



**PRISON LAW OFFICE**  
General Delivery, San Quentin CA 94964  
Telephone (510) 280-2621 • Fax (510) 280-2704  
www.prisonlaw.com

*Director:*  
Donald Specter

*Managing Attorney:*  
Sara Norman

*Staff Attorneys:*  
Rana Anabtawi  
Susan Christian  
Rebekah Evenson  
Steven Fama  
Penny Godbold  
Megan Hagler  
Alison Hardy  
Kelly Knapp  
Millard Murphy  
Judith Rosenberg  
Zoe Schonfeld  
Lynn Wu

# **THE PAROLEE RIGHTS HANDBOOK**

(updated March 1, 2010)

## **KNOW YOUR RIGHTS! ANSWERS TO 22 QUESTIONS ABOUT PAROLE INFORMATION ON:**

### **Rights and Restrictions While on Parole Length of Parole Parole Violations and Revocation**

#### **IMPORTANT INFORMATION REGARDING THE USE OF THE PAROLE MANUAL**

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in the prison or public law library.

Board of Directors  
Penelope Cooper, President • Michele WalkinHawk, Vice President • Marshall Krause, Treasurer  
Honorable John Burton • Felecia Gaston • Christiane Hipps • Margaret Johns  
Cesar Lagleva • Laura Magnani • Michael Marcum • Ruth Morgan • Dennis Roberts

This and other self-help materials are available at [www.prisonlaw.com](http://www.prisonlaw.com). Additional information on prison and parole laws and legal actions for enforcing prisoners' and parolees' rights can be found in The California State Prisoners Handbook, Fourth Edition (2008); ordering information is available by writing The Prison Law Office or visiting our website.

## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	4
<b>RIGHTS AND RESTRICTIONS ON PAROLE</b> .....	5
1. DOES A PAROLEE HAVE TO SIGN THE CONDITIONS OF PAROLE? .....	5
2. WHAT KIND OF PAROLE CONDITIONS CAN THE CDCR OR BPH IMPOSE? ...	5
A. General Rules Regarding Parole Conditions .....	5
B. Residency Restrictions and GPS Tracking for Sex Offender Parolees .....	7
C. Treatment by the Department of Mental Health as a Condition of Parole .....	9
D. Challenging a Condition of Parole .....	10
3. CAN A PAROLE AGENT OR POLICE OFFICER SEARCH A PAROLEE'S PERSON, CAR OR RESIDENCE WITHOUT A WARRANT? .....	11
4. CAN A PAROLEE TRANSFER TO ANOTHER COUNTY OR STATE? .....	12
A. Requesting Transfer to a Different County .....	13
B. Requesting Transfer To A Different State .....	14
C. Out-of-State Absconders or Parole Violators .....	15
5. WHAT RIGHTS DOES A PAROLEE WITH A DISABILITY HAVE ON PAROLE? .....	16
6. CAN A PAROLEE OWN A GUN? .....	17
7. CAN A PAROLEE GET MONEY FROM THE CDCR? .....	18
8. CAN A PAROLEE GET PUBLIC BENEFITS (SOCIAL SECURITY, FOOD STAMPS, ETC.)? .....	19
9. WHAT CRIMINAL HISTORY INFORMATION IS A PAROLEE REQUIRED TO GIVE TO AN EMPLOYER? .....	20

10.	CAN A PAROLEE VOTE? SERVE ON A JURY? .....	20
	A. Voting .....	20
	B. Jury Duty .....	21
11.	CAN A PAROLEE VISIT FRIENDS OR RELATIVES IN PRISON? .....	21
12.	CAN A PAROLEE OBTAIN A BUSINESS LICENSE? .....	22
13.	HOW CAN A PAROLEE OBTAIN A CERTIFICATE OF REHABILITATION OR A PARDON? .....	23
	<b>LENGTH OF PAROLE</b> .....	24
14.	HOW LONG IS A PERSON ON PAROLE? .....	24
15.	CAN A PAROLEE GET OFF PAROLE EARLY? .....	26
16.	HOW IS THE PAROLE DISCHARGE DATE CALCULATED? .....	27
17.	WHAT HAPPENS IF A DEFENDANT WAS NOT INFORMED OF THE PAROLE PERIOD WHEN ACCEPTING A PLEA BARGAIN? .....	30
	<b>PAROLE REVOCATION</b> .....	31
18.	ARE THERE SOME PAROLEES WHO CANNOT HAVE PAROLE REVOKED? ..	31
19.	WHAT RIGHTS DOES A PAROLEE HAVE DURING PAROLE REVOCATION PROCEEDINGS? .....	33
	A. Overview of the Parole Revocation Process and Constitutional Rights .....	33
	B. Rights under the <u>Valdivia</u> Injunction .....	35
	C. Rights Regarding Accommodations for Disabilities .....	42
	D. Parole Revocation Extension Hearings .....	43
20.	IS A PAROLE VIOLATOR ENTITLED TO EARN GOOD CONDUCT CREDIT? ..	44
21.	CAN A PAROLEE GET DRUG DIVERSION INSTEAD OF A PAROLE REVOCATION TERM? .....	45
	A. Proposition 36 .....	45
	B. Drug Treatment Programs with Providers Who Contract with the CDCR .....	46
22.	CAN A PAROLEE CHALLENGE CDCR OR BPH DECISIONS? .....	47

# PAROLEE RIGHTS HANDBOOK

## INTRODUCTION

State law requires that all California prisoners serve a period on parole after release from prison. The parole term is considered to be a type of custody that is part of any sentence.<sup>1/</sup> All released prisoners must serve a parole period – although in some cases a parolee may serve some or all of the parole period confined in prison or jail.<sup>2/</sup>

Parole is required because the legislature believes that “the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship . . . . [Thus,] it is in the interest of public safety” to supervise and assist parolees.<sup>3/</sup> However, in reality, parole rarely eases a prisoner’s transition back to the free world.<sup>4/</sup>

When a prisoner is released on parole, he or she remains in the legal custody of the California Department of Corrections and Rehabilitation (CDCR).<sup>5/</sup> A parolee is supervised by a CDCR parole agent, and must meet certain requirements or “conditions” of parole. If the parolee violates his or her parole conditions, the Board of Parole Hearings (BPH) can revoke parole and order the parolee returned to custody to serve a parole revocation term. When the entire parole period is over, the parolee is released or “discharged” from parole.

This Handbook addresses commonly asked questions about parole terms and parolees’ rights; it is not a full discussion of the legal issues surrounding parole. In addition, this Handbook discusses the many changes in parole policies that have been instituted since 2004 as a result of a settlement agreement and court injunction in the lawsuit Valdivia v. Schwarzenegger (E.D. Cal.) S94-0671 LKK/GGH.

---

1. Penal Code § 3000. A prisoner with a determinate term will be released on parole when the number of actual days served, plus any time credits earned, equals the sentence imposed by the court. Prisoners with indeterminate terms are released only when and if they are found suitable for parole by the BPH.

2. Technically, the BPH has power to waive the parole requirement (see Penal Code § 3000), but such waivers are virtually non-existent.

3. Penal Code § 3000.

4. In 2008, there were 124,000 parolees in California; 51% had their parole revoked, and over 14% received new prison terms yearly. CDCR Facts, 4<sup>th</sup> Quarter 2008 ([http://www.cdcr.ca.gov/Divisions\\_Boards/Adult\\_Operations/Facts\\_and\\_Figures.html](http://www.cdcr.ca.gov/Divisions_Boards/Adult_Operations/Facts_and_Figures.html)).

5. Penal Code § 3056.

## RIGHTS AND RESTRICTIONS ON PAROLE

### **1. DOES A PAROLEE HAVE TO SIGN THE CONDITIONS OF PAROLE?**

Yes, if the parolee wants to get out of prison.

Forty-five days prior to a prisoner's release date, CDCR should complete a release program study and notify the prisoner of the conditions of parole.<sup>6/</sup> The release program study identifies the parolee's plan for housing, employment and support while on parole. The conditions of parole inform the parolee of all of the conditions governing his or her behavior while on parole. During the parolee's first meeting with his or her parole agent, the agent will require the parolee review and sign the conditions of parole a second time. It is important that parolees fully understand their conditions of parole and ask any questions they have during those meetings.

If a parolee refuses to sign the "Notice and Conditions of Parole," parole will be revoked and he or she will be kept in or returned to custody for up to six months.<sup>7/</sup> The revocation will be extended if the person still doesn't sign the conditions at the end of the revocation period. Therefore, there is no point in refusing to sign the conditions notice. If there is disagreement about whether a condition is lawful or necessary, the prisoner should follow the steps to challenge a parole condition described in Section 2.D, below.

### **2. WHAT KIND OF PAROLE CONDITIONS CAN THE CDCR OR BPH IMPOSE?**

Both CDCR and the BPH have authority to impose conditions of parole.<sup>8/</sup> A parolee should be aware of his or her parole conditions because violating those conditions can result in revocation of parole and return to prison or jail.<sup>9/</sup>

#### **A. General Rules Regarding Parole Conditions**

There are some standard conditions that apply to all parolees who are on regular supervised parole (see Section 18, below, for information about the "non-revocable parole" provisions under which some parolees are now released on non-supervised parole with modified parole conditions). The standard conditions include reporting to a parole agent upon release and periodically thereafter, complying with parole agent instructions, not engaging in criminal conduct, and not owning or having access to any weapon.<sup>10/</sup> Other standard conditions include reporting to the parole agent within the first working day after release (unless other arrangements

---

6. 15 CCR § 3075.2(b); CDCR Form 611 is used for the release program study and CDCR Form 1515 is used to notify parolees of their conditions of parole.

7. Penal Code § 3060.5; 15 CCR § 2512.

8. Penal Code §§ 3000(b)(4) and 3053 et. seq.; see also 15 CCR §§ 2510, 2512.

9. Penal Code §§ 3056, 3060.

10. See 15 CCR § 2512.

are approved), reporting changes of address in advance and notifying the agent of any change in employment. Restrictions on movement are also standard, and a parolee must get pre-approval of the agent to travel more than 50 miles from his or her residence, to be outside the county of residence for more than 48 hours, or to leave the state of California.<sup>11/</sup>

In addition, special conditions can be imposed based on particular facts regarding the case or the parolee. The most common special conditions are that a parolee abstain from use of alcoholic beverages, submit to narcotics testing, or participate in psychiatric treatment.<sup>12/</sup> Parolees may also be required to wear GPS tracking devices.<sup>13/</sup>

15 CCR § 3511 describes the various levels of parole supervision and the type and frequency of contacts with parole agents that will be required. As of February 2010, CDCR is proposing to amend these rules and move them to 15 CCR § 3511. If adopted, the new regulations will also make some substantive changes to the parole supervision categories.

A condition of parole is invalid if it: (1) has no relation to the commitment offense; (2) relates to conduct which is not in itself criminal; and (3) requires or forbids conduct that is not reasonably related to future criminality.<sup>14/</sup> For instance, if a parolee has no history of alcohol abuse or committing crimes while intoxicated, random alcohol testing cannot be imposed as a condition because using alcohol is not inherently illegal and such a condition would not relate to past or future criminality.<sup>15/</sup>

Also, a parole condition which infringes on a constitutional right is invalid if the condition is not reasonably related to a legitimate purpose, the public value of the condition does not outweigh the infringement, and less restrictive alternatives might serve the purpose. Conditions

---

11. See CDCR Form 1515.

12. See 15 CCR § 2513. Any parolee convicted of a sex offense while intoxicated or addicted to alcohol is required to abstain from using alcohol. Penal Code § 3053.5. A parolee convicted of domestic violence is required to participate in counseling as a condition of parole. Penal Code § 3053.2(e)-(I).

13. Penal Code § 3004 (a), §§ 3010-3010.7.

14. People v. Lent (1975) 15 Cal.3d 481, 486 [124 Cal.Rptr. 905]; People v. Burgener (1986) 41 Cal.3d 505 [224 Cal.Rptr. 112, overruled on other grounds in People v. Reyes (1998) 19 Cal.4th 743 [80 Cal.Rptr.2d 234]; People v. Dominguez (1967) 256 Cal.App.2d 623, 627 [64 Cal.Rptr. 290]. Many of the cases deal with probation conditions, to which courts usually apply the same type of analysis.

15. People v. Kidoo (1990) 225 Cal.App.3d 922 [275 Cal.Rptr. 298], overruled on other grounds in People v. Welch (1993) 5 Cal.4th 228 [19 Cal.Rptr.2d 520].

also may be invalid if they are excessive or if they are so vague that they cannot be understood and followed.<sup>16/</sup>

Special conditions of parole may be imposed which will limit the parolee's employment, but the condition must directly relate to the parolee's crime. For instance, a parolee who is convicted of writing checks with insufficient funds can be prohibited from maintaining a checking or charge account, but prohibiting him or her from working in commissioned sales could be an unnecessary infringement upon the right to work.<sup>17/</sup>

## **B. Residency Restrictions and GPS Tracking for Sex Offender Parolees**

As a result of Proposition 83 ("Jessica's Law), there are strict residency restrictions on any parolee who is required to register as a sex offender under Penal Code § 290. Such parolees are prohibited from residing within one half mile from any public or private school and within 2000 feet of any park where children regularly gather.<sup>18/</sup> These residency restrictions have forced many parolees to become homeless because they are unable to find compliant housing.

The California Supreme Court has held that the residency restrictions can be applied to any sex offender who was released on parole on or after November 8, 2006; it does not matter

---

16. People v. Fritchey (1992) 2 Cal.App.4th 829, 838 [3 Cal.Rptr.2d 585]; United States v. Bonanno (N.D. Cal. 1978) 452 F.Supp. 743, 752. See, People v. Bauer (1989) 211 Cal.App.3d 937 [260 Cal.Rptr. 62] (condition not to become pregnant); People v. Pointer (1984) 151 Cal.App.3d 1128, 1139 [199 Cal.Rptr. 357] (condition forbidding living with parents); People v. Beach (1983) 147 Cal.App.3d 612, 622-623 [147 Cal.App.3d 612] (condition banishing from home); In re Sheena K. (2004) 116 Cal.App.4th 436 [10 Cal.Rptr.3d 444 (condition not to associate with anyone disapproved by officer); Hyland v. Procunier (N.D. Cal. 1970) 311 F.Supp. 749 [condition to get permission before making speech]; Arciniega v. Freeman (1971) 404 U.S. 4 [92 S.Ct. 22, 30 L.Ed.2d 126] (condition not to associate with ex-convicts at work); People v. Garcia (1993) 19 Cal.App.4th 97, 101-102 [23 Cal.Rptr.2d 340] (condition to not associate knowingly or unknowingly with ex-felons or drug users); In re Justin S. (2001) 93 Cal.App.4th 811 [113 Cal.Rptr.2d 466] (condition prohibiting association with "any gang members"); In re Stevens (2004) 119 Cal.App.4th 1228 [15 Cal.Rptr.3d 168] (prohibition on sex offender using computers or Internet when neither had been used in committing crime); United States v. Williams (9th Cir. 2004) 356 F.3d 1045 (requiring releasee to take medications).

