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THE PAROLEE RIGHTS HANDBOOK

(updated August 2013)

KNOW YOUR RIGHTS! ANSWERS TO QUESTIONS ABOUT PAROLE INFORMATION ON: Rights and Restrictions While on Parole Length of Parole Parole Violations and Revocations Post-Release Community Supervision

IMPORTANT INFORMATION REGARDING THE USE OF THE PAROLE MANUAL

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in the prison or public law library.

This Handbook addresses common questions about parole terms and parolees' rights; it is not a full discussion of the legal issues surrounding parole. **Things are changing quickly in this area; the laws for parole have been amended several times in the past few years and there are still questions about what procedures and policies will be put in effect now that courts instead of the Board of Parole Hearings (BPH) are conducting parole revocation hearings. (See Section 20, below.)** We will attempt to update this information when important new developments occur. This Handbook and other self-help and information materials are available at www.prisonlaw.com.

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RIGHTS AND RESTRICTIONS ON PAROLE

1. WHO MUST SERVE A PERIOD OF PAROLE?

Some state prisoners are required to serve a period of parole after they are released from prison. Parolees remain under the jurisdiction of the California Department of Corrections and Rehabilitation's (CDCR's) Division of Adult Parole Operations (DAPO),^{1/} are supervised by CDCR parole agents, and must meet certain requirements or "conditions" of parole.

As of October 2011, a prisoner must serve a parole term if any of the following apply:

- the current prison term is for a serious felony as defined in Penal Code § 1192.7(c);
- the current prison term is for a violent felony as defined in Penal Code § 667.5(c);
- the prisoner was sentenced as a three-striker under Penal Code §§ 667(b)-(i)/ 1170.12(c)(2);
- the prisoner is classified by the CDCR as a High Risk Sex Offender, regardless of the type of current crime; or
- the prisoner is found to be a Mentally Disordered Offender (MDO) under Penal Code § 2962.^{2/}

People who were paroled from state prison under the law in effect prior to October 1, 2011, must stay on parole even if they do not fall into any of these categories. However, when they are released to the streets after serving revocation terms, the CDCR is supposed to screen their cases to decide whether they should be returned to parole or placed on Post-Release Community Supervision (PRCS) for the rest of their supervision period.^{3/}

People who are released from state prison and who are not required to serve parole are placed on Post-Release Community Supervision (PRCS).^{4/} People on PRCS are supervised by county probation officers and some different rules apply to them. (See Section 25, below.)

People who are sentenced to county jail terms for felonies do not have to serve any period of parole or post-release supervision. However, courts can impose a "split sentence" by ordering a defendant to serve part of the felony sentence in jail and part on county-supervised probation.^{5/}

1. Penal Code § 3056(a).

2. Penal Code § 3000.08(a); 15 CCR § 3079.1.

3. Penal Code § 3000.09.

4. Penal Code § 3451.

5. Penal Code § 1170(h)(5).

2. CAN A PERSON AVOID PAROLE IF HE OR SHE WAS NOT INFORMED OF THE PAROLE REQUIREMENT WHEN ACCEPTING A PLEA BARGAIN?

It is possible, but unlikely.

A court is supposed to accurately advise a defendant of the direct consequences of entering a guilty or no contest plea, including any required parole period.^{6/} A defendant who was not informed of the parole period when entering a plea may be able to argue that the plea was not knowingly and intelligently made. The issue may sometimes be raised through a direct criminal appeal if the defendant obtains permission from the court by getting a “certificate of probable cause”; otherwise, the issue can be raised only in a petition for writ of habeas corpus.^{7/}

To show that the plea was invalid because it was not knowingly and intelligently made, the defendant/prisoner must show that:

- the trial court failed to advise or gave incorrect advisements to the defendant about the parole requirement before the court accepted the plea; and
- the defendant did not otherwise actually know about the parole requirement at the time of the plea; and
- the defendant would not have pled guilty if he or she had been aware of the parole requirement.^{8/} If parole was correctly explained to the defendant after the plea, but prior to or at the sentencing hearing, the defendant should have objected; a defendant who did not object must explain why no objection was made.^{9/}

The usual remedy will be to allow the parolee to withdraw the plea. However, when the plea is withdrawn, the prisoner will be in the same situation as he or she was prior to taking the plea. This means that the criminal case, including any charges dismissed as a result of the plea bargain, can be prosecuted fully.^{10/} A prisoner should think carefully about whether the possible benefit of withdrawing the plea is worth the risk of ending up with a more serious conviction and longer sentence.

6. In re Carabes (1983) 144 Cal.App.3d 927, 932 [193 Cal.Rptr. 65].

7. The Prison Law Office has information packets on challenging guilty pleas and filing state court habeas corpus petitions. These packets are available for free on request or on the Resources page at www.prisonlaw.com.

8. Berman v. Cate (2010) 187 Cal.App.4th 885, 900 [114 Cal.Rptr.3d 49]; In re Moser (1993) 6 Cal.4th 342, 351-352 [24 Cal.Rptr. 723, 728-729]; People v. Avila (1994) 24 Cal.App.4th 1455 [30 Cal.Rptr.2d 138]; People v. McMillion (1992) 2 Cal.App.4th 1363, 1370 [3 Cal.Rptr.2d 821].

9. In re Clark (1993) 5 Cal.4th 750, 797 [21 Cal.Rptr.2d 509, 540]; In re Walker (1974) 10 Cal.3d 764, 773 [112 Cal.Rptr. 177].

10. See People v. Victorian (1992) 2 Cal.App.4th 954, 959 [4 Cal.Rptr.2d 460].

A court could order a different remedy by granting the prisoner a parole-free release (“specific performance” of the plea agreement), but this is highly unusual. The only situation in which specific performance might be considered is where the prisoner already has served more time than bargained for and/or has already served most of the parole period.^{11/}

A court is also supposed to inform the defendant of any parole period at the time of sentencing, regardless of whether the conviction is by a trial or a plea.^{12/} However, failure to inform a defendant of the parole period at sentencing does not entitle a prisoner to any remedy. Parole in certain cases is mandatory and a court has no authority to waive the requirement.^{13/}

3. WHAT KIND OF PAROLE CONDITIONS CAN BE IMPOSED?

The CDCR has the authority to impose parole conditions. The BPH also has the authority to impose parole conditions in lifer cases, as well as in cases in which a prisoner was released on parole or charged with a parole violation prior to July 1, 2013.^{14/} Violating those conditions can result in revocation of parole and return to custody. (See Sections 18-24, below.)

A. Notification of Parole Conditions

The CDCR should complete a Release Program Study and notify a prisoner of his or her conditions of parole 45 days prior to the prisoner’s release date; the prisoner will be asked to sign the notification.^{15/} The Release Program Study identifies the prisoner’s plans for housing, employment, and support. The conditions tell the parolee the rules he or she must follow. During the parolee’s first meeting with his or her parole agent, the parolee will read and sign the conditions of parole a second time. It is important that parolees fully understand their conditions of parole.

In the past parole could be revoked if a parolee refused to sign the “Notice and Conditions of Parole.” The law now says only that parole will be revoked for six months if a parolee (1) refuses to give any required DNA sample prior to release or (2) refuses to sign any documents acknowledging a duty to register as a sex offender.^{16/}

11. See Carter v. McCarthy (9th Cir. 1986) 806 F.2d 1373, 1377.

12. Penal Code § 1170(c).

13. See In re Moser (1993) 6 Cal.4th 342, 357 [24 Cal.Rptr. 723, 728-729].

14. Penal Code §§ 3000(b)(7) and 3053 et seq.

15. 15 CCR §§ 3075.2 and 3502. CDCR Form 611 is used for the Release Program Study and CDCR Form 1515 is used to notify parolees of their conditions of parole.

16. Penal Code § 3060.5. Although the BPH regulations still contain a rule that parolees must sign their conditions of parole, it is unclear whether this provision is still enforced in cases in which the BPH has parole authority. 15 CCR § 2512(a)(6).

B. General Rules Regarding Parole Conditions

There are some standard conditions that apply to all parolees. These conditions include reporting to a parole agent the first working day after release from prison and thereafter as directed by the parole agent, obeying parole agent instructions, not committing crimes, and not owning or having access to any weapons.^{17/} Other standard conditions include reporting changes in address and employment. Finally, a parolee must get the parole agent's approval to travel more than 50 miles from his or her residence, to be outside the county where he or she lives for more than 48 hours, or to leave the state of California.^{18/}

Special parole conditions can be imposed on individual parolees based on particular facts about the case or the person. The CDCR imposes a different level of supervision depending on whether the parolee is classified as High Control, High Service, Control Services, or Minimum Supervision. The parolee's case will be reviewed periodically to determine whether the supervision level should be changed.^{19/} The most common special conditions imposed by the CDCR are that a parolee must not drink alcohol, must submit to drug testing, or must participate in mental health treatment.^{20/} Some offense-related parole conditions are required by state law.^{21/}

Some parolees will be required to wear GPS tracking devices. By law, any parolee who is required to register as a sex offender must wear a GPS tracking device (usually an ankle bracelet) during parole.^{22/} In addition, it is the CDCR's policy to require GPS monitoring for: (1) any parolee validated as a member or associate of a prison gang, street gang, or "disruptive group"; (2) any parolee placed on "High Control" supervision; (3) any parolee with a history of being unavailable for supervision, absconding, escalating parole violations, or other such factors indicating the parolee is likely to re-offend; and (4) any parolee on whom the BPH has imposed a

17. See 15 CCR § 2512.

18. See CDCR Form 1515.

19. 15 CCR § 3504.

