

**ABOUT PAROLE
in New York State**

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¿ Cual es el PROPOSITO DE ESTA PUBLICACION?

“LIBERTAD BAJO PALABRA en el Estado de Nueva York” es una publicación sobre las normas que rigen aquellos que están en libertad bajo palabra en el estado de Nueva York. Ha sido preparada primordialmente para los reclusos en las instituciones penales y para aquellos que están bajo palabra cumpliendo sentencias indeterminadas. También puede ser de ayuda para los reclusos que están cumpliendo sentencias determinadas y correccionales. La publicación tiene dos propósitos, como sigue:

- 1) **Información** — Explica como funciona el sistema de Libertad Bajo Palabra.
- 2) **Guía** — Orienta y aconseja a los que están en libertad bajo palabra o con posibilidad de conseguirla, como funcionar en el sistema dentro de sus derechos y para sus mejores intereses.

El contenido de esta publicación se basa en entrevistas hechas a ex-reclusos que están en libertad bajo palabra, reclusos, oficiales probatorios, abogados, profesionales en el sistema de corrección y personal de agencias de la comunidad. También está basado en los estatutos y reglamentos vigentes del estado de Nueva York, decisiones de las cortes y el Manual del Oficial Probatorio. Esta publicación ha sido preparada por y puede ser ordenada del Citizens' Inquiry on Parole and Criminal Justice, Inc., 84 Fifth Avenue, Room 307, New York, New York 10011, Teléfono: (212) 929-2955.

Si logramos conseguir fondos esta publicación será traducida al español.

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What is the PURPOSE OF THIS BOOKLET?

“ABOUT PAROLE in New York State” is a booklet about New York parole. It is written primarily for inmates and parolees serving indeterminate sentences. It may, however, be of help to inmates serving definite and reformatory sentences. The booklet has the following 2 purposes:

- 1) **To give information:** Explain the workings of the parole system.
- 2) **To give advice:** Help parolees and potential parolees function in the parole system within their rights and in their own best interests.

This booklet is based on interviews with parolees, inmates, parole officers, lawyers, corrections professionals and community agency personnel. It is also based on current New York State statutes and regulations, court decisions and the parole officer's manual. The booklet was supported by a grant from the New York Foundation. It was prepared by and can be ordered from the Citizens' Inquiry on Parole and Criminal Justice, Inc., 84 Fifth Avenue, Room 307, New York, New York 10011, Telephone: (212) 929-2955.

We hope, pending funding, to have a Spanish translation available.

Price: \$2.00. (FREE to New York State inmates, parolees, ex-offenders and parole officers)

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IX. ADDRESSES

I. INTRODUCTION

What is the LAW OF PAROLE?

The law of parole comes from 3 sources:

- 1) New York State **statutes**
- 2) New York State **codes, rules and regulations**
- 3) **Judicial decisions**

1) **Statutes** are passed by the state legislature, signed by the governor, and become law. The statutes governing parole are in 2 books:

- McKinney's Consolidated Laws of New York, *Correction Law*, Book 10B.
- McKinney's Consolidated Laws of New York, *Penal Law*, Book 39, Vol. I.

2) Many state agencies have been given authority to make **rules and regulations** that have the effect of law. The rules and regulations made by the Department of Correctional Services and the Division of Parole for operating the parole system are found in:

Codes, Rules and Regulations of the State of New York, Vol. 7, *Correctional Services*.

3) **Judicial decisions** are law. The courts often give new and important interpretations to the parole laws and set new requirements for operating the parole system.

CITES: Information from Legal Books

When information in this booklet has been taken from state statutes and state regulations, citations are given. The cites come at the end of the material.

Example: The parole board will give you a date within the next 2 years when you will have another parole release hearing. [CL Supp. 212(3)]

In this example [CL Supp. 212(3)] is the cite.

The cites are abbreviated. The abbreviations are for the books in which the particular law cites can be found. A law library assistant will be able to help you find these books. The abbreviations used in this booklet are as follows:

CL = McKinney's Consolidated Laws of New York, Correction Law, Book 10B.

PL = McKinney's Consolidated Laws of New York, Penal Law, Box 39, Vol. I.

Supp. = Supplement (pages added to the back of the book)

7 NYCRR = Codes, Rules and Regulations of the State of New York, Vol. 7, Correctional Services.

Some TERMS and what they mean

alleged — Charged, but needs to be proven

criteria — Standards by which decisions are made

due process — A course of legal proceedings intended to produce a fair result

probable cause — Sufficient facts to believe that a person *probably did* commit the charged violation or crime

mitigating — Circumstances, when explained, that make the violation appear less harsh or severe

II. THE PAROLE SYSTEM

HOW DID PAROLE BEGIN?

In the early 1800's, prisons were built to be places where criminals could be reformed. Some prisons were even called reformatories. Criminals were believed to be "sick" and it was also believed that prison would rehabilitate or "cure" them so they could return to the community as law-abiding citizens. Despite these good intentions, prisons became barbaric and sentences became too long. In the late 1800's parole began, theoretically, as a way to shorten the long sentences and allow prisoners to continue their rehabilitation process in the community.

The problems of releasing a prisoner on parole became: *who* will decide, and *how* will that person decide when the prisoner should be released from prison on parole? The state organized a parole department to provide the "who" and decide the "how."

To assist the parolees' reintegration into the community, a parole officer force was established. These parole officers were also to act as peace officers who would assure the public's protection by supervising parolees and attempting to prevent them from engaging in criminal activity.

In 1930, the New York State parole system was organized on a state-wide basis. It was called the Division of Parole. The framework for parole established at that time continues to be the basis of the present parole system.

NEW YORK PAROLE

The New York State parole system — part of the Department of Correctional Services — is one of the biggest in the country. In an average year the parole board releases about 4,500 inmates from state institutions to parole and is responsible for the supervision, on a daily basis, of about 9,000 parolees and conditional releasees in the community. The New York parole system has 9 area offices located around the state where parolees and conditional releasees regularly report to a staff of about 425 parole officers.

Definition of Parole

Parole is a process by which an inmate is released by a parole board from prison, before he completes his maximum term, to the supervision of a parole officer in the community. While in the community, a parolee is still technically in the custody of the Board of Parole. A parolee is obligated to

comply with the conditions of his release. He may be returned to prison for the balance of his sentence if he fails to comply with these conditions.

PAROLE BOARD MEMBERS

The New York Board of Parole has 12 members. It is the largest and highest paid parole board in the country. The members are all appointed to their jobs by the governor, an appointment which must be approved by the State Senate, for a renewable term of 6 years. One of the members is elected chairman by the others. The law does not set forth educational or work-related requirements for becoming a parole board member. However, in practice, many have a background in corrections. The only requirement the law makes is that a parole board member must hold no other jobs, except for part-time teaching at a State University. [CL Supp. 6]

The current members of the parole board are:

Name	Has Been Member Since
Barnwell, William J.	1970
Caldwell, Frank L.	1959
Dean, Maurice F.	1973
Gilbride, Martin	1971
Gross, Frank A.	1970
Jones, Ada Fisher	1972
Lewis, Milton B.	1969
Maffucci, John J.	1974
Pierro, Louis	1973
Quinn, John J.	1967
Regan, Paul J. (Chairman since 1970)	1960
Rivera, A. Luis	1970

Since the parole board began in 1930 there have been 40 parole board members.

