

Regulations of Connecticut State Agencies

TITLE 54. Criminal Procedure

Agency

Board of Pardons and Paroles

Subject

Revocation and Rescission of Parole

Inclusive Sections

§§ 54-124a(j)(1)-1—54-124a(j)(1)-12

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Sec. 54-124a(j)(1)-1. Definitions

As used in this regulation:

- (1) “Board” means the Board of Pardons and Paroles.
- (2) “Chairperson” means the Chairperson of the Board of Pardons and Paroles.
- (3) “Conditions of Parole” means the conditions established for the release of an offender to the community and the conditions established for the conduct of the offender while on parole.
- (4) “Discretionary Parole” means conditional release from imprisonment before the end of a criminal sentence granted in the discretion of the Board that allows the offender to serve the remainder of the sentence in the community under supervision following the conditions of parole.
- (5) “Effective Parole Status” means that status of an offender who has been voted to parole and is within thirty days of the “On or after” release date or for whom a file review within sixty days of the “On or after” release date has revealed no serious misconduct, no significant adverse information and the existence of a suitable parole plan.
- (6) “Hearing Examiner” means an employee of the Board who conducts preliminary and final revocation hearings and rescission hearings.
- (7) “Notice of Parole Rescission” means the written notice to an offender of the allegations of personal misconduct or other circumstances upon which the Board intends to rescind its previous parole release decision.
- (8) “Notice of Parole Violation” means the written notice to an offender detailing the allegations of violation of parole and the supporting or documenting evidence relied upon.
- (9) “Offender” means a person convicted of a crime and includes inmates of correctional facilities and persons granted parole.
- (10) “On or After Date” means the earliest date an offender may be released on discretionary parole.
- (11) “Preliminary hearing” means a hearing to determine whether there is probable cause to believe the offender 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.
- (12) “Rescission of parole” means the cancellation of scheduled release on discretionary parole before release for serious misconduct, significant adverse information not available at the time of granting of parole, or lack of a suitable release plan.
- (13) “Rescission hearing” means a hearing to determine whether the parole granted to an offender should be rescinded before actual release.
- (14) “Reinstate” means restoration of parole as previously approved by a panel of the Board, the Chairperson or designee.
- (15) “Remand to Actual Custody Order” means the written temporary legal authority directed to any proper officer by which an offender is arrested, charged with violation of parole and returned from parole status to actual custody.

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(16) “Remand to actual custody” means the physical procedures used to arrest and return an offender to actual custody.

(17) “Revocation of parole” means the cancellation of the status of discretionary parole or special parole for failure to comply with the conditions of parole.

(18) “Revocation hearing” means a hearing to determine whether the offender is subject to conditions of parole; whether the offender has violated the conditions of parole and, if so, whether the violation merits revocation and to determine the appropriate disposition.

(19) “Special Parole” means that period of supervision of an offender ordered by the court to follow a term of imprisonment, subject to conditions of parole set by the Board or by the Chairperson, as provided by sections 53a-28(b)(9) and 54-125e of the Connecticut General Statutes.

(20) “Technical Violation” means a violation of terms and conditions of supervision other than the commission of a new crime.

(21) “Voted to Parole Status” means that status of an offender between the time discretionary parole has been granted by the Board until thirty days before the “On or After Date”, which status and release are contingent upon continued good conduct, a suitable release plan and the absence of significant adverse information not otherwise available at the time the offender was voted to parole.