20. See 15 CCR § 2513.

21. See Penal Code § 3053 et seq. For example, any parolee convicted of a sex offense while intoxicated or addicted to alcohol is barred from using alcohol. Penal Code § 3053.5. A parolee convicted of domestic violence must participate in counseling. Penal Code § 3053.2(e)-(i).

22. Penal Code § 3004(b). The statute says that § 290 registrants must be monitored by GPS "for life," but no law enforcement agency is designated to do such monitoring once parole has ended and no punishment is authorized. Also, the GPS requirement does not apply to persons who were both convicted and released from custody prior to November 8, 2006. Doe v. Schwarzenegger (E.D. Cal. 2007) 476 F.Supp.2d 1178; Doe v. Schwarzenegger (N.D. Cal. Feb. 22, 2007) No. C 06-06968 JSW.

GPS monitoring condition.^{23/} Failure to keep the GPS device charged or wear it is a violation of parole.^{24/} Parolees can be required to pay for the cost of the GPS if they are able to do so.^{25/}

C. Residency Restrictions for Sex Offender Parolees

As a result of Proposition 83 (“Jessica’s Law”), there are strict residency restrictions on parolees who are required to register as sex offenders under Penal Code § 290. Such parolees cannot reside within 2,000 feet of any school or park where children regularly gather.^{26/} Failure to comply will be reported as a parole violation.^{27/} This law has forced many parolees to become homeless because they cannot find compliant housing.^{28/}

For the residency restriction, distance is measured by a straight line between the main entrance of the residence and the boundary of the nearest park or school, not the driving or walking distance.^{29/} The CDCR considers a place to be a “residence” if: (1) the parolee spends one day or night at the same address every week for multiple consecutive weeks; (2) the parolee resides two or more consecutive days or nights at the same address; (3) the parolee has a key to the address “and there is a pattern of residency”; or (4) the parole agent finds evidence of residency such as a parolee’s clothes or toiletries.^{30/} Parole agents are supposed to make exceptions for parolees who are mentally ill and housed in a licensed mental health facility or who need medical care in a licensed facility.^{31/} Parolees who become homeless may stay at locations without street addresses (such as bridges, encampments, and bus stops) that are closer than 2,000 feet to a school or park, but they must keep the agent informed of their whereabouts.^{32/} Homeless sex offenders may make regular entries at an address without establishing “residency”

23. Penal Code §§ 3004(a) and 3010-3010.7; 15 CCR § 3561.

24. 15 CCR § 3562.

25. Penal Code §§ 3004(c), 3000.07, and 3010.8; 15 CCR § 3563.

26. Penal Code § 3003.5(b). This rule applies to any sex offender released on parole on or after November 8, 2006, even if the most recent term was for a non-sex offense or the parolee was initially released before November 8, 2006, and later re-released after a parole revocation. In re E.J. (2010) 47 Cal.4th 1258 [104 Cal.Rptr.3d 165]. However, the residency restrictions cannot be applied to people who were both convicted and released from custody prior to November 8, 2006. Doe v. Schwarzenegger (E.D. Cal. 2007) 476 F.Supp.2d 1178.

27. 15 CCR § 3571(f).

28. California Sex Offender Management Board, Homelessness Among California’s Registered Sex Offenders, An Update (Aug. 2011) p. 1, at www.cdcr.ca.gov/News/docs/Sex_Offender_and_GPSTask_Force_Report.pdf.

29. 15 CCR § 3571(e)(4).

30. 15 CCR § 3590(a).

31. 15 CCR § 3590.1(d).

32. 15 CCR §§ 3590.2(a) and 3590.3(b).

if the entries are for approved work, receiving medical services, or conducting legitimate business.^{33/}

The Proposition 83 residency restriction is being challenged in the courts as being so unreasonable, vague, and overbroad as to violate fundamental constitutional rights. In some counties, parolees have been able to get courts to bar the CDCR from enforcing the residency restrictions. Also, some county courts are granting requests for stays of the residency restriction while the legal issues are being considered. Parolees should contact the public defender's office in their county to find out the status of local challenges. The Prison Law Office also has a more detailed information letter on the status of the issues and a sample petition for writ of habeas corpus for challenging the residency restrictions. The letter can be obtained by writing to the Prison Law Office or visiting the Resources page at www.prisonlaw.com.

The CDCR may be able to impose other residency restrictions as special conditions of parole in individual cases based on specific case factors.^{34/}

D. Treatment as a Mentally Disordered Offender (MDO)

Some parolees can be required to receive inpatient treatment by the Department of State Hospitals (DSH)^{35/} as a condition of parole. These parolees are called Mentally Disordered Offenders (MDOs). To be committed as an MDO, a parolee must be diagnosed with a serious mental illness that causes him or her to pose a substantial danger of physical harm to others. The person also must have been sentenced to prison for an offense involving violence.^{36/}

The MDO process begins with a screening by CDCR mental health staff and a DSH psychologist or psychiatrist. If both agree that the prisoner qualifies as an MDO, the CDCR will send certification papers to the BPH stating that the prisoner has been found to be an MDO.^{37/} The BPH then notifies the prisoner that he or she will have to undergo DSH inpatient treatment.^{38/} The BPH also must notify the prisoner of the right to challenge the MDO finding.^{39/}

33. 15 CCR § 3590.1.

34. For example, parolees convicted of violating Penal Code §§ 288 or 288.5 cannot live within one half-mile (2,640 feet) of a K-12 school if they are deemed "high risk" by CDCR. Penal Code § 3003(g). Also, a sex offender parolee cannot live in a single family house with another person who is also a sex offender, unless they are related by blood, marriage, or adoption. Penal Code § 3003.5(a).

35. The DSH was formerly known as the Department of Mental Health (DMH).

36. Penal Code § 2962. The definition of a crime involving violence under Penal Code § 2062(e) is broader than the definition of violent felonies in Penal Code § 667.5(c).

37. Penal Code § 2962(d)(1).

38. 15 CCR § 2573(c).

39. Penal Code §§ 2966 and 2978; 15 CCR §§ 2573-2574.

If a prisoner challenges the MDO finding, the BPH must have the prisoner evaluated by two independent mental health professionals and must hold a hearing in front of a BPH commissioner. The burden is on the state to prove by a preponderance of the evidence that the prisoner is an MDO.^{40/} If the prisoner wants a lawyer, the state must provide one at no cost.^{41/}

If the BPH commissioner finds that the prisoner is an MDO, the prisoner can file a petition in the local superior court to demand a jury trial. At trial the prisoner is entitled to an attorney, and the state has the burden of proving “beyond a reasonable doubt” that the prisoner meets the MDO criteria.^{42/}

A parolee who is found to be an MDO must be placed in inpatient treatment unless the DSH finds that the parolee can be treated safely as an outpatient.^{43/} After 60 days in DSH custody, an MDO can request a hearing in front of a BPH commissioner to ask for outpatient status.^{44/} At the hearing, the DSH has the burden of showing by a preponderance of the evidence that the parolee requires inpatient treatment.^{45/}

The BPH must review an MDO’s case on the presumptive parole discharge dates.^{46/} (See Section 16.B, below.) If the BPH recommends continued MDO placement, it must conduct re-commitment proceedings similar to the original MDO commitment procedures.^{47/} An MDO who is re-committed multiple times could end up serving his or her entire parole term in a DSH hospital.

When an MDO reaches the maximum parole discharge date (see Section 16.C, below), the DSH can move to continue the mental health commitment for one more year. If the MDO commitment is continued, the DSH can seek re-commitment every year thereafter.^{48/} Every time the DSH seeks to continue the MDO commitment, the case will be referred to the local district attorney, the MDO will be appointed an attorney, and a jury trial will be held at which the state

40. Penal Code § 2966(a); 15 CCR § 2576(b).

41. 15 CCR § 2576(b)(4).

42. Penal Code § 2966(a)-(b).

43. Penal Code § 2964.

44. Penal Code § 2964(b).

45. Penal Code § 2964; 15 CCR § 2578.

46. 15 CCR §§ 2535 and 2580.

47. 15 CCR § 2580(b)-(c).

48. Penal Code § 2970.

must prove beyond a reasonable doubt that the person meets the MDO criteria.^{49/} Through such re-commitments, a person could end up being hospitalized for the rest of his or her life.

E. When Is a Parole Condition Unlawful?

A condition of parole is invalid if it: (1) has no relation to the commitment offense; (2) bars conduct that is not in itself criminal; and (3) requires or forbids conduct that is not reasonably related to future criminality.^{50/} For instance, if a parolee has no history of alcohol abuse or committing crimes while intoxicated, alcohol testing cannot be imposed as a condition of parole because using alcohol is not illegal and the condition would not relate to the parolee's past or future criminality.^{51/}

Furthermore, a parole condition that infringes on a constitutional right must be no broader than necessary to promote public safety or rehabilitation.^{52/} Conditions may be invalid if they are excessively broad or if they are so vague that they cannot be understood and followed.^{53/} For example, a condition prohibiting a parolee from associating with certain groups of people must

49. Penal Code § 2972.

50. 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 relevant cases deal with probation conditions, to which courts usually apply the same analysis as to parole conditions. See also People v. Petty (2013) 213 Cal.App.4th [154 Cal.Rptr.3d 75 (condition requiring parolee to take psychiatric drugs invalid where no connection between mental health condition and criminality)]; People v. Brandao (2012) 210 Cal.App.4th 568 [148 Cal.Rptr.3d 426 (prohibition on associating with gang members must have connection to parolee's criminality)]; People v. Olguin (2008) 45 Cal.4th 375 [87 Cal.Rptr.3d 199] (condition requiring notification of all pets in home valid to protect supervising officer's safety during home visits).