PAROLE OFFICERS (P.O.)

There are two types of parole officers in New York: field parole officers and institutional parole officers.

Field Parole Officers

Field P.O.'s are located in the area offices around the state and are responsible for supervising parolees and conditional releasees who are released to the community. (For discussion of field P.O.'s duties see YOU

and YOUR P.O., p. 28.)

Institutional Parole Officers

Institutional P.O.'s work in the institutions. Their primary duties are to maintain files and conduct interviews. Institutional P.O.'s conduct the pre-parole interview (See PRE-PAROLE INTERVIEW, p. 20), write your parole summary and make parole release recommendations to the parole board. (See PAROLE SUMMARY, p. 20). Their duties also include the following:

- 1) Maintaining your case file (See CASE FILE, p. 19)
- 2) Discussing with you your parole eligibility (See ELIGIBLE FOR PAROLE, p. 19)
- 3) Helping you with your parole plan (See PAROLE PLAN, p. 21)
- 4) Conducting additional interviews with you to discuss institutional or personal matters

P.O. Qualifications

These are some of the qualifications for becoming a P.O.

- Be 21-40 years old to apply
- Have a law degree, or a bachelor's degree plus some combination of graduate school and social work experience
- Pass a civil service examination in sociology and criminology
- Pass a proficiency test in the use of a firearm
- Be physically, mentally and morally fit
- Go through a one month training program

[CL Supp. 9(2); N.Y. State Civil Service Announcement No. 20-318; Parole Officer]

DISCRETION and HOW DECISIONS ARE MADE

The key word in any discussion of parole is *discretion*. The parole board and its officers are directed by state laws and regulations to use their own judgment (discretion) in making most decisions about the extent of an inmate's or parolee's rehabilitation, the degree to which the conditions of parole should be enforced, and the appropriateness of returning a parolee to prison for a violation. [CL Supp. 210]

Unrestricted by guidelines or rules, discretion can work both for and against you. It may benefit you by providing more individual consideration than would be possible if decisions were guided by rules. It may be a disadvantage because, without written guides to refer to, it is often impossible to know *what* decisions will be made and exactly *why* a decision is made. Standards, like personalities, vary from individual to individual and it may be difficult for you to predict how a particular P.O. or board member will judge your character and behavior. Remember that when you are dealing with a parole board member or a P.O. you are working with an individual whose personal standards may well determine your freedom.

III. SENTENCES

SENTENCES

There are 3 types of sentences in New York: indeterminate, definite and reformatory. Anyone arrested after July 31, 1974 will not receive a reformatory sentence because this type of sentence has been repealed. The *type* of sentence you receive is specified by the judge who sentences you. He also sets the maximum *length* of the sentence and decides whether the sentence is to run concurrent with (at the same time) or consecutive to (one after the other) any time you may owe on a prior sentence. (For discussion of minimum sentences, see ELIGIBLE FOR PAROLE?, p. 19)

Many people have problems with the calculation of their sentence. For example, some people have problems because they served time prior to conviction that is not being counted as time served against their maximum expiration date. Others have problems because they are serving more than one sentence. Getting your problem straightened out may be a very simple matter or it may be very complex. You may need the help of an attorney.

If you have a problem with your sentence, you can start working on your problem by obtaining a **Certificate of Disposition** from the clerk of the court in which you were sentenced. It is available for a small fee and contains the following information:

- 1) Charges against you
- 2) Indictment or docket number
- 3) What you were convicted of
- 4) Your sentence and date you were sentenced
- 5) Judge

You need to give your name and the docket or indictment number in order to obtain a Certificate.

If you believe your sentence has been calculated incorrectly at the institution, you should do the following:

- 1) *First*, address your complaint to the Head Clerk of the institution. This is the person who calculates time. If you get no satisfaction:
- 2) *Second*, write to the Principal Clerk in Albany (See

ADDRESSES, p. 47). If you still get no satisfaction:

3) *Third*, seek judicial review. To do this, you should consult a lawyer.

IV. CONDITIONAL RELEASE (CR) and GOOD TIME

CONDITIONAL RELEASE (CR) and GOOD TIME

Conditional release is a way, other than parole, to be released from the institution before you serve your full maximum sentence. (The differences between CR on indeterminate sentences and CR on definite sentences are discussed below.) To be released on CR you must have "good time" (See discussion below), and you must *request* to be released on CR on forms that are provided by the institutional P.O. If you are released on CR you will be under the supervision of a P.O. for at least one year. You must also sign and agree to obey the Conditions of Release. (See CONDITIONS, p. 27) [PL 70.40(1)(b); PL Supp. 70.40(2)] CR differs from parole in one important way: *if CR is revoked, you must serve the remainder of your sentence as of the day you left the institution, not as of the day of delinquency.* [CL Supp. 212(5); CL 827(5)]

Example: You are released on CR when you have 2 years left on your maximum. Your CR is revoked during the 20th month. You will have to serve the full 2 years in the institution, not 4 months.

If CR is revoked, you have the same rights to due process as does a parolee. (See STEPS TO REVOCATION: Technicals Only, p. 33; STEPS TO REVOCATION: New Arrest or Conviction, p. 35; INSISTING ON YOUR RIGHTS DURING REVOCATION, p. 36; REVOCATION HEARINGS: Detailed Review, p. 39)

Good Time

According to New York law, good time is given to an inmate

... for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, ... [Good time] may be withheld, forfeited or cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned. [CL 803(1), 804(1)]

The "time allowance committee" at each institution has the power to grant, withhold, forfeit, cancel or restore your good time. If you feel a decision made by the time allowance committee is not fair, you can challenge

it, but it is very difficult to do and you should have a lawyer help you. [7 NYCRR 260, 261, 262, 270]

Indeterminate Sentences

You are eligible for CR when your good time equals the time that is left to be served on your maximum sentence. [PL 70.40(1)(b)] (Good time cannot equal more than 1/3 of your maximum. [CL 803(1)])

Example: If your maximum is 3 years, you can be conditionally released after serving 2 years, provided no good time has been taken away from you.

If you are eligible for CR and you request it, you *must* be released. [PL 70.40(1)(b)] CR on an indeterminate sentence is not, like parole, granted at the discretion of the parole board.

