

CHAPTER 11
PAROLE REVOCATION
[Prior to 2/22/89, Parole, Board of[615] Ch 7]

205—11.1(906) Voluntary termination of parole. Any voluntary termination of parole should be executed in writing by the parolee, reviewed by the parole officer, and approved by an administrative parole judge at a hearing. Upon the execution of the voluntary termination of parole, the parole officer shall file a preliminary parole violation information. If a parolee's parole is terminated, the parolee shall be returned to the Iowa Medical and Classification Center at Oakdale or the Iowa Correctional Institute for Women at Mitchellville as soon as practicable. The parolee shall receive credit for the time spent on parole prior to the voluntary termination of parole as determined by the administrative parole judge.
[ARC 3297C, IAB 8/30/17, effective 10/4/17]

205—11.2(908) Work release day reporting revocation. When a work release day reporting inmate is subject to revocation of day reporting status, the work release day reporting inmate shall be entitled to all procedural protections afforded parolees pursuant to Iowa Code sections 908.3 to 908.7 and rules 205—11.3(908) to 205—11.11(908).

205—11.3(908) Revocation initiated. Parole revocation procedures shall be initiated only as provided by Iowa Code chapter 908, which this rule is intended to implement.

205—11.4(908) Revocation of parole. The board of parole or its administrative parole judge, for good cause shown, may revoke any parole previously granted. Good cause for revocation of parole shall include the violation of a condition or conditions of the parole agreement or parole plan. Parole revocation procedures, including the parole revocation hearing, are governed by Iowa Code chapter 17A.

205—11.5(908) Parole violations.

11.5(1) The parole officer shall report to the board any parolee who is reasonably believed to have engaged in any of the following types of behavior:

- a. Violation of any federal or state laws which would be a felony or aggravated misdemeanor in the state of Iowa.
- b. Any violent, assaultive, or threatening conduct.
- c. Possession, control or use of any firearms, imitation firearms, explosives or dangerous weapons as defined in federal or state statutes.
- d. Any unapproved contact with victims or victims' family or with minors.
- e. A parolee whose whereabouts are unknown and who has been unavailable for contact for 30 days, or about whom reliable information has been received indicating that the parolee is taking flight or absconding.

11.5(2) The parole officer or supervisor is authorized to report any other parolee misconduct or pattern of misconduct not required to be reported above.

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205—11.6(908) Parole violation report. The parole violation report is a document prepared by the parole officer on a form or medium provided by the board specifying the parole violation charges against a parolee and containing or referring to information known to the parole officer relevant to the charges.

11.6(1) Violation report update. A violation report update may be submitted to report sufficient new information or evidence which proves or disproves violations previously charged; report new violations; note court action on charges which are being prosecuted in a criminal proceeding; expand, clarify, or correct information in an earlier report; provide the board with information not related to the violation but which may affect the board's decision regarding the appropriate disposition; provide additional requested information to the board at any time; or change the parole officer's recommendation. A violation report update shall be filed upon the apprehension of a parolee on absconder status. The violation report update shall be served in accordance with subrule 11.7(1).

11.6(2) Recommendations. The parole officer shall review the information available and, upon consultation of policy and with the supervisor or designee, make evidence-based, informed recommendations as to the appropriate action necessary to deal with the alleged violation.

11.6(3) District review.

a. Parole officer's responsibility. After discovery of information indicating a possible violation(s) of parole and determination by the parole officer that the violation(s) must be reported to the board, the parole officer shall prepare a parole violation report.

b. Parole supervisor review. After the preparation of a parole violation report, the supervisor shall review the report. If the supervisor concurs with the recommendation made, the supervisor shall submit the report to the business office of the parole board for review and scheduling of a parole revocation hearing, if required.

[ARC 3297C, IAB 8/30/17, effective 10/4/17]

205—11.7(908) Parole revocation hearing. Following submission of a parole officer's request for a parole revocation hearing, the parole officer shall schedule the parole revocation hearing and shall cause a notice of parole revocation hearing to be completed. The parole revocation hearing shall be held in any county in the same judicial district as that 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.

