation occurred. Any new parole violation charges arising after the preliminary revocation hearing will also be addressed at the final revocation hearing.

(7) Even if the Board member finds reasonable grounds to believe that one or more conditions of parole were violated, that Board member may order reinstatement to supervision or release pending further revocation proceedings if the Board member determines that incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violations, that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not present a danger to him or herself or the community.

303.13: Notice of Decision to Parolee After Preliminary Revocation Hearing

After a preliminary revocation hearing, the Massachusetts Parole Board shall provide the parolee with written notice of the final decision within 21 calendar days after a decision has been rendered.

303.14: Issuance of Parole Violation Warrant

(1) A parole violation warrant ordering imprisonment of a parolee may issue upon a finding that probable cause exists to believe the parolee has violated one or more conditions of parole. Service of the sentence ceases upon the issuance of a parole violation warrant. M.G.L. c. 127, § 149.

(a) After a preliminary revocation hearing, Parole Board members may find that probable cause exists to believe that one or more conditions of parole were violated, and that good cause exists to hold the parolee in custody pending further revocation proceedings.

(b) The following establish probable cause to believe that a parolee has violated one or more conditions of parole: a criminal conviction; a finding by the court of sufficient facts to enter a guilty finding; a probable cause finding after a hearing pursuant to M.G.L. c. 278, § 38 and Mass. R. Crim. P. 3; an indictment; or a showing of reasonable grounds to believe that a parolee has absconded from supervision.

(2) A parole violation warrant issues only when authorized by a member of the Parole Board or, in emergency situations, by the Chair's designee.

303.15: Withdrawal, Service, or Vacating of the Parole Violation Warrant

(1) Parole Board members may withdraw a parole violation warrant at any time prior to the service thereof. M.G.L. c. 127, § 149.

(a) A parole violation warrant may be withdrawn by a majority of the Parole Board members upon an office vote or, after a hearing, by a majority of the revocation hearing panel.

(b) Where the parole violation warrant is withdrawn, the time between the day after the issuance of the parole violation warrant until the withdrawal of said warrant is not considered as any part of the term of the underlying sentence being served on parole.

(2) A parole violation warrant is considered served when the parolee is physically detained under authority of that Massachusetts Parole Board warrant. The underlying sentence resumes again upon service of the warrant.

(a) As provided in M.G.L. c. 127, § 149, if the parolee is sentenced to an intervening sentence of imprisonment for commission of a crime or for violation of the conditions of federal or another state's parole or probation, the parole violation warrant may not be served until the parolee is discharged from any additional sentences by parole or otherwise.

1. Any sentence for a crime committed while on parole which is imposed prior to the service of the parole violation warrant is an intervening sentence.

2. The parole violation warrant must be served prior to the imposition of any sentence for a crime committed on parole in order for such sentences to run concurrently or consecutively to the underlying sentence.

(b) If the parolee is found not guilty of any additional crimes charged or not guilty of violating the conditions of parole or probation, then service of the parole violation warrant is effective on the date of issuance. M.G.L. c. 127, § 149.

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(c) If the disposition of any new criminal charges or charges of violation of parole is other than a finding of guilt, the parole hearing panel may, in its discretion, retroactively serve the parole violation warrant. M.G.L. c. 127, § 149.

(3) Under extraordinary circumstances where subsequent information negates an earlier finding by the Massachusetts Parole Board that probable cause exists to believe that the parolee has violated the conditions of parole, the Parole Board members may vacate the parole violation warrant.

(a) A parole violation warrant may be vacated by a majority of the Board members upon an office vote or, after a hearing, by a majority vote of the revocation hearing panel.

(b) Where Parole Board members vote to vacate a parole violation warrant, the time between the issuance of the warrant and the Board vote to vacate said warrant is credited to the underlying sentence.

303.16: Final Revocation Hearing: General Provisions

(1) The purpose of the final revocation hearing is to determine: whether the parolee violated one or more conditions of parole; if a violation occurred, whether parole status should be finally revoked; and if parole status is revoked, whether release to the community is appropriate.

(2) Where the sentence is a life sentence, the final revocation hearing may be conducted by a panel of Parole Board members, but the case must be referred to the full Board for final vote.

(3) Where the sentence is a state prison sentence, the final revocation hearing is conducted by a panel of Parole Board members.

(4) Where the sentence is a house of correction sentence, the final revocation hearing is conducted by Parole Board members or another designee pursuant to M.G.L. c. 127, § 134(b).

303.17: Scheduling of Final Revocation Hearing

(1) The Massachusetts Parole Board shall schedule the final revocation hearing within approximately 60 days from the date of service of the parole violation warrant issued pursuant to M.G.L. c. 127, § 149.