If released on CR, *you will be under the supervision of a P.O. until your maximum is up, or for one year, whichever is longer.* [PL 70.40(1)(b)] If CR is revoked, you will lose all previously earned good time. [CL Supp. 803(5)] If CR is revoked, you may become eligible again for parole. [CL Supp. 212(7)] You will also be eligible for CR, if the time to be served after revocation is longer than one year. [CL Supp. 803(5)] Again, good time cannot equal more than 1/3 the time left to be served. [CL Supp. 803(5)]

Definite Sentences (One Year or Less)

If your maximum sentence is over 90 days, you may be released on CR anytime after serving 60 days of your sentence (including jail time). [PL Supp. 70.40(2)] To get CR, you must file a written application to the parole board with your institutional P.O., who will interview you and make a recommendation regarding your release to the parole board. [CL 827(4)] You will not have a release interview. The release decision will be made by at least one parole board member. The decision to release you on CR when you are serving a definite sentence is, like the parole release decision, a discretionary decision. [CL 827(1)(2)] (See DISCRETION, p. 11) If released, you will be under the supervision of a P.O. for one year, no matter how much time you have left on your sentence [PL Supp. 70.40(2)]

If your CR is revoked, you do not lose the good time you earned while you were in the institution [CL 804(4)] and you can be eligible again for CR. [CL 828]

One additional point: If you are not released on CR, your good time may reduce your maximum term as much as 1/6 of the term imposed by the court.

Example: If your sentence is set for 12 months, you will be released after 10 months provided no good time has been taken away from you.

This type of release is an absolute discharge and you will not be under the supervision of a P.O. [CL 804(1)]

V. GETTING OUT OF PRISON ON PAROLE

When are you ELIGIBLE FOR PAROLE?

There are 3 ways to get out of prison: max out (complete your maximum sentence), be conditionally released (See CR, p. 15), or be paroled. Parole is the quickest way out. Release on parole depends on the following:

1) You must complete your minimum sentence to be eligible for parole consideration. [PL 70.40(1)(a)] Everyone serving an indeterminate sentence eventually becomes eligible for parole. Your Minimum Period of Incarceration (MPI) will be set by either the judge at sentencing, or by a 3-member parole board panel usually during your 10th month of incarceration. [PL 70.00(3); 7 NYCRR 1.7]

If your minimum term was set by the judge, your jail time will be credited against that portion of your minimum sentence which exceeds one year.

Example: If you have one year jail time and the judge sets your minimum term at 3 years, you will have to serve 2 years in a state institution before you are eligible for parole.

If your minimum term was set by the parole board, your jail time is credited against your maximum sentence, but not against your minimum sentence. [PL 70.30(3); CL Supp. 212(2)]

2) You must have a completed and approved parole plan. (See PAROLE PLAN, p. 21)

3) Your release on parole must be unanimously approved by a 3-member parole board panel at your parole release interview. [PL 70.40(1)(a); CL Supp. 214(5)] (See PAROLE RELEASE INTERVIEW, p. 22)

If paroled, you must sign the Conditions of Release. (See CONDITIONS, p. 27) If paroled, you will serve out your maximum, which is not reduced by your good time, under the community supervision of a parole officer. This means you forfeit your good time if you are released on parole. [PL 70.40(1)(a); CL Supp. 212(6); 7 NYCRR 1.12]

YOUR CASE FILE

Your case file, which contains your parole summary, (See PAROLE SUMMARY, p. 20) prepared by your institutional P.O., provides the parole board with all the information they will have about you. This file contains

many reports that have been accumulating, possibly since your first offense. The institutional P.O. will include reports from prison officials and he may add summaries of the interviews he has had with you. He may also include summaries of interviews with your visitors. You will not be permitted to see this file. When you are released on parole some of this material will go to your field P.O. [CL Supp. 211]

PRE-PAROLE INTERVIEW and PAROLE SUMMARY

Your parole summary is completed by an institutional P.O. As part of the summary, the P.O. will make a recommendation to the parole board as to whether or not he feels you should be paroled. This recommendation may influence the parole panel's decision.

The institutional P.O. will complete the parole summary after he has interviewed you. This interview is called the pre-parole interview. In the summary he will include his observations of you plus selected information from a number of written reports. (See list below) If he feels it is necessary, he may order a pre-parole investigation to verify attitudes and facts about you by consulting persons who know you or know about your crime.

When writing his report and making his parole recommendation the institutional P.O. may also be influenced by such factors as the publicity given your case and the seriousness of your crime.

Information Included in the Parole Summary

Legal History

- Present Offense
- Previous Record
- Warrants or Indictments Outstanding

Institutional Adjustment

The parole officer will have solicited reports about you from the prison staff having responsibility for each of these areas:

- Work
- Vocational Education
- Academic Education
- Recreational
- Disciplinary
- Medical
- Psychiatric
- Psychological
- Religious

- Correspondence
- Visits
- Financial

Personal Information

- Associates (Friends)
- Military Information
- Social Security Number

Parole Program

- Residence
- Employment

Community Attitude

District Attorney's Recommendation

YOUR PAROLE PLAN

You must have a completed parole plan approved by the parole board before you can be released on parole. (This does not apply to CR.) To complete your parole plan you must have the following:

- 1) A place to live
- 2) A job of "reasonable assurance" of a job [CL Supp. 214(4); 7 NYCRR 1.11]

If the board decides to release you on parole, but you do not have an approved parole plan, you will be held in prison until you have a plan and it is approved.

You must consult with the institutional P.O. about the details of your parole plan. He will arrange to have your plan investigated by field parole staff. Both residence and job must be verified and approved before you can be released.

Finding a job and place to live can be very difficult. Use whatever contacts you have. The parole service usually wants to see that you have made every effort you can to obtain both before they will give you help. If they do help, the amount of assistance they can give you is often minimal.

The parole department may accept "reasonable assurance" of a job if something more definite cannot be found. This may mean that an agency like the Fortune Society has offered you its assistance in obtaining a job. It is easier to get a job and a place to live through personal contacts. Write to

someone you know or have a friend write or speak on your behalf. If you write to places and persons who don't know you, it may be helpful if you include the following information:

Letter to Employer

- Your name, age and institutional address
- Address, where you will live when you get out
- What other jobs, education or training you have had
- Vocational training you have had in the institution
- What kind of work you can do now
- Some comment that you are writing while still in prison because:
 You need a job to get out
 You would like to have a job so you can start doing something worthwhile when you get out
- Some description of activities you have participated in while in prison

It may also be valuable to include a reference letter from your job in the institution.

