

Parole Violations and Sanctions

Nevada Board of Parole Commissioners

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Parole Violations and Sanctions

Parole violation (PV) hearings are conducted in two parts: (1) determine whether a violation occurred and (2) imposition of a sanction if the Board determines a violation did occur. The discretionary and mandatory sanctions related to findings of guilt and revocation are complex. This document describes the types of violations and their possible corresponding sanctions. Policies and procedures pertaining to the conduct of a parole violation hearing are not included in this document.

Types of Parole Violations

The Legislature codified language during the 2019 and 2023 Sessions to delineate what constituted a technical violation of parole. They also narrowed the sanctions that may be imposed by the Board when a parolee is found guilty of a technical violation of parole.

Parole violations are categorized as:

- Technical Violations
- Absconding (as defined in NRS 176A.510)
- New Crimes
- Violation of a stay away order involving a natural person who is the victim of the crime for which the parolee is being supervised.
- Violation of a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive.
- A restraining order or injunction that is in the nature of a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591 or a temporary or extended order for protection against sexual assault pursuant to NRS 200.378.
- Violations of a certain sex offender conditions enumerated in NRS 213.1245 (1)(h) or (k), NRS 213.1255, or 213.1258
- Termination from a program indicated in a parole release plan approved by the Division.

While these categories appear to be straightforward, they can be somewhat misleading as technical violations may include convictions for many non-violent misdemeanors and absconding no longer automatically includes leaving the State without permission¹.

Technical Violations of Parole

“Technical violation” means² any alleged violation of the conditions of parole that does not constitute absconding. The termination from a specialty court program is not considered a technical violation of parole. Furthermore, a technical violation does not include the commission of a:

- New felony or gross misdemeanor;
- Domestic Violence pursuant to NRS 200.485;

¹ Leaving the State without permission can constitute absconding in certain circumstances.

² NRS ~~213.1519(5)(b)~~ 213.15101

- Driving under the influence of drugs or alcohol pursuant to NRS 484C.110 and NRS 484C.120;
- A misdemeanor crime of violence as defined in NRS 200.408 (a crime involving the use or threatened use of force or violence against the person or property of another);
- Harassment pursuant to NRS 200.571, or stalking or aggravated stalking pursuant to NRS 200.575;
- Violation of a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive, a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS, a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591 or a temporary or extended order for protection against sexual assault pursuant to NRS 200.378; or
- Violation of a stay away order involving a natural person who is the victim of the crime for which the parolee is being supervised;
- Violation of a condition required pursuant to paragraph (h) or (k) of subsection 1 of NRS 213.1245, (contact or communication with a victim of the offense or a witness who testified against the parolee; or contact with a person less than 18 years of age in a secluded environment without permission and another adult present); 213.1255 (additional conditions of parole required for Tier 3 offenders convicted of sexual offense against child under 14, or 213.1258 (conditions relating to computers and use of Internet and other means of communication).
- Termination from a program indicated in a parole release plan approved by the Division.

Non-Technical New Crimes

These ~~New crimes~~ include felony convictions, gross misdemeanor convictions and the crimes specified in NRS ~~213.1519(5)(b)~~. 213.15101(8)(b).

Absconding Defined

“Absconding” means³ that a person is actively avoiding supervision by making his or her whereabouts unknown to the Division for a continuous period of 60 days or more.

Temporary Revocation of Parole

Subsection 4 of NRS 213.1519 governs the length of imprisonment when parole is temporarily revoked for the commission of a technical violation as follows:

4. If the Board finds that the parolee committed one or more technical violations of the conditions of parole and the Division has determined that the graduated sanctions adopted pursuant to NRS 213.15101 have been exhausted, the Board may:

- (a) Continue parole supervision;*
- (b) Temporarily revoke parole supervision and impose a term of imprisonment of not more than:*