(22) “Warrant for Reimprisonment” means the formal, continuing legal authority, issued by the Board, directed to a proper officer and based on probable cause, to arrest, hold and confine a person for violation of parole.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-2. Application

Sections 54-124a(j)(1)-1 to 54-124a(j)(1)-12, inclusive, of the Regulations of Connecticut State Agencies, apply to persons under supervision on parole, regardless of how they were released to parole status. Sections 54-124a(j)(1)-1 to 54-124a(j)(1)-12, inclusive, of the Regulations of Connecticut State Agencies, are not the source of rights of offenders but describe the process by which any rights such offenders may have under the Constitution or laws of the United States or the Constitution or laws of the State of Connecticut may be exercised.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-3. Scope. Parole revocation and rescission proceedings are not contested cases. No appeal

Parole revocation and rescission proceedings involve the cancellation of the conditional privilege of the service of a portion of a criminal sentence outside prison under supervision in the community or the cancellation of the period of special parole imposed by a court as part of the disposition of a criminal case. Parole revocation and rescission proceedings are not contested cases pursuant to the provisions of the Uniform Administrative Procedure Act, section 4-166 of the Connecticut General Statutes. There is no appeal from a decision

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to revoke or rescind parole.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-4. Remand

(a) The Commissioner of Correction, any officer designated by the Commissioner of Correction, the Board of Pardons and Paroles and the Chairperson of the Board may remand to actual custody any offender charged with violation of parole.

(b) Offenders remanded to actual custody for parole violation have no right to bail and may be detained pending revocation proceedings.

(c) The Remand to Actual Custody Order shall be valid for thirty business days, after which it shall be void, provided that:

(1) Any Remand to Actual Custody Order not executed may be renewed and reissued;

(2) any Remand to Actual Custody Order may be renewed by a Hearing Examiner pending completion of a preliminary hearing rescheduled past thirty days from return to actual custody for good cause; and

(3) any Remand to Actual Custody Order for an offender held on behalf of another jurisdiction may be renewed by the Deputy Compact Administrator under the Interstate Compact for Adult Offender Supervision for good cause.

(d) Not later than three business days after the remand to actual custody of the offender, the authority issuing the Remand to Actual Custody Order, shall serve or cause to be served on the offender a Notice of Parole Violation which notice shall state, with particularity, the acts alleged to be in violation of the conditions of parole and the evidence relied upon. Upon service of the notice, the remanding authority shall:

(1) Advise the offender regarding the availability and scope of a preliminary hearing;

(2) advise the offender of the right to counsel at personal expense and limited right to counsel appointed by the State to represent him, in accordance with section 54-124a(j)(1)-12 of the Regulations of Connecticut State Agencies; and

(3) if a technical violation, inquire regarding the offender's intentions concerning a plea and wishes relating to the preliminary hearing, counsel and witnesses.

(e) Not later than seven business days after the remand to actual custody of the offender, the Commissioner of Correction or the Commissioner's designee shall send to the Board:

(1) An Application for a Warrant of Reimprisonment, including all documentary evidence upon which the Commissioner relies;

(2) a copy of the executed Remand to Actual Custody Order;

(3) a copy of the Notice of Parole Violation showing service on the offender and the offender's intentions and wishes regarding plea, appearance, representation, appointment of counsel, and witnesses.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-5. Preliminary hearing and detention

(a) Unless waived, an offender charged with violation of parole shall be afforded a

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preliminary hearing on the charges of violation of parole.

(b) Not later than fourteen business days after the remand to actual custody, a Hearing Examiner shall conduct the preliminary hearing, unless continued for good cause.

(c) On three days advance notice to the offender, for good cause, the preliminary hearing may be expanded to constitute the final revocation hearing.

(d) At the preliminary hearing the offender may appear and testify and may present written materials and witnesses who can give relevant and material information to the Hearing Examiner regarding the allegations of violation of parole and mitigation. On request of the offender, persons who have given adverse information upon which revocation is premised shall be made available for questioning unless excused for good cause.

(e) The preliminary hearing shall be for the purpose of determining:

(1) Whether there is probable cause to believe that the offender has committed an act in violation of the conditions of parole; provided that, the probable cause finding included in an arrest warrant issued by a judge of a court of competent jurisdiction or determined at arraignment by any such court of competent jurisdiction following a new arrest shall be conclusive evidence that there is probable cause to believe that the offender has violated a condition of parole and the issue of probable cause shall not be revisited by the Hearing Examiner or other parole officials;

(2) whether the act is serious enough to warrant revocation of parole; and

(3) whether the offender should be detained pending further revocation proceedings.