The PAROLE RELEASE INTERVIEW

Most parole release interviews last about 10 minutes, although some are as short as 3 minutes or as long as 30 minutes. The interview will be held when a 3-member parole board panel makes its monthly visit to the institution. This panel will decide whether or not you will be paroled. The same 3 members do not always sit together on the same panel, their assignments change each week. Also at your interview will be a stenographer who will record the entire hearing (but not the discussion after you leave the room when the parole board members decide if you will be paroled), one or more institutional P.O.'s to assist the parole board members (not necessarily the institutional P.O. who wrote your report), and a guard to open and close the door. No one but you and the parole board members will actively participate. You are not permitted to be represented by an attorney or to be accompanied by anyone. [CL Supp. 214(4)(5); 7 NYCRR 1.3, 1.4, 1.9]

On the day of your hearing the case files of all the inmates to have hearings that day will be divided among the 3 parole board members. (See CASE FILE, p. 19) Your file will be examined by only one parole board member. The member who has your file will read it while other hearings

are going on. A copy of your parole summary, prepared by the institutional P.O., will be in your case file. (See PAROLE SUMMARY, p. 20) When it is time for your hearing, the summary will be given to the 2 parole board members who do not have and have not seen your case file. They will look at it during your interview. The interview will be a question and answer session, with most questions being asked by the parole board member who has seen your file.

When you leave the room the parole board member who has your file will tell the other 2 members his decision. Most frequently the other 2 will agree. All 3 must vote "yes" to grant you parole; one "no" will mean that parole is denied. [CL Supp. 214(5)] This decision is made between interviews so it is made very quickly. If parole is denied the board members will decide how long you should be held before you can again come before a parole panel. This period cannot be longer than 2 years. [CL Supp. 212(3)]

You will find out the parole panel's decision after they leave the institution, which could be that same day or 2-3 days later. You will be given a form that states if you have or have not been given parole. There will be no reasons given if parole has been denied.

The failure of the parole board to give inmates reasons for parole denial is currently being challenged in federal and state courts.

HOW WILL THE PAROLE BOARD DECIDE? The LAW and GUIDELINES

The parole release decision — whether to grant or deny parole — is discretionary. (See DISCRETION, p. 11)

State law provides the parole board with the following guidelines:

Reasons for release

Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the board of parole is of opinion that there is reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society. . . . [CL Supp. 213]

Parole board regulations provide the following guidelines:

Criteria for parole selection. The following are some of the factors that will be considered by the Board of Parole in determining the release on parole of every prisoner:

- (a) His previous criminal record; the nature and circumstances of the crime and his present attitude toward it; his attitude toward society

and toward authority generally; his attitude toward the policeman who arrested him, toward the district attorney who convicted him, toward the judge who sentenced him, and toward the complainant.

(b) His conduct in prison, his response to efforts made to improve his mental and moral condition, together with his school and industrial records; his character, capacity, mentality, physical and mental condition, habits, attitudes; the kind of work he is best fitted to perform and at which he is most likely to succeed when he leaves prison.

(c) The environment to which he plans to return.

(d) The kind of employment secured for him.

[7 NYCRR 1.10]

The parole panel may be influenced by your interview or your case file, or both, or neither. What counts when making the decision is what the parole board members think and feel are the most important facts in your case. Their decision is discretionary, and they may take into account considerations not contained in the laws and regulations. (See DISCRETION, p. 11; PAROLE SUMMARY, p. 20)

What you can do to PREPARE FOR YOUR INTERVIEW

Proper preparation for and a good attitude at your interview will not guarantee release on parole. However, you will want to make a good impression. Remember, the decision to grant or deny parole is determined by the parole panel's discretion. (See DISCRETION, p. 11) The following suggestions may help you prepare for your interview:

- Be able to discuss all aspects of and accept responsibility for the crime you were convicted of. If you plan to maintain your innocence of this crime, it is very possible parole will be denied
- Be able to discuss positive things about serving your term in prison
- Be able to discuss your future with realistic goals in mind
- Be prepared to show your sincerity without displaying extreme emotions
- Think before you speak but don't sound rehearsed; answer questions briefly but completely
- It may be helpful to have letters of recommendation sent to your institutional P.O. and to the chairman of the parole board (See ADDRESSES, p. 47)

APPEAL: What you can do if you believe the parole board's release decision was not fair

If you believe the parole board's release decision was not fair, it is difficult but possible to appeal the decision. (See appeal methods listed below) The parole board does not, however, provide a formal appeal process, and the number of decisions that have been reversed by either of the following methods is very small.

Methods of Appeal

- 1) Write a letter to the chairman of the parole board in Albany, (See ADDRESSES p. 47) requesting that the entire parole board review and consider your case. If your case is considered worthy of review and consideration, it will be brought up before the entire board at its monthly business meeting. This practice is informal and is not guided by law or regulations. Often, in order to get the entire parole board to review your case, you must show that new facts have developed since your parole interview, or that the 3-member parole panel failed to consider some important facts.
- 2) It is possible to challenge the board's decision in the courts. However, these challenges are complex and you should seek legal assistance.

VI. ON THE STREETS

The CONDITIONS OF RELEASE

The Conditions of Release are made by the board of parole. [CL Supp. 215] In order to be released on parole or CR you must sign and agree to obey them. [7 NYCRR 1.12, 1.14] If you do not obey them your parole or CR may be revoked. [CL 216; 7 NYCRR 1.13] Be sure you read, understand and try to figure out how strictly or leniently your P.O. interprets each rule. The rules can cover almost every aspect of your life, but generally a P.O. will recommend that your parole be revoked only when violations are considered to be serious. If you feel a rule may present a problem for you, talk to your P.O. about it.

CONDITIONS OF RELEASE

The following conditions of release shall be included in the release agreement, which agreement shall be completed and executed prior to the release of all persons who are subject to supervision:

I, _____ in consideration of being granted release, promise, with full knowledge that failure to keep such promise may result in the revocation of my release, that I will faithfully keep all the conditions specified on this sheet and all other conditions and instructions given to me by the Board of Parole or any of its representatives.

(1) I will proceed directly to _____, the place to which I have been released (spending funds only for necessities), and within twenty-four hours, I will make my arrival report to _____.

(2) I will not leave the State of New York, or any other State to which I may be released or transferred, or any area as defined by the Parole Officer in writing, without the written or documented permission of my Parole Officer.

(3) (a) I will fully comply with the instructions of my Parole Officer. (b) I will make office and/or written reports as I am directed. (c) I will reply promptly to any communication from a Member of the Board of Parole, a Parole Officer, or other authorized representative of the Board of Parole. (d) I am aware that making false reports may be considered a violation of the condition of my release.

(4) (a) I will permit my Parole Officer to visit me at my residence or place of employment. (b) I will discuss with my Parole Officer any proposed changes in my residence, and I will not change my residence without prior approval of my Parole Officer. (c) I understand that I am legally in the custody of the Board of Parole and that my person, residence, or any property under my control may be searched by my Parole Officer or by any other representative of the Board of Parole at its direction. (d) If so directed, I will observe a curfew.

(5) I will avoid the excessive use of alcoholic beverages: If so directed by the Parole Board or my Parole Officer, I will abstain completely from the use of alcoholic beverages.

(6) (a) I will make every effort to secure and maintain gainful employment. (b) If, for any reason, I lose my employment, I will report this to my Parole Officer immediately and I will cooperate fully in finding new employment. (c) I will not voluntarily quit my employment without prior approval of my Parole Officer.

