CHAPTER 908

VIOLATIONS OF PAROLE OR PROBATION

Referred to in §13B.4, §13B.11, §216A.136, §321J.2, §815.10, §815.11, §901.1, §901A.2, §902.1, §903B.1, §903B.2, §907.3

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908.1 Arrest of alleged parole violator — newly discovered evidence.

A parole officer having probable cause to believe that any person released on parole has violated the parole plan or the conditions of parole may arrest such person, or the parole officer may make a complaint before a magistrate, charging such violation, and if it appears from such complaint, or from affidavits filed with it, that there is probable cause to believe that such person has violated the parole plan or the terms of parole, the magistrate shall issue a warrant for the arrest of such person. If a parole officer has newly discovered evidence which indicates that a person released on parole should not have been granted parole originally, the parole officer shall present the evidence to the board of parole and the board may issue an order to rescind the parole.

[C79, 81, §908.1]

88 Acts, ch 1091, §6

908.2 Initial appearance — bail.

1. An officer making an arrest of an alleged parole violator shall take the arrested person before a magistrate without unnecessary delay for an initial appearance. At the initial appearance the magistrate shall do all of the following:

a. Provide written notice of the claimed violation.

b. Provide notice that a parole revocation hearing will take place and that its purpose is to determine whether the alleged parole violation occurred and whether the alleged violator's parole should be revoked.

c. Advise the alleged parole violator of the right to request an appointed attorney.

2. The magistrate may order the alleged parole violator confined in the county jail or may order the alleged parole violator released on bail under terms and conditions as the magistrate may require. Admittance to bail is discretionary with the magistrate and is not a matter of right. A person for whom bail is set may make application for amendment of bail to a district judge or district associate judge having jurisdiction to amend the order. The motion shall be promptly set for hearing and a record shall be made of the hearing.

[C79, 81, §908.2]

84 Acts, ch 1089, §1; 88 Acts, ch 1091, §7; 2002 Acts, ch 1067, §20; 2005 Acts, ch 107, §10, 14

908.2A Appointment of an attorney.

1. An attorney may be appointed to represent an alleged parole violator in a parole revocation proceeding only if all of the following criteria apply:

a. The alleged parole violator requests appointment of an attorney.

b. The alleged parole violator is determined to be indigent as defined in section 815.9.

c. The appointing authority determines each of the following:

(1) The alleged parole violator lacks skill or education and would have difficulty presenting the alleged parole violator's case, particularly if the proceeding would require the

cross-examination of witnesses or would require the submission or examination of complex documentary evidence.

(2) The alleged parole violator has a colorable claim the alleged violation did not occur, or there are substantial reasons that justify or mitigate the violation and make any revocation inappropriate under the circumstances.

2. If the appointing authority determines counsel should be appointed and all of the criteria apply in subsection 1, the appointing authority shall appoint the state public defender's designee pursuant to section 13B.4. If the state public defender has not made a designation for the type of case or the state public defender's designee is unable to handle the case, a contract attorney with the state public defender may be appointed to represent the alleged parole violator. If a contract attorney is unavailable, an attorney who has agreed to provide these services may be appointed. The appointed attorney shall apply to the state public defender for payment in the manner prescribed by the state public defender.

2005 Acts, ch 107, §11, 14; 2013 Acts, ch 56, §6

Referred to in **§815.10**

908.3 Place of parole revocation hearing.

The parole revocation hearing shall be held in any county in the same judicial district in which the alleged parole violator had the initial appearance or in the county from which the warrant for the arrest of the alleged parole violator was issued.

[C79, 81, §908.3]

88 Acts, ch 1091, §8

908.4 Parole revocation hearing.

1. The parole revocation hearing shall be conducted by an administrative parole judge who is an attorney. The revocation hearing shall determine the following:

a. Whether the alleged parole violation occurred.

b. Whether the violator's parole should be revoked.

2. The administrative parole judge shall make a verbatim record of the proceedings. The alleged violator shall be informed of the evidence against the violator, shall be given an opportunity to be heard, shall have the right to present witnesses and other evidence, and shall have the right to cross-examine adverse witnesses, except if the judge finds that a witness would be subjected to risk or harm if the witness's identity were disclosed. The revocation hearing may be conducted electronically.

[C79, 81, §908.4]

86 Acts, ch 1245, §1524; 88 Acts, ch 1091, §9; 89 Acts, ch 282, §9; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5; 2002 Acts, ch 1067, §21; 2005 Acts, ch 107, §12, 14

Referred to in **§908.7**

908.5 Disposition.

1. If a violation of parole is established, the administrative parole judge may continue the parole with or without any modification of the conditions of parole. The administrative parole judge may revoke the parole and require the parolee to serve the sentence originally imposed, or may revoke the parole and reinstate the parolee's work release status.

2. If the person is serving a special sentence under chapter 903B, the administrative parole judge may revoke the release. Upon the revocation of release, the person shall not serve the entire length of the special sentence imposed, and the revocation shall be for a period not to exceed two years in a correctional institution upon a first revocation and for a period not to exceed five years in a correctional institution upon a second or subsequent revocation.

3. The order of the administrative parole judge shall contain findings of fact, conclusions of law, and a disposition of the matter.

[C79, 81, §908.5]

83 Acts, ch 96, §149, 159; 88 Acts, ch 1091, §10; 89 Acts, ch 282, §10; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5; 2005 Acts, ch 158, §43

908.6 Appeal or review.

The order of the administrative parole judge shall become the final decision of the board of parole unless, within the time provided by rule, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. On appeal or review of the administrative parole judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge.

