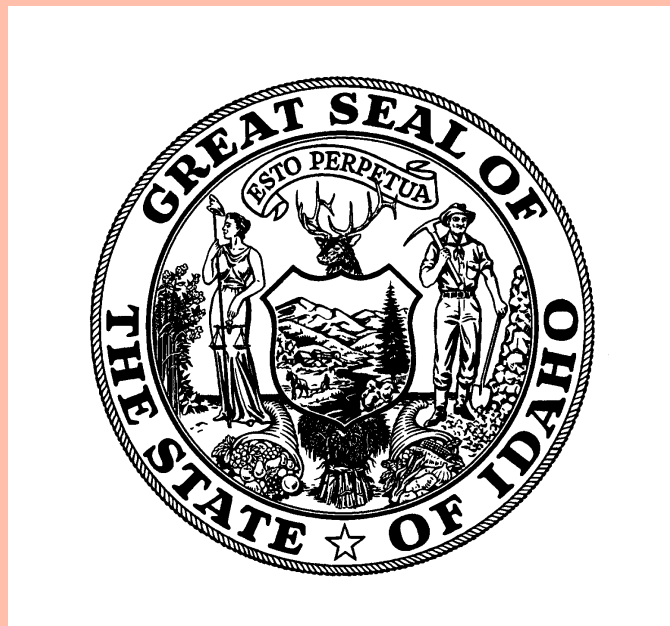


TEMPORARY RULES COMMITTEE RULES REVIEW BOOK

Submitted for Review Before
Senate Judiciary & Rules Committee
64th Idaho Legislature
First Regular Session -- 2017



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2017

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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DOCKET NO 50-0101-1602
NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 8, 2016.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 20-223, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The Commission of Pardons and Parole is updating its administrative rules to reflect current operating processes and mirror the language in Section 20-229B, Idaho Code, passed in the 2016 legislative session. This statutory language allows the Violation Hearing Officers the discretion to have the alleged parole violator appear in front of the Commission instead of imposing intermediate sanctions when the alleged parole violation was violent or sexual in nature or the parole violator has received a new formal charge of a felony or violent crime. This is for public safety.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

To comply with the statutory language change in IC 20-229B, to send the alleged parole violator in front of the Commission when the alleged parole violators conduct was violent or sexual in nature or the parole violator has received a new formal charge of a felony or violent crime. This is for public safety.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Mary Schoeler, Paralegal, (208) 334-2520.

DATED this 8th day of August, 2016.

Sandy Jones
Executive Director
Idaho Commission of Pardons and Parole
3506 Elder St.
Boise, Idaho 83705
(208) 332-2520

FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 50-0101-1602

400. PAROLE REVOCATION PROCESS.

01. Initiated. The parole revocation process is initiated by a written or verbal report describing the conditions of parole which are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. (4-11-15)

02. Warrants. A warrant may be issued for the offender's arrest. (3-23-98)

a. A supervising agency may issue an investigative warrant referred to as an agent's warrant. The agent's warrant authorizes local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the commission. (4-11-15)

b. A commission warrant may be signed by the executive director or by a member or members of the commission. Issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. (4-11-15)

i. If the location of the offender is unknown, the warrant will be entered into NCIC, I-HOT, or other law enforcement data base and will designate which states the commission will extradite the offender from once arrested. At any time the executive director or designee may change the area of extradition. (4-11-15)

ii. If an offender is being held in custody on new charges in a state other than Idaho, the warrant may be placed as a detainer only and written notice of this action will be submitted to the holding facility; if the detainer is officially served on the offender without notice of this action to the commission, the commission will not be held responsible for the time limits prescribed by law for service of charges. (3-8-16)

iii. If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant; during the time period in which the subject refuses to waive extradition, time incarcerated will not be credited toward the sentence. (3-23-98)

c. Parolees who have allegedly absconded from supervision are considered to be a Fugitive from Justice, starting from the day a Fugitive Warrant is issued by the commission and ending upon the day of arrest on that warrant. Per Idaho Code Section 20-228 upon issuance of a Fugitive Warrant parole is suspended and that time that a parolee is considered to be a Fugitive from Justice will not be counted towards the time on parole, or as part of the sentence. (3-8-16)

03. Due Process. Every parolee arrested on a commission warrant for alleged violation(s) of parole is entitled to pertinent due process including notice of the date, time and location of any and all hearings involved in the revocation process, the right to appear at a hearing and address the allegations, and to confront and cross-examine person(s) who have given adverse information on which the charges have been based. (4-11-15)