51. People v. Kidoo (1990) 225 Cal.App.3d 922 [275 Cal.Rptr. 298], overruled on other grounds in People v. Welch (1993) 5 Cal.4th 228 [19 Cal.Rptr.2d 520].

52. People v. Smith (2007) 152 Cal.App.4th 1245, 1250 [62 Cal.Rptr.3d 316].

53. 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. See 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] (forbidding living with parents); People v. Beach (1983) 147 Cal.App.3d 612, 622-623 [195 Cal.Rptr. 381] (banishing from home); In re Sheena K. (2004) 116 Cal.App.4th 436 [10 Cal.Rptr.3d 444] (not associating with anyone disapproved by officer); People v. O'Neil (2008) 165 Cal.App.4th 1351 [81 Cal.Rptr.3d 878] (same); Hyland v. Procunier (N.D. Cal. 1970) 311 F.Supp. 749 (condition to get permission before making speech); Arciniega v. Freeman (1971) 404 U.S. 4 [92 S.Ct. 22; 30 L.Ed.2d 126] (not associating with ex-convicts at work); People v. Garcia (1993) 19 Cal.App.4th 97, 101-102 [23 Cal.Rptr.2d 340] (not associating knowingly or unknowingly with ex-felons or drug users); In re Justin S. (2001) 93 Cal.App.4th 811 [113 Cal.Rptr.2d 466] (not associating with "any gang members"); In re Stevens (2004) 119 Cal.App.4th 1228 [15 Cal.Rptr.3d 168] (prohibiting use of computers or Internet when neither used in committing crime); United States v. Williams (9th Cir. 2004) 356 F.3d 1045 (requiring releasee to take medications); In re H.C. (2009) 175 Cal.App.4th 1067 [96 Cal.Rptr.3d 793] (not frequenting areas of gang activity); United States v. Soltero (9th Cir. 2007) 510 F.3d 858, 867 (not associating with members of "disruptive groups"); United States v. Wolf Chold (9th Cir 2012) 699 F.3d 1082 (condition not to live with or be in company of minor under 18 or socialize with minor children).

include a requirement that the parolee knows or should know that any given individual is part of the prohibited group.^{54/} Also, conditions of parole that limit employment must directly relate to the parolee's crime.^{55/}

The procedures for challenging a parole condition are described in Section 6, below.

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

Maybe.

Prisoners are usually paroled to the county of their last legal residence.^{56/} However, sometimes the BPH or the CDCR will force a person to parole to a different county if it would be in the best interests of the public.^{57/} In particular, a parolee who has been convicted of certain violent felonies or of a crime involving stalking or great bodily injury will not be sent to a county where he or she would be within 35 miles of the residence of a victim or witness if (1) the victim or witness has requested additional distance and (2) the BPH or CDCR finds that there is a need to protect the victim or witness.^{58/} If the BPH or CDCR decides to send a parolee to another county, the agency must state the reasons in writing.^{59/}

A. Requesting Transfer To a Different County

Parolees sometimes want to transfer their parole to a different county. Reasons for a transfer include avoiding the environment that led to the crime or benefitting from family support available in another county.

A parolee may request a transfer to another California county by submitting a verbal or written request to the parole agent. If possible, a prisoner should make the request when the Release Program Study (see Section 3.A, above) is being prepared. The prisoner or parolee should explain why being in a different county will help him or her be more successful. He or

54. People v. Turner (2007) 155 Cal.App.4th 1432 [66 Cal.Rptr.3d 803].

55. 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].

56. Penal Code § 3003(a).

57. Penal Code § 3003(b). A county that wants a parolee to be sent somewhere else must show that the parole authorities have abused their discretion when choosing the county of parole. McCarthy v. Superior Court (1987) 191 Cal.App.3d 1023, 1027 [236 Cal.Rptr. 833, 834]; City of Susanville v. CDCR (2012) 204 Cal.App.4th 377 [138 Cal.Rptr.3d 721].

58. Penal Code § 3003(f) and (h). This provision does not apply to the victim's next of kin. In re David (2012) 202 Cal.App.4th 675 [135 Cal.Rptr.3d 855].

59. Penal Code § 3003(b).

she should provide documents (such as letters from family members, a doctor, or a prospective employer) verifying the reasons that the transfer would be beneficial.^{60/}

A parole agent who receives a transfer request should prepare a Transfer Investigation Request Form and submit it to the parole unit supervisor. The supervisor should consider the following factors:

- any need to protect the safety of the parolee or a victim, witness, or other person;
- any public concern that would reduce the chance that parole would be successfully completed;
- the verified existence of a work offer or an educational or vocational program;
- the existence of family with whom the prisoner has strong ties and whose support would increase the chance that parole would be successfully completed; and
- the presence or lack of any needed mental health treatment programs.^{61/}

Because there is a limit on the number of “out-of-county” parolees who may be supervised in each county, transfer of parole may be denied even if some or all of these factors are favorable.

60. Penal Code § 3003(b)(3)-(4).

61. Penal Code § 3003(b).

B. Requesting Transfer To a Different State

An Interstate Compact for Adult Offender Supervision governs interstate parole transfers.^{62/} The Compact has been adopted by all 50 states, Puerto Rico, and the U.S. Virgin Islands.^{63/}

An Interstate Commission has developed rules for transfer eligibility and supervision. A parolee meets the basic eligibility requirements for transfer if he or she:

- has three months or more to serve on parole at the time the application is submitted to the receiving state;
- has not had parole revoked and has no pending parole revocation charges;
- was previously a resident of the receiving state for at least one year or has resident family who are willing and able to assist him or her; and
- can obtain employment or has means of support.

If a parolee meets these criteria and is approved for transfer by the sending state, then the receiving state must accept the parolee for supervision. The states may also agree to transfer a parolee who does not meet the normal eligibility requirements if there is good cause to do so.^{64/}

To get the process started, a prisoner or parolee should talk to his or her correctional counselor or parole agent. The parole agent should determine whether the parolee meets the eligibility criteria. If the criteria are met, the agent should submit a transfer application to the CDCR's Interstate Compact Unit in Sacramento. If the application is approved by the CDCR, the request will be sent to the receiving state.^{65/} The earliest that California can send a transfer request for a prisoner is 120 days prior to the expected release date.^{66/} The receiving state is supposed to respond within 45 calendar days of receiving a transfer request.^{67/} The process can be expedited in an emergency.^{68/}

62. Penal Code §§ 11180 and 11181.

63. Information on the Compact and rules made by the Interstate Commission for Adult Supervision and California State Council can be found at www.interstatecompact.org.

64. Rules Adopted by the Interstate Commission for Adult Supervision, Rule 3.101.

65. See DOM § 81060.1 et seq. for the CDCR's procedure for handling applications from parolees for out-of-state transfers; see also Rules Adopted by the Interstate Commission for Adult Supervision, Rules 3.102-3.109. Further information may be obtained from the CDCR Interstate Compact Unit, P.O. Box 942883, Sacramento, CA 94283.

66. Rules Adopted by the Interstate Commission for Adult Supervision, Rules 3.101 and 3.105.

67. *Id.*, Rule 3.104.

68. *Id.*, Rule 3.106.

5. WHAT RIGHTS DOES A PAROLEE WITH A DISABILITY HAVE?

The Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 et seq., protects California prisoners and parolees from discrimination due to disabilities. As a result of class action lawsuits called Armstrong v. Schwarzenegger (N.D. Cal.) No. 94-2307CW and Clark v. California (N.D. Cal.) No. 95-1486FMS, there are specific rules governing the rights of California prisoners and parolees with disabilities. The rules regarding parolees with physical (mobility, hearing, and vision) disabilities and learning disabilities are in the Armstrong Remedial Plan (January 3, 2001), § IV.S. The rules regarding parolees with developmental disabilities are in the Clark Remedial Plan (March 1, 2002), § VIII.

When a person with disabilities is released on parole, his or her correctional counselor must notify the parole agent about the parolee's disability and related special needs by completing this information on the Release Program Study (see Section 3.A, above).

Parole staff must ensure that a parolee with disabilities receives "effective communication" during orientations, interviews, and supervision meetings, and when being notified of conditions of parole and registration requirements. This means that parole staff must provide any help necessary for the parolee to understand the information that is being communicated. Examples include assistance by a sign language interpreter for a hearing-impaired parolee, reading aloud of written materials for a vision-impaired parolee, or simplification of information for a developmentally disabled parolee.

Parole staff must make reasonable changes to procedures so that parolees with disabilities can receive services in a location that is accessible to them. For example, if a disability makes it difficult for a parolee to get to the parole office, the parole agent should meet with the parolee somewhere else, such as the parolee's home. If the agent refers a parolee with disabilities to a community service such as a drug treatment center, job center, or literacy center, parole staff should make sure that the parolee can actually get to the programs and services offered. If a parolee is required to attend a program at the parole office, such as an outpatient clinic, that program must be accessible given the parolee's special needs.

A prisoner who uses a wheelchair or other healthcare appliance (such as a cane, prosthesis, eyeglasses, or prosthetic eyes) is entitled to keep the device when he or she paroled, even if it was provided by the state. Also, if parole staff arrest a parolee, the parolee's disability should be taken into account in placing any physical restraints. For example, if a parolee needs to use a cane, the agent should not cuff the parolee behind his or her back. Similarly, if a parolee with a disability is transported somewhere, staff must consider any disability needs in determining the mode of transportation to use.