17. See People v. Burden (1988) 205 Cal.App.3d 1277 [253 Cal.Rptr. 130]; People v. Lewis (1978) 77 Cal.App.3d 455 [143 Cal.Rptr. 587]; People v. Keefer (1972) 35 Cal.App. 156 [110 Cal.Rptr. 596].

18. Penal Code §§ 3003(g), 3003.5(b). Up until November 8, 2006, the law forbade sex offender parolees convicted of § 288 or § 288.5 from living within one half mile (2,640 feet) of a K-8 school; if deemed "high risk" by CDCR, such parolees could not live within a half mile of a K-12 school. Former Penal Code § 3003(g). Also, there is a law prohibiting a sex offender parolee from residing in a single family house with another person who is also a sex offender, unless they are legally related by blood, marriage or adoption. Penal Code § 3003.5(a).

whether the term for which the person is currently on parole is for a non-sex offense or whether the person was initially paroled before November 8, 2006 and then re-released after a parole revocation. However, the Court did not address the issues of whether the residency restrictions are so unreasonable, vague and over-broad as to violate fundamental constitutional rights. Instead, the Court sent the cases back to the lower courts for further evidentiary hearings; it is expected that parolee advocates will continue to litigate these issues.<sup>19/</sup>

Under CDCR regulations, violation of sex offender residency requirements must be reported to the BPH.<sup>20/</sup> CDCR has interpreted the residency restriction to prohibit parolees from spending more than two hours in any building that is within 2000 feet of a school or park unless they are working or receiving medical services or conducting legitimate business in a licensed business, professional or government building. Parolees may work in businesses that are within 2000 feet of schools or parks if they have permission from their agent. CDCR's current position is that spending even one night in a building establishes that building as a residence.<sup>21/</sup> Compliance is measured by the straight-line distance between the primary entrance of the parolee's residence and the exterior boundary of the nearest park or school, not the driving or walking distance between the two points.

Parole agents and the BPH have been instructed to make exceptions for parolees who are mentally ill and housed in a licensed mental health facility or are in need of medical care in a licensed facility. Also, parolees who indicated to their agent their intent to become transient are not to be arrested, though they must continue to keep the agent informed of their whereabouts.

Another rule enacted by Proposition 83 is that anyone who is convicted and sent to prison for a felony that requires registration as a sex offender must wear a GPS tracking device (usually an ankle bracelet) during parole.<sup>22/</sup> CDCR can require a parolee to pay the cost of the GPS monitoring, or can waive these fees if the parolee is unable to pay.<sup>23/</sup>

---

19. In re E.J. No. S156933; In re S.P. No. S157631; In re J.S. No. S157633 and In re K.T. No. S157634 (all decided Feb. 1, 2010, no official citation yet available). A federal court has ruled that the residency restrictions cannot be applied to people who were both convicted and paroled or released from custody prior to the date that Proposition 83 went into effect (November 8, 2006). Doe v. Schwarzenegger (E.D.Cal. 2007) 476 F.Supp.2d 1178.

20. 15 CCR § 2616(a)(15).

21. CDCR Department of Parole Operations Policy 08-35.

22. Penal Code § 3004(b); see also Penal Code § 3000.07. Federal courts have ruled that the GPS requirement does not apply to persons who were both convicted and paroled or released from custody prior to that date Doe v. Schwarzenegger (E.D.Cal. 2007) 476 F.Supp.2d 1178; see also Doe v. Schwarzenegger (N.D. Cal. Feb 22, 2007) No. C 06-06968 JSW.

23. Penal Code § 3004 (c); Penal Code § 3010.8.

**C. Treatment by the Department of Mental Health as a Condition of Parole (“MDO Commitment”)**

Some parolees can be required to receive inpatient treatment at a Department of Mental Health (DMH) hospital as a condition of parole. Such parolees are referred to as Mentally Disordered Offenders (MDOs). To be committed as an MDO, a parolee must be diagnosed with a serious mental illness that causes him or her to pose a substantial danger of physical harm to others. The person also must have been sentenced to prison for an offense involving violence.<sup>24/</sup>

Penal Code § 2960 and subsequent sections set forth the process by which a person can be committed as an MDO. This begins with a screening by CDCR mental health staff and a DMH psychologist or psychiatrist. If both agree that the prisoner qualifies as an MDO, CDCR will send certification papers to the BPH stating that the prisoner has been found to be an MDO.<sup>25/</sup>

The BPH then notifies the prisoner that one of the conditions of parole is inpatient treatment by the DMH.<sup>26/</sup> If the prisoner asks to challenge the MDO certification, the BPH must order evaluations by two independent mental health professionals and hold a hearing in front of a BPH commissioner. At the hearing, the burden is on the state to prove by a preponderance of the evidence that the prisoner is an MDO. If the prisoner wants a lawyer, the state must provide one at no cost.<sup>27/</sup>

If the BPH Deputy Commissioner determines that the prisoner is an MDO, the prisoner can then file a petition in the local superior court, demanding a jury trial. At trial, the prisoner is entitled to an attorney. The state has the burden of proving “beyond a reasonable doubt” that the prisoner meets the MDO criteria.<sup>28/</sup>

If a parolee is found to be an MDO, he or she must be placed in inpatient treatment unless the DMH finds that her or she can be safely treated on an outpatient basis.<sup>29/</sup> A person committed as an MDO can request a hearing in front of a BPH deputy commissioner after 60 days in DMH custody to determine whether he or she will be on inpatient or outpatient status. The burden is on DMH to establish by a preponderance of the evidence that the parolee requires inpatient treatment.<sup>30/</sup>

---

24. Penal Code §§ 2962. The definition of a crime involving violence under Penal Code § 2062(e) is much broader than the definition of “violent felonies” in Penal Code § 667.5(c).

25. Penal Code § 2962(d)(1).

26. 15 CCR § 2573.

27. Penal Code §§ 2966(b) and (b) and 2978; 15 CCR §§ 2573-2574 and 2576(b)(1).

28. Penal Code § 2966(b).

29. Penal Code § 2964.

30. Penal Code § 2964; 15 CCR § 2578.

The BPH must conduct reviews on the presumptive parole discharge dates for all parolees, including MDOs.<sup>31/</sup> If the BPH reviews the case and recommends that the MDO commitment continue, then there will be a re-commitment process to determine whether the parolee still qualifies as an MDO. This is similar to the original commitment procedures.<sup>32/</sup> As a result of the periodic re-commitment proceedings, an MDO might end up serving the entire parole term in a DMH hospital.

When an MDO reaches his or her maximum parole discharge date, the DMH can ask a court to continue the involuntary commitment, which will be reviewed annually. Thus, hospitalization as an MDO could potentially last for the rest of a person's life.<sup>33/</sup>

#### **D. Challenging a Condition of Parole**

Staff from CDCR's Division of Adult Parole Operations (DAPO) set most conditions of parole, decide the location of parole, and place parole holds. A parolee must file an administrative appeal of DAPO staff decisions prior to filing a court action.<sup>34/</sup> For all complaints except disability issues, the appeal is started by filling out a CDCR Form 602 and sending it to the Appeals Coordinator for the parole region. A copy of the 602 form is attached to this manual. The CDCR 602 appeal process has four levels.<sup>35/</sup> Each level has a time limit within which the appeal must be answered.<sup>36/</sup> There are some exceptions to the normal procedures; for example, appeals of parole location will not go to an Informal Level of review but will be assigned directly to the Assistant Regional Parole Administrator for First Level review.<sup>37/</sup> Also, appeals of parole conditions will not go to the Informal or First Formal Levels; they will be assigned directly to the Regional Parole Administrator for Second Level review. The parolee can then ask for Third Level review by sending the appeal to the CDCR Director.

---

31. 15 CCR §§ 2535, 2580. See Section 15, below, regarding presumptive discharge dates.

32. 15 CCR § 2580(b) and (c).

33. Penal Code § 2970.

34. When an agency has an administrative appeal procedure, courts will usually deny any legal action unless all administrative remedies have first been sought. See In re Dexter (1979) 25 Cal.3d 921, 925 [160 Cal.Rptr. 188]; In re Muszłaski (1975) 52 Cal.App.3d 500, 503 [125 Cal.Rptr. 286]. However, state courts may allow exceptions to this requirement when: the administrative remedy is unavailable or inadequate; pursuit of the remedy would be futile, such as where an adverse decision by CDCR is certain; or where a delay in hearing the case would possibly subject the prisoner to irreparable harm such as risk of serious injury. (See Glendale City Employee's Association, Inc. v. City of Glendale (1975) 15 Cal.3d 328, 342-43 [124 Cal.Rptr.513]; In re Serna (1978) 76 Cal.App.3d 1010 [143 Cal.Rptr. 350].)

35. 15 CCR § 3084.5.

36. 15 CCR § 3084.6.

37. 15 CCR §3084.7(f)(2).

If a CDCR parole condition discriminates a parolee based on a disability, or if a parolee cannot satisfy a condition because of a disability, then the parolee should file a CDCR Form 1824 Request for Reasonable Modification or Accommodation Request instead of filing a regular Form 602 administrative appeal. The rights of parolees with disabilities and the Form 1824 grievance process are discussed further in Section 5, below.

Although most parole conditions are set by CDCR staff, the BPH also has the power to impose conditions of parole. The BPH may occasionally use that power to set special conditions. However, the BPH has no general administrative appeal process, so it is not necessary to file any sort of administrative grievance with the BPH before filing a court action challenging a BPH-imposed condition.

Once any necessary administrative appeal process is completed, a parolee may consider filing a petition for writ of habeas corpus in the local superior court. A state court petition for writ of habeas corpus can be used by a prisoner or parolee to challenge violations of state or federal constitutional due process rights or violations of California statutes or administrative rules. The parolee should attach a copy of any administrative appeal decision to the petition, along with declarations or other documents supporting the claims. Sample forms and more information can be found in the Prison Law Office State Habeas Corpus manual, available for free on request.

### **3. CAN A PAROLE AGENT OR POLICE OFFICER SEARCH A PAROLEE'S PERSON, CAR OR RESIDENCE WITHOUT A WARRANT?**

Yes (almost always).

The standard CDCR “Notice and Conditions of Parole” requires every parolee to agree that “[y]ou and your residence and any property under your control may be searched without a warrant by an agent of the Department of Corrections or any law enforcement officer.”<sup>38/</sup>

This requirement has been upheld by the U.S. Supreme Court. Consequently, a search can be conducted without the parolee’s consent, without a search warrant, without probable cause, and without a reasonable suspicion that the parolee has violated parole.<sup>39/</sup> Parole agents and other law enforcement officers may also freely search a parolee’s property after a parole hold is placed and the parolee is placed in custody but before the BPH has revoked parole.<sup>40/</sup>

---

38. Penal Code § 3067. A prisoner who is about to be released for a crime committed on or after January 1, 1997, and who does not sign this consent form, loses worktime credit on a day-for-day basis and will not be released until he or she signs the form or has lost all worktime credits. Ibid.

39. Samson v. California (2006) 547 U.S. 843 [126 S.Ct. 2193;165 L.Ed.2d 250]; United States v. Lopez (9th Cir. 2007) 474 F.3d 1208; People v. Reyes (1998) 19 Cal.4th 743 [80 Cal.Rptr.2d 234].

40. People v. Hunter (2006) 140 Cal.App.4th 1147 [45 Cal.Rptr.3d 216].

Nearly the only limit on parole searches is the general rule that abridgement of federal constitutional Fourth Amendment rights must be no greater than is required by the legitimate demands of the parole process.<sup>41/</sup> Parole searches must be constitutionally “reasonable;” that is, they cannot be too often, at an unreasonable hour, unreasonably prolonged or conducted in an arbitrary or capricious manner.<sup>42/</sup> However, evidence that is obtained through an unlawful search can still be admitted at parole revocation hearings,<sup>43/</sup> so parole officers have little incentive to comply with the Fourth Amendment.

An otherwise unlawful search cannot be justified by a parole search condition if the officers were not aware that the defendant was on parole at the time of the search<sup>44/</sup> or did not have probable cause to believe the parolee lived in the residence that was searched.<sup>45/</sup> However, if officers know a person is a parolee, they may assume that he or she is subject to a parole search condition.<sup>46/</sup> In addition, the fact that a search is being conducted pursuant to a parole condition does not excuse police from complying with statutory knock-notice requirements;<sup>47/</sup> the officer must give notice of his or her authority and purpose in conducting the search.<sup>48/</sup>

#### **4. CAN A PAROLEE TRANSFER TO ANOTHER COUNTY OR STATE?**

Maybe.

Ordinarily, a person paroled to the county of his or her last legal residence.<sup>49/</sup> However, sometimes the BPH or CDCR will force a prisoner to parole to a different county if it would be in the best interests of the public. If the BPH makes a decision to return a parolee to another county,

---

41. People v. Williams (1992) 3 Cal.App.4th 1100, 1106 [5 Cal.Rptr.2d 591].

42. People v. Reyes (1998) 19 Cal.4th 743, 753-754 [80 Cal.Rptr.2d 734]; Penal Code § 3067(d).

43. Pennsylvania Board of Probation and Parole v. Scott (1998) 524 U.S. 357 [118 S.Ct. 2014; 141 L.Ed.2d 344].

44. People v. Sanders (2003) 31 Cal.4th 318 [2 Cal.Rptr.3d 630].

45. Motley v. Parks (9th Cir. 2005) 432 F.3d 1072.

46. People v. Middleton (2005) 131 Cal.App.4th 732 [31 Cal.Rptr.3d 813].

47. People v. Mays (1998) 67 Cal.App.4th 969 [79 Cal.Rptr.2d 519]; Penal Code § 1531.

48. Penal Code § 1531; People v. Britton (1984) 156 Cal.App.3d 689, 698 [202 Cal.Rptr. 882]; People v. Ford (1975) 54 Cal.App.3d 149 [126 Cal.Rptr. 396].