(2) If a parolee is serving an intervening sentence, the Massachusetts Parole Board shall schedule the final parole revocation hearing at the same time as the initial parole release hearing for that intervening sentence, unless Parole Board members choose to conduct a revocation hearing at an earlier time.

(3) If a parolee requests and receives postponement, as provided in 120 CMR 303.19, if the parole hearing panel postpones the hearing as provided in 120 CMR 303.19, or if a parolee's actions otherwise preclude the prompt conduct of such proceedings, Parole Board members may extend the time period stated in 120 CMR 303.17(1).

303.18: Notice of Charges to Parolee

At least 72 hours prior to a scheduled final revocation hearing, the parolee shall receive a written notice of the time and place of the hearing, a list of charges against the parolee, the applicable procedural rights under the Massachusetts Parole Board's regulations, and the possible actions which may be taken by the Parole Board members.

303.19: Postponement of Final Revocation Hearing

(1) The parolee may request postponement of the final revocation hearing until the next available docket for reasons including, but not limited to:

(a) in order to obtain representation;

(b) in order that necessary witnesses may attend;

(c) in order to properly prepare for the hearing; or

(d) in order to resolve pending criminal or disciplinary charges.

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- (2) The revocation hearing panel may postpone the final revocation hearing until the next available docket for reasons including, but not limited to:
- (a) the parolee did not receive proper notice;
 - (b) the revocation hearing panel has insufficient information upon which to conduct a meaningful hearing;
 - (c) to obtain the services of an interpreter;
 - (d) in order to render a decision on a request for discovery of information or presence of adverse witnesses pursuant to 120 CMR 303.21; or
 - (e) the parolee is absent or unavailable. Unavailability includes, but is not limited to, a commitment to Bridgewater State Hospital for observation. Unavailability does not include situations in which the parolee causes the absence from the hearing.

303.20: Waiver of the Final Revocation Hearing

- (1) A parolee may waive the final revocation hearing.
 - (a) Such waiver shall only occur after the parolee receives, in writing, notice of the time and place of the final revocation hearing, the charge of the alleged parole violation, the due process rights afforded at such hearing, and the possible dispositions.
 - (b) Such waiver shall be in writing, dated, and witnessed by a parole staff member.
- (2) A waiver of the final revocation hearing shall result in a decision of revocation affirmed and parole denied.
- (3) The Massachusetts Parole Board shall schedule a review hearing within the year following such waiver.
- (4) The inmate, after waiving the final revocation hearing, may request reconsideration of the case as provided in 120 CMR 304.03.

303.21: Disclosure of Information and Request for Presence of Adverse Witnesses

- (1) Prior to a final revocation hearing, a parolee may make a written request to the Institutional Parole Officer for:
 - (a) disclosure of documents which will be used by the parole hearing panel at the final parole revocation; and
 - (b) attendance of individuals who gave information upon which revocation may be based.
- (2) Evaluative and intelligence information may be withheld and summarized as provided in 120 CMR 500, *et seq.*
- (3) Where the parolee requests the presence of adverse witnesses at the final parole revocation hearing the Massachusetts Parole Board may subpoena the attendance of such witnesses if good cause exists therefor. The Massachusetts Parole Board shall provide the parolee with written notice of any denial and reasons for such denial.

303.22: Evidentiary Process at Final Revocation Hearing

- (1) The final revocation hearing is conducted by the presenting member of the revocation hearing panel. The presenting member may compel the attendance of witnesses, the production of exhibits, and testimony by duly issued summons as provided in M.G.L. c 233, § 8.
- (2) The strict rules of evidence do not apply at final revocation hearings. The parolee may present witnesses and documentary evidence. However, the presenting member of the revocation hearing panel may limit or exclude any irrelevant or repetitious testimony or documentary evidence.

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- (3) The revocation hearing panel may take into account any reliable and relevant information available to it in establishing a violation of any parole condition. If the parolee remains silent, the revocation hearing panel bases its decision on the available evidence.
- (4) The decision of the revocation hearing panel is based on a preponderance of the evidence. See 120 CMR 100.
- (5) Adverse witnesses who are present shall be available for questioning and cross-examination in the presence of the parolee, unless the panel finds good cause to disallow cross-examination.
- (6) At the final revocation hearing, the revocation hearing panel shall disclose to the parolee all evidence upon which it may base a finding of violation of one or more conditions of parole.
 - (a) The revocation hearing panel may disclose documentary evidence by permitting the parolee to examine the document during the hearing, or where appropriate, by reading or summarizing the document or portions thereof in the presence of the parolee.
 - (b) If the panel determines for good cause that certain information should not be disclosed to the parolee pursuant to 120 CMR 500, *et seq.*, that information will be disclosed in a summary manner. Information that is not disclosed in some manner to the parolee may not be used by the panel in making its decision.
- (7) A parolee may be represented at a revocation hearing by an attorney or by a law student under the supervision of an attorney. The parole hearing panel may permit a qualified individual to represent an inmate who, because of a mental, psychiatric, medical, physical condition, or language barrier, is not competent to offer testimony at or understand the proceedings.

