

109 CMR 8.00: THE GRANTING AND REVOCATION OF CONDITIONAL LIBERTY FOR YOUTH COMMITTED TO THE DEPARTMENT OF YOUTH SERVICES

Section

- 8.01: Purpose and Scope
- 8.02: Applicability
- 8.03: Definitions
- 8.04: Procedure
- 8.05: Conditional Liberty Agreement
- 8.06: Violation of Conditional Liberty Agreement
- 8.07: Notice of Violation and Right to Hearing
- 8.08: Waiver
- 8.09: Revocation Hearing
- 8.10: Role of the Hearing Officer
- 8.11: Disposition Options
- 8.12: Appeals
- 8.13: Emergency Provision

8.01: Purpose and Scope

To establish rules and regulations for the granting and revocation of conditional liberty for youth committed to the Department of Youth Services. The granting of conditional liberty shall be used to enhance the healthy development of the committed youth and enable the youth to return to and succeed as a valued and contributing member of the community.

A youth's conditional liberty may only be revoked after the consideration of reasonable alternatives, including graduated responses for the least amount of time necessary to effectuate the goals of the revocation. The Department will prioritize, explore and promote positive youth interventions in the community as an alternative to placement in a secure placement. Where revocation is necessary, the process will be conducted in a manner that promotes both actual, and the experience of, fairness for a committed youth.

8.02: Applicability

109 CMR 8.00 shall apply to all Department and Provider employees as well as to youth committed to the Department who face revocation of conditional liberty. 109 CMR 8.00 shall not apply to any youth otherwise committed to the Department who is held on bail by a court pending the disposition of a new charge or without bail pending the disposition of a probation violation.

8.03: Definitions

Conditional Liberty. The placement of a youth in any community-based setting (including home), contingent upon the youth's agreement to abide by certain predetermined rules.

Conditional Liberty Agreement. Also known as Grant of Conditional Liberty. A written agreement between a youth and the Department that defines rules of conduct a committed youth must comply with in order to remain at liberty in the community.

Emergency. A situation requiring placement or retention of a youth in a secure placement because:

- (a) the youth is at imminent risk for taking actions that will endanger him or herself or other persons; or
- (b) the youth's planned Community Placement becomes unavailable without adequate notice to the Department and the Department has no other reasonable community placement options.

Hearing Officer. An employee of the Department designated by the Commissioner to hold revocation hearings for youth alleged to have violated the terms of their Conditional Liberty Agreement.

8.03: continued

Revocation. The process used, pending a hearing, to remove a youth who has allegedly violated his or her Conditional Liberty Agreement from a Community Based Placement, and place him or her in a secure placement where he or she may remain after a determination at the hearing that the youth violated his or her Conditional Liberty Agreement.

Treatment Plan. A plan detailing the resources, opportunities, services and goals for each youth, designed to meet his or her developmental and rehabilitative needs and aligned with his or her assessed level of risk, to promote his or her success in the community and public safety.

8.04: Procedure

Whenever a youth is released to a community setting as part of a treatment plan, such release is conditional upon the youth's agreement to the specified conditions within his or her Conditional Liberty Agreement. The violation of any condition of the youth's Conditional Liberty Agreement may result in the issuance of a warrant of apprehension and placement of the youth in a secure placement. In cases where treatment longer than 120 days or a specialized placement is indicated for a youth found to have violated his or her Conditional Liberty Agreement, he or she shall be referred to the classification process. *See 109 CMR 4.00: Classification of Youth Committed to the Department of Youth Services.*

8.05: Conditional Liberty Agreement

Prior to any placement in a community-based setting, including home, a youth must agree in writing to abide by specific conditions. Such conditions shall be memorialized in the youth's Conditional Liberty Agreement, which shall meet the following criteria:

- (1) The terms set forth in the Conditional Liberty Agreement shall be in accordance with the standards established by the Department. In developing the standards, the Department shall take into account adolescent brain development, and normative adolescent behavior and reflect best practices for juvenile re-entry and Positive Youth Development.
- (2) The Conditional Liberty Agreement shall be written in clear and developmentally appropriate language, and be customized to accommodate the cognitive, social-emotional and cultural circumstances of the youth to whom it applies and public safety concerns.
- (3) The Department shall afford a youth and his or her legal guardian the opportunity to review and provide input into any Conditional Liberty Agreement prior to its finalization.
- (4) The Conditional Liberty Agreement shall be signed by the youth and the youth's Caseworker and/or the relevant District Manager or designee.
- (5) A youth's Conditional Liberty Agreement shall be reviewed at least once every four months and updated to remain consistent with the youth's circumstances, capabilities, goals and treatment plan, as well as any emergent public safety concerns.

8.06: Violation of Conditional Liberty Agreement

- (1) If a Department or Provider employee believes that a youth has not abided by the terms of the Conditional Liberty Agreement, the allegation(s) must be put in writing and submitted to the District Manager for review.
- (2) The District Manager or designee, after review of the allegations, may make a preliminary decision to have the youth placed in a Secure Placement pending a hearing, if there is probable cause to believe that the youth has violated one or more of the terms of his or her Conditional Liberty Agreement.
- (3) In deciding whether to pursue revocation, the District Manager or designee shall consider factors including, but not limited to:

8.06: continued

- (a) the youth's committing charge, level of community supervision and assessed risk;
- (b) the potential disruption of community services and supports that the youth is engaged in; and
- (c) the purpose of the return to a Secure Placement and whether the goals for the youth can be accomplished in a community setting without compromising public safety.

(4) Where a District Manager or designee determines there is probable cause to believe the youth has violated one or more of the terms of his or her Conditional Liberty Agreement, and the youth must be placed in a Secure Placement pending a hearing, the District Manager may seek the issuance of a warrant for the youth's apprehension.

(5) If a youth is arrested on a new offense and held on bail by either a bail commissioner or after arraignment, the Department shall recall any warrant of apprehension lodged against the youth and in its place, may lodge a detainer to prevent the youth's release if bail is posted or the youth is otherwise released.

8.07: Notice of Violation and Right to Hearing

(1) Upon being placed in a secure placement, a youth shall be promptly informed of the alleged violations of his or her Conditional Liberty Agreement and all rights available to him or her by either District Office or Program Staff. Youth shall be afforded access to counsel, either appointed by the Committee for Public Counsel Services or privately retained, and shall be provided the following documentation directly or through counsel:

- (a) Documentation of and regarding the alleged violations;
- (b) Copies of his or her treatment and service delivery plans;
- (c) Documentation regarding his or her history of prior revocation violations and dispositions;
- (d) Any other documents or evidence the Department intends to rely on in support of the revocation;
- (e) Any additional documentation the youth requests from his or her Department case file in order to assist in his or her defense.

(2) The documentation and evidence described in 109 CMR 8.07 shall be provided at least two business days prior to the scheduled hearing.

(3) In the event that a youth engages in actions that harm or are intended to harm persons or property while awaiting his or her revocation hearing that demonstrate an emergent treatment concern, such that the actions will be offered for consideration in disposition of the revocation, the Caseworker shall provide the youth directly, or through counsel, any evidence, including documents and video footage, to be offered at the hearing regarding the youth's actions, as soon as reasonably practicable, prior to the hearing.

8.08: Waiver

A youth may waive the right to a revocation hearing. Such waiver shall be after consultation with an attorney, where one has been appointed or retained; however, nothing in 109 CMR 8.08 shall preclude a youth from declining to accept an offer of assistance of counsel. Where a youth chooses to waive his or her right to a revocation hearing, liberty is revoked provided the youth has endorsed his or her intent to waive in writing. In any case where a youth has waived a hearing, the Hearing Officer shall review the revocation documents to determine the adequacy of the grounds for revocation, as well as evaluate the effectiveness of the waiver prior to affirming the youth's revocation of conditional liberty. The disposition of a youth who has waived a hearing shall be subject to the provisions of 109 CMR 8.11.