49. Penal Code § 3003(a).

it must state the reasons in writing.<sup>50/</sup> Parolees who have been convicted of a violent felony listed in Penal Code § 667.5(c)(1)-(7), a crime involving stalking, or a crime involving great bodily injury face additional residency restrictions. If the victim or witness of such a crime has requested additional distance and the BPH or CDCR finds that there is a need to protect the victim/witness, a parolee will not be released to a county where he or she would be within 35 miles of the residence of the victim or witness.<sup>51/</sup> As described in Section 2.B, above, there are also statutes that restrict where registered sex offenders can live.

#### **A. Requesting Transfer to a Different County**

For many parolees, returning to the county of last legal residence means returning to the environment that led them to commit crime in the first place. For this reason, and because many parolees have family support in counties that are not their last legal residence, parolees frequently want to transfer their parole to a different county. A parolee may request a transfer to another California county by submitting an oral or written request to his or her parole agent. The parolee should explain why paroling to a different county will help him or her be more successful on parole. A parolee should provide documentation (such as letters from family, doctor, or prospective employer) verifying the reasons why the parolee is requesting a transfer.<sup>52/</sup> This process can and should be started prior to parole when the pre-release Release Program Study is being prepared.

After the parole agent receives the request, he or she should prepare a Transfer Investigation Request Form (CDCR Form 1551) and submit it to the parole unit supervisor. The following factors, among others, should be considered:

- 1) the need to protect the safety of a victim, the parolee, a witness or any other person;
- 2) public concern that would reduce the chance that parole would be completed successfully;
- 3) the verified existence of a work offer, or an educational or vocational training program;
- 4) the existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that parole would be successfully completed;

---

50. Penal Code § 3003(b). A county that complains of a parolee's placement may not obtain a court order prohibiting that placement unless there has been an abuse of discretion by the parole authority. McCarthy v. Superior Court (1987) 191 Cal.App.3d 1023, 1027 [236 Cal.Rptr. 833, 834].

51. Penal Code § 3003(f) and (h).

52. Penal Code § 3003(b)(3)-(4).

5) for parolees who need to receive mental health treatment, the presence or lack of outpatient treatment programs.<sup>53/</sup>

Because parole agents' caseloads are high, and there is a five percent cap on the number of "out of county" parolee who can be supervised in each county, it is not easy to get a transfer of parole to another county. If a transfer is denied, the parolee can challenge the decision by following the steps in Section 2.D, above.

## **B. Requesting Transfer To A Different State**

In 2000 and 2002, the state legislature adopted a new Interstate Compact for Adult Offender Supervision which governs interstate parole transfers.<sup>54/</sup> The Compact has been adopted by all 50 states and by Puerto Rico and the U.S Virgin Islands..<sup>55/</sup>

The Interstate Commission has adopted rules and procedures for transfer eligibility and supervision. A parolee meets the basic eligibility requirements for transfer if he or she has three months of more to serve on parole at the time the application is submitted to the receiving state, and: (1) has not had parole revoked and has no pending parole revocation charges; (2) was previously a resident of the receiving state for at least a year or has resident family who are willing and able to assist the parolee; and (3) can obtain employment or has means of support. If the parolee meets the eligibility criteria and is approved for transfer by the sending state, then the receiving state must accept the parolee for supervision. The states may consent to the transfer of a parolee who does not meet the normal eligibility requirements if there is good cause to do so.<sup>56/</sup>

The process by which a parolee can be sent to another state consists of five steps: (1) the parolee requests the transfer; (2) the parole agent determines whether the parolee meets the eligibility criteria; (3) the parole agent submits an application to CDCR's California Interstate Compact Unit in Sacramento for review; (4) the application is submitted to the receiving state for review, and (5) the parolee is transferred.<sup>57/</sup>

To get the process started, a prisoner or parolee should talk to his or her correctional counselor or parole agent. The earliest that California can send a parole transfer request for a

---

53. Penal Code § 3003(b).

54. Penal Code §§ 11180 and 11181.

55. Information on the Compact and activities of the Interstate Commission for Adult Supervision and California State Council can be found at [www.interstatecompact.org](http://www.interstatecompact.org).

56. Rules Adopted by the Interstate Commission for Adult Supervision; Rule 3.101, at [www.interstatecompact.org](http://www.interstatecompact.org).

57. See DOM § 81060.1 et seq. for details on CDCR's procedure for handling applications from parolees for out-of-state transfers; See also Rules Adopted by the Interstate Commission for Adult Supervision, Rules 3.102-3.109, at [www.interstatecompact.org](http://www.interstatecompact.org).

prisoner who has not yet been released on parole is 120 days prior to the expected release date.<sup>58/</sup> If California authorities submit a transfer application to the receiving state, the receiving state is supposed to respond within 45 calendar days of receipt.<sup>59/</sup> The process can be expedited in an emergency.<sup>60/</sup>

Questions or requests for further information can be directed to the CDCR Interstate Compact Unit, Department of Adult Parole Operations, P.O. Box 942883, Sacramento, CA 94283.

### **C. Out-of-State Absconders or Parole Violators**

15 CCR §§ 2730-2733 govern cases in which parolees leave California without permission or violate parole while they are being supervised in another state. These regulations provide that California officials may enter another state and retake any California parolee who is alleged to have violated parole in order to conduct parole revocation proceedings.

All parolees waive the right to contest extradition as a standard condition of parole, and parolees also must waive the right to contest extradition if they are be paroled out-of-state.<sup>61/</sup> Thus, formal extradition proceedings are not required to return a parolee to California. Any attempt to contest extradition will be futile and may extend the period of time during which the parolee is not “available” to California authorities and not earning credits toward the California parole term.

If a parolee is subject to pending criminal prosecution in the other state, CDCR must wait for the other state's consent or discharge order before the parolee is available to be returned to California for parole violation proceedings. When CDCR places a “parole hold” on a parolee who is in out-of-state custody, CDCR will send the parolee a “Shapiro Waiver,” BPH Form 1102. That form allows the parolee to waive the right to an in-person parole revocation hearing on any California parole violations while he or she is in custody in another state; the parolee can opt to reserve the right to have a hearing once the out-of-state criminal case is over. The benefit of waiving an in-person hearing is that the parolee will start earning time toward the California parole term and toward any California parole revocation term on the date the parolee signs the waiver. The parolee may therefore serve some or all of the California revocation term concurrently with the period of incarceration in the other state.<sup>62/</sup> If the parolee does not waive

---

58. Id., Rules 3.105 and 3.109.

59. Id., Rule 3.104.

60. Id., Rule 3.106.

61. See CDCR Form 1515; Penal Code § 11177(3); see also Rules Adopted by the Interstate Commission for Adult Supervision, Rule 3.109, at [www.interstatecompact.org](http://www.interstatecompact.org).

62. *In re Shapiro* (1975) 14 Cal.2d 711 [122 Cal.Rptr. 768]; Penal Code § 3059; 15 CCR § 2731(c)(2)(B)(4)(b).

the right to a parole revocation hearing, none of the time served while a criminal case is pending in the other state will count toward any California parole violation term.

If a parolee who has been under out-of-state supervision does not waive the right to a revocation hearing, the BPH can request the receiving state to conduct a revocation hearing and make a recommendation, which will be reviewed by the BPH.<sup>63/</sup>

## **5. WHAT RIGHTS DOES A PAROLEE WITH A DISABILITY HAVE ON PAROLE?**

The Americans with Disabilities Act (the ADA), 42 U.S.C. § 12131 et seq., protects people, including California prisoners and parolees, from discrimination due to disabilities. Rules governing the rights of California prisoners and parolees with physical, learning and developmental disabilities are set forth in Remedial Plans filed as a result of class action lawsuits called Armstrong v. Schwarzenegger (N.D. Cal. No. 94-2307CW) and Clark v. California (N.D. Cal.) No. 95-1486FMS. The rules regarding parolees with physical and learning disabilities are set forth in the Armstrong Remedial Plan (January 3, 2001), § IV.S. The rules regarding parolees with developmental disabilities are set forth in the Clark Remedial Plan (March 1, 2002); § VIII.

When a person with disabilities is released on parole, the correctional counselor must notify the parole agent about the parolee's disability and related special needs on the Form 611 Release Program Study.

While on parole, the parole agent and other parole staff must ensure that the parolee receives effective communication during orientations, interviews, supervision meetings, and when being notified of conditions of parole and registration requirements. "Effective communication" means that the parole staff must make sure that information is relayed in a way that the parolee can perceive and understand. If a disabled parolee needs extra help in order to have effective communication, the parole office should provide that help. Examples include assistance by a sign language interpreter for a hearing-impaired parolee, reading aloud of written materials for a vision-impaired parolee, or simplification of information for a developmentally disabled parolee.

Parole staff must make reasonable changes to procedures so that parolees with disabilities can receive services in a location that is accessible to them. For example, if a disability makes it difficult for the parolee to get to the parole office, the parole agent should allow the parolee to meet with him somewhere else, such as the parolee's home. In addition, if the parole agent refers a parolee with disabilities to a community service such as a drug-treatment center, job center, or literacy center, the parole staff should help to make sure that the parolee can actually get access to the programs and services offered. Similarly, if a parolee is required to attend a program at the parole office, such as the parolee outpatient clinic, that program must be accessible.

If a parolee uses a wheelchair or other health care appliance, such as a cane, prosthesis, eyeglasses, or prosthetic eyes, he or she is entitled to keep the device when he or she paroled, even if it is a state-provided device. Also, if a parolee is arrested by a parole agent, any use of restraint equipment on must take into account the parolee's disability. For example, if a parolee

---

63. 15 CCR § 2733(c)(2).

has difficulty walking and needs a cane, the agent should not cuff the parolee behind his or her back. Similarly, if a parolee with a disability is transported by the parole office, he or she must be transported with special health care aids and appliances, and with consideration of any special disability needs.

There is a special CDCR appeal process for people with disabilities to ask for fair treatment or to get access to CDCR parole services or programs. If a parolee has problems receiving help from parole staff regarding his or her disabilities, he or she can submit the same type of Request for Modification or Reasonable Accommodation that is used in CDCR institutions. This is the yellow CDCR Form 1824. All parole offices should have this form available, and a copy of the 1824 form is attached to this manual. 1824 forms should be answered more quickly than ordinary 602 appeals – a parolee does not need to get Informal review of an 1824, and the First Level answer is due within 15 working days.<sup>64/</sup> A parolee who does not agree with the First Level response can file the appeal to the Second Level by attaching the 1824 form to a regular 602 appeal form, filling out section F of the 602, and sending both forms to the Regional Parole Administrator. The Second Level answer is then due in 15 working days. A parolee can also send the disability appeal to the Third Level, just like a regular 602 appeal, and should get the Third Level response within 20 working days.<sup>65/</sup>

## **6. CAN A PAROLEE OWN A GUN?**

No. It is forbidden by state and federal law.

The standard "Notice and Conditions of Parole" states that a parolee shall not "own, use, have access to or have under your control . . . any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm . . . ." This is in accord with California law, which makes it a felony for any ex-felon to own, possess or have custody or control of any firearm.<sup>66/</sup> Federal law also makes it unlawful for an ex-felon to receive or possess any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.<sup>67/</sup> Thus, parolees who live with someone else who possesses a gun or ammunition should make sure that person removes those items from the residence, or at least keeps the items locked in an area to which the parolee does not have access.

While it is not a violation of law for a parolee to possess or have access to a fake or toy gun, it is a violation of parole and can merit a return to custody of up to twelve months.<sup>68/</sup>

---

64. 15 CCR § 3085(a); Armstrong Remedial Plan, IV.I.23(e).

65. Armstrong Remedial Plan, IV.I.23(e).

66. Penal Code § 12021; see also Penal Code § 12021.1.

67. 18 U.S.C. § 922(g)(1).

68. 15 CCR §§ 2646.1(c)(9), (r)(6).

A certificate of rehabilitation (see Section 13, below) does not restore the right to possess a firearm. In some, but not all cases, the right can be restored by a full pardon.<sup>69/</sup> This means that all ex-felons are forbidden to have a gun for the rest of their lives unless they are pardoned and meet other eligibility criteria.

## 7. CAN A PAROLEE GET MONEY FROM THE CDCR?

Yes, for some parolees.

### 1. Trust Fund Accounts (Penal Code § 2085; 15 CCR § 3099)

Money brought to, earned, or received in prison can be kept in a trust account. Any money in a prisoner's trust account plus interest must be given to the prisoner upon release.

### 2. Gate Money (Penal Code § 2713.1; 15 CCR § 3075.2(d); CDCR Operations Manual § 81010.6 et seq.)

In addition to getting any trust account money, prisoners paroled or discharged from a CDCR institution or reentry facility are entitled to \$200.00 upon release. The parole agent is responsible for giving out these funds, and is not required to give a prisoner the entire sum immediately. Instead, the agent may distribute the \$200 in installments over a period of 60 days following release. Although practice varies, paroled inmates typically receive at least \$50 to \$100 of the gate money immediately upon release, and many receive the entire \$200.

Parole violators who have served less than six consecutive months prior to release are also eligible for gate money. However, these parolees are not necessarily eligible for the full \$200. Instead, they receive gate funds computed at a rate of \$1.10 per day served during the revocation term, up to a maximum of \$200.00.

A parolee who is released into a reentry facility may be given a maximum of one half of the \$200. A parolee who is released into the custody of another state or a local or federal agency will not get any gate money until he or she is released from custody. Prisoners who are released to a local jurisdiction for SVP civil commitment proceedings are entitled to gate money.<sup>70/</sup>

If a parolee needs to purchase a bus ticket or clothes upon release from prison, the parolee must pay for it. CDCR does not provide extra gate money for clothing or transportation.