There is a special CDCR appeal process for people with disabilities to ask for fair treatment or to get access to parole services or programs. A disabled parolee who is having problems receiving help from parole staff can submit a Request for Modification or Reasonable Accommodation (the yellow CDCR Form 1824). All parole offices should have this form

available. A parolee does not need to get informal review before filing a Form 1824.^{69/} A parolee who does not agree with the First Level response can appeal to the Second Level by attaching the 1824 form to a regular CDCR Form 602 administrative appeal, filling out section F of the 602, and sending both forms to the Regional Parole Administrator. If the answer is not satisfactory, the parolee can send the appeal to the Third Level.^{70/}

6. HOW CAN A PAROLEE CHALLENGE A PAROLE CONDITION?

If possible, it is usually best for a parolee to sign the “Notice and Conditions of Parole” and comply with them while taking the steps necessary to challenge the disputed condition. Otherwise the parolee may end up having to spend additional time in custody while the matter is being resolved.

A parolee who wants to challenge a parole condition set by the CDCR generally must start by filing an administrative appeal. (An administrative appeal can also be used to challenge or protest other actions by CDCR parole staff, such as unreasonable searches or refusals to approve housing or travel plans.) The administrative appeal may solve the problem, but even if it does not, courts usually will not consider a lawsuit challenging a CDCR decision unless the parolee has “exhausted administrative remedies.”^{71/} However, there are some circumstances in which a parolee may bring a court challenge without first filing an administrative appeal. These include situations where the administrative remedy is unavailable (for example, because the condition is required by a state statute), where an administrative appeal would be futile, or where delay could cause the parolee irreparable harm such as risk of serious injury.^{72/}

To challenge a CDCR parole condition (except issues that concern disabilities), a parolee should file a CDCR Form 22 Request for Interview Item or Service before filing a formal administrative appeal; the Appeals Coordinator may screen out a formal appeal if a prisoner does not first submit a Form 22 and receive a response.^{73/} After the Form 22 request-and-response process is completed, the parolee can start an administrative appeal by filling out a CDCR Form 602 and sending it to the Appeals Coordinator for the parole region. The parolee should continue filing the 602 administrative appeal through all three levels of review before filing a court action.

If a parolee cannot satisfy a CDCR parole condition because of a disability, or the condition is unfair to a disabled parolee, the parolee should file a CDCR Form 1824 Request for

69. Armstrong Remedial Plan, § IV.I.23(e).

70. Ibid.

71. 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].

72. See Glendale City Employee’s Association, Inc. v. City of Glendale (1975) 15 Cal.3d 328, 342-343 [124 Cal.Rptr. 513]; In re Serna (1978) 76 Cal.App.3d 1010 [143 Cal.Rptr. 350].

73. 15 CCR § 3084.6(e)(2).

Reasonable Modification or Accommodation instead of Forms 22 and 602. The Form 1824 process is discussed in Section 5, above.

If a parole condition was set by the BPH, or if a parolee wants to challenge a BPH decision, the parolee need not file any administrative appeal unless the issue involves a disability. This is because the BPH has no general administrative appeal process. For issues regarding disabilities, a parolee should file a BPH Form 1074 Request for Reasonable Accommodation and submit it to the BPH's ADA Coordinator. If the response is unsatisfactory, the appeal can be submitted to the second and third levels.

The Prison Law Office has a detailed information letter describing the rules, timelines, and procedures for pursuing administrative appeals. The letter can be obtained at no cost by writing to the Prison Law Office or by visiting the Resources page at www.prisonlaw.com.

A parolee who has completed the administrative appeals process (or who is not required to file an administrative appeal) can continue challenging a parole condition or decision by filing a state petition for writ of habeas corpus in the superior court in the county of parole. In a state court habeas petition, a parolee can argue that parole authorities or state officials have violated the federal Constitution or statutes or California's Constitution, statutes, or regulations. A state court habeas form and more information about state habeas cases can be found in the Prison Law Office's State Habeas Corpus Manual. The manual can be obtained for free by writing to the Prison Law Office or by visiting the Resources page at www.prisonlaw.com.

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

Yes (almost always).

The standard CDCR "Notice and Conditions of Parole" requires every parolee to agree 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." This requirement has been upheld by the U.S. Supreme Court. Thus, searches can be conducted without the parolee's consent, a search warrant, probable cause, or even reasonable suspicion that the parolee has violated parole.^{74/} Parole agents and other law enforcement officers may also search a parolee's property after the parolee is placed in custody pending revocation proceedings.^{75/}

The only limit on parole searches is the federal constitutional Fourth Amendment rule that searches must be no more intrusive than necessary for a legitimate interest in parole

74. Samson v. California (2006) 547 U.S. 843 [126 S.Ct. 2193; 165 L.Ed.2d 250]; United States v. Lopez (9th Cir. 2007) 474 F.3d 1208; People v. Reyes (1998) 19 Cal.4th 743 [80 Cal.Rptr.2d 234]; see also Penal Code § 3067(b)(3).

75. People v. Hunter (2006) 140 Cal.App.4th 1147, 1152-1153 [45 Cal.Rptr.3d 216].

supervision.^{76/} Parole searches must be constitutionally “reasonable”; they cannot take place too often, at an unreasonable hour, be unreasonably prolonged, or be conducted in an arbitrary or capricious manner.^{77/} However, a parolee has little recourse when law enforcement officers conduct an unlawful search because evidence that is obtained through an unlawful search can still be admitted at a parole revocation hearing.^{78/}

A search cannot be justified by a parole search condition if the officers who conducted the search were not aware that the person was on parole^{79/} or did not have probable cause to believe the parolee lived in the residence that was searched.^{80/} However, if law enforcement officers know a person is a parolee, they are allowed to assume that he or she is subject to a parole search condition.^{81/} Officers can also search the passenger compartment of a car in which a parolee is a passenger, even if the parolee is not the driver or owner.^{82/}

When conducting a parole search, law enforcement officers must comply with the statutory requirement of giving notice of the officers’ authority and purpose in conducting the search.^{83/}

8. CAN A PAROLEE OWN A GUN?

No.

76. People v. Williams (1992) 3 Cal.App.4th 1100, 1106 [5 Cal.Rptr.2d 591]; see also United States v. King (2012) 687 F.3d 1189 (parolees have even lower expectations of privacy than people on probation).

77. People v. Reyes (1998) 19 Cal.4th 743, 753-754 [80 Cal.Rptr.2d 734]; Penal Code § 3067(d).

78. Pennsylvania Board of Probation and Parole v. Scott (1998) 524 U.S. 357, 363-364 [118 S.Ct. 2014; 141 L.Ed.2d 344].

79. People v. Sanders (2003) 31 Cal.4th 318, 335 [2 Cal.Rptr.3d 630].

80. Motley v. Parks (9th Cir. 2005) 432 F.3d 1072, 1080.

81. People v. Middleton (2005) 131 Cal.App.4th 732, 738-739 [31 Cal.Rptr.3d 813].

82. People v. Schmitz (2012) 55 Cal.4th 909 [149 Cal.Rptr.3d 640].

83. Penal Code § 1531; People v. Mays (1998) 67 Cal.App.4th 969, 974 fn. 4 [79 Cal.Rptr.2d 519]; 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].

California law makes it a felony for any ex-felon to own, possess, or have custody or control of any firearm.^{84/} Federal law also makes it unlawful for an ex-felon to possess a firearm or ammunition that has been shipped or transported through interstate or foreign commerce.^{85/} Accordingly, CDCR’s standard “Notice and Conditions of Parole” states that a parolee 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”^{86/}

A parolee who lives with someone else who possesses a gun or ammunition should make sure that the other person removes those items from the residence, or at least keeps the items locked in a place to which the parolee does not have access.

A certificate of rehabilitation (see Section 15, below) does not restore the right to possess a firearm. In some cases, but not all, the right can be restored by a full pardon.^{87/}

9. CAN A PAROLEE VOTE? SERVE ON A JURY?

No to both questions.

In California, people are not allowed to vote while they are in prison or on parole.^{88/} The ban on voting also applies to people who are serving felony sentences in county jail, people serving felony “split sentences” that combine jail and probation, and people on PRCS.^{89/} Such restrictions on voting are permitted by the U.S. Constitution, Fourteenth Amendment, § 2.^{90/} Courts have acknowledged the possibility that such felon disenfranchisement laws might in some circumstances violate the federal Voting Rights Act, 42 U.S.C. § 1973, by having a disparate

84. Penal Code § 29800(a). This does not violate the Second Amendment to the U.S. Constitution. People v. Delancey (2011) 192 Cal.App.4th 1481 [122 Cal.Rptr.3d 216].

85. 18 U.S.C. § 922(g)(1); U.S. v. Vongxay (9th Cir. 2010) 594 F.3d. 1111 (ban does not violate Second Amendment).

86. CDCR Form 1515 Notice and Conditions of Parole. Note that it is not a violation of law for a parolee to possess or have access to a fake or toy gun, but it is a violation of parole if the toy or fake could reasonably be mistaken for a real gun.

87. See Penal Code §§ 4852.17 and 4854.

88. Cal. Constitution, art. II, § 4; Elections Code § 2150.

89. California Secretary of State, Memorandum 11134 re Voter Registration: Status of Persons Convicted Under State’s New Criminal Justice Realignment Statutes (Dec. 5, 2011), available at www.sos.ca.gov/elections/ccrov/pdf/2011/december/11134lf.pdf.