³~~NRS 176A.630(5)(a)~~ NRS 176A.510

- (1) ~~Thirty days for the first temporary parole revocation;~~ *Ninety days for the first temporary parole revocation; or*
 - (2) ~~Ninety days for the second temporary parole revocation;~~ *One hundred and eighty days for the second temporary parole revocation; or*
 - (3) ~~One hundred and eighty days for the third temporary parole revocation; or~~
 - (c) ~~Fully revoke parole supervision and impose the remainder of the sentence for a fourth third or subsequent revocation;~~ *or*
 - (d) *Revoke parole supervision at the request of the parolee. If parole supervision is revoked pursuant to this paragraph, the parolee must serve such part of the unexpired maximum term or the maximum aggregate term, as applicable, of his or her original sentence as may be determined by the Board with rehearing dates pursuant to NRS 213.142.*
5. *A parolee whose parole is revoked for committing a technical violation of the conditions of parole must receive credit for any time served while the parolee is waiting for a hearing to determine if a technical violation has occurred. The Board must apply such credit to any term of imprisonment imposed pursuant to subsection 4.*
6. *Any time served by a parolee while waiting for a hearing, as set forth in subsection 5, and any time served in accordance with any term of imprisonment imposed pursuant to subsection 4 must be applied toward the original sentence of the parolee.*

Credit Forfeiture

A temporary revocation of parole does not result in the forfeiture of Stat credits earned in prison and parole; however, the Board may affirmatively order the forfeiture of any number of Stat credits the parolee earned while on parole by virtue of a finding them guilty⁴ of violating one or more parole conditions.

~~Commencement of a Temporary Revocation~~

~~NRS 213.1519(4) does not address whether the days spent in custody prior to a violation hearing should be credited toward the imprisonment sanction of a temporary revocation. A parolee is still considered on parole until such time as they are revoked even though they may be confined. During the pre-hearing confinement, the parolee is still receiving credit against their sentence.~~

~~Since the legislature did not specify that pre-revocation in-custody time be credited toward any imprisonment time on a temporary revocation, and a temporary revocation would not begin until the Board adjudicates the charges, it appears that the maximum length of time that may be imposed for a temporary revocation would begin on the date the Board temporarily revokes parole.~~

Length of Temporary Revocation may be Less than the Maximum Period

~~Ideally, parole violators are scheduled to be heard at the first opportunity after their return to NDOC custody⁵. The timing of the date of return, the number of pending violation cases and the housing location~~

⁴NRS 213.1518

⁵NRS 213.1517 requires the Board to consider the violations within 60 days of the alleged violators return to NDOC custody. If the parolee is pending new charges, the board may defer consideration until not more than 60 days after their return following the final adjudication of the new charges.

~~may affect how soon a violator might be scheduled for a hearing.~~ The Board has the discretion to **set the length of a temporary revocation for fewer days than the maximum period.** ~~consider the amount of time an alleged parole violator spends in custody prior to the violation hearing when setting a reinstatement date.~~ A temporary revocation with ~~a one-day or~~ same day reinstatement is permitted.

Escaped Prisoners & Absconders

NRS 213.15185 states a parolee who leaves the State without permission from the Board, or who does not keep the Board informed as to his or her location as required by the conditions of his or her parole shall be deemed an *escaped prisoner*⁶ and arrested as such. The time a person is an *escaped prisoner* is not time served on his or her term of imprisonment.

NRS 213.15185 When paroled prisoner deemed escaped prisoner; loss of credits for good behavior; service of unexpired term of imprisonment.

1. A prisoner who is paroled and leaves the State without permission from the Board or who does not keep the Board informed as to his or her location as required by the conditions of his or her parole shall be deemed an escaped prisoner and arrested as such.
2. Except as otherwise provided in subsection 2 of NRS 213.1519, if parole is lawfully revoked and the parolee is thereafter returned to prison, the parolee forfeits all previously earned credits for good behavior earned to reduce his or her sentence pursuant to chapter 209 of NRS and shall serve any part of the unexpired maximum term or the maximum aggregate term, as applicable, of his or her original sentence as may be determined by the Board.
3. Except as otherwise provided in subsection 2 of NRS 213.1519, the Board may restore any credits forfeited pursuant to subsection 2.
4. Except as otherwise provided in NRS 213.15187, the time a person is an escaped prisoner is not time served on his or her term of imprisonment.

