

Nevada Board of Parole Commissioners

CODE OF ETHICS

In recognition and acceptance of the responsibilities inherent in the profession of corrections and public safety, and as a Parole Board member, I acknowledge these to be my guiding precepts:

- I shall conduct my personal life with decorum, neither accepting nor granting favors in connection with my office.**
- I shall be professional and respectful to all those involved in the parole hearing process, including the offender, victims and those who support or oppose an offender's release.**
- I shall prepare my cases with integrity and accuracy and share all matters of a confidential nature with only those who have a need to know.**
- I shall respect the individual needs and characteristics of my fellow Board members and shall value, appreciate and respect the decisions and views of my colleagues.**
- I shall cooperate with my co-workers and will continually strive to enhance mutual cooperation with representatives of the criminal justice agencies with whom I interact.**
- I recognize my office as a symbol of public trust and shall constantly strive to achieve the objectives and ideals of the Parole Board while dedicating myself to my chosen profession.**

BOARD COMMUNICATIONS:

1. The Parole Board sits as an arm of the sentencing court. Board members derive their authority from their function as a Board and do not have individual power to grant or deny parole. Just as it is never proper for someone to contact a sentencing judge outside the context of a hearing, it is inappropriate for inmate family or supporters to meet with individual Board members in an attempt to persuade specific action. Commissioners will not personally discuss specific cases with or accept input from persons who are not the specific victim of the inmate.
2. Parole commissioners will make themselves available by appointment to personally accept confidential information from victims of crime pursuant to NRS 213.131.
3. The Board welcomes all available information on prisoners being considered for parole, favorable and unfavorable. Recommendations for or against parole should be made in writing so they may be placed in the prisoner's file.
4. The victim of any person being considered for parole may submit documents to the Board and may testify at the meeting held to consider parole. All personal information, including, but not limited to, a current or former address, which pertains to a victim and which is received by the Board is confidential. The Board may meet with a victim in private immediately prior to or after a parole hearing to allow for the input of confidential personal information.
5. All protected information submitted by a victim to the Board shall remain strictly confidential and may not be disclosed to any person other than the Board, employees of the Board and counsel to the Board when required. The Board and its employees shall neither acknowledge the presence or absence of any victim or victim input nor shall it discuss any input from a victim during a public meeting unless the victim is present during the hearing and or authorizes such discussion.
6. Any victim who advises the Board in writing of their desire to be notified of specific parole hearings and results, and keeps the Board advised of their current mailing address will be notified pursuant to NRS 213.131. The Board is not held responsible if notification information is not current.
7. The views of Nevada judges, district attorneys, and law enforcement are welcomed by the Board, and are duly considered when the decision to either grant or deny parole is made.

VIOLATION HEARINGS IN ABSENTIA (NRS 213.15187/AB80):

1. If a parolee incurs a new conviction ~~is convicted for the commission of a new crime~~ in another state, country, etc., ~~a foreign jurisdiction~~ and is sentenced to a period of imprisonment, the parolee is not entitled to earn time on the Nevada sentence, until completing the sentence imposed in the foreign jurisdiction (if the new offense was committed on or after March 16, 1999).
2. If the parolee waives their right to a ~~in-person violation hearing~~ ~~personal hearing~~, the Board may 1) Take action to revoke or reinstate the parole of the prisoner immediately or at a later date and allow the Nevada sentence to run concurrent to the new conviction, or 2) Take no action at all. If the Board chooses to take no action, the parolee will not earn time on the Nevada sentence and will be scheduled to appear before the Board for a ~~Parole Violation Hearing~~ ~~personal violation hearing~~ within 60 days of their return to the NDOC.
3. The Division of Parole and Probation (P&P) ~~P&P~~ will provide the pertinent documents to the parolee and advise them of their rights. Upon receipt of a signed waiver, P&P will schedule a hearing as soon as practical, which should not exceed ~~but should not be more than~~ 60 days from the date of receipt ~~of or~~ the signed waiver.
4. Once the Board has determined the appropriate action, P&P will advise the parolee of the Board's decision and provide a copy of the Board's action to the parolee.
5. If the parolee refuses to sign a waiver, they will be scheduled for a ~~Parole Violation Hearing~~ ~~personal hearing~~ within 60 days of being returned to the custody of the NDOC.