(7) (a) I will lead a law-abiding life and conduct myself as a good citizen. (b) I will not be in the company of or fraternize with any person having a criminal record. If there are unavoidable circumstances (such as work, school, family or group therapy and the like), I will discuss these with my Parole Officer and seek his written permission. (c) I will support my dependents, if any, and assume toward them my legal and moral obligations. (d) I promise my behavior will not be a menace to the safety or well-being of myself, other individuals, or to society. (e) I will advise my Parole Officer at any time that I am questioned or arrested by members of any law enforcement agency.

(8) I will consult with my Parole Officer before applying for a license to marry.

(9) I will not carry from the Facility from which I am released, or cause to be delivered or sent to any Correctional Facility, any written or verbal message or any object or property of any kind without proper permission.

(10) (a) Upon my release, I will advise my Parole Officer as to the status of any driver's license I possess. (b) I will seek and obtain permission of my Parole Officer before applying for or renewing a driver's license. (c) I will request and obtain permission of my Parole Officer before owning or purchasing any motor vehicle.

(11) I will not own, possess, or purchase firearms or weapons of any kind.

(12) I will not use, possess, or purchase any illegal drugs or use or possess those that have been unlawfully obtained.

(13) Should the occasion arise, I will waive extradition and will not resist being returned by the Board of Parole to the State of New York.

(14) Special Conditions:

[7 NYCRR 1.15]

Special conditions could include restrictions such as a curfew, complete abstinence from alcohol, never seeing certain persons or going to certain communities, or a requirement such as enrolling in a drug program.

YOU and YOUR PAROLE OFFICER

Your P.O. is supposed to establish a case work relationship with you. He is supposed to assist your return to the community and protect the community against any wrongdoing on your part. He is therefore, both a counselor and a peace officer. This makes his role complex, and to make all the decision he must make, the use of discretion becomes essential. (See DISCRETION, p. 11)

As a counselor, you P.O. may be able to assist you with housing, jobs and personal problems, but whether he does or does not depends on his abilities, contacts, available time, interest, and his relationship with you. He will not be a specialist in all these areas, and the parole service does not furnish him with adequate backup to provide the services you may need.

You will often have to press hard for assistance, or you may have to rely on your own contacts.

As a peace officer, your P.O. has the authority to arrest you, search and seize your property, carry a gun, carry out surveillance activities, and alert and cooperate with other law enforcement officials. [McKinney's Consolidated Laws of New York, *Criminal Procedure Law*, Book 11A, 1.20(33)(i), 140.25]

You should try to work things out with your P.O. but also listen to your own instincts in forming your relationship with him.

VII. HAVING YOUR PAROLE REVOKED

REVOCATION: What does the LAW say?

The P.O. does *not* revoke parole. He does, however, *begin* the revocation process by taking you off the street and recommending revocation. The decision to revoke parole is made by the parole board.

The law provides the P.O. with the following guidelines for beginning revocation procedures:

Violation of Parole

If the parole officer . . . shall have reasonable cause to believe that such prisoner has lapsed, or is probably about to lapse, into criminal ways or company, or has violated the conditions of his parole *in an important respect*, such parole officer shall report such fact to a member of the board of parole or to any officer of the division of parole designated by such board, who thereupon may issue a warrant for the retaking of such prisoner and for his temporary detention or return to a designated prison. (emphasis added) [CL 216]

Again, discretion is the rule. (See DISCRETION, p. 11) With few exceptions the P.O. may choose to ignore or not ignore a parole violation. Their decisions are generally supported by the parole board.

REVOKING PAROLE: YOUR PAROLE OFFICER

Under what circumstances might a P.O. RECOMMEND REVOKING parole?

It is difficult to give a definite answer to this question because a P.O. has a very broad range of discretion when he is deciding whether to recommend revoking parole. (See DISCRETION, p. 11) For example, when 4 P.O.'s were asked the question, "When would you definitely begin revocation?" they gave 4 different answers:

- If he is convicted of a new crime
- If he is arrested
- If he violates the conditions with something specific and serious
- If he is generally uncooperative

The following are the answers most consistently agreed upon:

Your P.O. *will most likely* begin revocation in these cases:

- 1) If you are convicted of a new crime
- 2) If you are arrested and charged with a felony [7 NYCRR 1.18(a)]
- 3) If you have absconded — defined by the parole department as living at an address unknown and not reporting
- 4) If you have violated Special Conditions — Example: drinking alcohol when a “no alcohol” condition was added

Your P.O. *may* begin revocation in these cases:

- 1) If you are arrested on a misdemeanor charge and are waiting court action [7 NYCRR 1.18(b)]
- 2) If your P.O. feels you are maintaining relationships with others who are suspected of criminal activity
- 3) If you have not reported to your P.O. several times in a row (usually about 3)
- 4) If you consistently commit minor violations. Your P.O. may feel your over-all adjustment is not good and that it is very possible you will commit serious criminal activity

Under what circumstances might a P.O. decide NOT TO RECOMMEND REVOKING parole?

Your P.O. *may* decide *not* to begin revocation in these cases:

- 1) If your alleged parole violations are minor and he feels your adjustment in the community is mostly a good one
- 2) If he feels that removing you from your new job, home, friends, etc. would do you more harm than good
- 3) If he feels that further incarceration would do you harm rather than good and would serve no useful purpose
- 4) If you have only a little time left to serve on parole

ARRESTED? HOW MUCH SHOULD YOU TELL?

You should tell your P.O. immediately if you have been arrested. But, you may refuse to answer any questions regarding details surrounding a new

arrest asked by a P.O. or a parole board member either before or at a preliminary hearing, on the grounds of the Fifth Amendment.

If you do speak, this information may be used against you at your pending criminal trial, it could be considered a confession by the court, and it may be used to document alleged parole violations and to support parole revocation. When refusing to speak you may say:

I can't say anything because I might prejudice my defense in court. I am, therefore, claiming my 5th Amendment privilege to remain silent rather than risk self-incrimination.

The basis on which most paroles are violated is alleged *admissions* they make to their P.O. If your P.O. doesn't get you to admit to parole violations, you are in a much better position to defend yourself against charges of parole violation. You should use your own judgment when deciding if you will speak and how much you will say.

BEING TAKEN INTO CUSTODY: Warrants

You can be held in custody under 2 different warrants: the warrant of arrest and the parole warrant.

Warrant of Arrest

If you are arrested on a new criminal charge you will be held in custody on an arrest warrant, and in most cases you will be allowed to post bail.