11.7(1) Parole revocation hearing notice. The parole officer or board's designated officer shall cause to be prepared a written notice to the parolee, and parolee's attorney, if applicable, of the date, time, and place of the parole revocation hearing, which shall:

a. Include a complete copy of the report of violations, and updated report if applicable, including all documents referred to therein except confidential material defined in 205—subrule 6.4(2).

b. Be served upon the parolee by personal service. The notice may be served by any person 18 years of age or older at least seven days prior to the parole revocation hearing unless the parolee waives the right to seven days' advance notice.

c. Inform the parolee of the purpose of the hearing, the violations of parole conditions alleged, the circumstances of the alleged violations, the possible action which may be taken as a result of the revocation proceedings, and the following rights to which the parolee shall be entitled at the parole revocation hearing:

(1) To appear and speak on the parolee's own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole judge.

(2) To be represented by an attorney or, if the parolee is indigent, the right to be represented by an attorney pursuant to Rule 2.28 of the Iowa Rules of Criminal Procedure and Iowa Code section 908.2A.

(3) To remain silent.

(4) To present witnesses to testify on the parolee's behalf as to matters relevant to the alleged violation of parole.

(5) To confront and cross-examine adverse witnesses unless the administrative parole judge determines that such witnesses would be subjected to risk of harm.

(6) To present documentary evidence and any relevant material or information.

11.7(2) Testimony at parole revocation hearing. All testimony shall be under oath.

11.7(3) Parole revocation hearing recorded. Parole revocation hearings shall be mechanically recorded. The recording or transcription thereof shall be filed and maintained by the board of parole for at least five years from the date of the parole revocation hearing.

11.7(4) Witnesses segregated. The administrative parole judge on the judge's own motion or on the request of the parolee, parolee's counsel, or any representative of the state may order witnesses to be segregated except that the parole officer, parolee, and counsel may be present at all times at the hearing.

11.7(5) Parole revocation hearing evidence. The admissibility of evidence at parole revocation proceedings is governed by Iowa Code section 17A.14.

a. Documentary evidence. The parole officer shall ensure that all relevant documentary evidence is available at the hearing and has been made available to the parolee and the parolee's attorney prior to the hearing unless designated confidential. This evidence includes the violation report and statements of

witnesses. When relevant documentary evidence is not available, the parole officer shall specify what evidence is unavailable and why.

b. Physical evidence. Physical evidence is ordinarily not required at the hearing. The parole officer may bring physical evidence to the hearing if the parolee has requested it or it appears necessary for the hearing, security is not endangered, and there is no other means of presenting the information.

11.7(6) Witnesses.

a. Parolee request. A parolee may request either friendly or adverse witnesses. If a witness is requested by the parolee or the parolee's attorney, the parolee or the parolee's attorney shall notify the parole officer.

b. Parole officer request. If, in preparing the case prior to the hearing, the parole officer requires a particular witness to demonstrate essential facts of violation, attendance of that witness may be requested by the officer even though the parolee has not requested that witness. If a witness is requested by the parole officer, the officer shall notify the parolee or the parolee's attorney.

c. Witnesses' transportation. All witnesses shall provide their own transportation.

d. Fearful witnesses. All witnesses who refuse to attend the hearing either because they would be subjected to risk of harm if their identities were disclosed or who, even if their identities were known, fear for their safety should they attend the hearing shall be interviewed by the parole officer prior to the hearing, and their information and the reasons for their fear shall be documented in writing or on the record. The officer must assess whether this testimony is necessary to proceed with prosecution of parole violations. If there are other alleged violations that merit a recommendation of revocation, this testimony may not be necessary. The administrative parole judge shall determine whether good cause exists to excuse a witness's attendance and shall document the decision including the reasons.

e. Interviewing witnesses. A parolee or the parolee's attorney has the right to speak to possible witnesses, but it is completely within the discretion of an individual witness whether to speak to or disclose the witness's whereabouts to a parolee or the parolee's attorney. No attempt shall be made by the parole board staff to influence the witness's decision.

