



Office of Legislative Corrections Ombudsman

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Parole Violation Process

The following information is based on Michigan Department of Corrections Policy Directive 06.06.100 "Parole Violation Process."

General Information:

1. The parole violation ("PV") process will be expedited to ensure it is completed prior to a parolee's potential maximum date. Under no circumstances will a parolee be held on pending PV charges beyond his/her maximum discharge date.
2. If parole is revoked by the Parole Board (PB) based on a violation of parole, the PB chairperson may forfeit up to all of the parolee's good time and/or disciplinary credits.
3. A parolee will receive credit on the sentence(s) for which s/he is being supervised for any period of time s/he is held in custody while on parole, but not for time when parolee has been declared an absconder from parole.
4. A parolee whose hearing is totally impaired or whose hearing is so seriously impaired that his/her primary means of communication is through lip reading, sign language, finger spelling, or reading must be provided with an interpreter at parole violation hearings, including preliminary parole violation hearings and mitigation hearings, consistent with the requirements set forth in MCL 393.502 et seq. An interpreter also shall be provided at such hearings to a parolee who is unable to communicate in English.

Pre-Hearing Procedures:

1. The field agent must complete a Parole Violation Response Guideline form when there is evidence to support one or more charges of a PV.
2. A parolee shall be returned to custody for PV processing if s/he is charged with owning or possessing a firearm, or being in the unauthorized company of a person the parolee knew to possess a firearm.
3. The FOA Deputy Director may issue a Parole Violation Warrant if there is reason to believe a parole violation has occurred.

4. If a parolee is believed to have violated a condition of parole and a return to custody will be recommended, the parolee shall be arrested on the charges and held in custody pending completion of the PV process.
5. The field agent must file a Parole Detainer with the law enforcement agency holding the parolee if a parolee is being held in custody on a PV or criminal charge which may result in PV charges.

Preliminary Parole Violation Hearing:

1. A parolee charged with a PV is entitled to a preliminary parole revocation hearing conducted pursuant to Administrative Rule 791.7740 -7750 to determine if there is probable cause to believe s/he violated parole, except:
 - a. If the parolee has been bound over to Circuit Court on a criminal charge for which s/he also is charged with a PV. Probable cause for that PV charge is established based on the court's action. This does not apply if the parolee waived the preliminary examination.
 - b. If the parolee has been convicted of a criminal charge for which s/he also is charged with PV. This includes a conviction by trial, or by guilty or *nolo contendere* pleas. Probable cause is established based on the conviction.
 - c. If a formal PV hearing is conducted in lieu of the preliminary PV hearing. Notice is provided under MCL 791.240a.
2. The preliminary hearing must be conducted within 10 calendar days after the parolee is arrested and becomes available for return to the MDOC, unless the parolee waives the hearing.¹
3. Prior to the preliminary hearing, the parolee will be provided:
 - a. A brief description of each condition the parolee is alleged to have violated;
 - b. An explanation of the circumstances under which s/he is entitled to a preliminary hearing;
 - c. Notice of whether a preliminary examination or criminal conviction will be used to establish probable cause in lieu of the preliminary hearing; and
 - d. An explanation of when the parolee can have attorney representation at the preliminary hearing.

¹ "Available for return" is defined as the point when the parolee is held in custody solely due to the PV charge; i.e. not also being held in custody due to a criminal charge or to serve a jail sentence.

4. If a parolee requests attorney representation, the agent will convey that information to the hearing examiner. The hearing examiner will determine if pursuant to Administrative Rule 791.7745 the parolee is allowed representation.
5. The parolee must receive at least 48 hours written notice of the time, date, and location of the preliminary hearing. At the hearing the parolee will:
 - a. Be provided an opportunity to be heard by a hearing examiner with no prior direct involvement in the issue at hand;
 - b. Disclosure of the evidence against him/her;
 - c. The opportunity to testify and present relevant witnesses and documentary evidence; and
 - d. The opportunity to confront and cross-examine adverse witnesses, unless the hearing examiner determines on the record this would subject the witness to risk of harm if his/her identity is revealed.
6. Based on the evidence at the preliminary hearing, the hearing examiner will determine whether probable cause exists that a PV occurred. The determination and summary of evidence is documented on a Preliminary Parole Violation Hearing Report of Findings.
7. If probable cause is not found, the parolee must be reinstated on parole immediately.

Parole Violation Hearing:

1. If a parolee is convicted of a felony while on parole and receives a new sentence to be served with the MDOC, a PV hearing is not required and the parolee will have been found to have violated parole based on the conviction.
2. Prior to a PV hearing, the parolee will be provided:
 - a. A copy of the Parole Violation Report;
 - b. A reading of the pending PV charges;
 - c. Notice that s/he is entitled to a hearing;
 - d. Notice that s/he may have attorney representation at the hearing, and if s/he is indigent an attorney will be provided; and
 - e. Notice that s/he may waive the hearing, provided the violation is supported either by a criminal conviction or is uncontested by the parolee.
3. A parolee may plead guilty or no contest to one or more of the pending charges before a PB member, a Parole Violation Hearing Specialist, or a hearing officer from the Department of Licensing and Regulatory Affairs (LARA). For all other charges, the parolee will be scheduled for a hearing and provided a Parole Violation: Request for Appointed Attorney form. If the

parolee is indigent—as determined by the PB member or LARA hearing officer—an attorney will be provided.

4. The hearing will be conducted on the record within 45 calendar days after the date the parolee became available for return to the MDOC, unless the hearing is waived in writing by the parolee, the parolee's attorney, or, if the preliminary hearing was postponed upon request of the parolee, by the PB.
5. A parolee will be provided reasonable prior written notice of the time, date, location, and purpose of the hearing.
6. At the hearing, the parolee is entitled to:
 - a. Full disclosure of the evidence against him/her;
 - b. Testify and present relevant witnesses and documentary evidence;
 - c. Confront and cross examine adverse witnesses, unless the hearing officer determines on the record that disclosure of the identity of a witness may subject the witness to risk of harm; and
 - d. Present other relevant evidence in mitigation of the charges.
7. The PB member or hearing officer will decide whether the evidence shows, by a preponderance of the evidence, a parolee violated a condition of parole.
8. A written report of the findings of the hearing will be submitted to the PB if any of the charges are sustained, including a recommendation whether parole should be revoked.
9. The PB will determine whether to reinstate parole or revoke parole. If parole is revoked the PB must also determine when the parolee will be reparaoled or reconsidered for parole.
10. Appeal of Dismissed Charges: If none of the charges are sustained and the parolee will be reinstated on parole, the FOA Deputy Director or designee may request the Administrator of the Office of Legal Affairs to review the hearing decision. Notice of intent to request a review must be served on the Administrator, the PB member or hearing officer who conducted the hearing, and the parolee and his/her attorney within one business day after the charges were found not to be sustained. The parolee will remain in custody pending the review. Within two business days after service of the notice, the hearing report and request for review must be filed with the Administrator. The Administrator shall make the determination as to whether a new hearing is required within two business days after receipt of the hearing report and the request for review. If the Administrator determines a new hearing is warranted, it shall be conducted within seven business days after issuance of the Administrator's decision.
11. The final decision regarding revocation of parole must be made by the PB pursuant to Administrative Rule 791.7765.

12. Whenever the PCB revokes parole, written findings of fact and the reasons for revocation must be provided to the parolee within 60 calendar days after the parolee became available for return to the MDOC.
13. A parolee cannot appeal the outcome of the PV hearing.