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

impact on people of color; however, no court has yet overturned a felon disenfranchisement law.^{91/}

An ex-felon is prohibited from serving on a jury, even after he or she has been discharged from parole or PRCS.^{92/} This restriction has been upheld by the California Supreme Court, which opined that there is no fundamental right to serve on a jury and that excluding ex-felons from juries does not violate the Equal Protection Clause because the prohibition is rationally related to the state goal of assuring impartial verdicts.^{93/}

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

Not without prior approval.

It is a crime for a former prisoner to be on prison grounds for any reason without prior approval of the warden.^{94/} To get permission to visit, a parolee must get written approval from his or her parole agent and send it along with a visiting questionnaire (CDCR Form 106) and a letter to the warden. Similarly, a probationer or person on PRCS should get written permission from his or her probation officer and follow the same application procedure.^{95/}

An ex-felon who has been discharged from parole or other supervision should send a certificate of discharge with the visiting questionnaire. After one year from the discharge date, an ex-felon should not be denied visiting “for reasons that would not apply to any other person.”^{96/} However, CDCR regulations authorize prison staff to deny visiting by people who have criminal records even if they are not on parole or other supervision. For example, visits may be denied for anyone who was a co-defendant of the prisoner; was convicted of one felony in the past three years, two felonies in the past six years, or three felonies in the past ten years; or was convicted of a crime such as transporting or distributing drugs or contraband in prison or jail or involvement in an escape or attempted escape.^{97/}

91. Farrakhan v. Washington (9th Cir. 2003) 338 F.3d 1009, 1016, 1020; see also Hayden v. Pataki (2d Cir. 2006) 449 F.3d 305, 328; Johnson v. Florida (11th Cir. 2005) 405 F.3d 1214.

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

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

94. Penal Code § 4571.

95. 15 CCR §§ 3172(d) and 3172.1(b)(4)-(5).

96. 15 CCR § 3172.1(b)(4).

97. 15 CCR § 3172.1(b)(1).

11. CAN A PAROLEE GET FINANCIAL ASSISTANCE FROM THE CDCR?

Some parolees can.

A. Trust Fund Accounts

Money brought to, earned, or received in prison can be kept in a trust account. Any money in a prisoner's trust account, plus interest, must be given to the prisoner upon release.^{98/}

B. Gate Money

Prisoners who are paroled, placed on PRCS, or discharged from a CDCR institution or reentry facility are entitled to \$200.00 in state funds upon release.^{99/} For a parolee, the parole agent is responsible for giving out these funds, and is not required to give the entire sum immediately. Instead, the agent may distribute the \$200 in installments over a period of 60 days following release. Although practices vary, paroled inmates typically receive at least \$50 to \$100 of the gate money immediately upon release, and many receive the entire \$200. If a parolee needs to purchase clothes or a bus ticket, the parolee must pay for it; the CDCR does not provide extra gate money for clothing or transportation.

A parolee who is released into a reentry facility or Alternative Custody Program may be given up to \$100 of the gate money at that time. A parolee who is released into the custody of another state, local, or federal agency will not get any gate money until he or she is released from that custody. However, prisoners who are sent a local jail for SVP civil commitment proceedings are entitled to gate money.^{100/}

Parolees who abscond prior to receiving all their gate money forfeit the money. Also, people who are released after being placed in jail for parole revocation proceedings do not receive gate money. However, it appears that lifer parolees who are returned to prison on a parole violation can receive gate money if they are re-released to parole.

C. Cash Assistance Loans and Bank Drafts^{101/}

Some emergency funds are available to parolees through their parole agents. "Cash assistance funds" are loans, which the CDCR expects the parolee to pay back as soon as circumstances permit. The loans are only granted to parolees when there is a critical need and

98. Penal Code § 2085; 15 CCR § 3099.

99. The rules for gate money are in Penal Code § 2713.1, 15 CCR § 3075.2(d), and DOM § 81010.6 et seq.

100. Sabatasso v. Superior Court (2008) 167 Cal.App.4th 791 [84 Cal.Rptr.3d 446] (holding contrary portion of 15 CCR § 3075.2(d)(2) invalid).

101. The rules for these funds are in 15 CCR § 3605 and DOM § 81070.1 et seq.

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 services, including 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 the items. Once again, the loans are granted on an emergency basis, and the parolee must pay the money back as soon as he or she is able to do so.

The parole agent and his or her supervisor have discretion over whether to give a loan or funds to a parolee. The decision will depend on whether there is money available and on the circumstances, including the parolee's history and needs.^{102/} **In the current tight budget times, these funds are extremely limited.**

12. CAN A PAROLEE GET PUBLIC BENEFITS (SOCIAL SECURITY, FOOD STAMPS, ETC.)?

Parolees and other people released from prison may be eligible for federal, state, and local assistance programs, but they are not entitled to receive any special benefits just because of their recent release. A parolee should investigate the various programs to see whether he or she qualifies for any of them. A person who is interested in getting any type of public benefits might want to try sending a letter to the applicable office before release from prison and should seek advice from a community agency or legal services organization once released. Also, the CDCR's Pre-Release Planning Program may be able help prisoners apply for benefits prior to release.

In addition, parole agents should be able to help parolees apply for benefits. At a minimum, an agent should be able to provide a parolee with the names and locations of local offices where the parolee can apply for benefits. The parole agent also should have lists of homeless shelters, food banks, job training facilities, and drug treatment centers in the local area. Parolees can use these resources to try to get shelter, food, and other necessary items.

A new program allows some parolees to be referred to a "Re-entry Court Program" (RCP), where parolees are referred to receive services to help them integrate into the community. These programs are run by the individual counties.^{103/}

All parolees are also required to attend a Police and Corrections Team (PACT) orientation within two weeks of their release from prison. Many community service

102. In addition, there are limits on the financial assistance that will be provided to some parolees who are not U.S. citizens. 15 CCR § 3630.

103. 15 CCR §§ 3769-3769.6.

organizations attend the PACT orientations and parolees can get benefits and assistance information from those organizations.

Further information on public benefits available to parolees is available in the free Prison Law Office information letter on Parolee Benefits. The letter can be obtained by writing to the Prison Law Office or by visiting the Resources page at www.prisonlaw.com. Parolees can also get information from their parole agent or from the CDCR Parolee Handbook, available at www.cdcr.ca.gov/Parole/Parolee_Handbook/Index.html.

13. WHAT CRIMINAL HISTORY INFORMATION IS A PAROLEE REQUIRED TO GIVE TO AN EMPLOYER?

An employer may ask about a job applicant's prior convictions. Generally, however, an employer cannot ask about arrests that did not result in a conviction or a diversion program. There are some exceptions if a person has recently been arrested and the charges are still pending. There are also some exceptions for employers at law enforcement agencies and healthcare facilities.^{104/}

Most private employers do not have the right to request or obtain a job applicant's or employee's written criminal history report ("rap sheet"). Again, there are some exceptions for government agencies, public utilities, and school or elder-care agencies.^{105/} Also, any employer may still be able to obtain information about a prospective employee's background from public sources like court databases or news media. Finally, there are some laws that allow parolees and ex-felons to be excluded from certain jobs.^{106/}

14. CAN A PAROLEE OBTAIN A BUSINESS LICENSE?

It depends on the type of license and conviction, as well as the behavior of the applicant since committing the crime.

In California, a variety of agencies are involved in licencing businesses and professions, including the Department of Consumer Affairs. The Governor's Office of Business and Economic Development has a website, www.calgold.ca.gov, where people can find contact information for the agencies that issue permits and licenses for various types of businesses.

104. Labor Code § 432.7.

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

106. See, e.g., Penal Code § 290.95 (prohibiting § 290 registrants whose offenses involved children under age 16 from work that would involve direct, unaccompanied, regular contact with minors and requiring disclosure of registration status to any employer where job involves contact with children).

It is unconstitutional for a licensing board to have a policy of denying employment or occupational licenses to all convicted felons.^{107/} Also, California law provides that a licensing board may deny a license on the basis of a criminal conviction or other misconduct “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.”^{108/} The boards that govern the various professions are required to have criteria for evaluating whether a crime is substantially related to the qualifications, functions, or duties of the business or profession.^{109/} Portions of the California Code of Regulations dealing with specific types of licenses describe those criteria. The regulations also sometimes list the types of crimes that are presumed to be substantially related to those particular types of businesses.

A person shall not be denied a license due to a felony conviction if he or she has obtained a certificate of rehabilitation (see Section 15, below) or due to a misdemeanor conviction if he or she has met all of the rehabilitation criteria adopted by the relevant licensing board.^{110/}

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

To obtain a certificate of rehabilitation, a person must live an honest and law-abiding life out of prison or jail for a specified period of time.^{111/} Most people must wait for seven years before being eligible for a certificate of rehabilitation. People who were convicted of a crime that carries a life sentence must wait nine years, and many sex offenders must wait ten years. All applicants must have lived in California for at least five years during their rehabilitation period. Some people are completely barred from getting a certificate of rehabilitation – for instance, people convicted of certain serious sex crimes, people serving life-long parole terms, and people in the military.^{112/}

A person who wants to apply for a certificate of rehabilitation must file a petition in the superior court for the county where he or she lives. The petition form is available from the local

107. See, e.g., Newland v. Board of Governors (1977) 19 Cal.3d 705, 711 [139 Cal.Rptr. 620].

108. Business and Professions Code § 480(a).

109. Business and Professions Code § 481.

110. Business and Professional Code § 480(b); see also Penal Code § 4852.06.

111. Penal Code § 4852.05.

112. Penal Code §§ 4852.01 and 4852.03. In extraordinary circumstances, the governor can pardon a sex offender who is otherwise barred from obtaining a certificate of rehabilitation. Penal Code § 4852.01(e).