(f) If the Hearing Examiner finds no probable cause to believe the offender has committed an act in violation of parole, or finds probable cause to believe the offender has committed an act in violation of parole but determines the violation is not serious enough to warrant revocation, the Hearing Examiner, shall order the offender's Parole reinstated.

(g) If the Hearing Examiner finds probable cause to believe the offender has committed an act in violation of parole serious enough to warrant revocation, the Hearing Examiner may order continued detention pending the final revocation hearing or, upon an affirmative finding that the offender is unlikely to engage in further misconduct and release does not jeopardize public safety, the Hearing Examiner, may authorize the offender released to supervision pending the hearing.

(h) Not later than twenty-one business days after the remand to actual custody, or upon completion of any preliminary hearing, if detention beyond thirty days from the remand to actual custody is appropriate, the Chairperson, or designee, shall review:

(1) The Application for Warrant for Reimprisonment;

(2) the Remand to Actual Custody Order;

(3) the Notice of Parole Violation;

(4) Any documentary or other evidence being relied upon to support revocation and, if applicable, the Hearing Examiner's findings on the preliminary hearing.

(i) The Chairperson or designee shall review the submissions to ensure probable cause exists for continued detention and, if so, shall issue and cause to be delivered to a proper officer a Warrant for Reimprisonment.

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(j) If the offender is already in actual custody in Connecticut, the Warrant for Reimprisonment shall substitute for the expiring Remand to Actual Custody Order and shall be delivered to the Commissioner of Correction not later than thirty business days following the remand to actual custody.

(k) If the offender has absconded from supervision, the Warrant for Reimprisonment shall be held pending determination of the offender's location and delivered to appropriate authorities when the offender is located.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-6. Pending criminal charges. Acquittal, dismissal or *nolle prosequi*

Parole revocation procedures premised upon criminal misconduct that is the subject of prosecution shall be continued until the criminal matter is disposed. Dispositions of acquittal, dismissal or *nolle prosequi* are not binding on the Board for revocation purposes. Such a disposition shall be reviewed to determine whether revocation proceedings remain appropriate. If not, the revocation matter shall be dismissed, the warrant withdrawn, and the offender's parole reinstated.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-7. New conviction. Revocation. New eligibility date

(a) The supervising parole officer shall monitor the status of criminal prosecution of each offender accused of violation of parole based upon criminal misconduct. Not later than fourteen business days following any new conviction the supervising parole officer shall report to the Board the circumstances regarding the conviction.

(b) Conviction of a new crime is conclusive evidence of violation of conditions of parole and shall result in revocation of parole.

(c) If the new sentence or aggregation of sentences results in a new calculated parole eligibility date that exceeds the term or period of supervision of the original sentence from which the offender was paroled, or any confinement that would be imposed for violation of parole with respect to the original sentence, no further hearing is required. The Hearing Examiner shall send to the Commissioner of Correction and to the offender a notice of revocation of parole and, to the offender, a preliminary new parole eligibility date with respect to the new sentence.

(d) If the new sentence or aggregation of sentences results in a calculated parole eligibility date that falls within the term of the original sentence from which the offender was paroled, the Hearing Examiner shall conduct a revocation hearing to determine mitigation surrounding the violation and the possibility and conditions of potential reparole within the term of the original sentence. The Hearing Examiner, may recommend no reparole, reparole, or a parole eligibility date following the hearing.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-8. Diversion. Expedited revocation disposition. Procedure

In any appropriate case and at any stage of the revocation process before final revocation, the Board may:

(1) Divert the offender from revocation and reinstate without a finding of violation upon the same conditions of parole as originally provided for; or, with sufficient notice and opportunity for hearing to the offender, impose additional or more stringent conditions of parole; or