Parole Warrant (De Cainer)

If you are charged by your P.O. with a parole violation, you will be held on a parole warrant. Under a parole warrant you are not entitled to bail or release until the parole warrant is lifted. (See *Calloway v. Skinner*, cite on p. 40)

If you are held *only* on a warrant of arrest, you will be released from custody if you can post bail. If you are held *only* on a parole warrant (for which there is no bail), you will not be released from custody until the warrant is lifted. If you are held on *both* a warrant of arrest and a parole warrant, even if you are able to post bail on the arrest warrant, you will not be released from custody until your parole warrant is lifted. (As to how and when a parole warrant is lifted, See STEPS TO REVOCATION: Technical Violations Only, p. 33; STEPS TO REVOCATION: New Arrest or Conviction, p. 35)

STEPS TO REVOCATION: For Technical Violations Only

If you are facing the possibility of having your parole revoked because of

technical violations *only* (without new criminal charges or conviction), the following steps in the revocation process are consistent with statutes, regulations and the courts:

- 1) The P.O. decides to begin revocation procedures and applies to the senior P.O. for a "warrant for retaking and temporary detention" (parole warrant). (See BEING TAKEN INTO CUSTODY: Warrants, p. 33) [CL 216]
- 2) You are taken into custody by the P.O., a police officer, or any authorized person, to a local jail where you are held on a parole warrant.
- 3) Once you are taken into custody on a parole warrant, you have the right to have a preliminary hearing. The purpose of the preliminary hearing is to establish whether there is sufficient factual evidence (probable cause) to believe you probably did violate the conditions of your parole. If probable cause is found you are held without bail until your final revocation hearing. [See *Calloway v. Skinner*, cite on p. 40] After the finding of probable cause, your P.O. prepares a parole violation report. This report plus your file is then reviewed by another parole board member who fixes the date of delinquency (See PAROLE REVOCATION AND YOUR REMAINING SENTENCE, p. 38) and orders your transfer to another institution where the final revocation hearing will be held. (For further discussion of hearing location, see p. 41)
- 4) If probable cause is found or if you waive your preliminary hearing (See WAIVE YOUR PRELIMINARY HEARING?, p.35) you have a right to a final revocation hearing before a 3-member parole board panel. [CL Supp. 212(7)] This panel must consider the evidence on *all* charges for which probable cause was found at the preliminary hearing plus any mitigating evidence. The panel must decide if they believe the evidence supports the charges that you violated your parole conditions. If they decide that the evidence does not support the charges, you will be released on parole back to the community. If they decide the evidence does support the charges of parole violation, they must then decide what to do with you. They have the following 3 choices:
 - a) Decide to re-parole you immediately
 - b) Decide to re-parole you once you submit a new parole plan which must be approved by the parole board. (A plan much like the PAROLE PLAN, p. 21)
 - c) Decide to reincarcerate you. If they decide to do this, you will be told when you have another parole release hearing.

This must be within 24 months.

STEPS TO REVOCATION: With New Arrest or Conviction

The parole board has taken the position that the process of revocation for someone with a new arrest or conviction is not the same as for someone with technical violations only. For example, one parole board policy is that a person with a new conviction is not entitled to a preliminary hearing because the conviction itself establishes probable cause of a parole violation. Some of the parole board's procedures and policies are now being challenged in the courts. This means that parole board procedures and policies are in a state of flux.

If you are faced with revocation and you have a new arrest or a new conviction, you should consult with a lawyer immediately about your rights. If your lawyer does not know about the ins and outs of revocation, you should write for assistance from the Parole Revocation Defense Unit of Legal Aid. (See ADDRESSES, p. 47)

Should you WAIVE YOUR PRELIMINARY HEARING?

If you are charged with parole violations and face the possibility of having your parole revoked, you must decide whether you should have your preliminary hearing or waive it. You may want to talk to a lawyer about this decision.

Your P.O. may tell you that there is little to be gained by insisting on a preliminary hearing. This may or may not be true depending on the circumstances of your case. When deciding if you will want your preliminary hearing keep in mind these 2 points:

- 1) It may be to your advantage to have a preliminary hearing. The purpose of the preliminary hearing is to determine whether or not there is probable cause to believe that you actually committed the parole violations you have been charged with. (See STEPS TO REVOCATION: Technical Violations Only, p. 33; REVOCATION HEARINGS: Detailed Review, p. 39; INSISTING ON YOUR RIGHTS DURING REVOCATION, p. 36) If probable cause is not found, the parole warrant is lifted and you are released, unless there is another outstanding warrant on you. (See BEING TAKEN INTO CUSTODY: Warrants, p. 33; STEPS TO REVOCATION: New Arrest or Conviction, p. 35) You are held for a final revocation hearing only if probable cause is found to support the violation charges.
- 2) A preliminary hearing will give you a chance to hear the P.O.'s testimony and to evaluate the evidence against you. This may help you prepare

for your final revocation hearing in the event that probable cause is found at the preliminary hearing.

INSISTING ON YOUR RIGHTS DURING REVOCATION

During revocation you should expect and request the items listed below to make sure you use your rights to your advantage. All the written notices listed *are available*. If they are not given to you, you should ask for them, and you should receive them early enough so you have time to make use of them. (See STEPS TO REVOCATION: Technical Violations Only, p. 33; WAIVE YOUR PRELIMINARY HEARING?, p. 35; REVOCATION HEARINGS: Detailed Review, p. 39)

Preliminary Hearing

1) **Notice of Violation:** This is a form that is usually given to you as soon as you are taken to jail. This notice should include the following information:

- a) A list of all violations you are charged with
- b) A space to X if you want or do not want to waive your preliminary hearing. (See WAIVE YOUR PRELIMINARY HEARING?, p. 35)
- c) The purpose of the preliminary hearing
- d) A statement of your right to call witnesses and present evidence at the preliminary hearing

2) **Counsel:** You should immediately make a request to the institutional P.O. that an attorney be present at your preliminary hearing. If you cannot afford an attorney, you can request that the local Supreme Court assign one to you or you should get in touch with the Legal Aid Society or the Public Defender's Office. It is a good idea to base your request for an attorney on one or more of the 3 needs outlined in *Gagnon*. (See Chart, p. 42, points marked with an asterisk (*). Do not use point *(2) if you have a new arrest.) If you are not permitted to be represented by counsel at your preliminary hearing, you still have the right to discuss your case with an attorney. The decision to permit counsel is made by the parole board member at the hearing. If your attorney comes to the hearing, he is often allowed to stay.

3) **Notice of Time, Date and Place of Hearing:** This form is usually given to you by your P.O. or the institutional P.O. You should receive it at least 6 days before the hearing.

4) **Decision of Hearing:** You will be told the decision of the hearing, but the written Statement of Decision is usually not given to you. You can write for this form or have your lawyer get it for you. It should contain the reasons for the decision and the evidence that was relied on.