Parolees who abscond prior to receiving their gate money forfeit the money.

### 3. Cash Assistance Loans and Bank Drafts (15 CCR § 3705 and CDCR Operations Manual §§ 81070.1-81070.2)

There are some emergency funds available to parolees through their parole agents. "Cash assistance funds" are loans, which CDCR expects the parolee to pay back as soon as

---

69. See Penal Code §§ 4852.16 and 4854.

70. Sabatasso v. Superior Court (2008) 167 Cal.App.4th 791; Welfare & Institutions Code § 6600 et. seq.

circumstances permit. The loans are only granted to parolees when there is a critical need and assistance is not available from any other source. The loans are usually for amounts under \$50. The parole agent's supervisor must approve any loan over \$50 or any series of loans totaling more than \$150 in a 30-day period.

The parole agent is also authorized to distribute funds for casework services, which include housing, food, and clothing. The agent may authorize a loan of up to \$500 to the parolee for over-the-counter purchases. The check may be written to either the parolee or the vendor from whom the parolee is purchasing items. Once again, the loans are granted on an emergency basis, and the parolee must pay the money back as soon as he or she is able to do so.

A parolee should keep in mind that the parole agent and agent's supervisor have discretion over whether to grant a loan to a particular parolee. A parole agent's decision to grant or deny a loan depends on whether there is money available and on the circumstances, including the history and needs of the parolee.<sup>71/</sup> In the current tight budget times, these funds are extremely limited.

## **8. CAN A PAROLEE GET PUBLIC BENEFITS (SOCIAL SECURITY, FOOD STAMPS, ETC.)?**

Paroled prisoners may be eligible for federal, state, and local assistance programs, although they do not receive any special status because of their recent release. A parolee should investigate the various programs in order to see whether he or she qualifies for any of them. A person who is interested in getting any type of public benefits may want to try sending a letter of inquiry to the applicable office before release and should seek advice from an advocate at a community agency or legal services organization once released. Also, under CDCR's pre-release planning program, prisoners may be able to get help applying for benefits prior to release.

In addition, parole agents should be able to help parolees apply for benefits. At a minimum, an agent should be able to provide a parolee with names and locations of local offices where the parolee can apply for benefits. The parole agent also should have lists of shelters, food banks, job training facilities, and drug treatment centers in the local area. Parolees can use these resources as an initial step toward getting shelter, food and other necessary items.

Also, all parolees are required to attend a PACT (Police and Corrections Team) orientation within two weeks of release from prison. Many community service organizations attend the PACT orientations and parolees can get benefits and assistance information from those organizations.

Further information on public benefits available to paroles is available in the free Prison Law Office information letter on Parolee Benefits, which we will send on request. Parolees can also get information from their parole agent or from the CDCR Parolee Handbook, available at [www.cdcr.ca.gov/Parole/Parolee\\_Handbook/Index.html](http://www.cdcr.ca.gov/Parole/Parolee_Handbook/Index.html).

---

71. In addition, there limitations on the financial assistance that will be provided to certain parolees who are not U.S. citizens. 15 CCR 3630.

**9. WHAT CRIMINAL HISTORY INFORMATION IS A PAROLEE REQUIRED TO GIVE TO AN EMPLOYER?**

An employer may ask about a job applicant’s prior convictions. However, generally, an employer cannot ask about or consider arrests that did not result in a conviction. There are some exceptions if a person is awaiting trial for an arrest. There are also some exceptions for employers at law enforcement agencies and health care facilities.<sup>72/</sup>

Most private employers do not have a right to obtain or request a job applicant’s or employee’s written criminal history report (“rap sheet”). Again, there are some exceptions for government employers, public utilities, and school or eldercare agencies, where such access is authorized by law or regulation.<sup>73/</sup> Even though other employers cannot obtain an official rap sheet, they may still be able to obtain information about a prospective employee’s background from public sources like court databases or news agencies.

There are other provisions of law that allow parolees and ex-felons to be excluded from certain jobs.<sup>74/</sup>

**10. CAN A PAROLEE VOTE? SERVE ON A JURY?**

No to both questions.

**A. Voting**

People in prison or on parole in California are not allowed to vote, though they are allowed to vote once they are discharged entirely.<sup>75/</sup> Such restrictions on voting are permitted by the United States Constitution, Fourteenth Amendment, § 2.<sup>76/</sup>

Courts have considered whether laws denying voting rights to prisoners, parolees and ex-felons violate the federal Voting Rights Act (42 U.S.C. § 1973) by having a disparate impact on the voting rights of people of color. Courts have acknowledged the possibility that felon disenfranchisement laws might in some circumstances violate the Voting Rights Act, but no court

---

72. Labor Code § 432.7.

73. Penal Code § 11105; Labor Code § 432.7.

74. See, e.g., Penal Code § 290.95 (prohibiting § 290 registrants whose offenses involved children under age 16 from work (paid or volunteer) that would involve direct, unaccompanied, regular contact working with minors and requiring disclosure of registration status to any employer where job involves contact with children).

75. Cal. Constitution, Article II, § 4; Elections Code § 2150.

76. Richardson v. Ramirez (1974) 418 U.S. 24 [94 S.Ct. 2655; 41 L.Ed.2d 551].

has yet overturned a felon disenfranchisement law.<sup>77/</sup>

## **B. Jury Duty**

An ex-felon (regardless of whether he or she has discharged from parole) is prohibited from serving on a jury.<sup>78/</sup> This restriction has been upheld by the California Supreme Court. The Court held that the right to serve on a jury is not a fundamental right and that exclusion of ex-felons from juries did not violate the equal protection clause. The Court found that the exclusion of ex-felons from jury service was rationally related to the legitimate state goal of assuring impartial verdicts.<sup>79/</sup>

### **11. CAN A PAROLEE VISIT FRIENDS OR RELATIVES IN PRISON?**

Not without prior approval.

It is a crime for a person who was previously convicted of a felony to be on prison grounds for any reason without prior approval of the warden.<sup>80/</sup> To get permission to visit, a parolee must send a letter to the warden along with a visiting questionnaire (CDCR Form 106) and written proof that the parole agent has given permission for the parolee to visit the prisoner.<sup>81/</sup> However, any person who has been discharged from prison or parole (or who provides proof of the discharge date) should not be denied visiting by the warden “for reasons that would not apply to any other person.”<sup>82/</sup>

Prison officials can deny visits by people who have criminal records, even if they are not still on parole. Visits may be denied for anyone who was a co-defendant of the prisoner; was convicted of one felony in the past three years or two felonies in the past six years or three felonies in the past ten years; or was convicted of a particularly sensitive crime such as trafficking drugs or contraband into a prison or jail or involvement in an escape attempt.<sup>83/</sup>

---

77. Farrakhan v. Gregoire (9th Cir. 2010) 338 F.3d 1009; Farrakhan v. Washington (9th Cir. 2003) 338 F.3d 1009, 1016, 1020; see also Hayden v. Pataki (2d Cir. 2006) 449 F.3d 305, 328; Johnson v. Florida (11th Cir. 2005) 405 F.3d 1214.

78. Code of Civil Procedure § 203(a)(5).

79. Rubio v. Superior Court (1979) 24 Cal.3d 93 [154 Cal.Rptr. 734].

80. Penal Code § 4571.

81. 15 CCR §§ 3172(d) and 3172.1(b)(4) and (5).

82. 15 CCR § 3172.1(b)(4).

83. 15 CCR § 3172.1(b)(3).

## 12. CAN A PAROLEE OBTAIN A BUSINESS LICENSE?

It depends on the type of license and conviction, as well as the behavior of the applicant since committing the crime.

In California, most occupations requiring licensing are regulated by the Department of Consumer Affairs, with the exception of: (1) applicants for membership in the State Bar as attorneys ; (2) persons seeking licenses for occupations subject to the Alcohol Beverage Control Act; (3) applicants for licenses to sell manufacture or mobile homes or commercial coaches; and (4) any persons holding a financial interest or the ability to exercise influence over the operation of a gaming club. Within the Department of Consumer Affairs are individual boards that develop licensing criteria for specific types of businesses.

The Department of Consumer Affairs may deny a license to an applicant on the basis of a criminal conviction "only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."<sup>84/</sup> The boards that govern the various professions are required to develop criteria for evaluating whether a crime is substantially related to the qualifications, functions or duties of the business or profession. As a general principle, there is a substantial relationship is when "the crime or act...evidences present or potential unfitness...to perform the functions authorized by...[the]..certificate or registration in a manner consistent with the public health, safety or welfare."<sup>85/</sup> Portions of the California Code of Regulations dealing with specific types of licenses sometimes list the types of crimes that are presumed to be substantially related to those particular businesses.

However, a person shall not be denied a license due to a felony conviction if he has obtained a Certificate of Rehabilitation under Penal Code § 4852.01 (see Section 13, below), or due to a misdemeanor conviction if he or she has met all of the criteria of rehabilitation developed by the relevant licensing board.<sup>86/</sup> Factors that will generally be considered include:

- C The nature and severity of the applicant's crimes;
- C Whether there are any other bad acts that could be grounds for denial of the license;
- C How much time that has elapsed since commission of the crime;
- C The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions; and

---

84. Business and Professions Code §§ 475(a)(2) and 480(a)(3).

85. Business and Professions Code § 481.

86. Business and Professional Code § 480(b), see also Penal Code § 4852.06.

C Any other evidence of rehabilitation submitted by the applicant.<sup>87/</sup>

As with the “substantial relationship” criteria, the various boards may have lists of more specific factors to be considered in regard to particular types of businesses.

Further information about license applications and criteria are available on the Department of Consumer Affairs website at [www.dca.ca.gov](http://www.dca.ca.gov). Information concerning licensing to practice law as an attorney can be found at the website of the State Bar of California at [www.calbar.ca.gov](http://www.calbar.ca.gov). Information on licenses involving alcoholic beverages can be found at the website of the Department of Alcoholic Beverage Control at [www.abc.ca.gov](http://www.abc.ca.gov).

### **13. HOW CAN A PAROLEE OBTAIN A CERTIFICATE OF REHABILITATION OR A PARDON?**

A person must wait for a certain period of time (usually seven years from last release from custody, five years of which the person must have resided in California) before he or she can file a petition for a Certificate of Rehabilitation.<sup>88/</sup> During the period of rehabilitation the person must live an honest and law abiding life.<sup>89/</sup> Some ex-felons must wait additional periods of time before applying, and some are simply not eligible for a certificate of rehabilitation.<sup>90/</sup>

The petition requesting a certificate of rehabilitation must be filed in the local superior court in the county where the petitioner resides, after which the court will hold a hearing. The petition form is available from the local courts’ clerk offices at no cost. Copies of the petition must be served upon the District Attorney of the county of residence, the District Attorney of every county in which the person was convicted of a felony, and the Governor's office, all at least 30 days before the hearing date.<sup>91/</sup> Indigent petitioners are entitled to court-appointed counsel at the hearing at which the court will decide whether to grant or deny the petition.<sup>92/</sup> If the court grants the petition, it will issue the Certificate of Rehabilitation and recommend that the Governor grant a full pardon to the petitioner.<sup>93/</sup>

Additional information on pardons and certificates of rehabilitation can be found on the BPH’s website at [www.cdcr.ca.gov/Divisions\\_Boards/BOPH/docs/apply\\_for\\_pardon.pdf](http://www.cdcr.ca.gov/Divisions_Boards/BOPH/docs/apply_for_pardon.pdf); [www.cdcr.ca.gov/Divisions\\_Boards/BOPH/pardons.html](http://www.cdcr.ca.gov/Divisions_Boards/BOPH/pardons.html); and

---

87. Business and Professions Code § 482.

88. Penal Code § 4852.03.

89. Penal Code § 4852.05.

90. Penal Code §§ 4852.01 and 4852.03. In People v. Ansell (2001) 25 Cal.4th 868, the California Supreme Court held that applying new limits on certificates of rehabilitation to offenders convicted prior to the date of the new limits does not violate ex post facto principles.

91. Penal Code § 4852.07.

92. Penal Code § 4852.08.

93. Penal Code § 4852.13.

## LENGTH OF PAROLE

### **14. HOW LONG IS A PERSON ON PAROLE?**

The length of the parole period is set by statute, and depends on the type and date of the criminal conviction for which the person is on parole. Because the laws have changed over the years, determining the proper parole period can be confusing and a parolee should verify that the parole term is based on the law in place on the date of the commitment offense. In most cases there is a base parole period that can be increased if the parolee commits parole violations.<sup>94/</sup>

Following is a summary of parole lengths (from shortest to longest) for various types of offenses. If a prisoner's commitment offenses fall into more than one category, the longest parole period applies. Please note that any time during which a parolee absconds and is not available for parole supervision "stops the clock" and does not count toward the parole period.<sup>95/</sup>

#### Three-year parole period with maximum period of four years:

- Persons serving determinate (set length) terms for crimes occurring on or after January 1, 1979, who do not fall into any of the other categories listed below.<sup>96/</sup>
- Persons sentenced to life with the possibility of parole for offenses committed before January 1, 1979.<sup>97/</sup>

#### Five-year parole period with maximum period of seven years:

- Persons convicted of any violent sex crime listed in Penal Code § 667.5 (c)(3), (4), (5), (6), (16) or (18) if the offense was committed on or after July 19, 2000. Also, persons convicted of a violent sex crime listed in Penal Code § 667.5 (c)(11) if the

---

94. Penal Code §§ 3000, 3000.1, 3001 and 3057 set forth the length of parole terms and have been amended multiple times. See also 15 CCR § 2515. Statutory changes that lengthen parole terms cannot be applied to parolees whose commitment offense took place prior to the change in the law. In re Thomson (1980) 104 Cal.App.3d 950 [164 Cal.Rptr. 99]; In re Bray (1979) 97 Cal.App.3d 506 [158 Cal.Rptr. 745].