(2) Offer the offender a time-limited, one-time only, non-negotiable expedited revocation disposition, conditioned upon admission to one or more of the pending parole violation charges and acceptance of responsibility for the parole violation conduct in return for a specified revocation disposition. If the offender accepts the expedited revocation disposition within the time period allowed, the expedited revocation disposition shall become the official Board action. If the offender does not accept the expedited revocation disposition within the time period allowed, the expedited revocation disposition shall not be considered further during continuing revocation proceedings.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-9. Revocation hearing

(a) Parole revocation matters not resolved earlier shall proceed to a revocation hearing not later than sixty business days from remand unless continued for good cause.

(b) The purpose of the revocation hearing is to determine contested relevant facts regarding allegations of violation of parole; to determine whether the facts as found warrant revocation of parole; and, if so, to determine an appropriate disposition.

(c) The revocation hearing shall be conducted by a Hearing Examiner and shall be electronically recorded.

(d) The rules of evidence shall not apply in a revocation hearing. The Hearing Examiner may exclude, but is not required to exclude, evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or based on evidentiary privilege. The Hearing Examiner may admit hearsay and evidence seized by police, and other evidence which may not be admissible in a criminal proceeding under the rules of evidence, provided there is sufficient indicia of reliability.

(e) An employee of the Board may present evidence and advocacy in support of the allegation that the offender violated conditions of parole. Alternatively, the hearing may proceed without a presenter. The absence of a presenter shall not preclude the Hearing Examiner from considering any evidence regarding revocation.

(f) Unless revocation is based on a new criminal conviction, the Hearing Examiner may require the presence of any relevant witness and shall, upon timely request of the offender, make available for questioning in the presence of the offender any person who has given information upon which revocation may be based unless the witness is excused for cause. The Chairperson shall issue and cause to be served any subpoena necessary to ensure the timely presence of any witness.

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(g) The offender shall have the opportunity to be heard and present evidence and advocacy in defense against the allegation, showing there was no violation of the conditions of parole or, if so, that circumstances in mitigation show that the violation does not warrant revocation. The offender may appear and testify and may present written materials and witnesses who can give relevant and material information to the Hearing Examiner regarding the allegations of violation of parole and mitigation.

(h) At the conclusion of evidence regarding the alleged violation, the Hearing Examiner shall make findings regarding violation of parole. If the Hearing Examiner finds no violation, the hearing shall conclude and the offender's parole reinstated. If the Hearing Examiner concludes that the offender violated a condition of parole and that the violation may merit revocation, the Hearing Examiner shall hear from both the attending parole officer and the offender regarding the offender's background and history for the purpose of considering the appropriate disposition.

(i) At the conclusion of evidence and advocacy regarding the offender's background and history, the Hearing Examiner shall determine whether to reinstate, with or without modification of the conditions of parole, or whether to recommend revocation. If revocation is recommended, the Hearing Examiner shall also recommend the period of confinement to be imposed.

(j) If reinstatement with modification of the conditions of parole is being considered, the Hearing Examiner shall afford the offender the opportunity to be heard with respect to the modification of the conditions of parole.

(k) At the conclusion of the hearing the Hearing Examiner may:

(1) Find that the offender has violated the conditions of parole but recommend to the Chairperson or designee that the offender's parole be reinstated and may recommend to the Chairperson or designee modifications of the conditions of parole. If the offender disagrees with the modification of the conditions of parole, the offender may petition the Board by letter to reconsider the modified conditions of parole, but the modified conditions of parole shall remain in effect until removed by the Board;

(2) Find that the offender has violated the conditions of parole and recommend:

(A) Reincarceration for the remainder of the sentence imposed by the court, a reparole date, or a new parole eligibility date.

(B) Forfeiture of any good conduct credit which may have been earned pursuant to Section 18-7 and 18-7a of the Connecticut General Statutes.

(l) The Hearing Examiner shall prepare a written report of the findings and recommendations for approval by a panel of the Board.

