

MISSOURI
RIGHTS OF ALLEGED VIOLATOR
TO PRELIMINARY AND REVOCATION
HEARING



28879

Missouri Board of Probation and Parole
P. O. Box 267
211 Marshall Street
Jefferson City, Missouri 65101

INTRODUCTION

This booklet is designed to provide information and set out the rights of individuals who have been placed on probation or parole and who have become involved in alleged violations of the conditions of probation and parole.

Information contained in this booklet has been derived from Statutes of the State of Missouri; recent Supreme Court rulings; and long standing policies of the Courts and of the Board of Probation and Parole.

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ARREST AND DETENTION

The following is taken from Missouri Revised Statutes 549.265 and 549.101, setting out the authority of the Probation and Parole Officer to arrest or have arrested and placed in detention the alleged violator of probation and parole conditions.

*"Any Probation or Parole Officer may arrest such probationer or parolee without a warrant or may deputize any other officer with the power of arrest to do so by giving him a statement setting forth that the probationer or parolee has in the judgment of the Probation and Parole Officer violated the conditions of his probation or parole. The written statement delivered with the probationer or parolee by the arresting officer to the official in charge of any jail or other detention institution to which the person is brought shall be sufficient legal authority for the detention of the probationer or parolee. After making the arrest the Probation and

Parole Officer shall present to the detaining authority a similar statement of the circumstances of the violation." The alleged violator will be delivered a copy of the warrant at the time of arrest or as soon as possible thereafter.

RIGHTS TO PRELIMINARY HEARING

Any probationer or parolee who has allegedly violated the conditions of his probation or parole and his supervising officer has recommended revocation of his probation or parole has the right to a review of this recommendation by means of a preliminary hearing. The only exception in which a preliminary hearing is not required is when a recommendation for revocation is based on a new conviction. However, in such cases a preliminary hearing may be held if requested by the Court or Parole Board.

This is not a direct quotation in that we have used "probationer" where in Statute 549.265, the word "prisoner" is used and "parolee," where in Statute 549.101, the word "defendant" is used. In all other ways the Statute is quoted correctly.

The alleged violator shall have an opportunity to indicate his desire for a preliminary hearing by signing Form MBPP-169, which is entitled "Request for or Waiver of Preliminary Hearing." If the alleged violator wants a hearing or desires to waive the hearing he will designate this desire by signing this form in the proper place. The hearing will be held within 10 working days from the time the violation report is prepared and received at the Regional Office. In most cases the hearing will be held within two weeks. If the right to the preliminary hearing is waived, this does not affect the right to have a revocation hearing before the Parole Board or the Court.

The Preliminary Hearing will be held reasonably near the place of the alleged violation or arrest as promptly as convenient after the arrest to determine whether there is probable cause to believe that the alleged violator has in actuality violated the conditions of probation or parole. This is an informal inquiry and is not to be confused with a final revocation hearing.

At the hearing the alleged violator has the following rights:

- 1) the alleged violator may present his own testimony in regard to the alleged violation, as well as presenting any documents or other evidence or mitigating circumstances which may throw light on the violation.

- 2) the alleged violator may present his own witnesses who can give relevant information concerning this violation. These witnesses cannot just be character witnesses.

- 3) the alleged violator may confront or cross-examine any adverse witness unless

the hearing officer determines that the witness may be subject to risk, harm, or embarrassment if their identity is disclosed.

4) the alleged violator will receive a written report of the hearing.

If a preliminary hearing is to be held the alleged violator will receive a notice of preliminary hearing from his Probation and Parole Officer. This notice will set out the date, time, and location of the hearing and designate the officer to hold the hearing. In no case will the officer holding the hearing be the Probation or Parole Officer of the alleged violator or that officer's immediate supervisor. This notice will also outline to the alleged violator the charges that are brought against him consisting of the violations of the conditions of probation or parole.

It will be the responsibility of the alleged violator to produce his own witnesses. If in custody he will be given ample opportunity by the officials in charge of the detaining fa-

cility to make such contacts as may be necessary to assure the appearance of the witnesses. The hearing officer does not have subpoena power. Neither do they have funds to assure the appearance of any witness for the preliminary hearing nor to pay any other expenses incurred by the alleged violator in preparation for or resulting from the preliminary hearing.

The hearing officer shall be in charge of the hearing. Only the alleged violator and the hearing officer will be present unless the hearing officer feels a security guard should be in attendance. Only one witness will be allowed in the hearing room at a time. The hearing officer will initiate all questioning of witnesses followed by the alleged violator's cross-examination. The alleged violator will have ample time to question witnesses. However, the hearing officer can terminate questioning if the testimony becomes irrelevant, repetitious or excessive.

If probable cause is indicated the hear-

ing officer will then refer the case to the Parole Board or the Court for a revocation hearing.

REVOCATION HEARING

Any probationer or parolee who has allegedly violated the conditions of his probation or parole and who has had or has waived a preliminary hearing has the right to a revocation hearing before the authority that originally allowed the probation or parole. This hearing will be held within a reasonable time after the alleged violator has been made available to the releasing authority either by his return to the Missouri Department of Corrections for his appearance before the Parole Board or his return to the jurisdiction of the Court.

The alleged violator may waive his right to a revocation hearing. Parolees from the

Missouri Department of Corrections will be contacted by an Institutional Parole Officer who will make available to him a form entitled "Request for or Waiver of Revocation Hearing." He will sign this form indicating his desire. Probationers or parolees under the authority of the Court will be given an opportunity to appear before the Court and to make their desires known at that time. Some Courts may not allow the alleged violator to waive revocation hearing. In these cases the hearing will be held at the instruction of the Court.