Applying new time requirements or limits to previously convicted offenders does not violate ex post facto principles. People v. Ansell (2001) 25 Cal.4th 868 [108 Cal.Rptr.2d 145]. However, imposing different waiting periods for people convicted of similar crimes violates equal protection. People v. Schoop (2012) 212 Cal.App.4th 457 [151 Cal.Rptr.3d 200].

court clerks' offices at no cost; some of those offices have forms and information available online. Once the petition is filed the court will schedule a hearing to decide whether to grant or deny the petition. At least 30 days before the hearing date, the petitioner must serve copies of the petition on the local district attorney, the district attorney of every county in which the petitioner was convicted of a felony, and the governor's office.^{113/} A petitioner who does not have money to hire a lawyer is entitled to court-appointed counsel at the hearing.^{114/}

At the hearing, the court can consider the petitioner's criminal history and behavior in custody or on probation, parole, or PRCS.^{115/} In order to grant the petition, the court must find the petitioner has demonstrated that he or she is rehabilitated and fit to exercise all the civil and political rights of citizenship. Sex offender registrants must also convince the court that they do not present a threat of committing any sex offenses against minors.^{116/} 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.^{117/}

The person can appeal from the denial or re-apply for a certificate of rehabilitation in the future.^{118/} In some cases where the person served consecutive prison terms, the court can set a longer rehabilitation period before the person can re-apply for a certificate of rehabilitation.^{119/}

The governor has the authority to grant a pardon to a prisoner.^{120/} A pardon completely forgives the person's conviction. In addition to the scenario described above whereby a court may recommend that the governor grant a pardon, state law authorizes the BPH to recommend to the governor people who might be eligible for a pardon on account of good conduct, unusual term of sentence, or any other cause.^{121/} In the current political climate, however, parolees should be aware that a pardon is rarely a realistic alternative.

113. Penal Code § 4852.07.

114. Penal Code § 4852.08. If there is no county public defender, a probation officer may represent the petitioner.

115. Penal Code § 4852.10. See also People v. Zeigler (2012) 211 Cal.App.4th 638 [149 Cal.Rptr.3d 786] (court could consider facts of offense for which petitioner had received Proposition 36 drug treatment).

116. Penal Code § 4852.13.

117. Penal Code § 4852.13. Refusal to admit guilt of the underlying crime can be a reason for a court to deny a certificate of rehabilitation. People v. Blocker (2010) 190 Cal.App.4th 438 [118 Cal.Rptr.3d 215].

118. See People v. Lockwood (1998) 66 Cal.App.4th 222 [77 Cal.Rptr.2d 769].

119. Penal Code § 4852.03(a)(4).

120. Penal Code § 4800; Cal. Constitution, art. V, § 8.

121. Penal Code § 4801; 15 CCR § 2830.

An application for a pardon is made directly to the governor; the application must also be served on the district attorney of the county of conviction at least 10 days before it is submitted to the governor.^{122/} The governor's website contains information and forms for applying for a pardon.^{123/}

LENGTH OF THE PAROLE TERM

16. HOW LONG IS A PERSON ON PAROLE?

A. How Is the Parole Term Determined?

The length of the parole period is set by state law. In most cases, there is a base parole period that can be increased up to a maximum term if the parolee commits parole violations. The parole term lengths are set forth in Penal Code § 3000(b) (set-length parole terms) and § 3000.1 (life-long parole terms).

A person's parole term depends on the type of commitment offense. The parole term should be set under the law in effect on the date of the commitment offense (not the sentencing date and not the parole date).^{124/} It can be confusing to figure out the correct parole term because there have been many changes to the parole laws over the years, especially for sex offenders.

Following is a summary of parole lengths (from shortest to longest) for various types of offenses. If a parolee fits into more than one category, the longest parole period applies.

Three-year base period, maximum period of four years:

- People who were sentenced to a determinate (set-length) prison term, and who do not fall into any of the other categories listed below. Longer parole periods apply to people convicted of serious sex crimes or sentenced to life with the possibility of parole.
- People sentenced to life with the possibility of parole for offenses committed before January 1, 1979.^{125/}

Five-year base period, maximum period of seven years:

122. Penal Code § 4804.

123. See www.gov.ca.gov/pdf/interact/how_to_apply_for_a_pardon.pdf.

124. See 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].

125. 15 CCR § 2515(e); In re Wilson (1981) 30 Cal.3d 438, 440-441 [179 Cal.Rptr. 207].

- People convicted of a violent sex crime listed in Penal Code § 667.5(c)(3)-(6), (16), or (18) committed between July 19, 2000, and September 19, 2006, or between November 7, 2006, and September 9, 2010. This provision also applies to people convicted of a violent sex crime listed in Penal Code § 667.5(c)(11) committed between January 1, 2003, and September 19, 2006, or between November 7, 2006, and September 9, 2010.
- People sentenced for a sex crime under Penal Code § 661.61 (the “one strike” law) committed between July 19, 2000, and September 19, 2006 (note that the base term can be extended for an additional five years if the prisoner is deemed to pose a danger to society; as of January 1, 2002, either the original or extended parole period can be increased to a maximum of seven years). This also applies to people sentenced under Penal Code § 667.71 (recidivist sex offenders) for offenses committed from January 1, 2003, through September 19, 2006.
- Life prisoners who committed their offenses on or after January 1, 1979, and who do not fall into some other category.^{126/}

Ten-year base period, maximum period of fifteen years:

- People convicted of a violent sex crime listed in Penal Code § 667.5 (c)(3)-(6), (11), (15), (16), or (18) committed between September 20, 2006, and November 6, 2006. This provision also applies to people convicted of a violent sex crime listed in Penal Code § 667.5 (c)(3)-(6), (11), or (18) committed on or after September 9, 2010, and who do not fall into some other category.
- People sentenced to life with the possibility of parole for a sex offense under Penal Code §§ 209(b) [with intent to commit a sex offense], 269, 288.7, or 667.51 committed between September 20, 2006, and November 6, 2006.^{127/}
- People sentenced to life with the possibility of parole for a sex offense under Penal Code §§ 667.61 or 667.71 committed on or after September 20, 2006, and who do not fall into some other category.

Twenty-year and six month base period with a maximum life-long parole:

- People convicted of a sex offense under Penal Code §§ 261, 262, 264.1, 286, 288a, 288(b)(1), 288, 288.5, or 289 if the victim was under 14 years of age and the

126. Penal Code § 3000(b)(1); 15 CCR § 2515(d).

127. This provision also purports to apply to people sentenced to life with the possibility of parole under Penal Code § 209 [with intent to commit a sex offense] or § 667.51 committed on or after September 9, 2010. However, such offenses appear to be covered by the life-long parole provision in Penal Code § 3000.1.

offense was committed on or after September 9, 2010. These parolees can be kept on parole longer, even without parole violations, upon a finding of good cause.

Life-long parole period:

- People sentenced to life with the possibility of parole for first- or second-degree murder committed on or after January 1, 1983.^{128/}
- People sentenced to life with the possibility of parole under Penal Code § 209(b) [with intent to commit a sex offense] committed on or after September 9, 2010.^{129/}
- Prisoners sentenced to life with the possibility of parole for sex offenses under Penal Code §§ 269, 288.7(c), 667.51, 667.61(j), (l), or (m), or 667.71 [if victim under age 14] committed on or after September 9, 2010.

Any time during which a parolee absconds and is not available for parole supervision “stops the clock” and does not count toward the parole period.^{130/} Also, when a parolee undergoes Sexually Violent Predator (SVP) proceedings the parole term is “tolled” (paused) until the proceedings are dismissed or the parolee is discharged from the Department of State Hospitals (DSH).^{131/}

When a parolee gets a new felony conviction and is sentenced to a new prison term, the original parole term will generally be discharged. However, this is not automatically the case if a parolee gets a new felony conviction and is sentenced to a county jail term. It appears that a person stays on parole while serving a new felony county jail sentence. If the jail sentence ends before the parolee’s controlling discharge date (see Section 16.C, below), then the parolee will have to report to his or her parole officer upon release and finish serving his or her parole term.

Although statutes set the base and maximum parole term lengths, the date that a person actually gets off parole will be determined by a number of factors. Parolees may serve less than the standard parole period because the law requires early discharge for most parolees unless there is good cause to keep the parolee under supervision. (See Section 16.B, below.) On the other hand, the parole discharge date may get put off further into the future due to absconding or parole violations. Calculating the parole release date is discussed in Section 16.C, below.

128. Penal Code § 3000.1; 15 CCR § 2515(f).

129. Penal Code §§ 3000(b)(3) and 3000.1(a)(2). There is a discrepancy between the statutory language and the stated legislative intent to require life-long parole for “habitual sex offenders [and] persons convicted of kidnapping a child under 14 years of age with the intent to commit a specified sex offense.” Legis. Couns. Dig. Assem. Bill No. 1844, Ch. 219. Thus, there is potentially an argument that prisoners convicted under § 209(b) should be subject to only a 10-year parole term if the victim is over 14 years old.

130. Penal Code §§ 3000(b)(6) and 3064.

131. Penal Code § 3000(a)(4).

B. Can a Person Get Off Parole Early?

Sometimes.

Most parolees can be discharged from parole early if they successfully complete a certain amount of parole time and the BPH does not find good cause to retain them on parole.^{132/} This is called the “presumptive discharge date.”