303.23: Procedure at Final Revocation Hearing

- (1) The Massachusetts Parole Board shall audio record all final revocation hearings. At any time during the final parole revocation hearing, the revocation hearing panel may request that the parolee or representative leave the hearing room so that the panel may convene privately to discuss any point of law or fact. Likewise, the parolee and representative may request a recess in the hearing for conference.
- (2) The revocation hearing panel shall conduct each final parole revocation hearing according to the following procedures:
 - (a) The presenting member of the revocation hearing panel shall ascertain the identity of the parolee and ascertain whether written notice of charges was received.
 - (b) If the parolee is represented, the presenting member of the revocation hearing panel shall ascertain the name, address, and telephone number of the representative.
 - (c) The presenting member of the revocation hearing panel shall read or summarize from the written notice each charge, asking that the parolee either “admit” or “deny” the charge.
 - (d) The panel shall ask the parolee for factual information regarding each alleged violation including information in mitigation of the charges.
 - (e) The parolee may present voluntary witnesses. Members of the panel may question any voluntary witnesses.
 - (f) Members of the revocation hearing panel shall examine any adverse witnesses and shall permit the parolee or representative to cross-examine the adverse witnesses unless the panel finds good cause for not allowing cross-examination.
 - (g) Members of the panel shall review all relevant information regarding the parolee’s suitability to be returned to parole supervision including, but not limited to: the parolee’s institutional conduct since returning to prison as an alleged parole violator; criminal history; home situation; reports of physical, medical, mental, or psychiatric examinations; any pending criminal cases; any outstanding domestic restraining orders; reports of parole staff; and any other information provided by the custodial authority.
 - (h) At the conclusion of the hearing, the parolee and representative shall leave the hearing room.

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(i) The revocation hearing panel shall make its decision in private. This decision making process will not be recorded.

(j) After a decision is made, the revocation hearing panel will call the parolee and representative back into the hearing room, at which time the presenting member informs the parolee of the decision as follows:

1. Whether a violation occurred as to each charge;
2. Whether parole status should be revoked, or whether the matter should be continued for further information or panel review; and
3. Whether reparole is warranted.

(k) The presenting member shall advise the parolee of administrative appeal and reconsideration rights under 120 CMR 304.02 and 304.03.

(l) At the conclusion of the hearing, the presenting member shall prepare a vote sheet which will contain the final vote of each member of the panel and the reasons for the decision.

303.24: Revocation Decision

(1) When the revocation hearing panel does not find, by a preponderance of the evidence, that the parolee violated any condition of parole, Parole Board members shall restore the parolee to supervision within 24 hours. However, the Massachusetts Parole Board may delay release of the parolee if necessary to assure that the parolee has an approved home plan or to notify a crime victim or a CORI-certified individual. See 120 CMR 500.04. Where appropriate, the Board members may modify the previous conditions of release.

(2) When the revocation hearing panel finds, by a preponderance of the evidence, that the parolee violated a condition of parole, the Board members shall affirm the revocation of parole and may take any of the following actions:

- (a) set a reparole date, in accordance with 120 CMR 401.05, which may be subject to the fulfillment of certain conditions, such as obtaining approved home, work or treatment; or
- (b) deny reparole.

(3) Where there are criminal charges pending against the parolee, there is a strong presumption against reparole.

(4) Where criminal charges are resolved with a finding of not guilty, Parole Board members may revoke parole if, upon reviewing the facts, they determine by a preponderance of the evidence that the parolee has violated a condition of parole.

303.25: Notice of Decision to Parolee After Final Revocation Hearing

(1) Where revocation of parole is affirmed after the final revocation hearing, the Massachusetts Parole Board shall provide the inmate such written notice within 21 calendar days after the decision is rendered. The written notice of decision shall include a summary of the reasons therefor.

(2) Where release on parole is granted after the final revocation hearing, the Massachusetts Parole Board shall provide the inmate with a written summary of the reasons supporting the decision and any special conditions of release. The Massachusetts Parole Board shall provide the inmate such written notice within 21 calendar days after the decision is rendered or as soon as possible after the decision if such release will occur within 21 days after the decision.

REGULATORY AUTHORITY

120 CMR 303.00: M.G.L. c. 27, § 5.