At the revocation hearing the alleged violator has the following rights:

- 1) the alleged violator may present his own testimony regarding the alleged violation as well as presenting any other documents or evidence with mitigating circumstances which may throw light on the violation.
- 2) the alleged violator may present his own witnesses who have relevant information

concerning this violation. These witnesses are not just to be character witnesses.

3) the alleged violator may confront and cross-examine any adverse witness unless the Board or the Court finds good cause for not allowing a confrontation or cross-examination.

4) a statement by the Court or the Board as to the evidence relied on and reasons for revoking shall be supplied the probationer or parolee.

It will be the alleged violator's responsibility to produce his own witnesses. He will be given an opportunity by the officials to make such contacts as may be necessary to assure the appearance of these witnesses. There are no funds available to assure the appearance of any witnesses or to pay any expenses incurred by the alleged violator in preparation for or resulting from the hearing.

REVOCATION DECISION — MISSOURI BOARD OF PROBATION AND PAROLE

After the revocation hearing, the Parole Board will supply the alleged violator with a written notice within a reasonable time, setting out their decision. This notice will be sent within 5 working days from the time the decision was made. The following is a list of possible decisions the Board may make. However, the list does not exhaust the decisions open to the Board.

BOARD DECISIONS

The Board may:

1) request additional information by means of various types of reports from the supervising probation and parole officer, consulting psychologist or psychiatrist, or any other party or agency that might be able to supply additional information regarding the violation.

2) schedule the alleged violator for another personal hearing before the Board to look more deeply into the violation.

3) revoke and deny further parole consideration causing the violator to serve the remainder of his sentence.

4) revoke and reschedule the violator for either a review and/or a hearing. If the remaining time on the sentence from date of revocation of parole is less than six months, it is very likely that the Board will give a complete denial. Under special circumstances and in very rare situations, the Board may decide to grant further parole consideration even with less than six months to serve on the sentence. If the remainder of the sentence is more than six months from the date of revocation, the Board will then schedule a review or a hearing. The review or the hearing will usually be held within six months or one year but rarely longer than one year. However, in some instances, scheduling for a review or a hearing may be up to a maxi-

mum of five (5) years.

5) not revoke but consider the alleged violator for reinstatement on parole. The release will occur as soon as a satisfactory plan is approved by the Board.

TIME ACCREDITED TO SENTENCE

All time served within the Department of Corrections and under direct parole supervision is accredited as time served on the sentence.

Missouri Revised Statutes 549.265, sets out restrictions regarding the time allowed on sentence. For those individuals who were arrested for a crime while on parole and received a conviction and a sentence and this was served outside the Missouri Department of Corrections, the Statute reads as follows:

"if at any time during release on parole the prisoner is arrested for a crime which later leads to conviction

and sentence is then served outside the Missouri Department of Corrections, the Board of Probation and Parole shall determine what part, if any, from the date of arrest until the completion of the sentence imposed, is counted as time served under the sentence for which he was paroled."

In consideration of this statute, an individual's time stops at the date of arrest and does not begin again until he has completed the sentence he received. Once the sentence is complete, his time will begin again and will be accredited as time served on his sentence.

549.265, Section 3, relates to those who have absconded while under parole supervision. The Statute reads as follows:

"a prisoner for whose return a warrant has been issued by the Board shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled

from justice. If it shall appear that he has violated the provisions and conditions of his parole the Board shall determine whether the time from the issuance of the warrant to the date of his return to the Missouri Department of Corrections or continuance on parole shall be counted as time served under sentence."

From the effective date of the Board's Order of Arrest and Return to the date that the alleged parole violator is returned to the Department of Corrections for the purpose of revocation hearing, such time shall not count as time served on his sentence.

In both the case of the individual who serves a sentence outside the Department of Corrections and the absconder it will be discretionary with the Parole Board as to whether or not any part of that time is accredited against the individual's sentence.

For those individuals who were sentenced to the Department of Corrections under Sec-

tion 195.221 for selling, giving or delivering a controlled substance and when paroled under that section of the statute, were compelled to serve under parole supervision their original sentence as well as an additional five years, the Attorney General has ruled in regard to their time when returned as parole violators, stating the following:

"an individual — is not to be given credit for parole time as time towards service of his term of imprisonment. Therefore, a person on parole for such a conviction must on the revocation of the conditions of his parole serve the remainder of the term set by the original sentence from which he was paroled."

Therefore, any individual returned under this Statute will serve whatever was remaining on his original sentence at the time he was released on parole.

The Parole Board has no jurisdiction in regard to the restoration of either

merit or blood time earned by an individual prior to his release on parole. This matter is determined solely by the Department of Corrections.

In case of consecutive sentence, time is accredited as any other case. If one parole is revoked and there are other remaining consecutive paroles granted, all are automatically revoked.

REVOCATION DECISION — COURT

The Court, at the conclusion of the revocation hearing may immediately advise of the decision they have made in the case or may take the case under advisement and rule within a reasonable time then advising of the action taken by them. The Court does have discretion in what action they may take and the following are some examples, however, the list does not exhaust the decisions open to the Court.

The Court may:

1) order the continuance of the probation or parole, causing the continuation of supervision by the Missouri Board of Probation and Parole.

2) order continuance of probation or parole under such new conditions as the Court may prescribe.

3) after revoking probation or parole require the payment of all Court costs in the case and may grant a second probation or parole, but no more than two probations or paroles shall be granted the same person under the same judgment of conviction.

4) revoke the probation or parole and cause execution of sentence pronounced.

5) relieve the alleged violator of parole or probation supervision and issue a final discharge.

Further information concerning probation or parole may be obtained from any probation and parole officer, from the Board of Probation and Parole, or the Court.

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