95. Penal Code §§ 3000(b)(5) and 3064.

96. Penal Code § 3000(b)(1) and (5).

97. Penal Code § 3000(b)(2) and (5); 15 CCR § 2515(e); see also Penal Code § 1170.2(f); In re Wilson (1981) 30 Cal.3d 438, 440-441 [179 Cal.Rptr. 207].

offense was committed on or after September 24, 2002.<sup>98/</sup>

- C Life prisoners who committed their offenses on or after January 1, 1979, and who do not fall into some other category.<sup>99/</sup>

Ten-year parole period with a maximum of fifteen years:

- Persons who receive life sentences under Penal Code § 667.61 for “one-strike” or recidivist sex offenses or under Penal Code § 667.71.<sup>100/</sup>

NOTE: In the past decade, there have been many changes to § 3000(b)(3) and (5) regarding parole periods for various sex offenders serving life terms. The changes increasing parole terms cannot be applied to people whose offenses were committed before the date the new law took effect. On the other hand, there may be arguments that beneficial changes should be applied “retroactively” to people who had not yet paroled or finished serving their parole terms before the new laws took effect. The changes include the following:

- C Effective July 19, 2000, the parole period for Penal Code § 661.61 offenses was five years, with a maximum of seven years. However, the five year base term parole could be extended for another five years if the BPH thought the prisoner posed a danger, even if the parolee had not committed any parole violations. As of January 1, 2002, the law was amended so that either the original or extended parole period could be increased to a maximum of seven years.
- C Effective January 1, 2003, this same provision (five year parole period, plus possibility of five year extension, with maximum term of seven years for either) became applicable to Penal Code § 667.71 offenses.
- C Effective September 20, 2006, the parole period for prisoners sentenced to life-terms for sex crimes under Penal Code §§ 209(b), 269, 288.7, 667.51, 667.61 and 667.71 was set at 10 years, with a maximum period of 15 years.
- C Effective November 8, 2006, the 10-year parole term was eliminated for all crimes except sex offenses with life terms under Penal Code §§ 667.61 and 667.71.

---

98. Penal Code § 3000(b)(1) and (5). Note that, effective September 20, 2006, the legislature expanded the 10-year parole term set forth in Penal Code § 3000(b)(3) to include people convicted of violent sex crimes listed in Penal Code § 667.5 (c)(3), (4), (5), (6), (11), (16) or (18). However, effective November 8, 2006, a proposition returned this group of people to the five-year parole category. Because the proposition lowered the parole term, there may be a good argument that the Board should apply the five-year term even to prisoners who committed their crimes between September 20 and November 7, 2006.

99. Penal Code § 3000(b)(2) and (5); 15 CCR § 2515(d).

100. Penal Code § 3000(b)(3) and (5).

Life-long parole period:

- Persons who received life sentences for first or second degree murder for offenses committed on or after January 1, 1983.<sup>101/</sup>

Although the statutes set the basic parole term lengths, the time that a person is actually on parole will be determined by a number of factors. Parolees may serve less than the standard parole period because the law requires the BPH to review each parolee's case periodically and grant an early discharge from parole unless there is good cause to keep the parolee under supervision. On the other hand, parole terms can be extended to the maximum parole period for certain types of misbehavior. Early discharge from parole, extensions of the parole term, and calculation of the maximum parole period are discussed in the following sections.

**15. CAN A PAROLEE GET OFF PAROLE EARLY?**

Sometimes.

Under Penal Code § 3001, a parolee should be discharged early from parole if he or she successfully completes a certain amount of parole time and the BPH does not find good cause to retain the person on parole.<sup>102/</sup> The date on which the BPH must make this "discharge review" is called the "presumptive discharge date." The BPH must conduct the discharge review within 30 days after the parolee serves the following period of time on continuous parole (meaning there have been no revocation terms, suspensions, or "dead time" for absconding):

- One year, for any person with a determinate sentence who was convicted of non-violent felonies only;
- Two years, for any person with a determinate sentences who was convicted of a violent felony as defined in Penal Code §667.5(c) and has a three-year parole term;
- Three years, for any person who has a five-year parole term following a determinate sentence for a violent sex crime listed in Penal Code § 667.5(c)(3), (4), (5), (6), (11), (16) or (18). The three-year presumptive discharge date also applies to any person who has a five-year parole term following an indeterminate life sentence for a crime other than a murder. (The three-year presumptive discharge date also applies to any case with a parole term of five-years plus a five-year possible extension under laws that were in effect between 2000 and 2006.)
- Five years, for those sentenced to indeterminate life terms for second degree murder;
- Six years, for persons with 10-year parole terms; and
- Seven years, for those sentenced to indeterminate life terms for first degree

---

101. Penal Code § 3000.1; 15 CCR § 2515(f).

102. Penal Code § 3001. Another former provision for early "earned discharge" for some parolees (former 15 CCR § 3075.4) has been repealed.

murder.<sup>103/</sup>

Parolees who were sentenced to prison for offenses committed between on July 1, 1977 and December 31, 1978 are not entitled to early discharge review hearings.<sup>104/</sup>

The parolee does not have a right to a personal appearance at the review.<sup>105/</sup> However, the BPH is required to give a copy of its decision to the parolee.<sup>106/</sup> Also, if the BPH decides to continue parole, the parolee will be reviewed for possible discharge each year until the maximum parole date is reached.<sup>107/</sup>

The BPH regulations broadly define the circumstances in which there is good cause to retain someone on parole, taking into account factors such as the original crime, in-prison behavior, efforts to pay restitution obligations and parole adjustment.<sup>108/</sup> Prior to 2009, CDCR and the BPH retained almost all parolees past their presumptive discharge dates. This has changed recently; however, early discharge from parole is still the exception rather than the rule.

The law states unless the BPH acts to retain the parolee, he or she “shall” be discharged from parole.<sup>109/</sup> There are conflicting cases on what this means. Some court decisions state that parole terminates automatically if CDCR and BPH fail to take action to retain the prisoner on parole or fail to give notice of the retention.<sup>110/</sup> However, other cases hold that mere failure to conduct annual reviews or to give notice of retention does not require automatic discharge.<sup>111/</sup>

## **16. HOW IS THE PAROLE DISCHARGE DATE CALCULATED?**

A parolee who is retained past the “presumptive discharge date” can calculate when he or she must be discharged from parole. There are two important dates to calculate: the controlling

---

103. Penal Code §§ 3000.1(b) and 3001; 15 CCR § 2535; see proposed CDCR 15 CCR §§ 3720-3722 (pending as of Feb. 8, 2010) regarding factors to be considered in discharge reviews.

104. 15 CCR § 2535(b)(5).

105. 15 CCR § 2535(c).

106. Penal Code §§ 3001(a); 15 CCR § 2535(c); see also proposed CDCR 15 CCR §§ 3723-3722 (pending as of Feb. 8, 2010).

107. Penal Code § 3001(c); 15 CCR 2535(c).

108. 15 CCR § 2535(d), DOM §§ 81080.1-81080.1.1.

109. Penal Code § 3001.

110. In re Nesper (1990) 217 Cal.App.3d 872 [266 Cal.Rptr. 113]; In re Carr (1995) 38 Cal.App.4th 209 [45 Cal.Rptr.2d 34].

111. People v. Jack (1997) 40 Cal.App.4th 1129 [70 Cal.Rptr.2d 676]; In re Carr, *supra*, 38 Cal.App.4th at p. 209; In re Ruzicka (1991) 230 Cal.App.3d 595 [281 Cal.Rptr.435]; In re Roa (1991) 1 Cal.App.4th 724 [3 Cal.Rptr.2d 1].

discharge date (CDD) and the maximum discharge date (MDD). The CDD is the date that a parolee is currently set to discharge from parole if nothing changes. The MDD is the maximum parole term as set by statute (see Section 14 above), after which the parolee must be discharged. (Of course, a parolee who is serving a life-long parole term will not have a CDD or a MDD).

Two events may change the CDD and MDD:

- C time during which a parolee absconds or is unavailable for parole supervision does not count toward either the CDD or MDD, and extends both the CDD and MDD by the amount of time the parolee has been unavailable. There is no limit on how long the CDD and MDD can be extended due to absconding.<sup>112/</sup>
- C any time served in custody for parole revocation terms will extend the CDD. However, revocation time will extend the CDD only until the MDD is reached.<sup>113/</sup>

The five pieces of information a parolee needs to figure out his or her CDD and MDD are: (1) the initial parole date, (2) the base statutory parole term that applies to his or her sentence; (3) the maximum statutory parole term that applies to his or her sentence; (4) how much time he or she has been unavailable for supervision, if any; and (4) the amount of time he or she has served in custody on any parole violations. Since calculating a parole discharge date can be complicated, a work sheet with a sample calculation is included here. This example assumes that the parolee has not absconded at all during his or her parole term and is subject to a three year base parole period with a maximum parole term of four years:

1. Start with the date of first parole from the original prison term. For our worksheet example, we will assume the prisoner first paroled on January 1, 2007.
2. Add to that date the amount of time the parolee must continuously serve on parole before an early discharge review. Our example parole has a presumptive early discharge date of one year plus 30 days. The parolee in our example would be eligible for early discharge on February 1, 2008.
3. If the parolee is not discharged early, he or she will be released on the CDD if there are no revocations or abscondings. In this example, three years is the base parole period, so the CDD is January 1, 2010.
4. The MDD can also be calculated by adding the statutory maximum parole term to the release date. In this case, the maximum statutory parole term is four years and the parolee's MDD is January 1, 2011.
5. If the parolee absconds for any period of time, the "clock" stops, meaning that the

---

112. Penal Code § 3000(b)(5). Also, the parole period is tolled (meaning the clock does not run) while a former-prisoner is in a state hospital on a civil commitment as a Sexually Violent Predator (SVP). Penal Code § 3000(a)(4).

113. Penal Code §§ 3000(b)(5) and 3064.

CDD and MDD are both extended by however long the parolee has absconded.<sup>114/</sup> If the parolee in our example absconded for three months, the CDD is extended to April 1, 2010 and the MDD is extended to April 1, 2011.

6. Time spent in custody due to a parole revocation is added to the CDD, but only until the MDD is reached.<sup>115/</sup> In our example, if the parolee then serves an eight-month revocation term, eight months will be added to the CDD. The parolee's controlling discharge date is now December 1, 2010.

7. If the parolee gets revoked again and is returned to custody for another six months, this time will be added to the discharge date. However, revocation time cannot push the CDD past the MDD. Since our example prisoner has an MDD of April 1, 2011, his CDD and MDD become the same. Thus, the parolee will "max out" and be discharged on April 1, 2011.<sup>116/</sup>

### **Work Sheet**

1. Date originally paroled:	1/1/07
2. Add 13 months to get Presumptive Discharge Date:	2/1/08
3. Add three years to get Controlling Discharge Date:	1/1/10
4. Add four years to get Maximum Discharge Date:	1/1/11
5. The parolee absconds for three months; the CDD and MDD are both extended by three months and become:	4/1/10 (CDD) 4/1/11 (MDD)
6. Add eight months for first revocation term and the CDD is now:	12/1/10
7. Add the second six-month revocation term to the CDD, but only until the MDD is reached. The MDD and the CDD are now the same.	4/1/11

In rare cases, a prisoner who is being released to parole will have served too long in prison because of reversal of a conviction or a delayed grant of time credits. In such cases, the parolee is

---

114. Penal Code §3064. Because the clock stops when a parolee has absconded, parolees and their attorneys should try to get a parole violation charge of "absconding" amended to "failure to follow instructions" if the parolee has been unavailable for supervision for only a short time.

115. Penal Code §§ 3000(b)(5) and 3064.

116. Penal Code § 3000(b)(5).

entitled to have the extra time spent in prison applied to the parole period.<sup>117/</sup> However, the parolee will not be completely discharged from parole until the amount of credits toward parole exceed the CDD. The same rule applies when people are sentenced to prison and have pre-sentence credits that are greater than the prison term – the pre-sentence credit will be applied toward the parole period but some period of parole will still be served unless the credits are enough to cover the entire parole period up to the CDD.<sup>118/</sup>

#### **17. WHAT HAPPENS IF A DEFENDANT WAS NOT INFORMED OF THE PAROLE PERIOD WHEN ACCEPTING A PLEA BARGAIN?**

A court is supposed to accurately advise a defendant of all direct consequences of a guilty plea, including the mandatory statutory parole period.<sup>119/</sup> A defendant who is not informed of the parole period at the time he or she enters a guilty plea may be able to argue that the plea was not knowingly and intelligently made. In such a case, the prisoner must prove that:

- C The trial court mis-advised or failed to advise the defendant of the mandatory parole requirement at the time the court accepted the plea; and
- C The defendant did not at the time of the plea otherwise know of the parole term requirement and would not have pled guilty had the requirement been known.<sup>120/</sup>

In addition, if the parole term was explained at sentencing, a prisoner who challenges the plea by filing a petition for writ of habeas corpus must explain why no objection was made at that time and why the issue was not raised on direct appeal.<sup>121/</sup>

The usual remedy for failure to advise the defendant of the correct parole period will be allowing the defendant to withdraw the plea, meaning that criminal proceedings, including any charges dismissed as a result of the plea bargain, could be reinstated.<sup>122/</sup> In a very rare case, the court might order specific performance of the plea agreement by a parole-free release; this is likely to happen only where the prisoner already has served more time than was bargained for or

---

117. In re Lara (1988) 206 Cal.App.3d 1297, 1301 [254 Cal.Rptr. 360]; In re Kemper (1980) 112 Cal.App.3d 434, 438 [169 Cal.Rptr. 513]; In re Ballard (1981) 115 Cal.App.3d 647 [171 Cal.Rptr. 459].

118. People v. London (1988) 206 Cal.App.3d 896, 910-911 [254 Cal.Rptr. 59]; In re Jantz (1984) 162 Cal.App.3d 412, 415-418; [208 Cal.Rptr. 610]; In re Welch (1990) 190 Cal.App.3d 407 [235 Cal.Rptr 470].

119. In re Carabes (1983) 144 Cal.App.3d 927, 932 [193 Cal.Rptrs. 65].

120. In re Moser (1993) 6 Cal.4th 342, 351-352 [24 Cal.Rptr. 723, 728-729]; People v. Avila (1994) 24 Cal.App.4th 1455 [30 Cal.Rptr.2d 138]; People v. McMillion (1992) 2 Cal.App.4th 1363, 1366 [3 Cal.Rptr.2d 821].

121. In re Clark (1993) 5 Cal.4th 750, 797 [21 Cal.Rptr.2d 509, 540]; In re Walker (1974) 10 Cal.3d 764, 773 [112 Cal.Rptr. 177].

