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PAROLEE RIGHTS HANDBOOK
UPDATED FEBRUARY 2005

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PAROLEE RIGHTS HANDBOOK

INTRODUCTION

State law requires that all California prisoners serve a period on parole after release from prison. The parole term is considered to be a type of custody that is part of any sentence.[1] All

1. Penal Code § 3000. A prisoner with a determinate term will be released on parole when the number of actual days served, plus any time credits earned, equals the sentence imposed by the court. Prisoners with indeterminate terms are released only if found suitable by the BPT.

released prisoners must serve a parole period – although in some cases a parolee may serve some or all of the parole period confined in prison or jail.[2]

Parole is required because the legislature believes that "the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship . . . . . [Thus,] it is in the interest of public safety" to supervise and assist parolees.[3] However, in reality, parole may not ease a prisoner's transition back to the free world.[4]

When a prisoner is released on parole, he or she remains in the legal custody of the California Department of Corrections (CDC).[5] A parolee is supervised by a CDC parole agent, and must meet certain requirements or "conditions" of parole. If the parolee violates his or her parole conditions, the Board of Prison Terms (BPT) can revoke parole and order the parolee returned to custody to serve a parole revocation term. When the entire parole period is over, the parolee is released or "discharged" from parole.

This handbook addresses commonly asked questions about parole terms and parolees' rights; it is not a full discussion of the legal issues surrounding parole. In addition, this handbook discusses the many changes in parole policies that have been instituted starting in 2004 as a result of a settlement agreement in the lawsuit Valdivia v. Schwarzenegger (E.D. Cal.) S-94-0671 LKK/GGH .

1. HOW LONG IS A PERSON ON PAROLE?

From one year to life, depending on the type of crime and the date it was committed.

The basic length of the parole period is set by statute, and depends on the type and date of the criminal conviction. Because the law has changed over the years, determining the length

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2. Technically, the BPT has power to waive a person's parole requirement (see Penal Code § 3000), but such waivers are virtually non-existent. Equally rare is the case where a court orders a parole-free release because of a failure to advise a defendant of the required parole period at the time a guilty plea is entered (see Section #4 below, for further discussion).

3. Penal Code § 3000.

4. In 2004, there were 113,000 parolees in California; 47% had their parole revoked and over 10% received new prison terms yearly. CDC Facts, 3rd Quarter 2004 (http://www.corr.ca.gov).

5. Penal Code § 3056.

of a parole period can be confusing.[6] Following is a summary of parole lengths;[7] please note that any time during which a parolee absconds and is not available for from parole supervision does not count toward the parole period.[8]

- Prisoners with Determinate Sentences or Non-Life Penal Code §1168 Sentences – Offenses on or after January 1, 1979: three-year parole period, with a maximum parole period of four years if parole revoked. Most parolees fall in this category.

- Prisoners with Determinate Sentences for Sex Crimes in Penal Code § 667.5(c)(3)(4)(5)(6)(16) or (18) – Offenses on or after July 19, 2000: five-year parole period, with a maximum parole period of seven years if parole is revoked. Amendments effective September 24, 2002 added people convicted of the crime in Penal Code § 667.5(c)(11) to the list of those subject to a five-year parole period.

- Prisoners with Determinate or Non-Life Indeterminate §1168 Sentences – Offenses before January 1, 1979: one-year parole period, with a maximum parole period of eighteen months if parole revoked.

- Life Prisoners – Offenses before January 1, 1979: three-year parole period, with a maximum parole period of four years if parole revoked.

- Life Prisoners – Offenses on or after January 1, 1979: five-year parole period, with a maximum parole period of seven years if parole revoked.

- Life Prisoners – 1st and 2nd Degree Murder – Offenses on or after January 1, 1983: maximum parole period of life.

- Life Prisoners – Sex Offenses under Penal Code § 667.61 – Offenses on or after July 19, 2000: five-year parole period, with a maximum parole period of seven years if parole revoked. Parole may be extended an additional five years if the BPT finds the parolee may pose a substantial danger to public safety. As of September 24, 2002, this provision also applies to people sentenced to life terms

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6. Statutory amendments that lengthen parole terms cannot be applied to persons who committed offenses prior to the change in the law. In re Thomson (1980) 104 Cal.App.3d 950 [164 Cal.Rptr. 99]; In re Bray (1979) 97 Cal.App.3d 506 [158 Cal.Rptr. 745].

7. Penal Code §§ 3000, 3000.1, 3001 and 3057 set forth the length of parole terms. See also 15 CCR § 2515.

8. Penal Code § 3064.

under Penal Code § 667.71. As of October 13, 2001, both the original and extended parole periods may be increased to a maximum of seven years each.

2. CAN A PAROLEE GET OFF PAROLE EARLY?

Sometimes.

A parolee must be discharged early from parole if he or she successfully completes a certain amount of parole time (without revocations or suspensions) and the BPT does not find good cause to retain the person on parole.[9] The date on which the BPT must make this determination is called the "presumptive discharge date." The BPT must hold the discharge review within 30 days after the parolee serves the following period of time on continuous parole (meaning there have been no revocation terms, suspensions, or "dead time" for absconding):[10]

- One year, for those with determinate sentences who were convicted only of non-violent felonies;
- Two years, for those with determinate sentences who were convicted of violent felonies as defined in Penal Code §667.5(c) and placed on three year-parole periods;
- Three years, for those serving five-year parole periods for indeterminate sentences under Penal Code §§ 1168, 667.61 or 667.71 or determinate sentences for sex crimes under Penal Code § 667.5(c)(3), (4), (5), (6), (11), (16) or (18). The three-year early presumptive discharge date also applies to the discretionary five-year parole period extensions that may be imposed on people sentenced under Penal Code §§ 667.61 and 667.71.
- Five years, for those sentenced to indeterminate life terms for second degree murder; or
- Seven years, for those sentenced to indeterminate life terms for first degree murder.

Parolees who were sentenced to prison for offenses committed between on July 1, 1977 and December 31, 1978 are not entitled to early discharge review hearings.[11]

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9. Penal Code § 3001.

10. Penal Code §§ 3000.1(b) and 3001; 15 CCR § 2535.

11. 15 CCR § 2535(b)(5).

The BPT rules broadly define the circumstances in which it can find good cause to retain someone on parole, taking into account factors such as the original crime, in-prison behavior , efforts to pay restitution obligations and parole adjustment.[12/] The parolee does not have a right to a personal appearance at the review.[13/] However, the BPT is required to give a copy of its decision to the parolee.[14/] Also, if the BPT decides to continue parole, the parolee will be eligible for discharge review each year until the maximum parole date is reached.[15/]

The law requiring discharge reviews states that a parolee "shall" be discharged unless the BPT acts to retain for good cause. There are conflicting cases on what this means. Some Court of Appeal decisions state that parole terminates automatically if CDC and BPT fail to take action to retain the prisoner on parole or fail to give notice of the retention.[16/] However, other cases hold that mere failure to give a parolee notice that he or she has been continued on parole or failure to conduct subsequent annual reviews does not mean automatic discharge of parole.[17/]

3. HOW DOES A PAROLEE CALCULATE THE MAXIMUM PAROLE DISCHARGE DATE?

A parolee who does not receive an early parole discharge can calculate when he or she will be discharged from parole. There are two important dates to calculate: the controlling discharge date (CDD) and the maximum discharge date (MDD).[18/] The CDD is the date that a parolee is currently set to discharge from parole (if he or she does not get an early discharge). If parole is revoked and the parolee serves a revocation term, the time in custody does not count toward the parole term and the CDD is moved to a later date.[19/] However, there is a maximum legal limit on how long the parole discharge date can be extended – the MDD is the longest

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12. 15 CCR § 2535(d), DOM §§ 81080.1-81080.1.1.

13. 15 CCR § 2535(c).

14. Penal Code §§ 3001(a); 15 CCR § 2535(c);.

15. Penal Code § 3001(c).

16. In re Nesper (1990) 217 Cal.App.3d 872 [266 Cal.Rptr. 113]; In re Carr (1995) 38 Cal.App.4th 209 [45 Cal.Rptr.2d 34].

17. People v. Jack (1997) 40 Cal.App.4th 1129 [70 Cal.Rptr.2d 676]; In re Carr, supra, 38 Cal.App.4th at p. 209; In re Ruzicka (1991) 230 Cal.App.3d 595 [281 Cal.Rptr.435]; In re Roa (1991) 1 Cal.App.4th 724 [3 Cal.Rptr.2d 1].

18. These dates do not apply to parolees who are serving potentially life-long parole terms.

19. Penal Code §§ 3000(b)(4) and 3064.

period of time a person can be legally kept on parole, including revocation time in custody. Time during which a parolee absconds or is unavailable for parole supervision does not count toward either the CDD or MDD and will always extend the discharge date.[20]

Since calculating a parole discharge date is complicated, a work sheet with a sample calculation is included here:

1. Start with the date of first parole from the original prison term. For our worksheet example, we will assume the prisoner first paroled on January 1, 2005.

2. Add to that date the amount of time the parolee must continuously serve on parole before an early discharge review. For example, parolee who served a determinate sentence for a non-violent crime committed after January 1, 1979 has a presumptive early discharge date (assuming no revocation or absconding) of thirteen months. The parolee in our example would be eligible for early discharge on February 1, 2006.

3. If the parolee is not discharged early from parole, he or she will be release on the controlling discharge date (CDD). Start with the original date of parole and add the normal parole term. In this the example, three years is the normal parole period. Thus, the CDD is January 1, 2008, and the parolee must be discharged on this date if he or she does not abscond or have parole revoked.

4. Time actually spent in custody for a parole revocation does not count toward the parole term.[21] Thus, revocation terms must be added to the CDD, resulting in a later discharge date. In our example, if the parolee was sentenced to a twelve month revocation term, and after receiving time credits actually spent eight months in prison, then eight months must be added to the three year mandatory term. The discharge date is now September 1, 2008.