SPECIAL CONDITIONS:

1. The Board has set the standard conditions of parole which are reflected on the parole agreement prepared and issued by P&P. In addition to those conditions, the Board may require other special conditions to assure a successful parole ~~such as house arrest, special programming, no victim contact, off limit areas, or any other reasonable conditions.~~

2. All special conditions imposed on parole to the community shall also apply to earlier granted paroles that remain on active status.

3. Because parolees are very often requested by law enforcement officials to act as informants and undercover agents, and in such capacities are exposed to the environment and associates which had been detrimental to their welfare in the past, the Board directs that parole officers be instructed to prohibit parolees under their supervision from becoming informants or undercover agents for law enforcement agencies, unless the Chief of P&P directs otherwise and informs the Board in writing.

Nevada Board of Parole Commissioners

Procedural Due Process for the Non-Punitive Revocation of Parole

Drafted November 17, 2020

This document was developed to provide guidance for the correction of paroles granted on erroneous sentences or changes to a sentence that parole was granted on. 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 Board reserves the right to alter procedures contained herein as necessary. The establishment of this document is not intended to establish a cause of action or a basis to overturn the outcome of a hearing if strict adherence is not followed. This document has not yet been approved as policy by the Board and may be revised without notice.

Background Information

Procedural Parole Revocation

A Procedural Parole Revocation is a formal non-punitive action taken by the Board to revoke the parole of a person who was erroneously released on parole to a consecutive sentence or to the community.

An erroneous release can occur because of several reasons including, but not limited to: the re-interpretation of a sentence structure, an error in the execution of a sentence structure, an amendment to a Judgement of Conviction (JOC), an error when a parole document is produced and the misapplication of sentence credits.

A procedural revocation of parole must not be construed as a punitive revocation and may not be considered a revocation for the purposes of classification, preparation of risk assessments or any factor or statistical calculation used or prepared within the criminal justice system.

Jurisdiction (NRS 213.1099(3))

The Board is the only agency with the authority to grant and revoke parole. When an error in the release of a prisoner on parole occurs, the Board has the responsibility to consider and act upon a petition to consider the procedural revocation of parole.

Parole Revocation vs Parole Rescission

Parole Revocation:

A parolee has a liberty interest in the parole that is protected from deprivation without procedural due process¹. A person who has begun to receive the benefit² of parole (whether in-custody or in the community) is entitled to due process protections including when a parole is alleged to be invalid because of an erroneous release to the community or to a consecutive sentence.

Parole Rescission:

Parole rescission is action taken after a hearing to deny the previously granted parole of a person who is still in custody and actively serving the sentence parole was granted on. A prisoner subject to parole rescission is not entitled to the due process protections required for the revocation of parole.

Parole Rescission due to ineligibility:

When the Board is notified by the Nevada Department of Corrections that a previously granted prisoner is no longer eligible for parole, and the prisoner has not yet been released to the street or consecutive sentence, the parole may be rescinded without a hearing. When this occurs, the prisoner will be seen when the prisoner becomes eligible, and the new hearing will be treated as if it is a first hearing on the case(s).

¹ U. S. Supreme Court's decision in *Morrissey v. Brewer*, 408 U. S. 471 (1972)

² The benefit of parole must be bona fide.

Parole Rescission and Denial of Parole:

If the outcome of a rescission could result in a denial of parole, the prisoner is entitled to a hearing prior to the rescission action³. The release of a prisoner who has not yet received the benefit of parole may be suspended beyond the prisoner's eligibility date by the Board to allow for the scheduling of a hearing to consider rescinding and denying the previously granted parole.

Due Process Rights – Parole Revocation versus Non-Punitive Procedural Parole Revocation

A Parole Violation Hearing is a proceeding conducted to ensure there are enough verified facts supporting the revocation of parole.

The U. S. Supreme Court established the following minimum due process requirements prior to an entity acting on a violation that results in the revocation of parole:

- (a) Written notice of the claimed violations of parole;
- (b) Disclosure to the parolee of the evidence against him;
- (c) The opportunity to be heard in person and to present witnesses and documentary evidence;
- (d) The right to confront and cross-examine adverse witnesses (unless the panel conducting the hearing specifically finds good cause for not allowing confrontation);
- (e) A "neutral and detached" hearing body; and
- (f) A written statement by the factfinders as to the evidence relied on and the reasons for revoking parole.

