

**CENTRAL OFFICE**

1677 Old Hot Springs Rd., Ste. A  
Carson City, Nevada 89706  
<http://parole.nv.gov>  
(775) 687-5049  
Fax (775) 687-6736

CHRISTOPHER DERICCO, *Chairman*  
TONY CORDA, *Member*  
MARY BAKER, *Member*  
SUSAN JACKSON, *Member*

DARLA FOLEY, *Executive Secretary*

**STATE OF NEVADA**  
STEVE SISOLAK  
Governor



**LAS VEGAS OFFICE**

4000 S. Eastern Ave., Ste. 130  
Las Vegas, Nevada 89119  
<http://parole.nv.gov>  
(702) 486-4370  
FAX (702) 486-4376

CHRISTOPHER DERICCO, *Chairman*  
MICHAEL KEELER, *Member*  
ERIC CHRISTIANSON, *Member*  
DONNA VERCHIO, *Member*

**NEVADA BOARD OF PAROLE COMMISSIONERS**

June 18, 2020

To: Board of Parole Commissioners

From: David M. Smith, Parole Hearings Examiner II 

Subject: Changes to Parole Violation Actions in accordance with Assembly Bill 236 effective July 1, 2020.

I have prepared the following information related to changes to actions the Board may take at parole violation hearings beginning July 1, 2020. This guidance is not definitive, and it is based on my best understanding of the intent of the Legislature with respect to the changes affecting the Parole Board in AB236.

Chairman DeRicco has requested legal advice from the Attorney General's office with respect to the consideration of unadjudicated misdemeanor charges that may be pending at the time of a parole violation hearing. Once we have received advice on that matter, this information will be updated.

Once the new legislative changes have been put into practice, there will likely be questions that will need clarification and may need to be included in a final document. Please feel free to contact me with questions or any concerns regarding my interpretation of the changes.

# Parole Violations and Sanctions

Nevada Board of Parole Commissioners

JUNE 18, 2020

1677 Old Hot Springs Road STE A, Carson City, NV 89706

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This document was developed to provide information regarding the Nevada Parole Board’s response to alleged violations and is not all inclusive. The information appearing in this document is for general informational purposes only and is not intended to provide legal advice to any individual or entity. The creation of this informational document is not intended to establish a cause of action or a basis to overturn the outcome of a parole violation hearing if strict adherence is not followed. This document has not been approved as policy by the Board and may be revised from time to time without notice. This document was prepared by David M. Smith, Parole Hearings Examiner II. Questions or concerns regarding its contents may be directed to [dmsmith@parole.nv.gov](mailto:dmsmith@parole.nv.gov) or 775-687-6506.

## Table of Contents

Parole Violations and Sanctions.....	2
Types of Parole Violations .....	2
Technical Violations of Parole .....	2
New Crimes .....	3
Absconding Defined .....	3
Temporary Revocation of Parole.....	3
Credit Forfeiture.....	3
Commencement of a Temporary Revocation .....	3
Length of Temporary Revocation may be Less than the Maximum Period .....	4
Escaped Prisoners & Absconders .....	4
Absconding vs Escaped Prisoner .....	5
Effect of Being Adjudicated as an Escaped Prisoner who is not an Absconder .....	6
Effect of Being Adjudicated as an Absconder .....	6
Other Considerations.....	6
Setting Stop and Restart Dates for Escaped Prisoners.....	6
Effect of Prior Revocations on Violations Adjudicated after July 1, 2020.....	7
Effect of Re-Release after Revocation.....	7

# 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 Session 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
- New Crimes

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 permission<sup>1</sup>.

## Technical Violations of Parole

“Technical violation” means<sup>2</sup> 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;
- 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.

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<sup>1</sup> Leaving the State without permission can constitute absconding in certain circumstances.

<sup>2</sup> NRS 213.1519(5)(b)

## New Crimes

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

## Absconding Defined

“Absconding” means<sup>3</sup> 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, the Board may:*

- (a) Continue parole supervision;*
- (b) Temporarily revoke parole supervision and impose a term of imprisonment of not more than:
  - (1) Thirty days for the first temporary parole revocation;*
  - (2) Ninety 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 or subsequent revocation.*

## 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 guilty<sup>4</sup> 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.

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<sup>3</sup> NRS 176A.630(5)(a)

<sup>4</sup> NRS 213.1518

## 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 custody<sup>5</sup>. The timing of the date of return, the number of pending violation cases and the housing location may affect how soon a violator might be scheduled for a hearing. The Board has the discretion to 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*<sup>6</sup> 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 time<sup>7</sup> 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.

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

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<sup>5</sup> NRS 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.

<sup>6</sup> Escaped prisoner is defined in NRS 213.15185

<sup>7</sup> Credits for good behavior

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 days<sup>8</sup>, 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).

### 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.

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.

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

## 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 4<sup>th</sup> 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 order<sup>9</sup> 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 forfeits<sup>10</sup> all stat credits<sup>11</sup> 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 sentence<sup>12</sup>. 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* 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

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

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

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

<sup>12</sup> 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.



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

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.

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.