Write to: P.O. in Charge of Preliminary Hearings at the Parole Area Office that has your records (See ADDRESSES, p. 47)

5) **Hearing Minutes (Also applies to the final hearing):** The minutes for both the preliminary and the final revocation hearings are available. You can write and request them from the Secretary of the Parole Board in Albany. (See ADDRESSES, p. 47) If your preliminary hearing occurred after June 1, 1974 at Rikers or Ossining, the minutes are available from Adler Reporting Service, 15 Park Row, New York, New York 10038. When writing for hearing minutes include the following information:

- a) Your name, number, and address
- b) Date of your hearing
- c) Place of your hearing
- d) Names of parole board members (if you know)
- e) Type of hearing: preliminary or final revocation

You should find out the price per page. When your order is ready, you will be informed, and you must then send your money. If you are seeking judicial review and cannot afford to buy the minutes, ask the court for an order directing that the minutes be provided to you without fee.

6) **Witnesses (Also applies to the final hearing):** You have a right to question witnesses who have spoken against you. This means you can question your P.O. You can also question any person who has given your P.O. information against you. Once you receive the parole violation report, you should be able to tell who these people are. Make a request in writing to your institutional P.O. that the parole board produce these persons. Keep a copy of the letter for yourself. *The parole board does have subpoena power and the power to swear witnesses and to take testimony under oath.* [CL Supp. 6-a(5)] Make a written demand that the adverse witness be subpoenaed, if you think the person will not come voluntarily. (The only exception to this general rule is if the parole board believes the witness would be subject to "risk of harm" if forced to testify. For discussion of "risk of harm," see p. 41) You may wish to present defense witnesses, people who will testify for you either to the charges or to mitigating factors. The institution must be notified ahead of time in order for these people to be ad-

mitted, and they should be sure to bring proper identification. You should give a list of your witnesses to the institutional P.O. ahead of time.

Final Revocation Hearing

1) **Violation Report:** This report is written by your P.O. after the preliminary hearing. It includes a list of all the violation charges, the charges for which probable cause was found at the preliminary hearing and a detailed statement of the evidence on each charge. A copy of this report will be given to your lawyer. If you do not have a lawyer and you do not receive this report, you should write and request it from your P.O. or the institutional P.O. before your final hearing.

2) **Counsel:** you have an absolute right to counsel at your final revocation hearing even if you did not have an attorney at your preliminary hearing. (See REVOCATION HEARINGS: Detailed Review, p. 39) (For information on how to get a lawyer, see discussion of Counsel, p. 36)

3) **Notice of Time, Date and Place of Hearing:** This is given to your attorney several weeks before the hearing. If you are not represented by an attorney, you may be informed of the hearing only a few hours before the hearing is scheduled to be held. You should protest this lack of sufficient notice when you go before the board and make sure it is on the record. You may want to request an adjournment if lack of sufficient notice prevents you from presenting witnesses or evidence.

4) **Statement of Reasons for Decision and Evidence Relied On:** After the parole board leaves the institution you will receive a form which will briefly state the decision. If parole is revoked, it will say something like: "Parole revoked. Reasons: Admissions, parole officer testimony. Charges 1, 2 sustained. Held 9 months, July 1976 board." Always check the date of your next hearing against the number of months you were ordered to be held, since mistakes do occur.

APPEALING THE REVOCATION DECISION

If you feel your rights have been violated, you will need to go to court in order to challenge the parole board's decision. You should consult a lawyer to find out what proceeding is appropriate to your case, in what court it should be filed and how to go about filing it.

PAROLE REVOCATION and YOUR REMAINING SENTENCE

The following information may help you determine how the revocation of your parole will affect the remainder of your sentence. Since the relation-

ship between parole revocation and your sentence can, in some cases, become complicated, you may find it necessary to consult a lawyer.

1) If your parole is revoked you will lose the good time you accumulated prior to your being released on parole. [CL Supp. 803(5)]

2) You should find out the "date of delinquency." This date is determined by a parole board member and is supposed to be the date when you first violated the conditions of your parole (the violation for which you had your parole revoked). The date of delinquency is important because the time you spent on parole in the community before this date will be credited against your maximum term.

3) You should also find out whether or not the time you spent in custody under a warrant, pending the revocation of your parole, will affect your sentence. Whether it does have an affect, and what the effect is, depends on several factors such as:

a) whether or not the revocation of your parole is based only on technical violations, or

b) whether or not the revocation of your parole is linked with an arrest and whether that arrest ended in a conviction or an acquittal, or

c) whether a conviction resulted in sentences which will run concurrent or consecutive, or

d) whether it was the judge or the parole board which set the minimum term of your new sentence. (For further discussion of setting the minimum sentence, see ELIGIBLE FOR PAROLE?, p. 19)

If you believe that a mistake was made in any of these matters, follow the steps on page 13.

REVOCATION HEARINGS: A Detailed Review

In the past several years, 4 court cases have caused many changes in the revocation process. These cases are:

People ex. rel. Menechino v. Warden, Green Haven State Prison, Court of Appeals of New York, January 13, 1971. 27 N.Y. 2d 376, 318 N.Y.S. 2d 449 (1971).

Morrissey v. Brewer, U.S. Supreme Court, June 29, 1972. 408 U.S. 471, 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1972).

Gagnon v Scarpelli, U.S. Supreme Court, May 14, 1973. 411 U.S. 778, 36 L. Ed. 2d 656, 93 S. Ct. 1756 (1973).

People ex rel. Calloway v. Skinner, Court of Appeals of New York, July 3, 1973. 33 N.Y. 2d 23, 347 N.Y.S. 2d 178 (1973).

The following chart describes the due process safeguards and your rights established by these court decisions:

(Parole board policies are included in brackets []. For further discussion of parole board policies, see **INSISTING ON YOUR RIGHTS DURING REVOCATION**, p. 36)

QUESTIONS	PRELIMINARY HEARING	FINAL HEARING
1. Where must the hearing be held?	"... reasonably near the place of the alleged parole violation or arrest ..." (<i>Morrissey</i> at 485) [New York State Courts have held that a parolee may be moved to a state facility if local facilities have no space.]	[Parole board policy has been that the hearing be held at a state correctional facility. This policy is being challenged in New York State courts.]
2. When must the hearing be held?	"... as promptly as convenient after arrest while information is fresh and sources are available." (<i>Morrissey</i> at 485) [In New York State, within 20 days is considered satisfactory.]	"... the revocation hearing must be tendered within a reasonable time after the parolee is taken into custody. A lapse of two months, ... would not appear to be unreasonable." (<i>Morrissey</i> at 488)
3. What kind of notice of my hearing am I entitled to?	1. "... the parolee should be given notice that the hearing will take place and ... its purpose ..." (<i>Morrissey</i> at 486) 2. "The notice should state what parole violations have been alleged." (<i>Morrissey</i> at 487)	1. "written notice of the claimed violations of parole" (<i>Morrissey</i> at 489) 2. "disclosure to the parolee of evidence against him" (<i>Morrissey</i> at 489)
4. Who should conduct the hearing?	"... an uninvolved person ... the officer directly involved in making recommendations cannot always have complete objectivity in evaluating them..." (<i>Morrissey</i> at 486) [New York State Parole Department practice is to use one member of the parole board.]	"a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers." (<i>Morrissey</i> at 489) [New York State Parole Department uses 3 members of the parole board.]
5. What may I do personally to present my case at the hearing?	1. "... The parolee may appear and speak in his own behalf;" 2. "he may bring letters, documents or individuals who can give relevant information to the hearing officer. On request of the parolee, persons who have adverse information on which parole revocation is to be based are to be made available for questioning in his presence." (<i>Morrissey</i> at 487) 3. "... if the hearing officer determines that the informant would be subject to risk of harm if his identity were disclosed, he need not be subjected to con-	1. You can be "heard in person and ... present witnesses and documentary evidence." 2. You have the "right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)." (<i>Morrissey</i> at 489)