5. If the parolee gets revoked and returned to custody again, this additional time in prison will also be added to the discharge date. However, the actual discharge date cannot exceed the maximum discharge date (MDD), which in this example is four years from the date of first parole. Thus, if the parolee received a second revocation term of 12 months, the parolee would not serve the full 12 months. Instead, he or she would be discharged from parole on the MDD of January 1, 2009.[22]

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20. Penal Code § 3000(b)(4).

21. Penal Code §§ 3000(b)(4) and 3064.

22. Penal Code § 3000(b)(4).

6. Periods during which a parolee absconds or has parole suspended do not count at all towards the parole term and extend both the CDD and MDD.[23/] In this example, if the parolee absconds several times during the parole term, for a total of twelve months, then the discharge date would then be extended by twelve months to January 1, 2010. This means that the parolee would still be on parole until five years after the initial parole date.

7. The actual discharge date is the date a parolee is released from parole given all of the above calculations.

Work Sheet

1. Date originally paroled:	1/1/05
2. Presumptive Discharge Date: (13 months)	2/1/06
3. Controlling Discharge Date: (3 years)	1/1/08
4. First Revocation Term: (8 months actually served)	9/1/08
5. Second Revocation Term: (12 months, but released at 4 year MDD regardless of additional revocation terms)	1/1/09
6. Total absconding periods (Time when parole was suspended due to absconding, 12 months)	1/1/10
7. Actual Discharge Date:	1/1/10

In rare cases, a prisoner who is being released to parole has served too long in prison because of the reversal of a conviction or a delayed grant of time credits. In such cases, the

23. Penal Code § 3064.

parolee is entitled to have the extra time spent in prison applied to the parole period.[24] However, the parolee will not be completely discharged from until the amount of credits granted and/or earned on parole exceeds the normal parole period. The same rule applies to people who are sentenced to prison and have pre-sentence credits that are greater the prison term that was imposed – the pre-sentence credit will be applied toward the parole period but some period of parole must be served unless the credits are enough to cover the entire parole period.[25]

4. WHAT HAPPENS IF THE DEFENDANT WAS NOT INFORMED OF THE PAROLE PERIOD WHEN ACCEPTING A PLEA BARGAIN?

A defendant who is not informed of the parole period at the time he or she enters a guilty plea may be able to argue that the plea was not knowingly and intelligently made.

To challenge a judgment resulting from a guilty plea on the grounds that there was a failure to advise regarding parole, a prisoner must prove that:

1) the trial court failed to advise the defendant of the mandatory parole requirement at the time the court accepted the plea; and

2) the defendant did not at the time of the plea otherwise know of the parole term requirement and would not have pled guilty had the requirement been known.[26]

In addition, a prisoner who files a petition for writ of habeas corpus on this issue must explain why the issue was not raised on direct appeal. If a significant time has elapsed since the plea was taken, the delay in filing must also be explained.[27]

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24. In re Lara (1988) 206 Cal.App.3d 1297 [254 Cal.Rptr. 59]; In re Kemper (1980) 112 Cal.App.3d 434 [169 Cal.Rptr. 513]; In re Ballard (1981) 115 Cal.App.3d 647 [171 Cal.Rptr. 459].

25. People v. London (1988) 206 Cal.App.3d 896, 910-911 [254 Cal.Rptr. 59]; In re Jantz (1984) 162 Cal.App.3d 412 [208 Cal.Rptr. 610]; In re Welch (1990) 190 Cal.App.3d 407 [235 Cal.Rptr 470].

26. People v. Avila (1994) 24 Cal.App.4th 1455 [30 Cal.Rptr.2d 138]; In re Moser (1993) 6 Cal.4th 342, 351-352 [24 Cal.Rptr. 723, 728-729]; People v. McMillion (1992) 2 Cal.App.4th 1363 [3 Cal.Rptr.2d 821]; Carter v. McCarthy (9th Cir. 1986) 806 F.2d 1373, 1374-1376; In re Carabes (1983) 144 Cal.App.3d 927, 933 [193 Cal.Rptr. 65].

27. In re Clark (1993) 5 Cal.4th 750, 751 [21 Cal.Rptr.2d 509, 510]; In re Walker (1973) 10 Cal.3d 764, 773 [112 Cal.Rptr. 177].

The usual remedy for failure to advise the defendant of the parole period at the time of the plea will be allowing the person to withdraw their plea, meaning that criminal proceedings, including any charges dismissed as a result of the plea bargain, could be reinstated. In a very rare case, the court might order specific performance of the plea agreement by a parole-free release, particularly if the prisoner already has served more time than was bargained for or has served most of the parole period.[28]

A failure to inform a defendant of the parole period at the time of sentencing does not entitle a prisoner to a parole-free release.[29] The remedy, if any, would be a re-sentencing hearing with the proper advisement about the parole requirement.

5. ARE FUNDS AVAILABLE TO PAROLEES UPON RELEASE FROM CUSTODY?

Yes, for some prisoners.

1. Trust Fund Accounts (Penal Code § 2085)

Money brought to, earned, or received in prison can be kept in a trust account. Any money in a prisoner's trust account must be given to the prisoner upon release.

2. Gate Money (Penal Code § 2713.1; 15 CCR § 3075.2(d); CDC Operations Manual § 81010.6)

In addition to any trust account funds, prisoners paroled or discharged from a CDC institution or reentry facility are entitled to $200.00 upon release. The parole agent is responsible for giving out these funds, and need not grant a prisoner the entire lump sum immediately upon release. The agent may distribute the $200 in installments over a period of 60 days following release. Although practice varies, paroled inmates typically receive at least $50 to $100 of the gate money immediately upon release, and many receive the entire $200.

Parole violators who have served less than six consecutive months prior to release are also eligible for gate money. However, these parolees are not necessarily eligible for the full $200. Instead, they will receive gate funds computed at a rate of $1.10 per day served during the revocation term, up to a maximum of $200.00.

A parolee who is released into a reentry facility may be given a maximum of one half of the $200. A parolee who is released into the custody of another state or a local or federal agency, may not receive any gate money unless he or she later is released for and available for parole supervision.

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28. See Carter v. McCarthy, supra, 806 F.2d 1373.

29. In re Chambliss (1981) 119 Cal.App.3d 199, 200 [173 Cal.Rptr. 712].

If a parolee needs to purchase a bus ticket or street clothes upon release from prison, the parolee must pay for it. The CDC does not provide extra gate money for clothing or transportation.

3. Cash Assistance Loans (15 CCR § 3705 and CDC Operations Manual § 81070.1) and Bank Drafts (CDC Operations Manual § 81070.2)

There are also some emergency funds available to parolees through their parole agents. "Cash assistance funds" are loans, which CDC expects the parolee to pay back as soon as employment and personal circumstances permit. The loans are only granted to parolees when there is a critical need and assistance is not available from any other source. The loans are usually for amounts under $50. The parole agent's supervisor must approve any loan over $50 or any series of loans totaling more than $150 in a 30 day period.

The parole agent is also authorized to distribute funds for casework services, which include housing, food, and clothing. The agent may authorize a loan of up to $500 to the parolee for over-the-counter purchases. The check may be written to either the parolee or the vendor from whom the parolee is purchasing items. Once again, the loans are granted on an emergency basis, and the parolee must pay the money back as soon as circumstances permit.

A parolee should keep in mind that the parole agent and agent's supervisor have discretion over whether to grant a loan to a particular parolee. A parolee is not automatically entitled to a loan. A parole agent's decision to grant or deny a loan depends whether there is a money available and on the circumstances, including the history and needs of the parolee.

4. Other Benefits (SSI, Social Security, Housing Assistance)

Paroled prisoners may be eligible for federal, state, and local assistance programs, although they do not receive special status because of their recent release. A parolee should investigate the various programs in order to see whether he or she qualifies for any of them. Note that parolees convicted of drug felonies are not eligible for some welfare benefits as of 1998.

Parolees should also be aware that the Social Security Administration, which administers SSI and Social Security, no longer considers drug or alcohol addiction to be an eligible disability. In order to receive SSI, an applicant must be disabled and unable to work because of a disability independent of substance abuse. A person who is interested in SSI or any other benefits, can send a letter of inquiry to the applicable office before release, and should seek advice from an advocate at a community agency or legal services organization once released.

In addition, parole agents should be able to assist parolees in gaining access to benefits. At a minimum, an agent should be able to provide a parolee with names and locations of local offices where the parolee can try to get assistance. The parole agent should have lists of shelters, food banks, job training facilities, and drug treatment centers in the local area. Parolees can use these resources as an initial step toward getting shelter, food and other necessary items.

Additional information is available in the Prison Law Office information letter on Parolee Benefits, which we can send on request. Parolees can also get information from their CDC counselor or parole agent or from the CDC Parolee Handbook, available at www.corr.ca.gov.

6. DO PAROLEES HAVE TO SIGN THEIR CONDITIONS OF PAROLE?

Yes.

If a parolee refuses to sign the "Notice and Conditions of Parole," parole will be revoked and he or she will be kept in or returned to custody for up to six months.[30] Therefore, there is usually no point in refusing to sign the agreement. If there is disagreement about whether any condition is lawful or necessary, the prisoner can follow the steps to challenge a parole condition described in Section #16, below.

7. WHAT KIND OF PAROLE CONDITIONS CAN THE CDC OR BPT IMPOSE?

Both the California Department of Corrections (CDC) and the Board of Prison Terms (BPT) have authority to impose conditions of parole.[31] Prisoners must be given a written "Notice and Conditions of Parole" at least 30 days before release. Every parolee should be aware of his or her parole conditions because violating those conditions can result in revocation of parole and return to prison or jail.[32]

There are some general parole conditions that are standard and apply to all parolees; these include complying with parole agent instructions, not engaging in criminal conduct, and not owning, possessing, using, or having access to any weapon.[33] In addition, special conditions can be imposed based on particular facts regarding the case or the parolee; some of these special conditions are required by state statutes. The most common special conditions are that a parolee abstain from use of alcoholic beverages, submit to narcotics testing, or participate in psychiatric treatment.[34]

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30. Penal Code § 3060.5; 15 CCR § 2512.