(m) A panel of the Board shall consider all recommendations to revoke parole or to modify the conditions of parole, and 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 good conduct credit forfeiture than that proposed, or reinstate, with or without modifications; or

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(3) impose a period of reincarceration longer than or impose a forfeiture of good conduct credit in addition to that recommended but only after notice and opportunity for a supplementary hearing to allow the offender to respond to concerns of the Board.

(A) Any supplementary hearing held by the Board shall be duly noticed and limited to the issues the Board determines may justify additional confinement upon revocation. Upon imposition of a period of incarceration longer than that recommended, the Board shall include its reasons therefor in the written decision.

(n) The Board shall issue a final written decision and shall notify the offender and the Commissioner of Correction or designee.

(o) Upon revocation of discretionary parole, the offender shall be held on the original criminal court mittimus for a period equal to the unexpired portion of the sentence, in accordance with Section 54-128(a) of the Connecticut General Statutes, or such lesser time as specified by the Board.

(p) Upon revocation of Special Parole, the Chairperson or designee shall issue a mittimus declaring the cause of commitment and requiring the warden of the correctional institution or community correctional center to receive and keep such person for the period fixed by the judgment of the Board, in accordance with the provisions of section 54-97 of the Connecticut General Statutes.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-10. Rescission of parole

(a) After the Board has granted parole, it may modify or rescind parole for the following reasons:

- (1) A serious act of misconduct before release;
- (2) significant adverse information regarding the offender, received after the hearing resulting in the parole grant but before release; or
- (3) the absence of a suitable release plan.

(b) Not earlier than sixty days before the “On or After Date” and not later than thirty days before the “On or After Date”, the Board shall conduct an electronic pre-release file review for each offender voted to parole to determine continued good conduct, the absence of significant adverse information and the existence of a suitable release plan.

(c) If the electronic pre-release file review reveals no reason for possible rescission, the offender’s status shall advance from Voted to Parole Status to Effective Parole Status.

(d) If the electronic file review indicates reason for possible rescission, parole release shall be suspended temporarily and the case referred to the Board for consideration for rescission of parole.

(1) In the case of serious misconduct or significant adverse information, the case may be referred to the Board for rescission.

(A) If the serious misconduct or significant adverse information is not a new criminal charge, the Board shall hold a rescission hearing in accordance with subsections (e) and (f) of this section.

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(B) If the offender is arrested on a new criminal charge, parole release shall be held in abeyance pending disposition of the new criminal charge. Conviction of a new criminal charge shall result in automatic rescission of the parole release.

(2) In the absence of a suitable release plan:

(A) Release may be deferred for up to one hundred twenty days past the scheduled release date, without a hearing, while the Department of Correction, Parole and Community Services Division, continues efforts in placement; or

(B) in the event a suitable parole plan cannot be implemented, or, in any event, one hundred twenty days after the scheduled release date without a suitable release plan, the case shall be referred to the Board for rescission.

(e) **Rescission Process – Effective Parole Status – Serious Misconduct or Significant Adverse Information.** After a successful pre-release file review or, in the absence of such review, thirty days before the “On or After Date”, the offender’s status becomes Effective Parole Status. The process to rescind a previously granted parole with less than thirty days remaining to the “On or After Date” for serious misconduct or significant adverse information, except in the case of a new criminal charge, shall be the same as for parole revocation and shall include:

(1) Ten-day advance written notice of the intent to rescind parole and the specific misconduct or adverse information supporting rescission;

(2) a hearing before a neutral and detached Hearing Examiner not bound by the result of prison disciplinary proceedings;

(3) the right to counsel and the limited right to counsel appointed by the state.

(4) the right to confront and cross examine willing adverse witnesses when doing so would not be unduly hazardous to institutional safety;

(5) the right to call witnesses and present documentary evidence when doing so would not be unduly hazardous to institutional safety;

(6) a written statement of the evidence relied on and the reasons for rescinding parole;

(7) a written or electronic record of the proceedings.