122. See People v. Victorian (1992) 2 Cal.App.4th 954, 959 [4 Cal.Rptr.2d 460].

has already served most of the parole period.<sup>123/</sup>

A court is also supposed to inform a defendant of the parole period at the time of sentencing (regardless of whether the defendant was convicted by plea or by trial).<sup>124/</sup> However, failure to inform a defendant of the parole period at sentencing does not entitle a prisoner to a parole-free release or any other remedy. Parole is a mandatory part of a prison sentence per Penal Code § 3000 and a court has no authority to waive the parole requirement.<sup>125/</sup>

## **PAROLE REVOCATION**

### **18. ARE THERE SOME PAROLEES WHO CANNOT HAVE PAROLE REVOKED?**

Yes.

Effective January 25, 2010, Penal Code § 3000.03 created a new category of “non-revocable” parole. The statute provides that if a person is on non-revocable (or “summary”) parole status, CDCR shall not place a parole hold, report any parole violation to the BPH, or return the parolee to prison.

Parolees who are on non-revocable parole can still be searched by parole agents and local law enforcement, but they do not have to report to a parole agent and cannot be charged with a parole violation. Such parolees may be returned to custody only if a court orders that they be held for new criminal or civil proceedings. Parolees who are placed on non-revocable parole will be required to sign modified parole conditions that are far less strict than the conditions imposed on parolees who are on regular supervised parole. However, parolees who are on non-revocable parole status still must comply with any statutorily-mandated residency restrictions or other requirements.<sup>126/</sup>

To be placed on non-revocable parole, a parolee must meet all of the following criteria:<sup>127/</sup>

- (a) The parolee is not required to register as a sex offender under Penal Code § 290;
- (b) The parolee was not committed to prison for a serious felony (defined in Penal Code §§ 1192.7 and 1192.8), or a violent felony a(defined in Penal Code § 667.5), and does not have any prior conviction for a serious or violent felony;
- (c) The parolee was not committed to prison for a sexually violent offense as defined in Welfare and Institutions Code § 6600(b) and does not have a prior conviction

---

123. See Carter v. McCarthy (9th Cir. 1986) 806 F.2d 1373, 1377.

124. Penal Code § 1170(c).

125. See In re Moser (1993) 6 Cal.4th 342, 357 [24 Cal.Rptr. 723, 728-729].

126. Proposed regulation amending 15 CCR § 3000 (pending as of Feb. 8, 2010.).

127. Penal Code § 3000.03.

for a sexually violent offense;

- (d) The parolee was not found guilty of a serious prison disciplinary offense during his or her current term of imprisonment. For purposes of this section, CDCR is proposing to define “a serious disciplinary offense” as any Division A, B or C in-prison offense except for possession of inmate-manufactured alcohol.<sup>128/</sup>
- (e) The parolee is not a validated prison gang member or associate, as defined by CDCR (this provision does not affect people who are only members or associates of street gangs or people who are prison gang drop-outs);
- (f) The parolee did not refuse to sign any written parole conditions; and
- (g) The parolee had been evaluated by CDCR using a validated risk-assessment tool and has not been determined to pose a high risk of re-offending.

According to CDCR training materials dating from January 2010, serious, violent, or sexually violent convictions include any out-of-state conviction for crimes which would be classified under California law as a serious, violent, or sexually violent felony. It also includes any counts that were stayed at sentencing or are still pending. However, juvenile adjudications and parole violations do not count as “convictions” for this purpose.

CDCR will be using the California Static Risk Assessment (CSRA) to determine parolees’ risk of re-offending. The CSRA considers age, gender, the number and type of previous convictions and the number of previous parole violations to determine the risk of reoffense.<sup>129/</sup> .

---

128. Proposed new regulations 15 CCR § 3505 (pending as of Feb/ 8. 2010); see 15 CCR § 3315 for listing of Division A, B or C offenses.

129. The risk factors can be found at [www.cdcr.ca.gov/Regulations/Adult\\_Operations/docs/NCDR/2010NCR/10-02/CSRA%2012-09.pdf](http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2010NCR/10-02/CSRA%2012-09.pdf). See also: 15 CCR § 3761.8.

As of January 2010, the CRCR started to screen people who will be paroled in the next few months, or who are already on parole, to determine who is eligible for non-revocable parole.<sup>130/</sup>

A parolee who wants to challenge a determination that he or she is not eligible for non-revocable parole should file a CDCR Form 602 administrative appeal, starting with either the parole agent or correctional counselor and proceeding through the Director's Level of review. (See Section 2.D, above, for further discussion on how to challenge CDCR decisions).

## **19. WHAT RIGHTS DOES A PAROLEE HAVE DURING PAROLE REVOCATION PROCEEDINGS?**

### **A. Overview of the Parole Revocation Process and Constitutional Rights**

The BPH has the power to revoke parole and to order a parolee returned to prison (except for parolees who are on non-revocable parole as described in Section 18, above).<sup>131/</sup> Under state law, parole cannot be suspended or revoked unless there is good cause to believe that the person had violated the conditions of his or her parole.<sup>132/</sup> A parole violation charge may be for conduct which is being prosecuted as a new criminal offense, or it may be for mere non-compliance with parole conditions.

Generally, the maximum time in custody that the BPH may impose for a parole violation is one year, even if there are multiple grounds for the revocation.<sup>133/</sup> The maximum revocation term may be extended beyond 12 months if the parolee commits misconduct in prison while

---

130. CDCR expects to complete screenings of all prisoners with release dates between April 1, 2010 and July 31, 2010 by March 1, 2010. Screenings of all parolees on active parole should be completed by the end of June 2010. Parolees with pending violation charges should be screened during the violation proceedings; those whose parole was revoked prior to January 25, 2010 should be screened as part of the group of prisoners in custody.

For parolees arrested on or after January 25, 2010, the parole agent should assess whether the parolee is potentially eligible for non-revocable parole. If the parolee appears eligible, screening should be expedited. Parolees who are found to be eligible for non-revocable parole will be converted to non-revocable parole status. Parolees who are not eligible for non-revocable parole will be referred for parole revocation proceedings.

This information is based on a January 2010 BPH training memorandum. Further information can be found at [www.cdcr.ca.gov/Parole/Non\\_Revocable\\_Parole/Non-Revocable\\_Parole\\_FAQs.html](http://www.cdcr.ca.gov/Parole/Non_Revocable_Parole/Non-Revocable_Parole_FAQs.html).

131. Penal Code §§ 3056, 3060. The Governor also has this power (Penal Code § 3062), but the Governor generally leaves parole revocation matters up to the BPH.

132. Penal Code § 3063. The Parolee's parole agent is responsible for placing a parole hold and drafting the violation report.

133. Penal Code § 3057(a); 15 CCR §§ 2635.1. For parolees whose offenses were committed on or before December 31, 1978, the maximum revocation term is six months. 15 CCR § 2635.1(b).

serving the revocation term.<sup>134/</sup> But regardless of any revocation term that is imposed, a parolee may not be kept in custody beyond the maximum parole discharge date (see Section 16 above).<sup>135/</sup>

In 1972, the United States Supreme Court decided a case called Morrissey v. Brewer, which recognized that parole is a form of conditional liberty and established minimal due process requirements for parole revocation proceedings. Morrissey held that under the Fourteenth Amendment to the U.S. Constitution parolees are entitled to the following procedural protections:

- Written notice of alleged violations and the charges' possible consequences to allow a parolee time to prepare a defense and obtain mitigating evidence.
- Disclosure of evidence against the parolee;
- The right to present witnesses and documentary evidence;
- The right to confront and cross-examine adverse witnesses;
- A neutral and detached hearing body; and
- A written statement of the decision, the evidence relied on and the reasons for revoking parole.<sup>136/</sup>

Morrissey also held that there must be a pre-revocation hearing “in the nature of a preliminary hearing,” held as promptly as convenient, while information is fresh and sources are available. If probable cause to remove the parolee from the street is found at a pre-revocation hearing, a more formal final revocation hearing must be held within a reasonable time.<sup>137/</sup>

Despite Morrissey, for many years California parole authorities conducted only a single “unitary” hearing, often many weeks or months after the parole hold was placed. Unfortunately, California courts were reluctant to order any remedy for such delays unless a parolee could show

---

134. Penal Code § 3057(c).

135. Penal Code § 3000(b)(5).

136. Morrissey v. Brewer (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]; other cases discussing due process rights in parole revocation proceedings include Vanes v. United States Parole Commission (9th Cir. 1984) 741 F.2d 1197 (due process violated by lack of notice of basis for parole violation charge); Rizzo v. Armstrong (9th Cir. 1990) 921 F.2d 855, 858 (failure to give notice of consequences if parole revoked at hearing); In re Law (1973) 10 Cal.3d 21 [109 Cal.Rptr. 573] (finding no due process right to bail while parole violation proceedings are pending and finding that criminal preliminary hearing or trial may serve as probable cause hearing for parole violation if the parolee is notified of the nature and effect of the combined hearing); In re Love (1974) 11 Cal.3d 179 [113 Cal.Rptr. 89] (finding no constitutional requirement that every parolee be represented by counsel at a parole violation hearing, but finding due process violation in failure to disclose the contents of the so-called “confidential” report where disclosure would not endanger any informant); In re Valrie (1974) 12 Cal.3d 139 [115 Cal.Rptr. 340] (revocation hearing requirements apply even when the alleged parole violation is also charged as a new criminal offense); In re Dunham (1976) 16 Cal.3d 63 [127 Cal.Rptr.343] (parole may be revoked based on conduct even though the parolee was acquitted of criminal charges based on that conduct).

137. Morrissey v. Brewer, *supra*, 408 U.S. at p. 485.

that the delay was unreasonable and that he or she was prejudiced by the delay.<sup>138/</sup>

In 2002, a federal court held that the California system violated parolees' procedural due process rights.<sup>139/</sup> The court ordered the BPH and CDCR to develop a new parole revocation process – and new time limits – to meet constitutional standards. In 2004, the court approved a new process, which is described in the Valdivia v. Schwarzenegger Permanent Injunction. The Valdivia Injunction also requires BPH to use more alternative sanctions to avoid returning parolees to custody for minor parole violations; such alternatives may include self-help outpatients/aftercare programs or electronic monitoring.<sup>140/</sup>

#### **B. Rights under the Valdivia Injunction<sup>141/</sup>**

A parole agent who believes a parolee has violated parole, can place a “hold,” arrest the parolee and place the parolee in custody.<sup>142/</sup> The Valdivia Injunction requires the parole agent and parole unit supervisor to confer on whether to continue or drop the hold within 48 hours (or no later than the next business day if the hold is placed on a weekend or holiday).<sup>143/</sup> Once the decision is made to go forward with the parole violation proceeding, the parolee has certain rights

---

138. See, e.g., In re Valrie, *supra*, 12 Cal.3d at p. 144 [115 Cal.Rptr. 340]; In re La Croix (1974) 12 Cal.3d 146, 156 [115 Cal.Rptr. 344]; In re Winn (1975) 13 Cal.3d 694 [119 Cal.Rptr. 496]; In re Shapiro (1975) 14 Cal.3d 711 [122 Cal.Rptr. 768]; see also In re O'Connor (1974) 39 Cal.App.3d 972 [114 Cal.Rptr. 883] (upholding as “reasonable” delays of 41 days before holding a pre-revocation hearing and 117 days before the revocation hearing); In re Moore (1975) 45 Cal.App.3d 285, 293 (delay of 55 days is reasonable); Meader v. Knowles (9th Cir. 1992) 990 F.2d 503 (15-month delay was not prejudicial when parolee was allowed to remain at liberty); but see In re Marquez (2007) 153 Cal.App.4th 1 [62 Cal.Rptr.3d 429] (ordering dismissal of charges and release where parolee prejudiced by delays and other due process violations).

139. Valdivia v. Davis (E.D. Cal. 2002) 206 F.Supp.2d 1068.

140. Valdivia v. Schwarzenegger (E.D. Cal., No. S94-0671LKK/GGH) Stipulated Order of Permanent Injunctive Relief, filed March 9, 2004 (“Valdivia Injunction”). Note that many of the provisions in 15 CCR §§ 2600-2744, which used to describe the parole revocation process, have been replaced by new procedures under the Valdivia Injunction.

141. Proposition 9 (also known as “Marsy’s Law”), which was passed by the voters on November 4, 2008, provides for reduced due process protections in parole revocation proceedings (see Penal Code § 3044). On March 26, 2009, a federal district court issued an order upholding the Valdivia Injunction and stopping the state from implementing the conflicting portions of Proposition 9. CDCR has appealed the district court’s order; as of February 2010 the matter is still pending before the Ninth Circuit Court of Appeals and the Valdivia injunction remains fully in effect.

142. 15 CCR § 3000.

143. Valdivia Injunction, ¶ IV.11(b)(ii).

and the proceedings must be conducted within certain time frames.<sup>144/</sup> Parolees are often held in custody while they are awaiting a hearing on parole violation charges. However, in cases of less serious conduct, they may be released and scheduled for a “not in Custody” (NIC) hearing.

The California Supreme Court has held that parolees may waive their rights, either expressly or by implication as a result of failure to assert the right.<sup>145/</sup> Therefore, it is crucial that a parolee takes advantage of his or her rights and complains in writing if a right is violated.

- 1) The BPH and CDCR must give a parolee notice of the alleged parole violations and notice of the parolee’s rights within 3 business days of the placement of a parole hold.<sup>146/</sup>

All parolees are entitled to “a short factual summary” of the charges against them within three business days of the parole hold. Normally, a notice agent from the parole division will come to the prison or jail and provide the parolee with a brief violation report prepared by the parolee’s assigned agent. During that meeting, the notice agent will also provide the parolee with a list of his or her rights in the parole proceedings and will ask if the parolee needs any accommodation for a disability during the proceedings.<sup>147/</sup> Parolees should ask questions during this meeting if they do not understand the charges or their rights.