In the event there is a question as to the continued validity of the waiver of a revocation hearing based on factors including, but not limited to, a change in the Department's requested disposition or the youth's reconsideration of the waiver, the Department shall promptly notify the attorney, if any, who counseled the youth regarding the waiver.

8.09: Revocation Hearing

A hearing shall be conducted by a Hearing Officer within seven working days after the return of a youth from a Community Placement to a Secure Placement, unless the youth or the Department requests and is granted a continuance by the Hearing Officer. Continuances may only be granted where a youth has not received proper notice of the alleged violations and additional time is necessary for the youth to obtain or review relevant evidence. This hearing will follow procedural requirements including:

- (a) Written notice of the allegations against the youth within one business day of the youth's return to custody;
- (b) Disclosure of evidence against the youth two business days prior to the hearing, or where emergent events arise while the youth is awaiting hearing, as soon as reasonably practicable prior to the hearing;
- (c) Notice of all witnesses one business day prior to the hearing;
- (d) Opportunity to be heard by the Hearing Officer;
- (e) Right to confront and cross-examine adverse witnesses;
- (f) Access to counsel, either appointed by the Committee for Public Counsel Services or privately retained;
- (g) Right to call witnesses on his or her own behalf;
- (h) Receipt of the Hearing Officer's decision within two business days of the hearing; and
- (i) Right to appeal the Hearing Officer's decision as outlined in 109 CMR 8.12.

The rules of evidence used in judicial proceedings shall not apply.

8.10: Role of the Hearing Officer

- (1) The Hearing Officer shall have the duty to conduct a hearing in a fair and impartial manner.
- (2) The Hearing Officer shall consider all evidence presented, ensure an orderly presentation of the evidence and reach a decision based upon the issues and evidence presented at the hearing, and in accordance with the law.
- (3) The Hearing Officer shall not engage in *ex parte* communication with any party to a hearing, either prior to, during, or after the resolution of the case, or conduct an independent investigation into any facts or circumstances.
- (4) The Hearing Officer shall not be bound by common law or statutory rules of evidence.
- (5) The Hearing Officer may continue or adjourn the hearing with or without the consent of the parties, if, in his or her judgement, a fair and impartial hearing requires such a delay.
- (6) The Hearing Officer is vested with all the power and authority granted to the Department to revoke and modify any previous order granting liberty subject to the appeal process and subject to the statutory authority vested in the Commissioner.
- (7) The Hearing Officer may weigh the relevancy of all evidence offered and exclude irrelevant or repetitious evidence.
- (8) The Hearing Officer's decision must be based upon a preponderance of the evidence offered.
- (9) The Hearing Officer shall issue a written decision no later than two business days after the hearing. This decision shall set forth the evidence upon which it is based.
- (10) Notwithstanding the provisions of 109 CMR 8.10, the Hearing Officer may take a case under advisement for any reasonable length of time.

8.11: Disposition Options

- (1) Where a Hearing Officer finds, by a preponderance of the evidence, that a youth has violated his or her Conditional Liberty Agreement, the Officer shall order revocation of the youth's conditional liberty.

