

19. Probation and Parole Regulations

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The Supreme Court has ruled that certain due process requirements must be observed at revocation proceedings. In most cases, a probationer and a parolee are entitled to a preliminary and final revocation hearing. Although these hearings are not a criminal prosecution, certain minimal due process safeguards are mandated.

Below is a brief description of the process you will go through if you are threatened with a probation or parole revocation.

Probation / Conditional Discharge Revocation ¹

1. *Declaration of Delinquency*

Any time during a period of probation or conditional discharge, the court may issue a declaration of delinquency if it has reason to believe that the defendant has violated a condition of the sentence.

a. **Notice to Appear**

The court may order a defendant under a sentence of probation or conditional discharge to appear before it. A notice will either be mailed to the defendant or delivered personally. Failure of the defendant to appear in court after receiving a notice is considered a violation of the sentence.

b. **Warrant**

¹ "On Your Own, Information and Resources for Persons formerly incarcerated, the Convicted and their Families in the [New York State] Capital District," produced by the Center for Law and Justice, Albany, NY.

When the court believes that a defendant has violated a condition of the sentence, it may issue a warrant directing that the defendant be taken into custody and appear before the court without delay.

i. **Appearance Before the Court**

When a defendant has been brought before the court for a violation of a condition of probation or conditional discharge, the court will:

- Commit the defendant to the custody of the sheriff (jail); or
- Set bail; or
- Release the defendant on their promise to return for the next court date.

2. *Hearing on Violation*

The court cannot revoke a sentence of probation or conditional discharge unless the court finds that the defendant violated a condition of the sentence and the defendant has had an opportunity to be heard in court.

a. **Statement of Violation**

The court must provide the defendant with a statement that explains the conditions of the sentence violated and a description of the time, place and manner of the violation.

b. **The Hearing**

The defendant has the right to a hearing. The judge will conduct the hearing - there is no right to a jury. The defendant has the right to present evidence and cross examine witnesses.

i. **Right to Counsel**

The defendant has the right to an attorney at all stages of the violation process.

ii. **Standard**

A finding that the defendant violated a condition of the sentence must be based on a preponderance of the evidence.

3. *Finding of the Court*

At the conclusion of the hearing, the court may revoke, continue or modify the defendant's sentence.

a. Revocation

If the court revokes the sentence, the probationer may be sentenced to:

- A term of imprisonment determined by the original conviction charge(s) or,
- A term of imprisonment and probation; the period of probation shall be the remaining period of the original sentence or one year, whichever is greater.

b. Continuation or Modification of Sentence

If the violation is not sustained, the remaining term of probation will served as if the violation were never filed. If the court sustains the violation, the judge may continue or modify the sentence. If the sentence is continued, there are no changes to the original Orders and Conditions. If the sentence is modified, the court may impose new conditions and extend the original sentence for the period of time between the act that caused the violation and the sentencing date on the violation.

Parole Revocation ²

The information contained here is provided by the *New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision* (January, 1998).

1. Investigation

If a Parole Officer receives information suggesting that a person has violated one or more of the conditions of release, he or she will investigate and discuss the situation with a supervisor. If the evidence from the investigation leads the officer to believe conditions of parole were violated, a parole violation warrant may be issued by a member of the Board of Parole or by a designated officer.

² New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision (January, 1998), <http://parole.state.ny.us/parolehandbook.html#section%20four>

2. Execution of Parole Warrant

When the parole warrant is executed, you will be detained in a local facility or detention center without bail.

a. After a Parole Violation Warrant is Issued

Within three days (five days if you are out of state), you would then be served with:

i. Notice of Violation

This notice will describe the hearing process and list your rights with respect to those hearings and the date, place and time of your Preliminary Hearing and your Final Hearing.

ii. Violation of Release Report

This report will describe the manner in which you allegedly violated one or more of the conditions of your parole.

2. Preliminary Hearing

Within fifteen days, a Preliminary Hearing must be scheduled unless you waive such a hearing.

a. Purpose of Preliminary Hearing

The purpose of the Preliminary Hearing is to determine if there is probable cause to believe that you violated a condition of parole.

Findings of the Preliminary Hearing

If there is not enough evidence to suggest you violated your conditions of release, you will be restored to parole supervision.

If probable cause is found at the Preliminary Hearing, or you waive the Preliminary Hearing, a Parole Area Supervisor will review your case and decide whether to declare you delinquent and order a Final Hearing.³

Delinquent Status

You may be declared delinquent in four situations:

1. When there is a reasonable cause to believe that you have absconded from supervision;
2. When probable cause has been found that you violated one or

³ Regulatory Change, effective 7/12/04, to 9NYCRR, § 8004.3(a)

more of the conditions of release;

3. When you are an alleged parole violator and waive your Preliminary Hearing;
4. When you have been convicted of a new crime while under parole supervision.