The BPH must conduct a discharge review within 30 days after a parolee has served a period of time on continuous parole (meaning no revocation terms, suspensions, or “dead time” for absconding). Different time periods apply in determining the presumptive discharge date, depending on the underlying commitment offense. The periods now in effect are set forth in Penal Code §§ 3000, 3000.1, and 3001. If a parolee fits into more than one category, the longer period applies.

- Six months: Any person with a determinate sentence for non-violent, non-serious, non-sex offenses.
- One year: Any person who has a three-year parole term following a determinate sentence for a serious felony listed in Penal Code §§ 1192.7 or 1192.8(a) or for an offense requiring registration as a sex offender.
- Two years: Any person who has a three-year parole term following a determinate sentence for a violent felony listed in Penal Code § 667.5(c).
- Three years: Any person who has a five-year parole term following a determinate sentence for a violent sex crime listed in Penal Code § 667.5(c) or following an indeterminate life sentence for a crime other than murder.
- Five years: Any person sentenced to an indeterminate life sentence for second-degree murder.
- Six years and six months: Any person with a ten-year parole term following an indeterminate life sentence under Penal Code §§ 209(b) [with intent to commit a sex offense], 667.51, 667.61, or 667.71.
- Seven years: Any person sentenced to an indeterminate life term for first-degree murder.
- No presumptive discharge date: Any person serving a life-long parole period following an indeterminate life term for a sex offense under Penal Code §§ 269,

132. Note that a provision for early “earned discharge” for some parolees (former 15 CCR § 3075.4) has been repealed.

288.7(c), 667.51, 667.61(j), (l), or (m), or 667.71 [if a victim was a child under age 14]. There is also no presumptive early discharge for parolees who were sentenced to prison for offenses committed between July 1, 1977, and December 31, 1978.^{133/}

When a parolee reaches the presumptive discharge date, CDCR parole staff will prepare a report recommending for or against retaining parole. If staff make a “mistake of fact” in the report, the parolee can file a CDCR Form 602 administrative appeal asking for reconsideration.^{134/}

The case will then be sent to the BPH for review. A parolee does not have a right to personally appear at the review.^{135/} The regulations broadly define the circumstances in which there is good cause to retain a person on parole, taking into account factors such as the original crime, in-prison behavior, and parole adjustment.^{136/} The BPH must give a copy of its decision to the parolee.^{137/}

Unless the BPH acts to retain the parolee after the presumptive discharge date, the parolee “shall” be discharged from parole.^{138/} Parole terminates automatically if the BPH fails to take action to retain the parolee.^{139/} However, there are conflicting cases on whether failure to give a parolee notice of the retention invalidates the retention decision.^{140/}

If the BPH decides to continue parole, the parolee will be reviewed for possible discharge each year until the maximum parole date is reached.^{141/} At these subsequent review dates, a prisoner will remain on parole unless the BPH affirmatively acts to discharge the parolee.^{142/}

133. 15 CCR § 2535(b)(5).

134. 15 CCR §§ 3721-3723.

135. 15 CCR § 2535(c).

136. 15 CCR §§ 2535(d) and 3722(c); DOM §§ 81080.1-81080.1.1.

137. Penal Code § 3001(a); 15 CCR §§ 2535(c) and 3723-3722.

138. Penal Code § 3001.

139. 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].

140. Compare In re Ruzicka (1991) 230 Cal.App.3d 595 [281 Cal.Rptr. 435] and In re Nesper (1990) 217 Cal.App.3d 872 [266 Cal.Rptr. 113] (lack of notice invalidates retention) with In re Stone (2011) 197 Cal.App.4th 746 [128 Cal.Rptr.3d 392], People v. Jack (1997) 60 Cal.App.4th 1129 [70 Cal.Rptr.2d 676], and In re Roa (1991) 1 Cal.App.4th 724 [3 Cal.Rptr.2d 1] (retention valid despite lack of notice).

141. Penal Code § 3001(d); 15 CCR § 2535(c).

142. In re Carr (1995) 38 Cal.App.4th 209 [45 Cal.Rptr.2d 34].

C. How Is the Parole Discharge Date Calculated?

A parolee who is not serving life-long parole and who is retained past the “presumptive discharge date” can calculate when he or she must be discharged from parole. There are two important dates: the “controlling discharge date” (CDD) and the “maximum discharge date” (MDD). The CDD is the date that a parolee is currently set to be discharged from parole if nothing changes. The MDD is the maximum parole term as set by statute (see Section 16.A, above), after which the parolee must be discharged.

Two types of events may change the CDD and MDD:

- Time during which a parolee absconds or is unavailable for supervision does not count toward either the CDD or MDD. There is no limit on how long the CDD and MDD can be extended due to absconding or unavailability.^{143/}
- Time served in custody for parole revocation terms will extend the CDD, but only until the MDD is reached.^{144/}

The pieces of information a parolee needs to figure out his or her CDD and MDD are: (1) the initial parole date; (2) the base and maximum parole terms that apply to his or her case (see Section 16.A, above); (3) how much time he or she has been unavailable for supervision, if any; and (4) the amount of time he or she has served in custody on parole violations.

Here is a calculation worksheet that can be used by any parolee, with an example of a calculation for a parolee named Joe who is serving a three-year parole term with a maximum term of four years following a determinate sentence for a non-serious, non-violent, non-sex offense.

Worksheet

- | | | |
|----|---|----------|
| 1. | Start with the date the parolee was first paroled.
For our example, Joe paroled on January 1, 2013. | 1/1/2013 |
| 2. | Add the amount of time the parolee must serve before a presumptive discharge review. (See Section 16.B, above.)
Joe has a presumptive discharge date of six months plus 30 days, and was eligible for early discharge on July 1, 2013. | 7/1/2013 |
| 3. | However, the BPH acted to retain Joe on parole, so his CDD | 1/1/2016 |

143. Penal Code § 3064. Because the clock stops when a parolee has absconded, a parolee who has been unavailable for only a short time should try to get a violation charge of “absconding” amended to “failure to follow instructions.”

144. Penal Code §§ 3000(b)(6) and 3064.

- | | |
|---|--|
| will be set by his full statutory base parole period. Joe has a three-year base parole period, so his CDD is January 1, 2016. Joe has a statutory maximum parole term of four years, so his MDD is January 1, 2017. | (CDD)
1/1/2017
(MDD) |
| 4. Joe absconded from parole, and the “clock” on his parole term stopped running during that time. This extends both the CDD <u>and</u> the MDD. Joe absconded for three months, so his CDD is now April 1, 2016, and his MDD is now April 1, 2017. | 4/1/2016
(CDD)
4/1/2017
(MDD) |
| 5. Joe also violated parole and served a parole revocation term in custody. This extends the CDD but only until the MDD is reached. Joe’s revocation term was 180 days, but he only served 90 days in jail because he behaved well and got good conduct credits. Thus, 90 days is added to his CDD, which is now July 1, 2016. The revocation time does not affect Joe’s MDD, which is still April 1, 2017. | 7/1/2016
(CDD)
4/1/2017
(MDD) |
| 6. Joe violated parole two more times and got two more 180-day revocation terms (360 days total); while he was in jail, Joe got into fights and refused to work, so he did not get any good conduct credits. The time Joe spends in jail extends his CDD but does not affect his MDD. Also, since a CDD cannot be further in the future than an MDD, Joe has “maxed out” and will be discharged on April 1, 2017. | 4/1/2017
(CDD)
4/1/2017
(MDD) |

In rare cases, a prisoner who is being released to parole will have served too long in prison because of a change in his sentence or a delayed grant of time credits. In such cases, the parolee is entitled to have the extra time spent in prison applied to the parole period.^{145/} However, the parolee will not be discharged from parole unless the amount of excess time credits exceeds the CDD. The same rule applies when a person has pre-sentence time credits that are greater than the prison term – the pre-sentence credit is applied toward the parole period but any remaining parole term will have to be served.^{146/}

17. WHAT SHOULD A PAROLEE DO IF THE PAROLE TERM SEEMS WRONG?

145. In re Lara (1988) 206 Cal.App.3d 1297, 1301 [254 Cal.Rptr. 360]; In re Kemper (1980) 112 Cal.App.3d 434, 438 [169 Cal.Rptr. 513]; In re Ballard (1981) 115 Cal.App.3d 647 [171 Cal.Rptr. 459].

146. Penal Code § 1170(a)(3); People v. London (1988) 206 Cal.App.3d 896, 910-911 [254 Cal.Rptr. 59]; In re Jantz (1984) 162 Cal.App.3d 412, 415-418 [208 Cal.Rptr. 610]; In re Welch (1990) 190 Cal.App.3d 407 [235 Cal.Rptr 470].

The process for challenging the length of a parole term is generally the same as that for challenging a parole condition, as more fully described in Section 6, above. If CDCR parole staff are applying the wrong parole term or calculating the CDD or MDD incorrectly, then the parolee should file a CDCR Form 22 Request for Interview Item or Service. If that does not give satisfactory results, the parolee should file a CDCR Form 602 administrative appeal and pursue it to the highest level of review necessary. (If the problem is with an action by BPH staff – for example, the BPH unfairly retained the parolee past the presumptive discharge date or did not provide notice of the retention – no administrative appeal need be filed.)

A parolee who has completed any required administrative appeals process can continue a challenge to a parole retention or term calculation by filing a state petition for a writ of habeas corpus in the superior court of the county of parole.