Parole agents will often fail to include all of the charges they intend to bring against the parolee in the initial notice. This often occurs when the charges are based on an arrest by police and the agent has not received the police report by the time the initial violation report is due. The parolee then does not find out about the additional charges until the day before the probable cause hearing during the meeting with his or her attorney (who has been given the full violation report). In such cases, parolees can object to the delayed notice of the additional charges, but the remedy is to re-start the notice period and have a separate hearing on the delayed charges. Having a separate violation proceeding for the delayed charges could result in consecutive instead of concurrent parole revocation terms on the delayed charges, resulting in the parolee being returned to prison for a longer total term. On the other hand, if it is clear that the parole agent knew of the additional charges before he or she wrote the initial report, the parolee should object to the delay and ask that the additional charges be dismissed.

- 2) The BPH and CDCR must appoint an attorney to represent a parolee during parole violation proceedings.<sup>148/</sup>

All parolees should be provided with state-appointed attorneys at no cost. A parolee

---

144. Note that all time frames are calculated by counting from the day after the event that starts the time running. For example, if a parole hold was placed on Monday, August 1, the parolee should start counting with August 2 as “Day 1” to get to the deadline for notice of a the alleged parole violations.

145. In re La Croix, *supra*, 12 Cal.3d at p. 153.

146. Valdivia Injunction, ¶ 11(b)(iii).

147. Id., ¶¶ 13, 18.

148. Id., ¶¶ 11(b)(i), 13, 14.

should have a chance to meet with the attorney by the 8th business day after notice of the charges and at least one day prior to the probable cause hearing. The BPH should give the attorney all non-confidential information that the BPH plans to use against the parolee and the attorney should provide the parolee with a copy of that information.<sup>149/</sup> Attorneys should also have a return-to-custody assessment or “screening offer” from the BPH at the meeting, which is similar to a plea bargain offer in a criminal case. Where necessary, attorneys can also review the non-confidential information in parolees’ field files.

During the meeting with the attorney, the parolee should provide the attorney with any additional information about the charges and his or her overall adjustment to parole. The parolee should also give the attorney contact information for any friends or family who might be able to give evidence about the charges or about the parolee’s accomplishments on parole (such as documentation of employment or school attendance). The parolee and the attorney should also discuss witnesses who might testify if the case goes to a full revocation hearing, because the attorney will have to submit a witness list to the BPH at the end of the probable cause hearing.

3) The BPH and CDCR must provide a “probable cause hearing” within 13 business days of the parole hold.<sup>150/</sup>

The probable cause hearing, which must occur within 13 business days of the parole hold, will be conducted by a BPH Deputy Commissioner (a “DC”). At the hearing the DC must determine whether there is probable cause to believe the charges are true and whether the parolee should be retained in custody. Probable cause is a low standard and is interpreted as whether a reasonable person would suspect that the charges were true based on the parole violation report. Normally, witnesses are not permitted at probable cause hearings.

A parolee can request an expedited probable cause hearing, to be held within 6 to 8 business days after the parole hold, or at the earliest time thereafter if the parolee needs more time to gather evidence. A parolee who has a complete defense to the charged conduct (such as clear evidence that he or she was not in the place where the alleged misconduct took place) should ask the attorney to contact the Decentralized Revocation Unit staff and request an expedited probable cause hearing. The attorney will have to provide an “offer of proof” which is a statement of the facts supporting the parolee’s defense in order to have an expedited probable cause hearing scheduled. Unlike standard probable cause hearings, witnesses are permitted at expedited probable cause hearings.<sup>151/</sup>

The parolee has the right to speak and present documentary evidence at a probable cause hearing.<sup>152/</sup> In addition to offering evidence in response to the parole violation charges, a parolee and his or her attorney should try to show that the parolee is not a danger to public safety and should be released, placed in a program, or returned to custody for only a short period of time.

---

149. Ibid.

150. Valdivia Injunction, ¶ 11(d).

151. Id., Exhibit A, p. 4.

152. Valdivia Injunction, ¶ 22.

DCs almost always find that there is probable cause on at least one parole violation charge. If the DC finds probable cause, he or she will then make an offer of a disposition to the parolee, similar to a plea bargain offer in a criminal case. Offers can range from immediate release based on credit for time already served to a 12-month revocation term, depending on the seriousness of the violation and the parolee's history. The offer cannot be higher than the return to custody assessment that was provided prior to the probable cause hearing; usually, the offer will be lower. If the parolee has a history of drug use and no convictions for violent offenses, no gang affiliations and no sex offender registration requirement, the DC may offer placement in a drug treatment program as a disposition.

If the parolee accepts the offer, the case is closed and the parolee must waive the right to have any further hearing on the parole violation charges.

If the parolee rejects the offer, the case will proceed to a full revocation hearing where the parolee can call witnesses, present evidence and cross examine the state's witnesses.

As a third possibility, the parolee may sign an "optional waiver." When a parolee signs an optional waiver, he or she gives up the right to have a revocation hearing while any related criminal case is in process, but keeps the option of requesting a parole violation hearing in the future. While the criminal charges are pending, the time in custody is credited toward any parole term he or she ultimately receives. When the criminal case is resolved, the parolee can then submit a request for a hearing. Such a request must be filed no later than 15 days after sentencing or other final disposition of the criminal case in the trial court and no later than 35 days before the expiration of the revocation period offered by the BPH. The BPH will then re-start the parole violation proceedings with another probable cause hearing. At the hearing, the DC may or may not uphold the probable cause finding. If the probable cause finding is upheld, the DC cannot order the parolee returned to custody for more time than previously offered.<sup>153/</sup>

If a parolee has been convicted of criminal charges, the DC will automatically find probable cause on any parole violation charge based on the same conduct. But even if the criminal charges are dismissed or the defendant is acquitted, the DC may still find good cause on the parole violation charges. This is because a lower standard of proof applies at parole violation hearings (proof by a "preponderance of the evidence" rather than the criminal case standard of "proof beyond a reasonable doubt").

- 4) If the parolee rejects the offered disposition, the BPH and CDCR must hold a full revocation hearing on or before the 35th calendar day after placement of the parole hold.<sup>154/</sup>

The 35-day timeline runs from the day after a parole hold is placed. (That means, the day the parole hold is placed is Day 0 and the next day is Day 1.) Under BPH policies, the remedy for

---

153. 15 CCR § 2641(b).

154. Valdivia Injunction, ¶ 11(b)(iv).

failure to hold the hearing within the 35-day time frame is either dismissal of the charges or release from custody and scheduling of a not-in custody (NIC) hearing, unless there is good cause for the delay. The BPH's definition of good cause is expansive and the BPH is likely to rely on any circumstances that are arguably beyond its control (such as the failure of county jail staff to transport the parolee to a hearing) to justify violation of the 35-day deadline.

The BPH has also carved out an exception to the 35-day deadline for cases it deems "priority." The BPH will designate a case as a priority case if the parolee has a past conviction or current violation charge for a serious or violent felony offense listed in Penal Code § 1192.7(c) or § 667.5 or the parolee is required to register as a sex offender under Penal Code § 290.<sup>155/</sup> In theory, priority cases will be processed in an expedited manner to avoid release of potentially dangerous parolees. In practice, the BPH typically refuses to provide any remedy for missed time frame violations for these parolees.

At the revocation hearing (often called a "Morrissey hearing"), the state must prove the parole violation charges by a preponderance of the evidence. That means the state must prove that it is more likely than not that the charges are true. The parole agent is responsible for presenting the state's case at the hearing.

If the parolee is released from custody before having a hearing, there is no legal ban against the BPH again charging the parolee with violations based on the same conduct that originally caused the placement of the parole hold. However, if that happens, the parolee may argue that the delay between the alleged misconduct and hearing has deprived him of a fair opportunity to defend against the charges, which will result in prejudice to (see § 10.31) and violation of the federal constitutional Fourteenth Amendment guarantee of due process.<sup>156/</sup>

The hearing is divided into two parts: (1) the evidentiary phase where the DC determines whether there the preponderance of the evidence supports the charges, and (2) a dispositional phase where the DC determines the appropriate punishment for the charges that have been found to be true. Thus, the parolee and attorney should be prepared to argue both that the evidence does not support the charges and that the parolee should not be returned to custody.

A parolee is entitled to have the case heard by an impartial panel or hearing officer. A parolee may request disqualification of a DC. In addition, a DC shall disqualify himself if: (1) there is a close relationship between the DC and the parolee or their families, (2) the DC was involved in a past incident with the parolee which may cause prejudice, or (3) the DC is actually prejudiced against or biased in favor of the parolee. Disqualification shall not occur solely because the DC knows the parolee or has made a past decision affecting the parolee. The decision on a disqualification request must be documented.<sup>157/</sup>

---

155. BPH Memorandum Processing of Revocation Cases Related to Penal Code §§ 1192.7(c), 667.5 and 290 (BPT, May 17, 2005).

156. In re Valrie (1974) 12 Cal.3d 139 [115 Cal.Rptr. 340].

157. 15 CCR § 2250.

At the conclusion of the hearing, the parolee has the right to a written statement by the DC as to the evidence relied on and the reasons for revoking parole; that information will be documented on the written hearing findings.<sup>158/</sup> A parolee also has the right to receive a copy of the recording of the revocation hearing.<sup>159/</sup> Copies of hearing tapes may be requested from: Decision Processing Unit, Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812-4036.

5) The BPH and CDCR must allow the parolee to present evidence and defend against the charges at the hearing.<sup>160/</sup>

A parolee has the right to present evidence in his or her defense, including relevant witness testimony. A parolee's attorney can subpoena and present witnesses and documentary evidence to the same extent as the state.<sup>161/</sup>

A parolee may request both evidentiary witnesses or dispositional witnesses. "Evidentiary witnesses" are people who perceived, reported on or investigated the event which is the basis for the parole violation proceeding. "Dispositional witnesses" are people who can provide information on the parolee's overall adjustment to life outside prison or other factors affecting the level of punishment that should be imposed. Character witness testimony, in which a witness describes the general good character of the parolee, should be submitted in writing.<sup>162/</sup> Any reasonable request for witnesses should be granted.

Witnesses may not be required to testify if they are deemed fearful or confidential. Fearful witnesses are witnesses whose identity is known to the parolee but who (1) have indicated that they are at risk of harm if they testify in the presence of the parolee, or (2) have requested that their contact information not be provided to the parolee. A confidential witness is one whose identity is not known to the parolee and who would be at risk of harm if his or her identity were disclosed.<sup>163/</sup> Parolees and attorneys should always challenge the BPH's designation of a witness as fearful or confidential.

---

158. Morrissey v. Brewer (1972) 408 U.S. 471 [92 S.Ct. 2593; 33 L.Ed.2d 484]; People v. Vickers (1972) 8 Cal.3d 451, 458 [105 Cal.Rptr.305]; Penal Code § 3063; 15 CCR §§ 2254-2255.

159. 15 CCR § 2254; Valdivia Injunction, ¶ 20.

160. Valdivia Injunction, ¶¶ 21, 22, 24.

161. Morrissey v. Brewer, *supra*, 408 U.S. at p.489; In re Carroll (1978) 80 Cal.App.3d 22, 34 [145 Cal.Rptr. 334, 341]. Valdivia Injunction, ¶ 21; see also 15 CCR §§ 2675-2677.

162. 15 CCR § 2000(b)(40) and (44) and § 2668(b)(1) and (2).

163. BPH, Hearing Directive 05/10 Re: Confidential and Fearful Witnesses. See United States v. Comito (9th Cir. 1999) 177 F.3d 1166 (discussing the balancing test between protecting a fearful witness and protecting the parolee's right to confront adverse witnesses).

A person served with a subpoena for a parole revocation hearing is obliged to appear at the hearing unless the hearing is held at a place outside the county of his or her residence and more than 75 miles from his or her residence.<sup>164/</sup>

A parolee has a conditional right under the federal and California constitutions to cross-examine people whose statements are used against him or her in a parole violation proceeding. Thus, upon the parolee's request, people who supplied the information on which the violation charges are based must be made available for questioning by the parolee at the hearing, unless the hearing officer determines that requiring the witness to appear would create a risk of harm.<sup>165/</sup> The right to cross-examine and confront adverse witnesses includes the right to cross-examine the author of the information on which the parole violation report is based.<sup>166/</sup> Although hearsay testimony may be admitted against a parolee, this may occur only if the BPH has good cause for failing to present a witness that outweighs the parolee's right to confront the witness. The more important the witness's testimony is to the case, the stronger the parolee's right to confront that witness.<sup>167/</sup>

The parolee and attorney should challenge any adverse hearsay testimony and move to exclude the testimony. The attorney should make sure the basis for the objection is clear in the hearing record. Courts may overturn a parole revocation if the BPH relies on unsworn hearsay without determining either the unavailability of the declarant or the reliability of the hearsay, or if the BPH fails to consider the parolee's interests prior to admitting the evidence.<sup>168/</sup>

A confidential informant who supplied information on which revocation charges are based may not be required to attend the hearing if the hearing officer determines that disclosing the identity of the informant will create a risk of harm.<sup>169/</sup> However, if confidential information is used as part of the basis for the charges against the parolee, a parolee can request that the BPH disclose the information or prove that disclosure would create an undue risk of harm to the

---

164. 15 CCR § 2679(a); Government Code § 11185.

165. People v. Arreola (1994) 7 Cal.4th 1144, 1154 [31 Cal.Rptr.2d 631]; People v. Burden, supra, 105 Cal.App.3d at p. 917; United States v. Comito (9th Cir. 1999) 177 F.3d 1166.

166. See In re Carroll, supra, 80 Cal.App.3d at pp. 34-35.

167. United States v. Comito, supra, 177 F.3d at p. 1170; People v. Arreola, supra, 7 Cal.4th at pp. 1159-1161.

168. See, e.g., In re Miller (2006) 145 Cal.App.4th 1228 [52 Cal.Rptr.3d 256].

169. In re Melendez (1974) 37 Cal.App.3d 967, 973 [112 Cal.Rptr. 755]; In re Prewitt (1972) 8 Cal.3d 470, 477-478 [105 Cal.Rptr. 318]; 15 CCR § 2668(e).

informant.<sup>170/</sup>

If a material state witness fails to attend a hearing, and the hearing cannot fairly proceed without the witness, the BPH should postpone the hearing only if the rescheduled hearing can be held within 35 days of the placement of the parole hold.<sup>171/</sup> Otherwise, the charges should be dismissed unless there is good cause for the failure of the witness to appear.<sup>172/</sup> Whether the witness' testimony would be "material" is determined by weighing the importance of the witness' expected testimony against the availability and reliability of any alternative source of the same information. Also, if the state's material witnesses fail to appear, but the parolee's witnesses are present, the parolee and his attorney may want to ask that the parolee's witnesses' testimony be taken and recorded prior to postponing the rest of the hearing.