31. Penal Code §§ 3000(b)(5) and 3053 et. seq.; see also 15 CCR §§ 2510, 2512.

32. Penal Code §§ 3056, 3060.

33. See 15 CCR § 2512.

34. See 15 CCR § 2513. Statutes require some parolees to register as sex offenders (Penal Code § 290) and some parolees to not use alcohol (Penal Code § 3053.5). A parolee who was convicted of violating Penal Code § 288 or § 288.5 also can't be placed or reside within 1/4 mile of a kindergarten or elementary school. Penal Code § 3003(g). A person convicted of domestic violence must participate in a counseling program. Penal Code § 3053.2.

A condition of parole may be invalid if it:
1) has no relation to the commitment offense;
2) relates to conduct which is not in itself criminal; and
3) requires or forbids conduct that is not reasonably related to future criminality;[35]

For instance, if a parolee has no history of alcohol abuse, random alcohol testing cannot be imposed, since the condition does not relate to past or future criminality and using alcohol is not itself illegal.[36] On the other hand, since possession of a firearm by an ex-felon is in itself a crime,[37] a prohibition on that conduct is a standard condition of parole.

A parole condition which infringes on a constitutional right may also be held invalid if the condition is not reasonably related to a legitimate purpose, the public value of the condition does not outweigh the infringement, and less restrictive alternatives might serve the same purpose. Conditions also may be invalid if they are excessive or extreme or if they are so vague that they cannot be understood and followed.[38]

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35. People v. People v. Burgener (1986) 41 Cal.3d 505 [224 Cal.Rptr. 112, overruled on other grounds in People v. Reyes (1998) 19 Cal.4th 743 [80 Cal.Rptr.2d 234]; People v. Lent (1975) 15 Cal.3d 481, 486 [124 Cal.Rptr. 905]; People v. Dominguez (1967) 256 Cal.App.2d 623, 627 [64 Cal.Rptr. 290]. Many of the cases in this area deal with probation conditions, as courts usually apply the same analysis to both parole and probation conditions.

36. But see Penal Code § 3053.5 (parole condition to abstain from using alcohol must be applied to any person convicted of a sex offense while intoxicated or addicted to alcohol).

37. Penal Code § 12021.

38. People v. Fritchey (1992) 2 Cal.App.4th 829, 838 [3 Cal.Rptr.2d 585]; United States v. Bonanno (N.D. Cal. 1978) 452 F.Supp. 743, 752. The following cases have invalidated probation or parole conditions: People v. Bauer (1989) 211 Cal.App.3d 937 [260 Cal.Rptr. 62] (condition not to become pregnant); People v. Pointer (1984) 151 Cal.App.3d 1128, 1139 [199 Cal.Rptr. 357] (condition forbidding living with parents); People v. Beach (1983) 147 Cal.App.3d 612, 622-623 [147 Cal.App.3d 612] (condition banishing defendant from her home); In re Sheena K. (2004) 116 Cal.App.4th 436 [10 Cal.Rptr.3d 444 [condition that probationer not associate with anyone disapproved by the probation officer]; Hyland v. Procunier (N.D. Cal. 1970) 311 F.Supp. 749 [condition that parolee get permission before making a public speech]; Arciniega v. Freeman (1971) 404 U.S. 4 [92 S.Ct. 22, 30 L.Ed.2d 126][condition restricting parolee from associating with other ex-convicts in the course of work for a common employer]; People v. Garcia (1993) 19 Cal.App.4th 97, 101-102 [23 Cal.Rptr.2d 340] (condition to not associate – knowingly or unknowingly – with ex-felons or drug); In re Justin S. (2001) 93 Cal.App.4th 811 [113 Cal.Rptr.2d 466] (condition prohibiting association with "any gang members"); In re Stevens (2004) 119 Cal.App.4th 1228 [15 Cal.Rptr.3d 168] (complete prohibition on sex offender from using computers or the Internet when neither computers or the

Special conditions of parole may be imposed which will impinge upon the parolee's employment, but the prohibited employment must directly relate to the crime.[39] For instance, a parolee who is convicted of writing checks with insufficient funds can be prohibited from maintaining a checking or charge account, but prohibiting him or her from working in commissioned sales could be an unnecessary infringement upon the right to work.[40]

8. CAN A PAROLEE OWN A GUN?

No. It is forbidden by state and federal law.

The standard "Notice and Conditions of Parole" informs each parolee that he or she shall not "own, use, have access to or have under your control . . . any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm . . . . ." This is in accord with California law, which states that any person convicted of a felony and who owns, possesses or has custody or control of any firearm, is guilty of a felony.[41] Federal law also makes it unlawful for an ex-felon to receive or possess any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.[42] Parolees who live with someone else who possesses a gun or ammunition should make sure that person removes those items from the residence, or at least keeps the items locked in an area to which the parolee does not have access.

A certificate of rehabilitation (see Section #17 below) does not restore the right to possess a firearm; in some, but not all cases, the right can be restored by a full pardon.[43]

9. CAN A PAROLE AGENT OR POLICE OFFICER SEARCH A PAROLEE'S CAR OR RESIDENCE WITHOUT A WARRANT?

Internet had not been used in committing crime); United States v. Williams (9th Cir. 2004) 356 F.3d 1045. (condition requiring releasee to take all medications prescribed for his mental illness where there was a lack of medical evidence to support such extreme impingement on the right to refuse to medication).

39. See People v. Burden (1988) 205 Cal.App.3d 1277 [253 Cal.Rptr. 130]; People v. Lewis (1978) 77 Cal.App.3d 455 [143 Cal.Rptr. 587]; People v. Keefer (1972) 35 Cal.App. 156 [110 Cal.Rptr. 596].

40. Ibid.

41. Penal Code § 12021; see also Penal Code § 12021.1.

42. 18 U.S.C. § 922(g)(1).

43. See Penal Code §§ 4852.16 and 4854.

Yes (usually).

The standard CDC "Notice and Conditions of Parole" provides that "[y]ou and your residence and any property under your control may be searched without a warrant by an agent of the Department of Corrections or any law enforcement officer." A prisoner who refuses to accept this condition of parole will lose worktime/goodtime credit on a day for day basis until the condition is signed or all earned credit is lost.[44/]

The constitutional right to be free from unreasonable searches and seizures is virtually non-existent while on parole. "The justification for exempting parole searches from the warrant requirement of the Fourth Amendment is that these searches are necessary for effective parole supervision."[45/] The parole agent can visit a parolee at his or her home or job site without prior notice to the parolee. A parole officer may authorize a search without the parolee's consent, without a search warrant, and without probable cause or even a reasonable suspicion that the parolee has violated parole.[46/]

Nearly the only limit on parole searches is the general rule that abridgement of a parolee's Fourth Amendment rights is justified only to the extent required by the legitimate demands of the parole process [47/] and that the parole search must be constitutionally reasonable.[48/] Unfortunately, the exclusionary rule (that evidence obtained in violation of Fourth Amendment rights cannot be admitted in a criminal case) does not apply in parole revocation hearings,[49/] so parole officers have little incentive to comply with even the few requirements of the Fourth Amendment.

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44. Penal Code § 3067.

45. People v. Reyes, supra 19 Cal.4th at p. 753.

46. Ibid. Reyes overruled People v. Burgener, supra, 41 Cal.3d at p. 505, which had held that the parole agent needs to have a reasonable suspicion of a violation.

47. People v. Williams (1992) 3 Cal.App.4th 1100, 1106 [5 Cal.Rptr.2d 591].

48. Reyes, supra, 19 Cal.4th 743 at pp. 753-754. See also People v. Clower (1993) 16 Cal.App.4th 1737 [21 Cal.Rptr.2d 38], stating that a parole search could become constitutionally unreasonable if made too often, at an unreasonable hour, if unreasonable prolonged or for other reasons establishing arbitrary or unreasonable conduct by the searching officer.

49. Pennsylvania Board of Probation and Parole v. Scott (1998) 524 U.S. 357 [118 S.Ct. 2014; 141 L.Ed.2d 344]

Being on parole does not itself justify a warrantless search by law enforcement officers other than parole agents.[50] However, the police are not required to seek a parole officer's permission to perform a parole search.[51] Thus, a warrantless parole search by a police officers for a law enforcement purpose will be upheld if the law enforcement purpose is also a legitimate parole supervision purpose. An example would be the investigation of a parolee's involvement in a crime.[52] Also, if the parole agent has requested police assistance, the search is reasonably related to the purposes of the parole process.[53] In addition, a police officer does not need to obtain an arrest warrant before entering a parolee's house to take the parolee into custody.[54]

The fact that a search is being conducted pursuant to a parole search condition does not excuse police or parole agents from complying with the "knock-notice"law, requiring an officer to give notice of his authority and purpose in executing a warrant.[55] The knock-notice requirement must be met unless the case falls under an exception to the general rule.[56]

10. CAN A PAROLEE VISIT FRIENDS OR RELATIVES IN PRISON?

Not without prior approval.

It is a crime for a person previously convicted of a felony to be on prison grounds for any reason without prior approval of the warden or superintendent of the institution.[57] To get

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50. People v. Johnson (1988) 47 Cal.3d 576, 594 [235 Cal.Rptr. 710, 719]; People v. Williams supra, 3 Cal.App.4th at p. 1106; People v. Montenegro (1985) 173 Cal.App.3d 983 [219 Cal.Rptr. 331]

51. See People v. Brown (1989) 213 Cal.App.3d 187, 192 [261 Cal.Rptr. 612, 615] (calling such a requirement a "meaningless formality").