Subsection 2 of NRS 213.15185 appears to imply that the Board can revoke parole and cause the forfeiture of all stat time⁷ simply by virtue of making a determination that a parolee is an escaped prisoner – for example, changing residence without permission or simply crossing the state line for a weekend without permission appears to be sufficient to violate the parolee and deem him or her an escaped prisoner for that weekend.

However, the amendments to NRS 213.1519 narrowed the Board’s discretion when responding to violations and therefore affects this section. In order for the Board to fully revoke a parolee who violates by leaving the State without permission or “..who does not keep the Board informed as to his or her location...,” the parolee would need to meet the minimum criteria for revocation in accordance with NRS 213.1519.

⁶ Escaped prisoner is defined in NRS 213.15185

⁷ Credits for good behavior

There has been a longstanding practice for determining the exact dates or timeframes an *escaped prisoner* is not entitled to time served. The “stop” date has been the date the warrant was signed by the Board when the parolee’s whereabouts are unknown. The “re-start” date has been based on knowing the whereabouts of the parolee charged with a violation of reporting or leaving the state without permission as follows:

- The date the parolee was arrested in the State of Nevada; or
- In the case when a parolee leaves the state without permission, the date in which the parolee is being held solely on Nevada’s parole violation warrant after being arrested in a foreign jurisdiction.

Based on the plain language of NRS 213.15185(1), if a violation report included charges related to not knowing the whereabouts of a parolee for a period of time that is less than 60 days⁸, theoretically the Board could determine that the parolee was an *escaped prisoner* and require that the duration of that time not be credited against the sentence. While it would be difficult to ensure consistency in applying such a practice without clear rules to determine start and stop dates outside of the warrant/arrest dates, there are scenarios that could occur that would allow for an arrest of a parolee as an *escaped prisoner* prior to the parolee being considered an absconder.

A process could be established for the Board to consider the disallowance of *escaped prisoner* time during the Division’s graduated sanctions process, however, with the new codified definition of absconding, the determination of whether a parolee is deemed an *escaped prisoner* may be best distinguished by two violation events:

- Leaving the State without Permission; and/or
- Absconding (as defined in NRS ~~176A.630~~ 176A.510).

Absconding vs Escaped Prisoner

Prior to July 1, 2020, the term *absconding* was used interchangeably with the status of a parolee who is deemed an *escaped prisoner*. The 2019 Legislature codified a new definition of *absconding* and established criteria and potential sanctions that now differs from the criteria and potential sanctions of a parolee who is deemed an *escaped prisoner*.

There are circumstances that could now arise resulting in a parolee being deemed an *escaped prisoner* but not be deemed an *absconder*. However, a parolee who is adjudicated an *absconder* would always be considered an *escaped prisoner* during the absconding period.

In order to ensure the proper sanctions and/or credit losses are administered when applicable parole violations are adjudicated, the Board must determine the circumstances and affirmatively apply the correct result.

⁸ For example, the parolee moves residences without permission and the Division is unable to locate the parolee for a period.

As previously stated, *absconding* means that a person is actively avoiding supervision by making his or her whereabouts unknown to the Division for a continuous period of 60 days or more.

Effect of Being Adjudicated as an Escaped Prisoner who is not an Absconder

While “escaped prisoners” are generally prosecuted for Escape, parolees have not (at least in recent history), been prosecuted for Escape when their conduct on parole meets the statutory definition of *escaped prisoner* in NRS 213.15185.

An *escaped prisoner* is not entitled to credit earnings against their sentence during the time they are an *escaped prisoner*. An *escaped prisoner* who is not an *absconder* is subject to graduated sanctions and temporary revocation restrictions unless they are deemed an *escaped prisoner* on their 4th 3rd or subsequent temporary revocation.

For example, if a parolee leaves the state without permission but returns before meeting the statutory definition of being an absconder, absent other qualifying revocation misconduct, the act of leaving the state without permission for less than 60 days would constitute a technical violation of parole subject to graduated sanctions and temporary revocation restrictions. In this case, the Board could order⁹ that the time the parolee was outside the State of Nevada not be credited against his sentence.