Presentation of physical evidence (other than documents) is permitted only when it is necessary for the hearing and will not pose a threat to institutional security.<sup>173/</sup> The BPH has a duty to preserve and disclose material physical evidence.<sup>174/</sup>

Finally, parolees should note that the U.S. Constitution's Fourth Amendment "exclusionary rule" does not apply in revocation hearings. Therefore evidence is admissible in parole revocation proceedings, even if such evidence would be excluded in a criminal case as illegally-obtained evidence or as an illegally-obtained confession. Accordingly, evidence suppressed in an earlier criminal proceeding is likely to be admissible at a subsequent parole revocation hearing.<sup>175/</sup>

### **C. Rights Regarding Accommodations for Disabilities**

Prisoners and parolees with disabilities are entitled to reasonable accommodations under the Americans with Disabilities Act (the ADA) during parole violation hearings. Examples of accommodations include ensuring access to the hearing room for a parolee with mobility

---

170. Valdivia Injunction, ¶¶ 14-16; see also In re Prewitt, *supra*, 8 Cal.3d at p. 478; In re Love, *supra*, 11 Cal.3d at p. 184.

171. See Valdivia v. Schwarzenegger (E.D. Cal. Mar. 9, 2004) No. S-94-0671 LKK/GGH, Stipulated Order of Permanent Injunctive Relief, ¶ 11(b)(iv).

172. BPH, Deputy Commissioner Manual for Parole Revocation Proceedings (July 2004).

173. 15 CCR § 2667.

174. People v. Moore (1983) 34 Cal.3d 215 [193 Cal.Rptr. 404].

175. Pennsylvania Board of Probation & Parole v. Scott (1998) 524 U.S. 357 [118 S.Ct. 2014; 141 L.Ed.2d 344] (finding that exclusion of evidence at a parole hearing would hinder the functioning of the parole system); In re Martinez (1970) 1 Cal.3d 641, 649-652 [83 Cal.Rptr. 382, 387-390] disapproved on other grounds in In re Tyrell J. (1994) 8 Cal.4th 68 [32 Cal.Rptr.2d 33]; In re Love (1974) 11 Cal.3d 179, 190 [113 Cal.Rptr. 89].

impairments, braille or taped documents or reading assistance for a vision-impaired parolee, assistance in communicating for a developmentally-disabled parolee, or sign language interpretation for a hearing-impaired parolee. Parolees should request any accommodations they need during the initial notice of parole violation charges, when the notice agent completes the BPH 1073 form. If the parolee requests an accommodation during that meeting and the request is denied, it can be immediately appealed prior to the hearing by using BPH Form 1074. Copies of BPH Forms 1073 and 1074 are attached to this manual. BPH must answer appeals raising disability issues within 30 days.<sup>176/</sup>

Under current informal BPH policies, if a parolee is unable to effectively participate in the hearing due to untreated mental illness, the hearing must be suspended and the parolee referred for a mental health evaluation and treatment. Once the parolee is stable enough to participate in the revocation proceedings, the hearing shall be scheduled. In no event shall a parolee undergoing mental health treatment be retained in custody past the end date of the return-to-custody assessment term.

#### **D. Parole Revocation Extension Hearings**

The BPH may extend a parole violator's revocation sentence up to an additional 12 months for misconduct committed in prison or jail during the revocation term.<sup>177/</sup> The BPH may extend a parole violator's revocation sentence by the following periods:

- up to 180 days extension for each act punishable as a felony, whether prosecution is undertaken or not;
- up to 90 days for each act punishable as a misdemeanor, whether prosecution is undertaken or not;
- up to 30 days for each serious disciplinary offense.<sup>178/</sup>

A parole violator's release date may be extended for a period not to exceed forty-five days for an act punishable as a felony or misdemeanor or thirty days for any other serious disciplinary offense, pending an extension hearing.<sup>179/</sup>

Parole violators who have been referred to the BPH for a revocation extension go through a similar process and are entitled to the same due process rights as those who are facing parole

---

176. Armstrong v. Davis (N.D. Cal.) No. C94-2307 CW Stipulation and Order Approving Defendant's Policies and Procedures, VIII.A and B, filed August 4, 2000, upheld in Armstrong v. Davis (9th Cir. 2001) 275 F.3d 849; 15 CCR §§ 3085 and 2251.

177. Penal Code § 3057(c).

178. Ibid.

179. 15 CCR § 2742(d).

revocation (see Sections 19A-C, above).<sup>180/</sup> Therefore, parolees should assert their rights and prepare for an extension hearing in the same way as they do for a revocation hearing.

## 20. IS A PAROLE VIOLATOR ENTITLED TO EARN GOOD CONDUCT CREDIT?

Some parole violators can earn good conduct credit and some cannot.

Under Senate Bill xxx18, all eligible parole violators earn “half-time” credits (one day conduct credit for each day served) against their revocation terms regardless of whether they are in county jail or prison, and regardless of whether they have a full-time program assignment.<sup>181/</sup> The new credit-earning provision went into effect on January 25, 2010, and the BPH is applying it to any parole violator who is taken into custody on or after that date.<sup>182/</sup> It is currently unclear whether and to what extent the new credit provision will be applied “retroactively” to parole violators who were already in custody prior to that date.<sup>183/</sup>

Eligibility for credits during a parole revocation term is determined by Penal Code § 3057.<sup>184/</sup> Generally, a parole violator is not eligible for credits if the commitment offense was, or the revocation charges could have been prosecuted as:

- a life crime;
- robbery;
- a violent offense;
- sex offense;
- gun enhancement;
- kidnapping;
- use of poison;
- arson with great bodily injury;

---

180. See Penal Code § 3057(c); 15 CCR § 2742(i).

181. Penal Code §§ 2933 and 3057(d).

182. Prior to the passage of this new law, Penal Code §§ 2933 and 3057(d) granted parole violators only “third time” credits (one day conduct credit for each two days served) while housed in the county jails or awaiting prison program assignments.

183. As of early February 2010, the BPH reports that parole violators who are in county jail and were returned to custody prior to January 25, 2010 will not receive half-time credit for their county jail time. However, staff in CDCR Case Records Departments report that eligible parole violators who are in prison will receive half-time credits as of January 25, 2010, regardless of when they came into custody.

184. Other sentencing statutes that determine credits on criminal sentences do not necessarily apply to parole violation terms. Thus, a person who has served a “second strike” term under Penal Code § 667(b)-(i) with only 20 percent credit-earning status, may earn full credits on a parole violation term so long as he or she is otherwise eligible under Penal Code § 3057.

- rioting; or
- any attempts at any such conduct.

Also ineligible are parolees who violated a condition of parole relating to:

- association with specified persons;
- entering prohibited areas;
- attending a parole out-patient clinic; or
- required psychiatric attention.<sup>185/</sup>

Additionally, parolees are ineligible if the Board finds the parolee unsuitable for credits because of the seriousness of the violation or the parolee’s criminal history.<sup>186/</sup>

Parolees will generally be told whether they are eligible for credits when they receive the return-to-custody assessment offer or hearing disposition. Parolees should carefully check the BPH’s reason for deciding that they are ineligible for credits with the criteria listed in the Penal Code. If the BPH’s decision does not comply with the statute, the parolee should immediately write to the BPH’s Quality Control Unit at P.O. Box 4036, Sacramento, CA 9581 and ask for correction of the error. The Quality Control Unit has the ability to correct errors that are not related to discretionary decision-making.

If a parole violator forfeits conduct credit because of prison disciplinary rules violations, he or she is not entitled to have that credit restored.<sup>187/</sup>

**21. CAN A PAROLEE GET DRUG DIVERSION INSTEAD OF A PAROLE REVOCATION TERM?**

Sometimes.<sup>188/</sup> There are two different types of drug treatment possibilities, described in the following sub-sections.

**A. Proposition 36**

Proposition 36 amended Penal Code § 3063.1 and requires that certain nonviolent drug offenders be sent to a drug treatment program instead of being returned to prison for a parole violation.

Prop. 36 allows a judge or the BPH to send a parolee convicted of a nonviolent drug

185. Penal Code § 3057(d)(2)(B) and(E), 15 CCR § 2744.

186. Penal Code § 3057(d)(2)(B) and(E), 15 CCR § 2744.

187. Penal Code § 3057(d).

188. The information throughout this section is taken from Penal Code §3063.1 and the Board of Prison Terms Operational Guidelines for Proposition 36.

possession offense (possession, use, or transportation of controlled substances) or a violation of any drug-related condition of parole to a certified drug treatment program. The types of parole violations for which Proposition 36 may be used include failure to participate in controlled substance testing; possession or use of a controlled substance; possession of paraphernalia; presence in a place where controlled substances are used, sold or given away; or failure to register pursuant to Health and Safety Code § 11590.

In addition to a drug treatment program, the parolee may also be required to complete job training, family counseling, and/or literacy training. Any parolee placed in a drug treatment program under Prop. 36 may be required to help pay for the program, if reasonably able to do so. The drug treatment services required as a condition of parole under this section may not go on for more than 12 months, but other “aftercare” services may also be required as a condition of parole for up to six more months. Thus, some parolees choose not to take advantage of the Prop. 36 diversion program when the treatment program term is longer than their likely revocation term.

Some parolees are not eligible for drug diversion under Prop. 36, particularly:

- Any parolee who has ever been convicted of one or more serious or violent felonies (as listed in Penal Code §§ 667.5 or 1192.7).
- Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and is found to have, at the same time, committed either a misdemeanor not related to the use of drugs or any felony. A “misdemeanor not related to the use of drugs” is a misdemeanor that does not involve possession of drugs for personal use, use of drugs, possession of drug paraphernalia, presence where drugs are used, or failure to register as a drug offender. (Board of Prison Terms, Operational Guidelines for Proposition 36.) Some parolees who are excluded from Prop. 36 under this criteria may still be eligible for placement in a drug treatment program contracted by CDCR, as discussed below.
- Any parolee who refuses drug treatment as a condition of parole.

Prop. 36 usually can apply to only one parole violation. If a parolee violates parole a second time or more for a drug-related offense or parole violation, he or she is not eligible for Prop. 36 and may be returned to prison. Also, if, during drug treatment under Prop. 36, a parolee violates parole either by being arrested for an offense other than a nonviolent drug possession offense, or by violating a non-drug-related condition of parole, the BPH may revoke the parole.

## **B. Drug Treatment Programs with Providers Who Contract with the CDCR**

In addition to Prop. 36, CDCR may place parolees in “In Custody Drug Treatment Programs.” (ICDTPs). Those programs are run by private providers who contract with CDCR. They take place in either jails or community-based drug treatment facilities. The “jail based” ICDTPs consist of a 60-day residential phase in a county jail, a 30-day residential phase in the community and a 60-day outpatient phase. The “community based” ICDTPs consist of a 90-day residential phase and a 60-day outpatient phase. A parolee must consent to be placed in an

ICDTP and the Board will impose a condition of parole requiring the parolee to complete the program. A parolee who is placed in an ICDTP is not considered to be doing a parole violation term, even if the ICDTP is jail-based. Therefore, any time served in custody prior to transfer to the program does not extend the parole discharge date. Parolees may have to wait in custody for a bed, however, and the time spent in custody does not count toward the time the parolee is required to spend in the ICDTP. Parolees who are not eligible for Prop 36 can still be placed in an ICDTP. Parolees who are required to register as sex offenders or who have gang affiliations are excluded from most ICDTPs

## **22. CAN A PAROLEE CHALLENGE CDCR OR BPH DECISIONS?**

Yes.

As described in Section 2.D, above, a parolee can challenge parole conditions set by the CDCR by filing a CDCR Form 602 administrative appeal. A 602 appeal can also be used to challenge or protest other actions by CDCR parole staff, such as unreasonable searches or refusals to approve a parolee's housing or travel plans. As discussed in Section 5, above, a parolee can challenge a CDCR decision that affects disability rights by filing a CDCR Form 1824 Request for Reasonable Modification or Accommodation. As further described section 2.D, after a parolee completes any necessary administrative appeal process, the parolee can then file a state court petition for writ of habeas corpus challenging the CDCR's or BPH's actions.

A parolee who wants to challenge a violation of rights or error that was made in a parole revocation proceeding should always obtain a tape of the revocation hearing. Immediately after the hearing, the parolee should send the BPH a request for a copy of the tape recording of the hearing. Parolees' attorneys and DCs have copies of the forms that parolees can use to request hearing tapes.

There are two ways to challenge BPH actions after a parole revocation, and a parolee should pursue both of those courses of action. The first option is for the parolee to ask his or her attorney to file a request for "decision review" with the BPH. The request should be presented to the BPH in a letter describing how the BPH or parole agent made a mistake of law or fact that affected the revocation hearing. The parolee's attorney must show that a mistake of law or fact was made and that the outcome of the hearing would have been different if the mistake had not been made. Requests for decision review must be filed within 10 calendar days after the hearing.

The second option is for the parolee to file a petition for habeas corpus challenging violations of rights or mistakes of law or fact made in the parole violation hearing (it is not necessary to request that the BPH conduct a decision review prior to filing a petition for habeas corpus). A state court petition for writ of habeas corpus can be used to challenge violations of state or federal constitutional due process rights or violations of California statutes or administrative rules. For example, a petitioner could argue that the revocation hearing was unreasonably delayed or that the petitioner was denied the right to confront adverse witnesses or that the revocation was not supported by the evidence. The relief requested by the petitioner

might be an order that the revocation be vacated and the BPH conduct a new hearing or an order that the parolee be released to parole. The petition should be filed in the local superior court of the county where the parole violation hearing was held. The parolee should attach to the petition any declarations or other documents that support the claims. There is no set time limit for filing a state habeas petition, but it should be done as soon as possible.

More information on state habeas corpus petitions, including sample forms, can be found in the Prison Law Office State Habeas Corpus manual, available for free on request.