52. People v. Stanley (1995) 10 Cal.4th 764, 790 [42 Cal.Rptr.2d 543, 557]. However, if police do not know a person is a parolee, they cannot later try to justify the search as being a parole search. People v. Sanders (2003) 31 Cal.4th 318 [2 Cal.Rptr.3d 630].

53. People v. Johnson (1988) 47 Cal.3d 576 [253 Cal.Rtpr. 710].

54. People v. Lewis (1999)74 Cal.App.4th 662 [88 Cal.Rptr.2d 231].

55. People v. Mays (1998) 67 Cal.App.4th 969 [79 Cal.Rptr.2d 519]; Penal Code § 1531.

56. People v. Britton (1984) 156 Cal.App.3d 689, 698 [202 Cal.Rptr 882]; People v. Ford (1975) 54 Cal.App.3d 149 [126 Cal.Rptr. 396].

57. Penal Code § 4571.

permission to visit, a parolee must send a letter of request to the warden.[58] However, any person who has been discharged from prison for more than twelve months or from parole may not be denied visiting by the warden "for reasons that would not apply to any other person ...."[59] Persons on parole, probation or out-patient status must also obtain written consent of their case supervisor before visiting will be approved.[60] Like any other prospective visitor, a parolee who wants to visit an inmate must also complete a Visiting Questionnaire (CDC Form 106).

11. CAN PAROLEES VOTE? SERVE ON A JURY?

No to both questions.

A. Voting

People in prison or on parole are not allowed to vote, though they are allowed to vote once they are discharged or complete parole.[61] Such restrictions on voting are explicitly permitted by the United States Constitution, Fourteenth Amendment, § 2.[62] Several recent cases have indicated that laws denying voting rights to ex-felons might violate the federal Voting Rights Act if they have a disparate impact on the voting rights of people of color;[63] however no court has yet overturned any law that bars parolees from voting.

B. Jury Duty

An ex-felon (regardless of whether he or she has discharged from parole) is prohibited from serving on a jury.[64] This restriction has been upheld by the California Supreme Court.[65] The Court held that the right to serve on a jury is not a fundamental right and that exclusion of ex-felons from juries did not violate the equal protection clause. The Court found that the

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58. 15 CCR § 3172(d).

59. 15 CCR § 3172.1(b)(4).

60. 15 CCR § 3172.1(b)(5).

61. Cal. Constitution, Article II, § 4. Elections Code § 2150.

62. Richardson v. Ramirez (1974) 418 U.S. 24 [94 S.Ct. 2655; 41 L.Ed.2d 551].

63. Farrakhan v. Washington (9th Cir. 2003) 338 F.3d 1009; Johnson v. Florida (11th Cir. 2003) 353 F.3d 1287.

64. Code of Civil Procedure § 203(a)(5).

65. Rubio v. Superior Court (1979) 24 Cal.3d 93 [154 Cal.Rptr. 734].

exclusion of ex-felons from jury service was rationally related to the legitimate state goal of assuring impartiality of the verdict.[66]

12. CAN A PAROLEE TRANSFER TO ANOTHER COUNTY OR STATE?

Maybe.

Ordinarily, a person paroles to the county of his or her last legal residence.[67] However, sometimes the BPT or CDC will force a prisoner to parole to a different county if it would be in the best interests of the public.[68] Also, a parolee will not be released to a county where he or she would be within 35 miles of the residence of a victim of or witness if the conviction was for a violent felony listed in Penal Code § 667.5(c)(1)-(7), a crime involving stalking, or a crime involving infliction of great bodily injury, if the victim or witness has requested additional distance and the BPT or CDC finds that there is a need to protect the victim/witness.[69]

If the BPT makes a decision to return a parolee to another county, it must state its reasons in writing.[70]

A. Requesting Transfer to a Different County

In some cases a parolee may not want to transfer to the county where CDC has decided to place the parolee. A parolee may request a transfer to another California county by submitting an oral or written request to his or her parole agent. A prisoner should provide documentation (such as letters from family, doctor, or employer) showing why he or she is requesting parole to another county. This process can also be started while a person is still in prison if the Release Program Study is being or has been prepared.

After the parole agent receives the request, he or she should prepare a Transfer Investigation Request Form (CDC Form 1551) and submit it to the parole unit supervisor. The following factors, among others, should be considered:

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66. Ibid.

67. Penal Code § 3003(a).

68. Penal Code § 3003(b).

69. Penal Code § 3003(f) and (h).

70. Penal Code § 3003(b). In addition, a county that complains of a parolee's placement may not obtain a court order prohibiting that placement unless there has been an abuse of discretion by the parole authority. McCarthy v. Superior Court (1987) 191 Cal.App.3d 1023, 1027 [236 Cal.Rptr. 833, 834].

1) the need to protect the safety of a victim, the parolee, a witness or any other person;

2) public concern that would reduce the chance that parole would be completed successfully;

3) the verified existence of a work offer, or an educational or vocational training program;

4) the existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that parole would be successfully completed;

5) the lack of necessary outpatient treatment programs for parolees receiving mental health treatment pursuant to Penal Code § 2960.[71]

If transfer is denied, the parolee can challenge the decision by following the steps in Section # 16, below.

B. Requesting Transfer To A Different State

In 2000 and 2002, the state legislature approved adoption of a new Interstate Compact for Adult Offender Supervision to try to make interstate parole and probation supervision procedures more uniform and easier to administer.[72] As of February 2004, the new Compact has been adopted by all states except Massachusetts, and by Puerto Rico and the U.S Virgin Islands. The Compact creates an Interstate Commission for Adult Offender Supervision to oversee, supervise and coordinate the movement of parolees. The Act also creates a California State Council for Interstate Adult Offender Supervision.[73]

The Interstate Commission has adopted rules and procedures transfer eligibility and supervision.[74] A parolee meets the basic eligibility for transfer if he or she has three months of more to serve on parole and: 1) is in compliance with the terms of supervision; 2) was a resident (as defined by the rules) of the receiving state or has resident family who have indicated

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71. Penal Code § 3003(b).

72. Penal Code §§ 11180 and 11181.

73. Information on the status of implementation of the new Compact and activities of the Interstate Commission for Adult Supervision and California State Council can be found at www.adultcompact.org.

74. Rules Adopted by the Interstate Commission for Adult Supervision on November 3 and 4, 2003 and amended March 12, 2004.

willingness and ability to assist the parolee; and 3) can obtain employment or has means of support. A receiving state may consent to transfer of a parolee who does not meet all of these conditions if there is good cause to do so.[75]

Transfers to serve parole in another state are arranged through the CDC's Interstate Compact Unit in Sacramento.[76] A prisoner or parolee should talk to his or her correctional counselor or parole agent to request transfer consideration. If it appears the person meets all basic eligibility requirements, California authorities submit a completed transfer application to the receiving state.[77] The application must contain certain forms and information, and a parolee who wants to transfer must waive the right to contest extradition from any other state to which he or she may abscond.[78] The earliest that California can send a parole transfer request for a prisoner who has not yet been released on parole is 120 days prior to the expected release date.[79] Transfer requests for California parolees are handled by the Interstate Compact Office, Parole and Community Services Division, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283.

The receiving state is supposed to investigate and respond to a request within 45 calendar day of receipt.[80] The process can be expedited in emergency circumstances.[81]

C. Out-of-State Absconders or Parole Violators

15 CCR §§ 2730-2733 govern cases where parolees leave California without permission or violate parole while they are being supervised in another state. California officials may enter another state and retake any California parolee; and the BPT may revoke an out-of-state parolee's parole.

If the parolee is subject to pending criminal prosecution in the other state, CDC must wait for the other state's consent or discharge orders before the parolee is available to be returned to California for a hearing. Because prisoners waive the right to contest extradition when they sign

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75. Id. at § 3.101.

76. See DOM § 81010 et seq. for details on the procedure for paroling out of state.

77. Id. at § 3.102.

78. Id. at § 3.107.

79. Id. at §§ 3.105 and 3.109.

80. Id. at § 3.104.

81. Id. at § 3.106.

their parole conditions, formal extradition proceedings are not necessarily required to return a parolee to California.[82] However, in some cases California will go through formal extradition proceedings unless the parolee waives extradition at the time he or she is ordered returned for parole revocation proceedings. The parolee is entitled to be represented by counsel at a hearing before a magistrate to test the legality of the order directing his or her delivery to the sending state.[83]

The parolee may choose to waive extradition and/or request a revocation hearing in absentia.[84] The benefit of waiving extradition and a hearing is that it starts the parolee's credits sooner and the parolee may be able to serve the California revocation term concurrently with any period of incarceration in the other state. If the parolee does not waive the right to a hearing, the BPT may request the receiving state to conduct the revocation hearing and make a recommendation or may return the parolee to California for a hearing.[85]

Prisoners sometimes do not receive credit for time spent incarcerated prior to the date that the California Interstate Unit *receives notice* that the prisoner is available or the date of actual return to California. Prisoners who think they are entitled to more credit facing should keep copies of any documents showing the date that extradition was waived or ordered and the date any charges in the other state were resolved. These documents can be filed with a CDC Form 602 administrative appeal describing the problem and asking for additional credits.

13. WHAT RIGHTS DO PAROLEES HAVE AT PAROLE REVOCATION HEARINGS?

Pursuant to settlement of the class action lawsuit, Valdivia v. Schwarzenegger (E.D. Cal.) S-94-0671 LKK/GGH, a federal court has entered a permanent injunction that makes many important changes in the parole revocation policies and hearing procedures. Most of these changes apply to anyone who is subject to a parole hold placed on or after January 1, 2005.[86] *These changes are discussed throughout the following sections of this manual*

A. Overview of the Parole Revocation Process and Basic Rights

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82. Penal Code § 11177(3).