The Preliminary Hearing Officer cannot recommend a disposition in your case. He or she has the limited duty and power of determining whether probable cause exists.

b. Right to Counsel

There is no absolute right to counsel at the Preliminary Hearing. However, you may appear with an attorney at this hearing. If you cannot afford an attorney, you can request that an attorney be appointed at the beginning of the hearing. The hearing officer will then decide whether or not it is necessary to appoint an attorney.

If a Final Hearing is ordered, an attorney will be assigned to represent you if you cannot afford one.

3. Final Hearing

In order to revoke your parole, the Division of Parole must prove at a Final Hearing, by a preponderance of the evidence, that you have violated at least one of the conditions of release. At this hearing, you have all the rights you had in the Preliminary Hearing, plus you have the right to counsel.

The Final Hearing is held before a Parole Board Member or Final Hearing Officer. The member or officer makes a decision or, in some cases, a recommendation to the Board of Parole whose members will make the ultimate decision about the revocation.

4. Convicted of a Crime while under Parole Supervision

If you are convicted of committing of a crime while under parole supervision, you forfeit your right to a Preliminary Hearing and possibly the Final Hearing as well.

a. Conviction of a Misdemeanor

If you are convicted of a misdemeanor, you are not entitled to a Preliminary Hearing but will receive a Final Hearing.

b. Conviction of a Felony

If you are convicted of a felony, and sentenced to a determinate or indeterminate term of imprisonment, your parole is revoked by law without the need for either a Preliminary or Final Hearing.

Interstate and Intrastate Probation⁴

If I am serving a Probation sentence, can I move to another county in the state or live in another state?

Yes, but only after discussing it with your probation officer and, with his/her approval, developing a definite plan for a living arrangement and employment. Transfer to another county requires the approval of and a transfer order by the sentencing court. Transfer to another state is accomplished through the Interstate Compact for Probation and requires the approval of the sentencing court and acceptance for supervision by the receiving state. Both processes take time and a change of residence of this type must not be undertaken until a final approval is obtained.

Would it be possible to return to my native country while on Probation?

Requests must be made to your Probation Officer for evaluation. If such a plan is acceptable permission of the sentencing court will be requested. If granted you must make your own transportation arrangements and are required to follow all directives issued by the court and probation.

Am I able to travel temporarily for work or school attendance in another county or state while on Probation?

Yes, if such travel is viewed by your probation officer as appropriate. You must first discuss this with your probation officer who can assist in the procedure for obtaining permission. The Probation Officer will verify the information provided by you and could grant permission or may request the sentencing court to grant such permission. In most situations a **Travel Permit** is issued. You will be required to follow all requirements stated in the permit if you are approved for travel.

⁴ Reviewed by the Westchester Department of Probation

A good rule to follow, if for any reason you need to leave your county of residence, is to speak to your probation officer first. Your leaving the jurisdiction of the court that sentenced you without proper authorization will result in action effecting your probation status.

Interstate Parole ⁵

Can I Be Paroled or Conditionally released out of State ?

Yes. You must first be accepted by the other state under the Interstate Compact for Parole.

What is the Interstate Compact for Parole ?

The Interstate Compact for Parole is an agreement among the fifty states, Puerto Rico the Virgin Islands and the District of Columbia that allows individuals paroled by one state to be supervised in another state. The basic authority for the Interstate Compact is contained in federal legislation originally passed in 1934.

What is the Procedure for Out of State Parole ?

You should discuss your release plans with your Facility Parole Officer prior to your Board appearance for release consideration. If you request an out-of state parole program, the plan will be forwarded to the other state for investigation. When the investigation is completed. the results will be forwarded to the institution and will be discussed with you by your Parole Officer. If you have been accepted for parole by the other state, you can be paroled directly to that state if the Board makes a positive release decision.

If Paroled in New York State, May I Later Transfer My Parole Out of State ?

Yes. Transfer to another state must be discussed with your New York State Parole Officer. The process is similar to the process of being released directly to out-of state parole officials. and takes about the same amount of time .

May I Be Paroled to Return to My Native Country ?

Yes, you can apply, either while still in the institution or while on parole supervision, to be repatriated to your native country. You must make your own travel arrangements and have verification of citizenship in your native country. Such requests are reviewed by the Board of Parole. If approved, you will be required to contact New York State Parole in writing upon arrival in your country. You will not be permitted to return to the United States without the permission of the New York State Parole Board, or the appropriate federal authority if there is an immigration issue.

⁵ New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision (January, 1998),
<http://parole.state.ny.us/parolehandbook.html#section%20four>