11.7(7) Subpoenas—general. Subpoenas may be issued by the board of parole to require the attendance of witnesses or the production of documents at parole revocation hearings.

a. Who may request. The parolee, the parolee's attorney, parole officer, or board staff may request that a subpoena be issued. The requested witness(es) should be contacted prior to issuance of the requested subpoena. If the parolee is pro se, the parole officer may need to make contact.

b. To whom made. Requests may be made directly to the administrative parole judge, the board's designated officer, or the parole officer, as appropriate. The parole officer shall provide the necessary information to the board of parole in order to process the request.

c. When made. The request shall be made prior to the scheduled hearing.

d. Subpoena duces tecum. The request for a subpoena duces tecum shall be accompanied by a declaration in support of the request. The declaration must show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and verification that the requested witness has possession or control of the documentary evidence.

e. Costs. The board of parole shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

11.7(8) Continuances.

a. A hearing may be continued by the presiding administrative parole judge for good cause shown, either upon the presiding judge's own motion or upon the request of a party. A party's request for continuance shall be made in writing to the administrative parole judge prior to the hearing. Each party shall be granted only one continuance. Further continuance may be granted for good cause.

b. If, because of an emergency or other good cause, a party having received timely notice is unable to attend the hearing or to request continuance within the allotted time, the presiding administrative parole judge may continue the hearing and schedule another hearing with notice to all interested parties.

c. Notice of continuance may be served upon the parolee's attorney of record for the parole revocation proceeding, in lieu of personal service upon the parolee.

d. If the notice of continuance includes allegations of violations beyond those contained in the original notice of hearing, it must be served upon the parolee or the parolee's attorney of record in accordance with subrule 11.7(1).

11.7(9) Areas of responsibility. The following areas of responsibility will apply for a parole revocation hearing.

- a.* The parole officer shall be responsible for the following:
- (1) Coordinating and scheduling location, security, and control of the parole revocation hearing;
 - (2) Preparing notice of hearing forms and causing the notices to be served;
 - (3) Notifying the parolee's attorney of record of the hearing date, time, and place;
 - (4) Notifying all necessary state witnesses of the hearing date, time, and place;
 - (5) Processing any required subpoenas on behalf of the state;
 - (6) Ensuring that all relevant state documents, forms, and materials are available at the hearing;
 - (7) Attending the hearing;
 - (8) Arranging security for posthearing transfer of the parolee in the event incarceration is ordered.
- b.* The administrative parole judge shall be responsible for the following:
- (1) Maintaining records on all hearings;
 - (2) Reserved.

11.7(10) Parole revocation hearing.

a. At the conclusion of the adjudication stage of the hearing, the administrative parole judge shall determine whether the parolee has violated the conditions of parole and shall verbally advise the parolee of the decision.

b. If the administrative parole judge determines that the parolee has not violated the conditions of parole, the judge shall order that the parolee be released from custody and continued on parole.

c. If the administrative parole judge finds that the parolee has violated a condition or conditions of parole, the judge shall make one of the following dispositions at the parole revocation hearing:

- (1) Revocation of parole;
- (2) Revocation of parole with the parolee placed on work release;
- (3) Reinstatement of parole with the previous parole conditions;
- (4) Reinstatement of parole with a modification of the parole conditions;
- (5) Continuation of the dispositional portion of the hearing.

d. The administrative parole judge shall determine from the record established at the final revocation hearing the date(s) of violation of parole. The judge shall also determine the number of days of parole which shall not be counted toward the discharge of the parolee's sentence. This number shall not exceed the number of days after the date of first violation during which the parolee was not incarcerated.

11.7(11) Parole revocation—hearing summary and order. The administrative parole judge or the board's designated officer shall forward a summary of the parole revocation hearing to the parolee, the parolee's attorney, the parole officer, and the board office as soon as reasonably possible following the parole revocation hearing. The summary of the parole revocation shall consist of a summary of the proceeding and shall contain the judge's findings of fact, conclusions of law and disposition of the matter.

11.7(12) Parole revocation hearing—conduct of the media. The provisions governing the conduct of the media at parole interviews as set out in 205—subrule 8.14(4) shall also apply to parole revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole judge.

11.7(13) Motions and requests. Any motion or request shall be submitted to the administrative parole judge or the board's designated officer, with copies to all parties, prior to the hearing. The parolee or parolee's attorney may submit any motion or request directly to the administrative parole judge, or designee, or through the parole officer. The board of parole does not utilize EDMS for submissions or notifications.

[ARC 3297C, IAB 8/30/17, effective 10/4/17]

205—11.8(908) Appeal or review. The order of the administrative parole judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion.

11.8(1) General. On appeal or review of the judge's decision, the chairperson or board panel's designee has all the power which the administrative parole judge would have in initially making the revocation hearing decision. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole business office or postmarked by the applicable date or they will not be considered. An order continuing disposition is not a final order and therefore is not appealable. The board shall give notice of its decision to the parolee.