83. Penal Code § 11177.1.

84. In re Shapiro (1975) 14 Cal.2d 711 [122 Cal.Rptr. 768]; 15 CCR § 2731(c)(2)(B)(4)(b); Penal Code § 3059.

85. 15 CCR § 2733(c)(2).

86. Valdivia v. Schwarzenegger (E.D. Cal. No. S-94-0671 LKK/GGH), Stipulated Order of Permanent Injunctive Relief, filed March 9, 2004.

The BPT and the Governor have the power to revoke parole and to order a parolee returned to prison.[87] Parole revocation is the process by which a parolee may be found to have violated the conditions of parole and be returned to custody. Parole cannot be suspended or revoked without cause, and the cause must be stated in the order suspending or revoking parole.[88] The violation may be for conduct which is being separately prosecuted as a new criminal offense or it may be for violation of parole conditions only. The details of the parole revocation process used to be set forth in 15 CCR §§ 2600-2744, but many of those provisions have been replaced by new procedures under the Valdivia Injunction.

Generally, the maximum time in custody that the BPT may impose for a parole violation is one year.[89] Some prisoners may be able to reduce the time actually served for a revocation by earning good-time and work-time credits (see Section #14 below). The maximum revocation term may be extended beyond 12 months if the parolee commits misconduct in prison while serving the revocation term.[90] But regardless of any revocation term that is imposed, a parolee may not be kept in custody beyond the maximum parole discharge date (see Section # 1 above).[91] In addition, the Valdivia Injunction requires BPT to use more alternative sanctions to avoid returning parolees to custody for minor parole violations; such alternatives may include self-help outpatients/aftercare programs or electronic monitoring.

In 1972, the United States Supreme Court decided Morrissey v. Brewer, recognized that parole was a form of conditional liberty "and an integral part of the penological system," and established minimal due process requirements for parole revocation proceedings.[92] Morrissey held that parolees are entitled to the following procedural protections:

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87. Penal Code §§ 3056, 3060 and 3062.

88. Penal Code § 3063.

89. This maximum applies to anyone whose original commitment offense was committed after January 1, 1979. Penal Code § 3057(a); 15 CCR §§ 2635.1 and 2515. For parolees whose offense was committed on or before December 31, 1978, the maximum revocation term is six months. Penal Code § 3057(a); 15 CCR § 2635.1(b).

90. Penal Code §§ 3057(c) and (d).

91. Penal Code § 3000(b)(4).

92. Morrissey v Brewer (1972) 408 U.S. 471 [92 S.Ct. 2593; 33 L.Ed.2d 484]. See also Penal Code §§ 3000-3065; 15 CCR §§ 2600-2744.

- Written notice of alleged violations and the charges' possible consequences to allow a parolee time to prepare a defense and obtain mitigating evidence.[93]
- Disclosure of evidence against the parolee;
- The right to present witnesses and documentary evidence;
- The right to confront and cross-examine adverse witnesses;
- A neutral and detached hearing body; and
- A written statement of the decision, the evidence relied on, and the reasons for revoking parole.[94]

Absconding parolees are not entitled to revocation hearings while still at large, and the BPT may summarily revoke their parole status. However, when the parolee is taken into custody, due process requires that he or she then be given a revocation hearing.[95]

The California Supreme Court has held that parolees may waive their rights, either expressly or by implication as a result of failure to assert the right.[96] Therefore, it is crucial that a parolee make sure that he or she takes advantage of his or her rights and complains in writing if a right is violated. Waiver of rights is further discussed in # 13.G. below.

B. Right to Notice

A parole agent who believes a parolee has violated parole, can place a "hold," arrest the parolee and place him or her in custody.[97] The Valdivia Injunction requires the parole agent and unit supervisor to confer on whether to continue or drop the hold within 48 hours (or no later than the next business day if the hold is placed on a weekend or holiday). The Injunction

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93. Morrissey v. Brewer, supra, 408 U.S. at pp. 488-489. See also Vargas v. United States Parole Commission (9th Cir. 1988) 865 F.2d 191 [new hearing ordered if Parole Commission failed to notify parolee of hearing date and provide him with information used against him]; Rizzo v. Armstrong (9th Cir. 1990) 921 F.2d 855, 858; Vanes v. United States Parole Commission (9th Cir. 1984) 741 F.2d 1197.

94. Morrissey, supra, 408 U.S. at pp. 488-489. See also People v. Vickers, supra, 8 Cal.3d at p. 451; In re Law (1973) 10 Cal.3d 21[109 Cal.Rptr. 573]; In re Love (1974) 11 Cal.3d 179 [113 Cal.Rptr. 89]; In re Valrie (1974) 12 Cal.3d 139 [115 Cal.Rptr. 340]; In re La Croix (1974) 12 Cal.3d 146 [115 Cal.Rptr. 344]; In re Winn (1975) 13 Cal.3d 694 [119 Cal.Rptr. 496]; In re Shapiro (1975) 14 Cal.3d 711 [122 Cal.Rptr. 768]; In re Dunham (1976) 16 Cal.3d 63 [127 Cal.Rptr.343].

95. People v. Vickers, supra, 8 Cal.3d at pp. 460-481.

96. In re La Croix, supra, 12 Cal.3d at p. 153.

97. 15 CCR § 3000.

requires that a parolee be given notice of the alleged parole violation and a notice of rights regarding the revocation process no later than 3 business days after placement of the parole hold.[98]

With some violations the parole agent has great discretion regarding whether to report a violation to the BPT,[99] and the BPT has great discretion as to whether the violation should result in a revocation term. However, many violations must be reported to the BPT and will almost always lead to revocation proceedings.[100]

C. Right to a Timely Hearing

The United States Supreme Court's 1972 decision in Morrissey held that there must be a pre-revocation hearing "in the nature of a preliminary hearing," held as promptly as convenient, while information is fresh and sources are available.[101] If probable cause to remove the parolee from the street is found at a pre-revocation hearing, a more formal final revocation hearing must be held within a reasonable time. Despite Morrissey, for many years California parole authorities conducted only a single hearing, often many weeks or months after the parole hold was placed. Unfortunately, courts were generally reluctant to order any remedy for such delays unless a parolee could meet the difficult burden of showing that the delay was unreasonable and that he or she was prejudiced by the delay.[102]

However, in 2002, a federal court held in Valdivia v. Davis that the California unitary parole revocation hearing system violated parolees' procedural due process rights, where the regulations suggested the hearing should be held within 45 days of the date of the parole hold

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98. Valdivia v. Schwarzenegger Permanent Injunction, supra, IV.11(b).

99. Parole agents and other parole supervisory personnel work in that part of the CDC known as the "Parole and Community Services Division," or the "P&CSD."

100. 15 CCR § 2616(a) and (b).

101. Morrissey, supra, 408 U.S. at p. 485.

102. The California Supreme Court established a test of reasonableness of a delay in a hearing based on three considerations: (1) pending criminal proceedings; (2) restraints on a parolee charged with a new crime; and (3) prejudice to the parolee. In re La Croix, supra, 12 Cal.3d at p. 156; In re Valrie, supra, 12 Cal.3d at pp. 144-145. See In re O'Connor (1974) 39 Cal.App.3d 972 [114 Cal.Rptr. 883] (upholding as "reasonable" delays of 41 days before holding a pre-revocation hearing and 117 days before the revocation hearing); In re Moore (1975) 45 Cal.App.3d 285, 293 (delay of 55 days is reasonable); Meader v.Knowles (9th Cir. 1992) 990 F.2d 503 (15-month delay was not prejudicial when parolee was allowed to remain at liberty during the delay).

and the actual average time between hold and revocation hearing was 35.2 days. The court found that detention for such a period of time without a probable cause determination violated parolees' liberty interests.[103] The court ordered the BPT and CDC to develop a new parole revocation process – and new time limits – to meet constitutional standards. The court approved a new process, which is described in a Permanent Injunction, and discussed throughout this manual.[104]

As part of the Valdivia Settlement, the BPT must:

- conduct a probable cause hearing no later than *10 business days* after a parolee has been given notice of an alleged parole violation. Between January 1 and June 30, 2005, only some parolees had the opportunity for a probable cause hearing. As of July 1, 2005, *all* parolees are entitled to a probable cause hearing. At the probable cause hearing, the parolee can present evidence to show why the violation charges are unsupported or why the parolee should be continued on parole. This evidence may be presented through the parolee's own testimony or through written documents.

- if the parolee can show that there is a complete defense to the charges on which the parole hold is based, the BPT and CDC must provide an "expedited" probable cause hearing within *6 to 8 business days* after the parolee receives notice of the charges.

- conduct a final revocation hearing no later than *35 calendar days* after placement of a parole hold. [105]

If the parolee waives a hearing pending resolution of criminal charges, the time for calculating delay does not start to run until the parolee reasserts the right to a hearing. If the parolee is released before having a hearing, the BPT can charge the parolee again with violations based on the same conduct. However, the parolee may argue that the delay from the date of the alleged misconduct resulted in prejudice and deprived him of due process of law.[106]

A parolee whose revocation hearing has been delayed and who is still awaiting a hearing, may file a petition for writ of habeas corpus (see Section # 16, below) to try to compel the BPT to hold the hearing. However, the BPT will usually hold the hearing before the case can be processed by the court. If there has been a delay, then the parolee should make an objection at the hearing if he or she feels that his or her due process rights have been violated by the delay.

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103. Valdivia v. Davis (E.D. Cal. 2002) 206 F.Supp.2d 1068.

