

(b) If the Board panel modifies or overrules the determinations of the preliminary hearing officer, the panel shall take appropriate action on the parolee's case and shall notify the parolee, the parolee's attorney, and the hearing officer in writing as to its decision and the reasons therefor.

(c) The parolee shall be continued in custody or taken into custody only where, in the opinion of the Board panel, the parolee represents a danger to public safety or where the parolee may not appear at the revocation hearing.

Amended by R.1985 d.213, effective May 6, 1985.  
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(a) added "upon review"; (b) added "the parolee's attorney".

#### 10A:71-7.12 Parole revocation hearing

(a) A parole revocation hearing shall be conducted when:

1. A hearing officer determines that probable cause exists to believe that the parolee has seriously or persistently violated the conditions of parole and that revocation of parole is desirable; or

2. The parolee has been convicted of a crime committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime.

(b) A parole revocation hearing may be conducted when the parolee has been convicted of a disorderly persons offense committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a disorderly persons offense.

(c) If the parolee has not been convicted of a crime committed while on parole or in the case of a juvenile parolee not adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the purpose of the revocation hearing shall be to determine:

1. Whether, by clear and convincing evidence, the parolee has seriously or persistently violated the conditions of parole; and

2. Whether revocation of parole is desirable.

(d) If the parolee has been convicted of a crime committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the purpose of the revocation hearing shall be to determine whether, by clear and convincing evidence, good cause exists why the parolee should not be returned to confinement.

(e) The parole revocation hearing shall be conducted by a hearing officer who shall be a designated representative of the Board and who did not conduct the preliminary hearing.

Amended by R.1985 d.213, effective May 6, 1985.  
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(b): Old text deleted and new substituted; (e) added.

Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Inserted provisions relating to juvenile parolees throughout.

#### Case Notes

Reasonable cause to believe parolee committed crime is insufficient basis for parole revocation (citing former N.J.A.C. 10:70-6.3). *White v. New Jersey State Parole Bd.*, 136 N.J.Super. 360, 346 A.2d 415 (App. Div.1975).

#### 10A:71-7.13 Revocation hearing; scheduling

(a) Except as provided herein, the revocation hearing shall be conducted within 60 days of the date the parolee was taken into custody as a parole violator, or, where the parolee was sentenced or committed to a State correctional or juvenile facility, within 60 days of the date of sentence or commitment.

(b) If the parolee requests a postponement of the revocation hearing and the parolee is currently in custody, such postponement shall be granted by the hearing officer. Such request shall be made in writing, and the hearing officer shall record such request in the parolee's case record.

(c) If the hearing officer requests a postponement of the revocation hearing, such postponement, if granted, shall not exceed 120 days from the original deadline determined pursuant to (a) above.

(d) If the request for postponement by the hearing officer or by a parolee who is not in custody is due to unanticipated scheduling problems or other emergent circumstances, such postponement shall be granted by the appropriate Board panel and shall not exceed 60 days from the originally scheduled date of the revocation hearing.

Amended by R.1985 d.213, effective May 6, 1985.  
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(d) substantially amended.

Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a), inserted reference to juvenile facility.

#### 10A:71-7.14 Revocation hearing; notice of hearing

(a) It shall be the responsibility of the hearing officer to give written notice to the parolee of the time, date and place of the revocation hearing.

(b) Such notice shall be served upon the parolee by personal service or by regular mail to the institution where the parolee is housed or to the parolee's address of record.

(c) Such notice shall inform the parolee of the following: the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the name(s) of any witness(es) scheduled to appear at the hearing; and the following rights to which the parolee shall be entitled at the revocation hearing:

1. The right to appear and speak in his or her own behalf and to be aided by an interpreter, if such aid is determined to be necessary by the hearing officer.

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes a timely and colorable claim that:

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

3. The right to remain silent.

4. The right to present witnesses to testify in his or her behalf as to matters relevant to the hearing.

5. The right to have the hearing officer issue a subpoena to compel the appearance of witnesses, provided that a prima facie showing is made that the prospective witnesses will provide material testimony relevant to the alleged violation(s) of parole.

6. The right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subject to risk of harm.

7. The right to present documentary evidence and any other relevant material or information.

8. The right to waive such hearing.

9. The right to request postponement of such hearing.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Substantially amended.

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

#### 10A:71-7.15 Record of the revocation hearing

(a) The hearing officer shall record the revocation hearing by an electronic recording device. If the electronic recording device is not operational the hearing shall proceed only upon the parolee waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the parolee and shall be made a part of the parolee's records. If the parolee does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled within 14 days.

(b) The hearing officer shall prepare a written summary which shall summarize the revocation hearing and contain the hearing officer's opinion as to whether the alleged violation(s) has been substantiated and the reason(s) therefore.

1. Such hearing summary shall be forwarded to the appropriate Board panel.

2. A copy of the hearing summary shall be forwarded to the parolee's attorney or directly to the parolee where he or she has appeared pro se in order that the parolee or his or her attorney may object to or comment on the hearing summary by submitting written exceptions to such summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after receipt of the hearing officer's hearing summary. A copy of the hearing summary shall also be forwarded to the District Parole Supervisor or the designated representative of the Commission, as appropriate.

(c) The hearing officer may verbally advise the parolee at the time of the hearing of the hearing officer's opinion as to whether the alleged violation(s) has been substantiated.

Amended by R.1980 d.434, effective October 7, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 665(a).

(c) added.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

"has" substituted for "have".

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (b)2, deleted "appropriate" preceding "District Parole Supervisor" and inserted reference to a designated representative of the Commission.

#### 10A:71-7.16 Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to October 17, 1994

(a) This section applies to inmates who violated parole prior to October 17, 1994. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record. If parole is revoked, the two-member Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b) Except as provided herein, upon revocation of parole, an adult inmate shall serve 12 months, a young adult inmate shall serve nine months, and a juvenile inmate shall serve six months, if the inmate has committed one of the following violations of parole:

1. Failure to report to the parole officer, N.J.A.C. 10A:71-6.4(a)2, provided that such parolee is declared by the District Parole Supervisor or designated representative of the Commission, as appropriate, to be missing from parole supervision.