continued

Questions	Preliminary Hearing	Final Hearing
	frontation and cross-examination." (<i>Morrissey</i> at 487) [New York State Parole Department policy is to allow your parole officer, yourself and the hearing officer at this hearing. The parole board usually does not produce witnesses, but sometimes will allow them.]	
6. What kind of hearing summary and list of reasons am I entitled to?	"The hearing officer shall have the duty of making a summary, or digest, of what occurs at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. Based on the information before him, the officer should determine whether there is probable cause to hold the parolee for the final decision of the parole board on revocation..." (<i>Morrissey</i> at 487)	"a written statement by the fact-finders as to the evidence relied on and the reasons for revoking parole." (<i>Morrissey</i> at 489) [State parole board policy is to give you a form which briefly states the decision.]
7. What is my right to counsel at the hearing?	1. You must be "... informed of ..." your "... right to request counsel, ..." (emphasis added) (<i>Gagnon</i> at 790) 2. "The need for counsel must be made on a case-by-case basis in the exercise of a sound discretion by the state authority charged with responsibility for administering the parole system." (<i>Gagnon</i> at 790) "... counsel should be provided in cases where, ... parolee makes such a request, based on a timely and colorable claim *(1) that he has not committed the alleged violation of the conditions ... *(2) even if the violation is ... uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present." *(3) Counsel should be allowed if parolee is not "... continued	1. "... the right to the assistance of an attorney at the hearing is constitutionally mandated." (<i>Menechino</i> at 380) 2. "... he should have been advised of that right ..." to counsel. (<i>Menechino</i> at 385)

* For practical use of these three points of *Gagnon*, see p. 36, discussion of "Counsel."

Questions	Preliminary Hearing	Final Hearing
	capable of speaking effectively for himself." (<i>Gagnon</i> at 790) 3. "... the State provide at its expense counsel for indigent ... parolees." (<i>Gagnon</i> at 790) 4. "In every case in which request for counsel at a preliminary or final hearing is refused, the grounds for refusal should be stated succinctly in the record." (<i>Gagnon</i> at 791)	

VIII. GETTING OFF PAROLE

Can you get an EARLY DISCHARGE FROM PAROLE OR CONDITIONAL RELEASE?

It is possible to get a discharge from parole or CR before you serve out your maximum sentence. (Does not apply to definite sentence.) An early discharge "... shall constitute a termination of the sentence..." [CL Supp. 212(8)] You are eligible for early discharge unless you were sentenced for one of the following felonies:

- 1) Some A-I felonies — for possession or sale of a controlled substance in the first degree, or the attempt to do either
- 2) Any A-II or A-III felony

If you are on parole you are eligible for early discharge if you have served unrevoked parole for 5 consecutive years. If you are on CR you are eligible if you have served unrevoked CR for 2 consecutive years.

Early discharge is granted at the discretion of the parole board. [CL Supp. 212(8)] If you feel you may be eligible, you should discuss it with your P.O.

Why YOU SHOULD APPLY TO GET YOUR RIGHTS BACK

As a result of your conviction you may have lost many rights. The number of rights you lose depends on the seriousness of your offense. You can, however, get some rights back after you have served your sentence. Getting your rights back is a smart and easy thing to do. It may help you get a job.

These are some of the rights you may have lost:

Civil Rights

- the right to vote
- the right to a driver's license
- the right to be a juror

Employment Rights

- the right to be employed in any place licensed to sell beer or liquor or a place where it is consumed on the premises

Civil Service Examination Rights

- the right to take some civil service examinations

Licensing Rights

the right to be licensed:
as a barber
as a guard
for certain waterfront jobs
as a junk dealer
as a pool room operator

To get your rights back you must apply for one of the following 2 certificates. Which certificate you apply for depends on the number of convictions you have.

1) *If you have only one conviction*, you should apply for the CERTIFICATE OF RELIEF FROM DISABILITIES.

Apply to: If you were sentenced to a state institution for a felony or a misdemeanor, apply to the state parole board.

Apply to: If you were sentenced to a county or local institution, apply to the court that sentenced you.

2) If you have *more than one conviction*, and have completed parole plus shown 5 years of good conduct in the community, you should apply for the CERTIFICATE OF GOOD CONDUCT.

Apply to: the state parole board (See ADDRESSES, p. 47)

To find out more about regaining your rights and how to do it, write for the pamphlet "how to regain your rights . . ." from New York Urban Coalition, 55 5th Avenue, New York, New York 10003.

IX. ADDRESSES

ADDRESSES

State Parole Offices

Central Office: New York State Parole Board
Department of Correctional Services
of the State of New York
Building 2
State Campus Complex
Albany, New York 12225
(518) 457-8178

Interstate Bureau: Twin Towers
Albany, New York
(518) 457-1237

Parole Area Offices: 1092 Madison Avenue
Albany, New York
(518) 474-2550

1206 Press Building
Binghamton, New York 13901
(607) 773-7769

260 East 161st Street
Bronx, New York 10451
(212) 292-7920

125 Main Street
Buffalo, New York
(716) 842-4357

49 Main Street
Canton, New York
(315) 386-2884

382 West Church Street
Elmira, New York
(607) 734-6667

167 North Franklin Street
Hempstead, New York
(516) 485-2660

314 West 40th Street
New York, New York
(212) 594-5800

82 Washington Street
Poughkeepsie, New York
(914) 452-0620

75 Clinton Avenue, North
Rochester, New York
(716) 232-5464

333 East Washington Street
Syracuse, New York
(315) 473-8181

Room 408 Utica State Office Building
Utica, New York
(315) 797-6120

Projects which give legal assistance on parole issues:

New York City: Parole Revocation Defense Unit
The Legal Aid society
15 Park Row
New York, New York 10038
(212) 374-1737

Attica: Prisoners' Legal Assistance Project
The Legal Aid Bureau of Buffalo
205 Walbridge Building
Court Street
Buffalo, New York 14202
(716) 853-9555

Clinton: Project for Prisoners' Rights
721 Ostrom Avenue
Syracuse, New York 13210
(315) 423-4463

Comstock: Prisoners' Assistance Project
Albany Law School
80 New Scotland Avenue
Albany, New York 12208
(518) 465-1545

END