104. Valdivia v. Schwarzenegger Permanent Injunction, supra.

105. Valdivia v. Schwarzenegger Permanent Injunction, supra, IV.11(b) and (d).

106. In re Valrie, supra, 12 Cal.3d at p. 139.

The parolee can also file a habeas corpus petition following the hearing; the parolee should cite Valdivia and try to show why the delay prejudiced his or her ability to defend against the charges.[107] To show prejudice, a parolee must show:1) how he or she could have presented a more complete defense if the hearing had been held earlier, and 2) that there is at least some doubt as to whether the outcome of the hearing would have been different if it had been held earlier.[108] Prejudice might result from delay in holding a hearing when:

- witnesses become unavailable;
- memories are impaired; or
- it has become difficult to contact witnesses and collect evidence.[109]

The relief available may be restoration to parole or remand of the case back to the BPT for further proceedings, including a possible rehearing.[110]

D. Requesting an Attorney

Parolees do not have an absolute constitutional right to be represented by counsel, either hired or appointed by the state, at a revocation hearing. Due process requires a lawyer only under certain circumstances.[111] For many years, the BPT appointed lawyers in only a few cases.

However, under Valdivia Injunction, BPT must appoint *appoint a lawyer for every parolee* no later than *6 business days* after a parole hold is placed. The BPT and CDC must provide the parolee's lawyer with all non-confidential information that will be used against the parolee and the lawyer will be able to review the parolee's field file.[112] The lawyer will help the

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107. Proving prejudice is not required if the court finds the Board acted in bad faith and determines that sanctions are necessary to force the Board to comply with the mandates of Morrissey. See In re La Croix, supra, 12 Cal.3d at p. 155.

108. In re La Croix, supra, 12 Cal.3d at pp. 154-155. A more recent affirmation of the standard appears in People v. Arreola (1994) 7 Cal.4th 1141, 1161 [31 Cal.Rptr.2d 631, 642]. The case refers to the use of hearsay at a revocation hearing.

109. In re La Croix, supra, 12 Cal. 3d at p. 146; In re Valrie, supra, 12 Cal.3d at p. 139.

110. In re Ruzicka, supra, 230 Cal.App.3d at p. 604; In re Bowers (1974) 40 Cal.App.3d 359 [114 Cal.Rptr. 665].

111. People v. Ojeda (1986) 186 Cal.App.3d 302 [230 Cal.Rptr. 609] Gagnon v. Scarpelli (1973) 411 U.S. 778 [36 L.Ed.2d 656, 93 S.Ct. 1756]; In re Love, supra, 11 Cal.3d at p. 179; see also Gee v. Brown (1975) 14 Cal.3d 571 [120 Cal.Rptr. 878].

112. Valdivia v. Schwarzenegger Permanent Injunction, supra, IV.11.(b) and (e).

parolee decide whether to take any screening offer and will represent the parolee at any hearings.

The parolee may hire an attorney or have one appointed by the state if he or she has no money.

E. Confronting Adverse Witnesses and Obtaining/Presenting Evidence

A parolee has a fundamental right, guaranteed by both the federal and California constitutions, to cross-examine people whose statements may be used against him or her. [113] The right to cross-examine and confront adverse witnesses includes the right to cross-examine the author of the information on which the parole violation report is based.[114] Revocation of parole based solely on an unsworn parole violation report, without the opportunity to cross-examine the author or any other witness, can violate a parolee's right to due process.[115]

Hearsay testimony may be admitted against the parolee, but only if the BPT has good cause for failing to present a witness and this good cause outweighs the parolee's right to confront the witness.[116] Also, a confidential informant who supplied information on which revocation charges are based may not be required to attend the hearing if the hearing officer determines that disclosing the identity of the informant will create a risk of harm.[117]

If a witness displays any reluctance to appear at the hearing, the Board may compel attendance by issuing a subpoena.[118] Two types of subpoenas are available: subpoena ad testificandum (to get a witness to appear), and subpoena duces tecum (to get a witness to produce a document at the hearing).[119]

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113. People v. Arreola, supra, 7 Cal.4th at p. 1154; People v. Vickers, supra, 8 Cal.3d at p. 459; People v. Burden, supra, 105 Cal.App.3d at p. 917; United States v. Comito (9th Cir. 1999) 177 F.3d 1166.

114. See In re Carroll, supra, 80 Cal.App.3d at pp. 34-35.

115. Gholston v. Jones (11th Cir. 1988) 848 F.2d 1156.

116. United States v. Comito, supra, 177 F.3d at p. 1170; People v. Arreola (1994) 7 Cal.4th 1144, 1159-1161.

117. In re Melendez (1974) 37 Cal.App.3d 967, 973 [112 Cal.Rptr. 755]; In re Prewitt (1972) 8 Cal.3d 470, 477-478 [105 Cal.Rptr. 318]; 15 CCR § 2668(e).

118. 15 CCR § 2675.

119. 15 CCR § 2676.

A parolee also has the right to present evidence, including testimony of relevant witnesses.[120] Under the Valdivia Injunction, a parolee's counsel has the ability to subpoena and present witnesses and evidence to the same extent and under the same terms as the state.[121] A parolee may request the attendance of evidentiary witnesses or dispositional witnesses. "Evidentiary witnesses" are people who perceived, reported on or investigated the event which is the basis for the evidentiary proceeding. "Dispositional witnesses" are people who will provide information on the overall adjustment of the parolee or other factors affecting the amount of punishment appropriate for a violation.[122] Character witness testimony, which is testimony that is not relevant to the details of the actual parole violation but discusses the good character of the parolee, should be submitted in writing.[123]

A person served with a subpoena is obliged to attend as a witness unless the hearing is held at a place outside the county of his or her residence and more than 50 miles from the residence.[124] The superior court in the county where the hearing is held, upon petition by the BPT, has jurisdiction to compel the attendance of witnesses.[125]

If a subpoenaed material witness fails to attend a hearing, and the hearing cannot fairly proceed without the witness, the BPT can and should postpone the hearing to allow time to enforce the subpoena. Whether the witness' testimony would be "material" is determined by weighing the importance of a witness' testimony against the reliability of any alternative means of getting the same information. If any witness whose testimony would be material and relevant to the charged violation is not present despite timely requests by the parolee's attorney, there are solid grounds for a petition for writ of habeas corpus to overturn the verdict on grounds that the parolee's rights to present evidence or to confront and cross-examine adverse witnesses have been denied.[126] (See # 16, below.)

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120. Morrissey v. Brewer, supra, 408 U.S. at p.489; In re Carroll (1978) 80 Cal.App.3d 22, 34 [145 Cal.Rptr. 334, 341].

121. Valdivia v. Schwarzenegger Permanent Injunction, supra, IV.21.

122. 15 CCR § 2000(b)(40) and (44).

123. 15 CCR § 2668(b)(1) and (2).

124. 15 CCR § 2679(a); Government Code § 11185.

125. Government Code §§ 11186-11188; 15 CCR § 2679(c).

126. White v. White (9th Cir. 1991) 925 F.2d 287. Such an argument should rely on Morrissey v. Brewer, supra, 408 U.S. at p. 471; People v. Vickers, supra, 8 Cal.3d at p. 45; In re Prewitt, supra, 8 Cal 3d at p. 470; In re Carroll, supra, 80 Cal.App.3d at p. 22.

Parole authorities also must provide the parolee's lawyer with all non-confidential documents on which the state intends to rely at the hearing. In addition, parolees' attorneys have the right to get access to the parole field files. If confidential information is used as part of the basis for the charges against the parolee, a parolee can request that the BPT disclose the information or prove that disclosure would create an undue risk of harm to the informant.[127/]

Physical evidence is only permitted when it is necessary for the hearing and will not pose a threat to institutional security.[128/] The BPT has a duty to preserve and disclose material physical evidence.[129/]

Documents or reports containing hearsay evidence may also be admitted if there are sufficient "indicia of reliability" for the BPT to conclude that they are trustworthy.[130/] For example, a report prepared by a drug rehabilitation director, indicating failure to participate in a required probation program, has been found to be admissible at a probation revocation hearing.[131/] Likewise a county crime lab report analyzing a suspected drug sample was held admissible.[132/]

F. Requesting Accommodations for Disabilities

Prisoners and parolees with disabilities are entitled to reasonable accommodations under the Americans with Disabilities Act.[133/] Examples of possible accommodations include ensuring access to the hearing room for a parolee with mobility impairments; braille or taped documents or reading assistance for a vision-impaired parolee; assistance in communicating for a developmentally-disabled parolee; or sign language interpretation for a hearing-impaired parolee.

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127. Valdivia v. Schwarzenegger Permanent Injunction, supra, IV.14-16; see also In re Prewitt, supra, 8 Cal.3d at p. 478; In re Love, supra, 11 Cal.3d at p. 184.

128. 15 CCR § 2667.

129. People v. Moore (1983) 34 Cal.3d 215 [193 Cal.Rptr. 404].

130. See People v. O'Connell (2003) 107 Cal.App.4th 1062, 1066 [132 Cal.Rptr.2d 665].

131. People v. O'Connell (2003) 107 Cal.App.4th 1062 [132 Cal.Rptr.2d 665].

132. People v. Johnson (2004) 121 Cal.App.4th 1409 [18 Cal.Rptr.2d 230].

133. Armstrong v. Davis (N.D. Cal. August 4, 2000) No. C94-2307 CW Stipulation and Order Approving Defendant's Policies and Procedures, VIII.A and B, upheld in Armstrong v. Davis (9th Cir. 2001) 275 F.3d 849; 15 CCR §§ 3085 and 2251.

BPT procedures allow parolees and life prisoners with disabilities to request accommodations to ensure that they have effective communication and equal access to parole proceedings.[134] Prisoners seeking such accommodations should use the BPT Form 1073 to make a request. A correctional counselor or C&PR should do the initial paperwork and send it to the BPT's American's with Disabilities Act Unit Coordinator for grant or denial.[135] If the request for accommodation is denied, it can be immediately appealed prior to the hearing by using BPT Form 1074. BPT must answer appeals raising disability issues within 30 days.