04. Intermediate Sanctions on Parole Violations and Absconding. If the violation does not result from ~~a conviction~~ either conduct that is sexual or violent in nature, or from a formal charge of a new felony or violent misdemeanor, ~~then the parolee will be afforded the opportunity to serve on~~ the following intermediate sanctions ~~rather than proceeding through the formal parole violation process-~~ will apply: (3-8-16)(8-8-16)I

a. For a first parole violation other than absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to ninety (90) days effective immediately upon either: (3-8-16)

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing; or (3-8-16)

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. (3-8-16)

b. For a second parole violation other than absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon either:

(3-8-16)

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing or entering the decision; or (3-8-16)

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. (3-8-16)

c. For a third or subsequent parole violation other than by absconding, a dispositional hearing will be convened during a regular session of the commission to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (3-8-16)

d. For a first violation by absconding, the commission or hearing officer will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon either: (3-8-16)

i. The date of waiver document, which indicates the parolee's acknowledgment of guilt and acceptance of sanctions in lieu of a violation hearing or entering the decision; or (3-8-16)

ii. Notice of the hearing officer's decision in event the parolee did not waive the hearing. (3-8-16)

e. For a second or subsequent parole violation by absconding, a dispositional hearing during a regular session of the commission will be convened to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. (3-8-16)

f. During any period of confinement on an intermediate sanction, the commission or hearing officer may reduce the period of confinement by up to thirty (30) days if the commission or hearing officer finds that there has been no instance of misconduct during the period of time the parolee is confined. (3-8-16)

g. Upon successful completion of a term of intermediate sanctioning under this section, the parolee will be released to parole supervision unless prior to completing the sanction, the parolee is convicted of a violent misdemeanor or felony crime. If convicted of a violent misdemeanor or felony crime, the parolee will proceed through the formal violation process. (3-8-16)

h. The commission or hearing officer will use the intermediate sanctions pursuant to Section 20-229B, Idaho Code, to determine length of confinement. The criteria may include the parolee's supervision history, stability in the community, severity and type of violation(s), risk and needs assessment score, and the violations report by the parole officer. (3-8-16)

i. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of evidence, or those that have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee will be reinstated on parole on the same or modified conditions of parole. (3-8-16)

05. Witnesses. The alleged parole violator or the accusing parole officer may present witnesses in support of the claims of the allegations or in defense of the charges. (3-23-98)

a. The commission has no subpoena power to compel any witness to attend a hearing. The alleged parole violator may make a timely written request to the commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. (4-11-15)

b. If it is determined by the hearing officer or the executive director that the identification of an informant or the personal appearance of a witness would subject such person to risk or harm, confrontation or cross-examination will not be allowed and the record will reflect such determination. (3-23-98)

c. It is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings. (4-11-15)

06. Attorney. The alleged parole violator may utilize the services of an attorney at any hearing conducted during the revocation process. (3-23-98)

a. An attorney will be paid at the alleged parole violator's expense unless it is determined by a hearing officer for the commission, the executive director, or the commission that there is a colorable claim that the alleged violation(s) did not occur, that the alleged parole violator does not understand the proceedings, or is otherwise incapable of representing himself. (3-23-98)

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the commission office of any hearings and if requested in writing, the commission office will provide the attorney with copies of reports or documents that are public records according to the public records act. (3-8-16)

07. Hearings. The alleged parole violator will be advised of any and all hearing dates and locations within a reasonable time frame. The hearing officer or executive director will determine the location of all hearings. (4-11-15)

a. The subject may request continuance or waiver of any hearing which is subject to the final determination of the hearing officer, executive director, or the commission. (3-23-98)

b. The type of charges addressed in the allegations will determine the kinds of hearings available to the alleged parole violator. (3-23-98)

i. Non-technical Violations. If the alleged parole violator is convicted of a misdemeanor, or new felony, or is charged with absconding, the subject is not entitled to a preliminary or on-site hearing, but is entitled to a hearing to determine guilt or innocence within a reasonable time following service of the charges. (3-8-16)

ii. Technical Violations. If the alleged parole violator is charged with a violation of the conditions of parole other than a misdemeanor, or new felony criminal conviction, or absconding, the subject is entitled to a preliminary hearing within a reasonable amount of time. An on-site hearing will be conducted to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. (3-8-16)