(f) **Rescission Process. Effective Parole Status. Lack of Suitable Parole Plan.** In those cases where the Board has specified conditions precedent to release, the process to impose such conditions precedent and to rescind parole based on the lack of a suitable parole plan shall include:

(1) To Impose or Modify Conditions:

(A) Notice of all conditions precedent to release imposed at the time parole is granted or as soon as practicable following the imposition of conditions precedent;

(B) an explanation of the reasons why such conditions precedent were being imposed;

(C) an opportunity to dispute the grounds for application of the condition or conditions precedent;

(2) To Rescind Parole:

(A) Advance written notice of intent to rescind parole for lack of a suitable parole plan and the reasons therefor;

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(B) consistent with safety and security, the opportunity to review relevant materials regarding failure to implement a suitable parole plan and opportunity to contend for release;

(C) review of all written materials regarding suitability of parole plan by a neutral and detached Hearing Examiner;

(D) a written statement of the evidence relied on and the reasons for rescinding parole for lack of a suitable parole plan.

(g) **Rescission Process – Voted to Parole Status – Serious Misconduct or Significant Adverse Information. After being voted to parole.** After being voted to parole but before the pre-release file review, and earlier than thirty days before the “On or After Date”, upon notice that the offender has engaged in serious misconduct or that there is significant adverse information previously unknown, parole release shall be suspended temporarily and the matter referred to the Board for rescission. The process to rescind a previously granted parole in such circumstance for serious misconduct or significant adverse information, except in the case of a new criminal charge, shall include:

(1) Ten-day advance written notice of the intent to rescind parole and the specific misconduct or adverse information supporting rescission;

(2) review of written reports by a neutral and detached Hearing Examiner who may accept such written reports as conclusive evidence of misconduct, provided that the offender is given the opportunity to explain;

(3) a written statement of the evidence relied on and the reasons for rescinding parole.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-11. Rescission of parole following a new conviction

Conviction of a new crime committed before release on parole shall be conclusive evidence of serious misconduct and parole shall be rescinded.

(Adopted effective April 5, 2007)

Sec. 54-124a(j)(1)-12. Counsel

(a) Offenders subject to revocation proceedings and offenders in Effective Parole Status subject to rescission proceedings for serious misconduct may retain counsel of their choice to assist in the revocation or rescission process.

(b) The Chairperson shall appoint counsel to represent offenders subject to revocation proceedings and offenders in Effective Parole Status subject to rescission proceedings for serious misconduct in the following circumstances:

(1) The offender is indigent;

(2) the offender makes a timely and colorable claim of:

(A) Innocence of the misconduct alleged; or

(B) although guilty of misconduct, the existence of substantial reasons that justify or mitigate the violation and render the revocation or rescission inappropriate;

(3) the claim of innocence or the reasons justifying or mitigating the violation are complex or otherwise difficult to develop or present; and,

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- (4) the offender appears incapable of speaking effectively.
- (c) Any request for appointment of counsel shall be in writing, directed to the Chairperson, and shall include:
 - (1) A statement of indigence;
 - (2) any written statement or other relevant materials the offender may wish the Board to consider regarding appointment of counsel. The offender is not required to discuss the substance of the violation charges but must provide sufficient relevant information regarding claims of complexity or difficulty to allow for a decision to be made regarding appointment of counsel or risk being denied appointed counsel;
 - (3) the results of an interview or evaluation by the interviewing parole officer regarding the complexity of the circumstances surrounding the alleged violation, the offender's apparent ability to understand the proceedings and the offender's apparent ability to speak effectively.
 - (d) In the case of multiple charges, the Chairperson may dismiss a complex or difficult charge and decline to appoint counsel if the remaining charges are simple and amenable to resolution without the participation of counsel.
 - (e) If the Chairperson declines a request to appoint counsel, the reasons for such refusal shall be stated in writing with a copy delivered to the offender.

(Adopted effective April 5, 2007)