[C79, 81, §908.6]

83 Acts, ch 96, §150, 159; 88 Acts, ch 1091, §11; 89 Acts, ch 282, §11; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

908.7 Waiver of parole revocation hearing.

The alleged parole violator may waive the parole revocation hearing, in which event the administrative parole judge shall proceed to determine the disposition of the matter. The administrative parole judge shall dispose of the case as provided in section 908.4. The administrative parole judge shall make a verbatim record of the proceedings. The waiver proceeding may be conducted electronically.

[C24, 27, 31, 35, 39, §**3807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.28; C79, 81, §908.7]

83 Acts, ch 96, §151, 159; 84 Acts, ch 1156, §1; 88 Acts, ch 1091, §12; 89 Acts, ch 282, §12; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

908.8 Repealed by 88 Acts, ch 1091, §15.

908.9 Disposition of violator.

If the parole of a parole violator is revoked, the violator shall remain in the custody of the Iowa department of corrections under the terms of the parolee's original commitment. If the parole of a parole violator is not revoked, the parole revocation officer or board panel shall order the person's release subject to the terms of the person's parole with any modifications that the parole revocation officer or board panel determines proper, or may order that the violator be placed in a violator facility, established pursuant to section 904.207, if the parole revocation officer or board panel determines that placement in a violator facility is necessary.

[C79, 81, §908.9]

83 Acts, ch 96, §153, 159; 88 Acts, ch 1091, §13; 91 Acts, ch 219, §28; 93 Acts, ch 46, §12

908.10 Conviction of a felony while on parole.

When a person is convicted and sentenced to incarceration in this state for a felony committed while on parole, or is convicted and sentenced to incarceration under the laws of any other state of the United States or a foreign government or country for an offense committed while on parole, and which if committed in this state would be a felony, the person's parole shall be deemed revoked as of the date of the commission of the new felony offense.

The parole officer shall inform the sentencing judge that the convicted defendant is a parole violator. The term for which the defendant shall be imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence of imprisonment for conviction of a felony shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court.

The parolee shall be notified in writing that parole has been revoked on the basis of the new felony conviction, and a copy of the commitment order shall accompany the notification. The inmate's record shall be reviewed pursuant to the provisions of section 906.5, or as soon as practical after a final reversal of the new felony conviction.

An inmate may appeal the revocation of parole under this section according to the board of

parole's rules relating to parole revocation appeals. Neither the administrative parole judge nor the board panel shall retry the facts underlying any conviction.

[C79, 81, §908.10]

88 Acts, ch 1091, §14; 89 Acts, ch 282, §13; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

908.10A Conviction of an aggravated misdemeanor while on parole.

When a person is convicted and sentenced to incarceration in a state correctional institution in this state for an aggravated misdemeanor committed while on parole, or is convicted and sentenced to incarceration under the laws of any other state of the United States or a foreign government or country for an offense committed while on parole, and which if committed in this state would be an aggravated misdemeanor, the person's parole shall be deemed revoked as of the date of the commission of the new aggravated misdemeanor offense.

The parole officer shall inform the sentencing judge that the convicted defendant is a parole violator. The term for which the defendant shall be imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence of imprisonment for conviction of an aggravated misdemeanor shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court.

The parolee shall be notified in writing that parole has been revoked on the basis of the new aggravated misdemeanor conviction, and a copy of the commitment order shall accompany the notification. The inmate's record shall be reviewed pursuant to the provisions of section 906.5, or as soon as practical after a final reversal of the new aggravated misdemeanor conviction.

An inmate may appeal the revocation of parole under this section according to the board of parole's rules relating to parole revocation appeals. Neither the administrative parole judge nor the board panel shall retry the facts underlying any conviction.

94 Acts, ch 1048, §2; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

908.11 Violation of probation.

1. A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation.

2. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

3. If the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.

4. If the violation is established, the court may continue the probation or youthful offender status with or without an alteration of the conditions of probation or a youthful offender status. If the defendant is an adult or a youthful offender the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation or youthful offender status, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation or youthful offender status, extend the period of probation for up to one year as authorized in section 907.7 while continuing the probation or youthful offender status, or revoke the probation or youthful offender status and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

5. Notwithstanding any other provision of law to the contrary, if the court revokes the probation of a defendant who received a deferred judgment and imposes a fine, the court

shall reduce the amount of the fine by an amount equal to the amount of the civil penalty previously assessed against the defendant pursuant to section 907.14. However, the court shall assess any required surcharge, court cost, or fee upon the total amount of the fine prior to reduction pursuant to this subsection.

[S13, §5447-b; C24, 27, 31, 35, 39, §**3805, 3806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.26, 247.27; C79, 81, §908.11]

84 Acts, ch 1244, §6; 91 Acts, ch 219, §29; 97 Acts, ch 125, §10; 97 Acts, ch 126, §52; 98 Acts, ch 1197, §2, 3, 8, 13; 2000 Acts, ch 1177, §4, 5; 2007 Acts, ch 180, §12; 2010 Acts, ch 1175, §2, 4; 2011 Acts, ch 34, §156

Referred to in **§232.54**, **§901B.1**, **§907.3A**, **§907.7**

2010 amendment to subsection 4 applies to criminal offenses committed on or after July 1, 2010; 2010 Acts, ch 1175, §4