The U. S. Supreme Court has not addressed the minimum due process requirements for a non-punitive procedural revocation of parole, however the same principles regarding the protections afforded to a procedural revocation of parole apply and are described as follows:

- (a) Written notice of the claimed error that resulted in the erroneous release;
- (b) Disclosure to the parolee of the evidence that resulted in the error and evidence to support the need for the procedural revocation;
- (c) The opportunity to be heard in person and present witnesses and documentary evidence;
- (d) The right to confront and cross-examine witnesses and documentary evidence asserting an erroneous release;
- (e) A "neutral and detached" hearing body; and
- (f) A written statement by the factfinders as to the evidence relied on and the reasons for procedurally revoking parole when applicable.

³ Hearing may be conducted in-person, telephonically or by videoconference. The same notice and protections afforded to prisoners at release hearings must be provided - NRS 213.131(9).

Procedural Revocation Process

Initiation of Petition for Procedural Revocation

Generally, a petition for the procedural revocation of parole is initiated by the governmental entity responsible for the error resulting in an erroneous release. However, there may be instances where changes in a Judgement of Conviction or other external factors may have a negative affect on a previous parole action. In cases such as this, a parolee or representative may also petition for the procedural revocation of a parole. The steps to initiate a procedural revocation include:

1. Petitioner prepares a report with exhibits/evidence and submits the packet to the Board requesting that the Board take up the matter.
2. The Parole Board staff reviews the packet and evidence to determine whether probable cause exists to consider the petition. If the packet or evidence is not appropriate, unclear or incomplete, it is returned to the petitioner with an explanation and request to cure any defect and resubmit.
3. Once the petition and other documents are in order, the Board will:
 - a. Set the hearing date, time and location;
 - b. Prepare and post an agenda for the public hearing;
 - c. Prepare an Order for the Parolee to Appear;
 - d. Prepare a document which advises the parolee of his or her rights; and
 - e. Include a copy of the petition and exhibits to the parolee with the Order to Appear.
 - f. Provide the parolee's packet to the governmental entity supervising the parolee for the documents to be served and processed.
4. The Board conducts the hearing and renders a decision.

Procedural Revocation Hearing Process

A procedural due process hearing will be conducted by the Board in the same relative manner and format in which parole violation hearings are conducted. The Board or panel established in accordance with NRS 213.133(1)(a) will act as a neutral body and consider the evidence and testimony presented by the petitioner and the parolee.

Parties Present

The following parties must be present at the hearing:

1. The petitioner or the petitioner's representative, and any witnesses the petitioner may want to call;
2. The parolee, the parolee's attorney/representative (if any) and any witnesses the parolee wishes to confront or cross examine, and any witnesses called to testify for the parolee.
3. When not acting as the petitioner, a representative of the governmental entity responsible for an alleged error nexus to the need for procedural revocation.

Conduct of the Hearing

After the Board has formally established on record the purpose of the hearing and determined the relevant parties are present, the petitioner will be called on to present the case and arguments to support the petition for procedural revocation.

The petitioner will begin by submitting evidence to support the need for procedural revocation.

When the action requested by the petitioner is adverse to the parolee, the parolee and/or counsel will be permitted to cross examine any witnesses testifying in support of the petition and/or challenge the accuracy of any evidentiary documentation provided by the petitioner.

When the action requested by the petitioner is adverse to the State, the State will be permitted to cross examine any witnesses testifying in support of the petition and/or challenge the accuracy of any evidentiary documentation provided by the petitioner.

Once the petitioner has concluded, the respondent may provide evidence and testimony to support the position that is contrary to the position of the Petitioner.

Upon the conclusion of the evidentiary review, the petitioner will be asked to make a recommendation to the panel as to the requested outcome of the matter followed by the respondent's recommendation to the panel as to the requested outcome of the matter.

The Board will deliberate in private before submitting a decision on the matter and will issue a written order detailing the basis for any decision.

Forms:

Form Outline for Petition

Example of Petition/Report to Board