8.11: continued

- (2) Where a Hearing Officer finds that the evidence does not support a finding that the youth has violated his or her Conditional Liberty Agreement, the Officer shall order the youth released from a Secure Placement and returned to the District or Regional Office for further placement and/or planning.
- (3) When Hearing Officer finds that a violation has been substantiated, the Hearing Officer may order any of the following:
 - (a) Immediate return of the youth to the community under continued supervision.
 - (b) Placement of the youth in a Secure Placement for a period of time between one and 120 days.
 - (c) Referral of the matter to the Regional Review Team for consideration of treatment longer than 120 days.
 - (d) Other reasonable alternatives in the best interest of the youth.
- (4) In determining the appropriate disposition, the Hearing Officer shall consider:
 - (a) The youth's committing charge, level of community supervision and assessed risk;
 - (b) The potential disruption of community services and supports the youth is demonstrably engaged in; and
 - (c) The purpose of the return to secure placement and whether such goals for the youth can be accomplished in community setting.
- (5) Where the disposition entered is referral to the RRT for consideration, the youth shall be afforded an opportunity to be heard by the RRT regarding the appropriate length of treatment. The RRT shall issue a written decision referencing the information considered by the RRT and providing the rationale for the RRT's decision, within two business days of hearing the youth's case, which is to be provided to the youth, his or her legal guardian, and his or her attorney of record. Accompanying the decision shall be information regarding the youth's right to appeal and the requirements regarding appeals outlined in 109 CMR 8.12.
- (6) Notwithstanding the provisions of 109 CMR 4.00: *Classification of Youth Committed to the Department of Youth Services* and 8.00, any youth whose conditional liberty has been revoked, who assaults a Department or Provider staff or another resident, or otherwise engages in behavior that jeopardizes his or her safety or that of any other person, may be brought before the Hearing Officer who revoked his or her conditional liberty for reconsideration of the disposition imposed. A youth facing reconsideration of his or her revocation disposition shall be afforded the following:
 - (a) Prompt notice of the request for reconsideration, including notice to the revocation counsel of record;
 - (b) Disclosure of, and a meaningful opportunity to review, evidence relied upon by the Department in seeking reconsideration.
 - (c) An opportunity to be heard regarding this evidence by the Hearing Officer who issued the disposition;
- (7) Should the Hearing Officer find, by a preponderance of the evidence, that the circumstances warrant a reconsideration of a change of disposition, the Hearing Officer shall enter a new disposition consistent with the options outlined in 109 CMR 8.11(3) and provide a decision consistent with 109 CMR 8.11(4).
- (8) Such reconsideration and new disposition shall be subject to appeal as outlined in 109 CMR 8.12.

8.12: Appeals

- (1) Decisions by the Hearing Officer can be appealed by the youth or the Department. If either party wishes to file an appeal, they may do so, in writing, within seven days of receipt of the decision to the Commissioner, or designee.
- (2) The Commissioner, or designee, will review the case record and render a decision within 14 calendar days of receipt of the appeal.

8.12: continued

(3) The Commissioner, or designee, may grant an expedited review of a youth's appeal upon request, where the request is timely filed and he or she determines that the circumstances put forth to justify the request warrant such review.

(4) In deciding an appeal, the Commissioner or designee's review shall be confined to the submitted appeal, any response by the non-moving party, and materials or evidence submitted for consideration at the hearing. The Commissioner, or designee, will review appeals to determine whether the Hearing Officer or RRT's decision was:

- (a) Beyond the authority of the Hearing Officer or RRT;
- (b) Based on an error of law or procedure;
- (c) Unsupported by the weight of the evidence; or
- (d) Arbitrary and/or capricious.

(3) The decision of the Commissioner, or designee, shall be final.

8.13: Emergency Provision

Notwithstanding the provisions of 109 CMR 8.00, the Commissioner may, for emergency reasons as defined in 109 CMR 8.03, order a youth to be placed or remain in a secure placement past his or her anticipated date of return to the community.

A youth facing placement or retention in a secure placement for emergency reasons shall be afforded the following:

- (a) Prompt notice of the Emergency Provision request;
- (b) Access to counsel where the request is to place or retain a youth in a secure placement beyond seven days; and
- (c) Disclosure of and an opportunity to submit a written response to the information relied upon by the Department.

REGULATORY AUTHORITY

109 CMR 8.00: M.G.L. c. 120, § 4, 6 and 12.