c. Preliminary Hearing. A technical parole violator is entitled to a preliminary hearing to establish whether or not there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of the supervising authority or as otherwise directed by the executive director. The alleged parole violator is entitled to a verbal or written decision within a reasonable time following the preliminary hearing. (4-11-15)

d. On-Site Hearing. A technical parole violator is entitled to an on-site hearing conducted by a hearing officer. The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The executive director or hearing officer will determine where the hearing will be conducted. In situations where the violation(s) occurred outside the state of Idaho, the executive director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than Idaho. (4-11-15)

e. Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence and may dismiss some or all allegations. If a hearing officer is unavailable, the executive director will appoint someone to conduct the hearing. The offender is entitled to a verbal or written decision within twenty (20) days of the violation hearing. (4-11-15)

f. Revocation. Pursuant to a violation hearing or waiver of such hearing and a finding of guilt was made on one (1) or more of the violations, the commission will consider whether or not parole will be revoked. (5-3-03)

i. The commission has full discretion in granting reinstatement on parole or revocation of parole. A hearing with the offender may be conducted or the decision may be made along with deliberation on an Absentia Parole Revocation. (see Subsections 400.07.g.i. and 400.07.g.ii.) The Commission will consider whether the parole

will be reinstated or revoked and will state the reasoning if parole is revoked. (3-8-16)

g. Absentia Hearing. The commission can revoke parole without the subject's appearance if the subject has signed the proper commission form waiving the right to appear before the commission. The commission will determine if parole will be considered once the revocation decision has been made. (3-23-98)

i. If new criminal charges result in a new commitment and incarceration, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

ii. If the subject has absconded supervision and is reincarcerated in another state without a new conviction, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

08. Miscellaneous Revocation Information. (3-23-98)

a. The executive director will determine who will conduct all hearings involved in the revocation process. (3-23-98)

b. The commission, through the executive director shall designate the county, state, or other facility where the alleged parole violator shall be held. The commission's order shall be sufficient authority by law to direct any county sheriff or the board of correction to hold an alleged parole violator in custody until such time as the commission directs his removal or transfer. (3-23-98)

c. The alleged parole violator can request a continuance of any hearing. The hearing officer, executive director, or the commission will determine if the continuance will be granted. If the alleged parole violator requests a continuance of any hearing, said request will constitute a waiver of any and all time limits involved. (4-11-15)

09. Inability to Assist in Defense. (3-23-98)

a. Specific time limits pertinent to the case may be waived. (3-23-98)

b. At the hearing officer or executive director's discretion, an attorney may be appointed for the offender at commission expense. (4-11-15)

c. A psychological evaluation may be requested by the commission and mental health treatment may be deemed appropriate. (4-11-15)

d. A status update of the case will be made at regular intervals, and the executive director will determine how the case will proceed. (3-23-98)

10. Findings/Decisions. (3-23-98)

a. At any time following arrest on a commission warrant, the executive director or the commission will decide if the parolee will be released to continue parole. (5-3-03)

b. If it is determined at the preliminary hearing that there is no probable cause to support the charges, the parolee will be released to continue parole. (3-23-98)

c. After a violation hearing, the hearing officer will prepare a report of findings summarizing the violation hearing, to include testimony, and will make specific findings for each allegation. (4-11-15)

i. The hearing officer may make a finding of guilt but may recommend to the executive director that the offender be reinstated on parole without further proceedings. (3-23-98)

ii. The offender is entitled to receive a copy of all reports of findings of hearings. (3-23-98)

11. Forfeiture of Time on Parole. If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on an agent's warrant and/or commission warrant may be

forfeited, in whole or in part, and may not be deemed a part of the sentence for which the offender was committed.
(4-11-15)

a. The time the offender is incarcerated on an agent's warrant and a commission warrant will be credited toward the sentence.
(4-11-15)

b. If the offender was incarcerated at any time during the parole period and such incarceration was on an agent's warrant and/or commission warrant, this time will be credited toward the sentence; this includes a reinstatement case.
(3-23-98)

c. The offender will not receive credit for incarceration time if the incarceration was for a new crime and the commission and parole officer did not initiate violation proceedings.
(3-23-98)

d. The offender must provide the hearing officer or the executive director with dates of incarceration and the location of the incarceration.
(3-23-98)