11.8(2) Grounds. All grounds shall be included in the same appeal, and all necessary documents and information shall be attached to the appeal. The general grounds for an appeal include that the board action is:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the board;
- c. In violation of a board rule;
- d. Made upon unlawful procedure;
- e. Affected by other error of law;
- f. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action;
- g. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of decision.

11.8(3) Filing an appeal. An appeal shall be filed in writing and shall state:

- a. The particular action which is the subject of the appeal.
- b. The grounds on which relief is sought.
- c. The relief sought.

[ARC 3297C, IAB 8/30/17, effective 10/4/17]

205—11.9(908) Interstate compact parole revocation probable cause hearings. The Iowa board of parole may conduct interstate compact parole probable cause hearings under the same procedures as the Iowa parole revocation hearings.

11.9(1) Interstate compact parole revocation probable cause hearings. The Iowa board of parole, or an administrative parole judge, may conduct a probable cause hearing for a parolee from another state who is on parole in Iowa under the terms of the interstate compact on probation and parole according to the same procedures which govern parole revocation hearings for Iowa parolees who are on parole in Iowa.

11.9(2) Interstate compact parole revocation hearings. If an Iowa parolee was on parole outside the state of Iowa through the interstate compact on probation and parole and has been returned to Iowa following a finding of probable cause in the receiving state, a parole revocation hearing shall be conducted for the parolee at the Iowa institution at which the parolee is incarcerated. This hearing shall be conducted according to the same procedures as those specified for hearings conducted for Iowa parolees who are on parole in the state of Iowa.

205—11.10(908) Parolee convicted of new offenses. A parolee who is found guilty of a new offense or who pleads guilty to a new offense, including a simple misdemeanor, has no right to the adjudication stage of the parole revocation hearing with regard to the new offense.

205—11.11(908) Waivers.

11.11(1) When the parole officer makes a request to the board of parole for a revocation hearing, the parole officer shall inform the parolee of the parolee's rights.

11.11(2) The parole officer shall also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to the parole revocation hearing's being conducted over the telephone.

11.11(3) In the event the parolee executes a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the parole revocation hearing shall be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted by telephone. In the event the parolee does not execute a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the hearing shall be scheduled and may, at the discretion of the administrative parole judge, be conducted electronically by videoconference.

[ARC 2678C, IAB 8/17/16, effective 12/19/16; ARC 3297C, IAB 8/30/17, effective 10/4/17]

205—11.12(908) Conviction of a felony or aggravated misdemeanor while on parole. When a parolee is convicted and sentenced to incarceration in Iowa for a felony or aggravated misdemeanor committed while on parole, or is convicted and sentenced to incarceration in any other state of the United States or a foreign country for an offense committed while on parole and which if committed in Iowa would be a felony or aggravated misdemeanor, the parolee's parole shall be deemed revoked as of the date of the commission of the offense.

11.12(1) 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 or aggravated misdemeanor shall be served consecutively to the sentence for which the defendant was on parole, unless a concurrent term of imprisonment is ordered by the court.

11.12(2) The parole officer shall forward to the board of parole a violation report together with a file-stamped copy of the judgment entry and sentencing order for the offense committed during the parole. An administrative parole judge shall review the violation report and the judgment entry and sentencing order and, if satisfied that the conditions of Iowa Code section 908.10 or 908.10A and of this rule have been met, shall issue an order revoking the parole. The judge shall also determine the date of commission of the felony or aggravated misdemeanor offense and the date of subsequent incarceration in a state institution. Time loss shall be the time between these two dates, except that the parolee shall receive credit for any time the parolee was incarcerated in a county jail between these two dates.

11.12(3) The parolee shall be notified in writing that the parole has been revoked on the basis of the new conviction, and a copy of the commitment order shall accompany the notification. The parolee's record shall be reviewed pursuant to the provisions of Iowa Code section 906.5, or as soon as practical after a final reversal of the new conviction.

11.12(4) An inmate may appeal the revocation of parole under this rule according to the procedure indicated in rule 205—11.8(908).

11.12(5) Neither the administrative parole judge nor the board shall retry the facts underlying any conviction.

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◇ Two or more ARCs