Effect of Being Adjudicated as an Absconder

Absconding is not considered a technical violation subject to temporary revocation restrictions. However, the Board is not prohibited from continuing parole or reinstating parole on a future date if a parolee is found guilty of absconding.

If an absconder is revoked, the parolee forfeits¹⁰ all stat credits¹¹ previously earned on their sentence. The Board can revoke parole for periods up to 3 years, or 5 years if ten or more years are remaining on the sentence¹². An *absconder* is also considered an *escaped prisoner* and is not entitled to credit for time served on his or her sentence during the period the parolee was avoiding supervision.

Other Considerations

Setting Stop and Restart Dates for Escaped Prisoners

As mentioned in this report, the Board has historically used the warrant date as the “stop” date, and the arrest date as the “re-start” date when adjudicating violations that included *escaped prisoner* credit disallowances.

With the new requirement that 60 consecutive days of supervision avoidance pass before a parolee may be considered an absconder, the Board may want to consider setting the “stop” date for *escaped prisoner*

⁹ The parolee would be entitled to a hearing if the Board were to consider such a forfeiture.

¹⁰ The Board may restore any credits that were forfeited upon revocation pursuant to NRS 213.1519(1)

¹¹ Credits forfeited include those Stat credits earned in prison and on parole pursuant to NRS 213.1519(1)(a)

¹² NRS 213.142 –Board policy currently allows a denial length of more than 3 years only to qualifying sentences for offenses committed on or after July 1, 1995.

time to be equal to (but no more than) 60 days prior to the date of a warrant that alleges the parolee has absconded.

Stop and start dates applied when a parolee has not kept the Board informed as to his or her location or has left the state without permission for less than 60 days should be based on evidence presented by the Division at a parole violation hearing. Since the Division is required to use a system of graduated sanctions prior to requesting a warrant, it may be appropriate to establish a process that would allow the Board to adjudicate a technical violation pertaining to *escaped prisoner* time for the purpose of *escaped prisoner* time forfeiture without imposing a sanction beyond a graduated sanction imposed by the Division.

Effect of Prior Revocations on Violations Adjudicated after July 1, ~~2020~~2023

The definition of a technical violation and limits on the length of revocation did not exist in statute prior to July 1, 2020. Since temporary revocations did not exist prior to July 1, 2020, any revocations that may have occurred prior to July 1, 2020, should not be considered when determining which temporary revocation applies to a violation. Additionally, effective July 1, 2023, the Legislature removed the 30-day temporary revocation for parolees and further codified that parole may be fully revoked for a 3rd or subsequent temporary revocation. Moving forward after July 1, 2023, if a parolee was previously found guilty of a temporary revocation prior to this date, the Board should impose an incremental revocation period of time for the new temporary revocation after this date. (For example, if a first temporary revocation was ordered prior to July 1, 2023, for 30 days, any subsequent finding should also be determined to be a first temporary revocation and be ordered to not serve more than 90 days. If a second temporary revocation was ordered prior to July 1, 2023, for 90 days, any subsequent finding should also be determined to be a second temporary revocation and be ordered to not serve more than 180 days. If a third temporary revocation was ordered prior to July 1, 2023, for 180 days, any subsequent finding rises to the level of a full revocation within statute.) Note, the example above only applies to when an individual has been temporarily revoked at least one time prior to July 1, 2023.

~~Also, the legislature did not establish a “reset” time between temporary revocations. While it is not an issue at this time, in the future, parolees serving lengthy sentences could serve years between technical violations yet be subject to longer imprisonment sanctions for subsequent minor violations.~~

~~To encourage long-term compliance, the Board may want to develop a policy allowing temporary revocations to reset to zero after a specific period of compliance on parole.~~

~~Effect of Re-Release after Revocation~~

~~Another area not addressed by the Legislature is whether the number of temporary revocations resets after a prisoner is re-released on parole after having been fully revoked. This is another area the Board may want to look at with respect to developing a policy for affected parolees.~~