G. Waivers of Rights

In all cases except psychiatric attention/referral cases, upon a finding of good cause, the BPT will recommend a dispositional "screening" offer.[136] Parolees may accept the offer by signing an unconditional waiver of their right to a hearing, akin to a plea bargain in criminal court. Parolees may also sign a conditional (optional) waiver, which waives the right to a hearing until the right is later reasserted.

1. Unconditional Waiver

By signing of this type of waiver, a parolee completely waives the right to a revocation hearing, including the right to appear, contest the charges and call witnesses. The waiver is not an admission of guilt but it does foreclose the possibility of a later hearing. The BPT may offer a reduced revocation sentence in exchange for signing the waiver form. If the parolee signs the waiver when no specific revocation term is offered, the BPT central office decides the length of the term.

2. Conditional (or Optional) Waiver

If the parolee signs this type of waiver, the parolee waives the revocation hearing during a pending criminal prosecution, but keeps the option of requesting a hearing in the future. The parolee may then submit a request a hearing no more than 15 days following sentencing or final disposition of the criminal case in the trial court and no later than two months before the expiration of the revocation period initially set by the BPT. At the hearing, the panel may or may not uphold the revocation but it cannot order the parolee returned to custody for more time than previously ordered.[137]

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134. Armstrong v. Davis Stipulation and Order, supra, VIII.A and B; 15 CCR § 2251.5.

135. Ibid.

136. 15 CCR § 2641(c).

137. 15 CCR § 2641(b).

Parolees who conditionally waive their right to a hearing pending adjudication of criminal charges should remember:

- to schedule a new hearing -- a parolee must reassert the right to a hearing immediately after the criminal charges are resolved;
- if the parolee accepted a plea bargain for the criminal charge in court, he or she cannot contest that charge at the BPT hearing; and
- the BPT may still revoke parole even though the court dismissed the criminal charges because the BPT uses a lower standard of proof (preponderance of the evidence).

H. The Revocation Hearing

Parole hearings may be conducted by one or more BPT hearing officers.[138] A parolee is entitled to have the case heard by an impartial panel or hearing officer. A parolee may request disqualification of a panel member. In addition, a panel member shall disqualify himself if: (1) there is a close relationship between the member and the parolee or their families, (2) the member was involved in a past incident with the parolee which may cause prejudice, or (3) the member is actually prejudiced against or biased for the parolee.[139] Disqualification shall not occur solely because the member knows the parolee or has made a past decision affecting the parolee. The decision on disqualification must be documented.[140]

When a parolee's rights are violated at the hearing, parolees and their attorneys should make oral objections clearly and concisely. The objections will then be documented on the tape recording of the hearing and, hopefully, the written Summary of the Revocation Decision. Parolees can then refer to these objections if they choose to challenge the BPT's decision.

The burden of proof at a parole revocation hearing is on the BPT to prove the violation by a preponderance of the evidence. This is a lesser standard that the "beyond a reasonable doubt" standard applied in criminal trials.

I. Parole Revocation Extension Hearings

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138. Penal Code § 3063.6.

139. 15 CCR § 2250.

140. People v. Vickers (1972) 8 Cal.3d 451, 458 [105 Cal.Rptr. 305].

The BPT may extend a parole violator's revocation sentence up to an additional 12 months for misconduct while confined in prison or jail on the revocation term.[141/] The BPT may extend a parole violator's revocation sentence by the following periods:

- up to 180 days extension for each act punishable as a felony, whether prosecution is undertaken or not;

- up to 90 days for each act punishable as a misdemeanor, whether prosecution is undertaken or not;

- up to 30 days for each serious disciplinary offense.[142/]

"All cases requiring an extension hearing shall be scheduled promptly in order to maintain the availability of witnesses."[143/] Parole violators who have been referred to the BPT for a revocation extension hearing are entitled to the same due process rights as at a parole revocation hearing.[144/] Therefore, parolees should assert their rights and prepare for an extension hearing in the same way as they do for a revocation hearing.

A parole violator's release date may be extended for a period not to exceed forty-five days for an act punishable as a felony or misdemeanor or thirty days for any other serious disciplinary offense, pending an extension hearing.[145/]

14. ARE PAROLE VIOLATORS ENTITLED TO EARN WORKTIME CREDIT?

Yes, if they are eligible.

As of September 30, 1987, all eligible parole violators receive good-time credits (one-for-two credits) and have the opportunity to earn worktime credits (one-for-one credits) against their revocation terms.[146/] Eligible parole violators working or programming full-time in prison will receive a half-time release date. Eligible parole violators who are serving their sentence in

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141. Penal Code § 3057(c).

142. Ibid.

143. 15 CCR § 2742(h).

144. See Penal Code § 3057(c); 15 CCR § 2742(i).

145. 15 CCR § 2742(d).

146. Penal Code § 3057(d); 15 CCR §§ 2743-2744.

community facilities or county jails and assigned to credit qualifying jobs should also receive one-for-one credits.[147]

Eligibility for credits during a parole revocation term is determined by Penal Code § 3057.[148] Generally, a parole violator is ineligible for § 3057(d) credits if the commitment offense was, or the revocation charges could have been prosecuted as, a:

- life crime;
- robbery;
- violent offense;
- sex offense;
- gun enhancement;
- kidnapping;
- poisoning substances;
- arson with great bodily injury;
- rioting; or
- any attempts at any such conduct.

Also ineligible are parolees who violated a condition of parole relating to:

- association with specified persons;
- entering prohibited areas;
- attending a parole out-patient clinic; or
- required psychiatric attention;[149] or
- if the Board finds the parolee unsuitable for credits because of the seriousness of the violation or the parolee's criminal history.[150]

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147. See CDC Administrative Supplemental Bulletin 87/89, dated May 23, 1988 [eligible sentenced parole violators who are serving their revocation sentence in local facilities and participating in a CDC-approved work incentive program will receive one-for-one credits]; 1988 Amendment to Penal Code 3057(d).

148. Other sentencing statutes that determine credits on criminal sentences do not necessarily apply to parole violation terms. Thus, a person who has served a "second strike" term under Penal Code § 667(b)-(i) with only 20 percent credit-earning status, may earn full credits on a parole violation term so long as he or she is otherwise eligible under Penal Code § 3057.

149. 15 CCR § 2744(b)

150. 15 CCR § 2744(e)

Parole violators should carefully check the BPT's reason for deciding that they are ineligible for credits with the criteria listed in the Penal Code. If the BPT's decision does not comply with the statute, the parolee should follow the steps in # 16 below.

If a parole violator who is earning worktime credits forfeits credits because of rules violations, he or she is not entitled to have that credit restored for good behavior.[151]

15. CAN A PAROLEE GET DRUG DIVERSION INSTEAD OF A PAROLE REVOCATION TERM?

Sometimes.[152]

Proposition 36 amended Penal Code § 3063.1 and requires that certain nonviolent drug offenders be sent to a drug treatment program instead of having to go to prison on a parole revocation. Prop. 36 can apply to any parole violation that occurs on or after July 1, 2001.

Prop. 36 allows a judge or the BPT to send a parolee convicted of a nonviolent drug possession offense (possession, use, or transportation of controlled substances) or a violation of any drug-related condition of parole to a certified drug treatment program. The types of parole violations for which Proposition 36 may be used include failure to participate in controlled substance testing; possession or use of a controlled substance; possession of paraphernalia; presence in a place where controlled substances are used, sold or given away; or failure to register pursuant to Health and Safety Code section 11590.

In addition to a drug treatment program, the parolee may also be required to complete job training, family counseling, and/or literacy training. Any parolee placed in a drug treatment program under Prop. 36 may be required to help pay for the program, if reasonably able to do so. The drug treatment services required as a condition of parole under this section may not go on for more than 12 months, but other "aftercare" services may also be required as a condition of parole for up to six more months. Thus, some parolees choose not to take advantage of the Prop. 36 diversion program when the treatment program term is longer than their likely revocation term.

Some parolees are not eligible for drug diversion under Prop. 36, particularly:

- Any parolee who has ever been convicted of one or more serious or violent felonies (they are listed in Penal Code sections 667.5 or 1192.7).

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151. Penal Code § 3057(d).

152. The information throughout this section is taken from Penal Code §3063.1 and the Board of Prison Terms Operational Guidelines for Proposition 36.

- Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and is found to have, at the same time, committed either a misdemeanor not related to the use of drugs or any felony. A "misdemeanor not related to the use of drugs" is a misdemeanor that does not involve possession of drugs for personal use, use of drugs, possession of drug paraphernalia, presence where drugs are used, or failure to register as a drug offender. (Board of Prison Terms, Operational Guidelines for Proposition 36.)

- Any parolee who refuses drug treatment as a condition of parole.

The first time a parolee who is eligible for Prop. 36 diversion violates parole by being arrested for a nonviolent drug possession offense or by violating a drug-related condition of parole, and the BPT acts to revoke parole, a revocation hearing must be held. If the parole violation is proved and the evidence shows it is more likely than not that the parolee poses a danger to the safety of others, parole must be revoked. If the parolee is not considered to be a danger to society, he or she may be diverted to a drug treatment program, instead of being sent to prison. Within seven days of the hearing, the BPT must notify a designated drug treatment provider that the parolee will be attending their program. Within 30 days of receiving that notice, the treatment provider must develop a treatment plan and send it to the BPT and the parolee's parole agent. Once the parolee begins the treatment plan, the drug treatment provider must give the BPT and the parole agent an update every 3 months.

Prop. 36 usually can apply to only one parole violation. If a parolee violates parole a second time or more for a drug-related offense or parole violation, he or she is not eligible for drug program diversion and may be returned to prison. Also, if, during drug treatment under Prop. 36, a parolee violates parole either by being arrested for an offense other than a nonviolent drug possession offense, or by violating a non-drug-related condition of parole, the BPT may revoke the parole.

16. CAN PAROLEES CHALLENGE CDC OR BPT DECISIONS THAT AFFECT THEIR PAROLE?

Yes.

The tape of the hearing can be very important for challenging the hearing decision. A parolee who wishes to challenge the BPT's decision should immediately send the BPT a request for a copy of the tape recording of the hearing. The request can be sent to: Decision Processing Unit, BPT ADA Compliance Unit, Board of Prison Terms, 1515 K. Street, Suite 600, Sacramento, CA 95814.

The BPT decides how parole hearings are conducted and decides whether to revoke parole and for how long; the BPT sometimes also sets parole length and conditions. In the past,

BPT actions could be appealed by using the BPT 1040 Form. However, as of May 2004, the BPT has abolished its administrative appeal procedures, except for grievances by parolees who need accommodations for disabilities. (See Section 13.F, above.) Thus, parolees and prisoners do not have to file a BPT 1040 Form with the BPT before taking their complaints to court using a petition for a writ of habeas corpus.

CDC staff set most conditions of parole, decide the location of parole and place parole holds. A parolee must still file an administrative appeal of CDC decisions prior to filing a court action.[153/] For all complaints except disability issues, the appeal is started by sending a CDC Form 602 to the Appeals Coordinator for the parole region. The CDC 602 appeal process has four levels.[154/] Each level has a time limit within which the appeal must be answered.[155/] There are some exceptions to the normal procedures; for example, appeals of parole location will not go to an Informal Level of review but will be assigned directly to the Assistant Regional Parole Administrator for First Level review.[156/] Also, appeals of parole conditions will not go to the Informal or First Formal Levels; they will be assigned directly to the Regional Parole Administrator for Second Level review. The parolee can get then ask for Third Level review by sending the appeal to the CDC Director.

There is a special CDC appeal process for people with disabilities to ask for fair treatment or to get access to CDC services or programs. Parolees who want their CDC parole agents to provide accommodations for a disability should fill out a CDC Form 1824. 1824 forms should be answered more quickly than ordinary 602 appeals – a parolee does not need to get Informal review of an 1824 and the First Level answer is due within 15 working days.[157/] A parolee who does not agree with the First Level response can file the appeal to the Second Level by attaching the 1824 form to a regular 602 appeal form, filling out section F of the 602, and

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153. When an agency has an administrative appeal procedure, courts will usually deny any legal action unless all administrative remedies have first been sought. See In re Dexter (1979) 25 Cal.3d 921, 925 [160 Cal.Rptr. 188]; In re Muszlaski (1975) 52 Cal.App.3d 500, 503 [125 Cal.Rptr. 286]. However, state courts may allow exceptions to this requirement when: the administrative remedy is unavailable or inadequate; pursuit of the remedy would be futile, such as where an adverse decision by CDC is certain; or where a delay in hearing the case would possibly subject the prisoner to irreparable harm such as risk of serious injury. (See Glendale City Employee's Association, Inc. v. City of Glendale (1975) 15 Cal.3d 328, 342-43 [124 Cal.Rptr.513]; In re Serna (1978) 76 Cal.App.3d 1010 [143 Cal.Rptr. 350].)

154. 15 CCR § 3084.5.

155. 15 CCR § 3084.6.

156. 15 CCR §3084.7(f)(2).

157. 15 CCR § 3085(a); Armstrong v. Wilson Remedial Plan (Jan. 3, 2001) IV.I.23(e).

sending both forms to the Regional Parole Administrator. The Second Level answer is then due in 15 working days. A parolee can also send the disability appeal to the Third Level, just like a regular 602 appeal, and should get the Third Level response within 20 working days.[158]

A parolee may consider filing a petition for writ of habeas corpus in superior court once the administrative appeal process is completed (for CDC issues) or immediately after the agency decision (for BPT issues). The parolee should attach a copy of any administrative appeal decision to the petition. A state court petition for writ of habeas corpus can challenge a violation of state or federal constitutional due process rights or violation of the rights established by California statutes or administrative rules. For example, a petition could argue that the revocation hearing was unreasonably delayed or that the parolee was denied the right to confront and cross-examine adverse witnesses or that the revocation was not supported by the evidence. The relief requested may be an order that the revocation be vacated and the BPT conduct a new hearing or an order that the parolee be returned to parole.[159] More information on state habeas corpus petitions, including sample forms, is available in the Prison Law Office Habeas Corpus manual, at www.prisonlaw.com/research.php.

17. CAN A PAROLEE OBTAIN A BUSINESS LICENSE?

It depends on the type of license and the conviction.

In California, most occupations requiring licensing are regulated by the Bureau of Consumer Affairs, with the exception of: 1) applicants for membership in the State Bar; 2) persons seeking licensure in occupations subject to the Alcohol Beverage Control Act; 3) applicants for licensure as manufacture, mobile home or commercial coach salesperson; and 4) any persons holding a financial interest or the ability to exercise influence over the operation of a gaming club.

The denial, suspension and revocation of licenses for all occupations regulated by the Bureau of consumer Affairs is covered by Business and Professions Code §§ 475-491. Section 475 sets forth grounds for the denial of a license, one of which is "conviction of a crime."[160] Section 480 specifically provides that a board may deny a license on the ground that an applicant has been convicted of a crime "only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."[161]

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158. Armstrong v. Wilson Remedial Plan, *supra*, IV.I.23(e).)

159. But see In re Valrie, supra, 12 Cal.3d at pp. 144-145 (after restoration to parole, Board can recharge parolee with the same parole violations).

160. Business and Professions Code § 475(a)(2).

161. Business and Professions Code § 480(a)(3).

A person shall not be denied a license solely on the basis that he has been convicted of a felony if he has obtained a Certificate of Rehabilitation under Penal Code § 4852.01, or on the basis of a misdemeanor conviction if he has met all of the criteria of rehabilitation developed by the individual board.[162]

A. Substantial Relationship

Each board under the provisions of the Business and Professional Code is required to develop criteria to evaluate the substantial relationship of a crime to the qualifications, functions or duties of the business or professional being regulated.[163] The general criteria which would show a substantial relationship is when "the crime or act...evidences present or potential unfitness...to preform the functions authorized by...[the]..certificate or registration in a manner consistent with the public health, safety or welfare."

The above criteria, in substantially the same form, are generally also included in the Title of the California Code of Regulations dealing with the specific license in question. It is often followed by a list of crimes which are considered to be substantially related. (The lists are not exclusive, but may indicate trends in decisions.)

B. Rehabilitation

Each licensing board is also required to develop criteria to evaluate the rehabilitation of a person when considering denial or suspension of a license.[164] The various boards will consider the following general criteria:

1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial;

2) Evidence of any act committed subsequent to the act under consideration which could also be considered as grounds for denial;

3) The time that has elapsed since commission of the act under consideration;

4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions; and

5) Evidence of rehabilitation submitted by the applicant.

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162. Business and Professional Code § 480(b), see also Penal Code § 4852.06.

163. Business and Professions Code § 481.

164. Business and Professions Code § 482.

As with the substantial relationship criteria, the various boards may have a list of specifics relating to the above list and/or further factors to be considered.

A person shall not be denied a license solely on the basis of a felony conviction if they have obtained a Certificate of Rehabilitation pursuant to § 4852.01 et seq. of the Penal Code.[165]

18. WHAT CRIMINAL HISTORY INFORMATION MUST A PAROLEE GIVE TO AN EMPLOYER?

An employer may ask about your prior convictions. However, generally, an employer cannot ask about or consider arrests that did not result in a conviction. There are some exceptions if you are awaiting trial for an arrest. There are also some exceptions for employers at law enforcement agencies and health care facilities.[166]

Most private employers do not have a right to obtain or request a job applicant's or employee's written criminal history report ("rap sheet"). However, there are again some exceptions for government employers, public utilities, and school or eldercare agencies, when such access is authorized by law or regulation.[167] Even though they cannot obtain an official rap sheet, other employers may still be able to obtain information about a prospective employee's background from public sources like court databases or news agencies.

The Legal Aid Society Employment Law Center has an excellent information package on employment rights of parolees and instructions on how a parolee can obtain copies or ask for corrections of his or her criminal history rap sheet. Information is available at the Employment Law Center's website at www.las-elc.org. The Employment Law Center can be contacted at 600 Harrison Street, Suite 120, San Francisco, CA 94107, (415) 864-8848.

19. HOW CAN A PAROLEE OBTAIN A CERTIFICATE OF REHABILITATION OR A PARDON?

A person must wait for a certain period of time (usually seven years from last release from custody, five years of which the person must have resided in California) before he or she can file a petition for a Certificate.[168] During the period of rehabilitation the person must live an

165. Business and Professions Code § 480(b).

166. Labor Code § 432.7.

167. Penal Code § 11105; Labor Code § 432.7.

168. Penal Code § 4852.03.

honest and law abiding life.[169] Some ex-felons are not eligible at all to apply for a certificate of rehabilitation, and some must wait additional periods of time before applying.[170]

The Petition for Rehabilitation is available for the County Clerk at no cost. Indigent petitioners are entitled to court appointed counsel at the hearing.[171] The Petition must be filed in the Superior Court of the county where the parolee resides. Copies of the Petition must be served upon the District Attorney of the county of residence as well as the District Attorney of every county in which the person was convicted of a felony and the Governor's office, all at least 30 days before the hearing date.[172] If the court grants the petition, it will issue the Certificate of Rehabilitation and recommend that the Governor grant a full pardon to the petitioner.[173]

Additional information on pardons and certificates of rehabilitation can be found on the BPT's website at www.bpt.ca.gov.

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169. Penal Code § 4852.05.

170. Penal Code §§ 4852.01 and 4852.03. In People v. Ansell (2001) 25 Cal.4th 868, the California Supreme Court held that applying new limits on certificates of rehabilitation to offenders convicted prior to the date of the new limits does not violate ex post facto principles.

171. Penal Code § 4852.08.

172. Penal Code § 4852.07.

173. Penal Code § 4852.13.