PAROLE VIOLATIONS AND REVOCATIONS

18. ARE THERE SOME PAROLEES WHO CANNOT HAVE THEIR PAROLE REVOKED?

Yes.

Effective January 25, 2010, the state created a category of “non-revocable” parole. A parolee must meet certain criteria to be placed on non-revocable parole.^{147/}

Parolees who are on non-revocable parole can still be searched by parole agents and local law enforcement, but they do not have to report to a parole agent and cannot be charged with a parole violation or have their parole revoked.^{148/} Parolees who are placed on non-revocable parole have modified parole conditions that are far less strict than the conditions imposed on regular parolees. However, they still must comply with any requirements that are set by statute.^{149/}

Because of new laws that took effect on October 1, 2011, most or all people who are eligible for non-revocable parole are being placed on Post-Release Community Supervision (PRCS) instead. (See Sections 1, above, and 25, below.)

147. Penal Code § 3000.03. The criteria are that the parolee: (a) is not required to register as a sex offender; (b) was not committed to prison for a serious or violent felony and does not have any prior conviction for a serious or violent felony; (c) was not committed to prison for a sexually violent offense and does not have a prior conviction for a sexually violent offense; (d) was not found guilty of a serious prison disciplinary offense during the most recent prison term; (e) is not a validated prison gang member or associate; (f) did not refuse to sign any forms or provide any DNA samples; and (g) has not been determined by the CDCR to pose a high risk of re-offending.

148. Penal Code § 3000.03; 15 CCR § 3075.2(b)(4)(C).

149. 15 CCR § 3075.2(b)(4)(A).

19. WHAT HAPPENS IF A PAROLEE ABSCONDS OUT OF STATE OR VIOLATES PAROLE OUT OF STATE?

All parolees waive the right to contest extradition as a standard condition of parole; parolees also must waive the right to contest extradition if they are to be paroled out of state.^{150/} Thus, California officials do not have to undergo formal extradition proceedings to return a parolee to California if the parolee absconds to another state or commits a parole violation while in another state.

If a parolee is facing criminal prosecution in the other state, California must wait for the other state's consent or discharge order before the parolee can be returned to California for parole violation proceedings.^{151/} When a parole hold is placed on a parolee who is in out-of-state custody, the CDCR will send the parolee a form allowing the parolee to waive the right to an in-person hearing on the California parole violation charges while he or she is in custody in the other state; the parolee can reserve the right to have a hearing once the out-of-state criminal case is over. The benefit of waiving an in-person hearing is that the parolee will start earning time toward the California parole term again and will also start earning time toward any California parole revocation term.. If the parolee does not sign a waiver, then none of the time served while the criminal case is pending in the other state will count toward a California revocation term.^{152/}

If a parolee under out-of-state supervision does not waive the right to a revocation hearing, California officials can ask the receiving state to conduct a probable cause hearing and make a recommendation, which will be reviewed by the BPH.

150. See CDCR Form 1515; Penal Code § 11177(3); see also Rules Adopted by the Interstate Commission for Adult Supervision, Rule 3.109, at www.interstatecompact.org.

151. Penal Code § 11177(3).

152. See In re Shapiro (1975) 14 Cal.3d 711 [122 Cal.Rptr. 768]; 15 CCR § 2731(c)(2)(B)(4)(b).

20. HOW DOES A PAROLEE GET CHARGED WITH A PAROLE VIOLATION AND WHO DECIDES PAROLE VIOLATION CASES?

A CDCR parole agent who suspects that a parolee has violated the law or a condition of parole may place a parole “hold” and put the parolee in jail pending further proceedings.^{153/} Alternatively, CDCR parole staff can ask the local superior court to issue a warrant for a parolee’s arrest.^{154/}

CDCR parole staff then decide if there is probable cause to believe that the parolee has violated the law or a condition of parole; the staff do not have to hold a hearing or give the parolee a chance to provide information.^{155/} If CDCR staff do not find probable cause, the parolee will be re-released on parole. If CDCR staff do find probable cause, they must decide whether the violation can be addressed by “intermediate sanctions.” Intermediate sanctions might include new parole conditions or requiring participation in treatment or rehabilitation programs. Another type of intermediate sanction is “flash incarceration,” which is detention in the county jail for up to 10 days.^{156/} It is unclear whether the CDCR will actually use flash incarceration. Parolee advocates are concerned that imposing flash incarceration without giving parolees any opportunity to be heard would violate parolees’ due process rights.

If CDCR staff decide that intermediate sanctions are not enough, they will file a formal parole revocation petition in the local superior court. The petition should describe the relevant conditions of parole, the circumstances of the violation, the history and background of the parolee, and any recommendation by parole staff as to the disposition.^{157/} The CDCR should inform the parolee of his or her rights, including the right to consult with an attorney and, if the parolee has no money to hire an attorney, the right to have the court appoint an attorney.^{158/} A parolee can waive the right to an attorney and a hearing, admit the parole violation, and accept the CDCR’s proposed revocation term (sometimes called a “screening offer”).^{159/}

153. Penal Code §§ 1203.2(a), 3000.08(c), and 3056; People v. Woodall (2013) ___ Cal.App.4th ___ [157 Cal.Rptr.3d 220] (decision not yet final as of 8/1/2013) (upholding similar probation provision).

154. Penal Code §§ 1203.2(a), 3000(b)(9)(A), and 3000.08(c).

155. Penal Code § 3000.08(d).

156. Penal Code § 3000.08(d)-(f).

157. Penal Code § 3000.08(f).

158. Penal Code § 1203.2(b)(2).

159. Penal Code § 3000.08(f).

Currently, the law does not set any timelines for these steps.^{160/} A draft CDCR Revocation Process Flow Chart dated April 3, 2013, proposes that CDCR staff make a probable cause determination within 2 business days after a hold is placed, notify a parolee of charges and rights within 3 business days after the hold, and either file a revocation petition with the court or release the parolee within 7 business days after the hold. However, these timelines are not formal regulations and the CDCR is not obligated to enforce them. Thus, parolee advocates have expressed concerns that there could be long delays between placement of parole holds and filing of revocation petitions. Advocates are also concerned that parolees may be pressured into giving up their rights and taking screening offers without having an opportunity to consult with an attorney.

The rest of the parole revocation process is conducted by the local superior court.^{161/} The process is basically the same as for probation and PRCS violations.^{162/} California requires appointment of attorneys for all probation revocations (other than summary revocations where the probationer has absconded),^{163/} so it appears that courts will appoint Public Defenders or other attorneys to represent parolees in all cases. Revocation cases will be heard by judges, magistrates, or court-appointed hearing officers.^{164/}

There are many unanswered questions about exactly how the court parole revocation process will work. There also may be differences between the various counties. Again, there are concerns that parolees will be kept in jail for long periods of time before their cases are heard because there are no set time limits for hearing parole revocation cases.^{165/}

At the hearing, the court must decide whether a “preponderance of the evidence” supports the charges; this means that the state must prove that it is more likely than not that the violation

160. The Valdivia Injunction, which previously set timeliness requirements on the parole revocation process, is no longer in effect. Because of the major changes in parole laws, the court overseeing Valdivia decided that the case is moot and that any problems with the new parole revocation procedures will have to be raised in new cases. Valdivia v. Schwarzenegger (E.D. Cal. July 3, 2013) No. S94-0671LKK/GGH, Order.

161. Prior to July 1, 2013, the Board of Parole Hearings (BPH) conducted all parole revocation hearings. The BPH will continue to hear and resolve parole violation cases that were already pending prior to July 1, 2013. Penal Code § 3000.08(j).

162. Penal Code § 1203.2.

163. People v. Vickers (1972) 8 Cal.3d 451, 461 [105 Cal.Rptr. 305].

164. Penal Code § 1203.2(b)(1) and (f).

165. The Valdivia Injunction, which required the BPH to hold full revocation hearings within 45 days after placement of a parole hold, is no longer in effect now that the courts conduct revocation hearings. Valdivia v. Schwarzenegger (E.D. Cal. July 3, 2013) No. S94-0671LKK/GGH, Order.

allegations are true. Thus, parole may be revoked based on conduct for which a parolee was acquitted of criminal charges.^{166/}

If the court finds there was a parole violation, it can put the parolee back on parole with modified conditions that might include a period of jail custody or referral to a re-entry court or other rehabilitation program. Alternatively, the court can revoke parole and order the parolee returned to the county jail to serve a parole revocation term.^{167/}

There are somewhat different rules and procedures for parolees sentenced to indeterminate prison terms of life with the possibility of parole. (See Section 22, below.)

21. WHAT RIGHTS DOES A PAROLEE HAVE DURING PAROLE REVOCATION PROCEEDINGS?

A. General Constitutional and Statutory Rights

Under state law, parole cannot be suspended or revoked unless there is good cause to believe that a person has violated the conditions of his or her parole.^{168/}

In Morrissey v. Brewer, the U.S. Supreme Court established minimal due process requirements for parole revocation proceedings under the Fourteenth Amendment to the U.S. Constitution.^{169/} Cases since Morrissey have reaffirmed those rights and described them more specifically. Those rights are as follows:

- Written notice of the alleged violations and possible consequences, sufficient to allow a parolee to prepare a defense and obtain mitigating evidence;^{170/}

166. See Penal Code § 3063; In re Dunham (1976) 16 Cal.3d 63 [127 Cal.Rptr.343].

167. Penal Code §§ 3000.08(f)-(g), 3004(a), and 3056(a).

168. Penal Code § 3063.

169. Morrissey v. Brewer (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]. See also In re Law (1973) 10 Cal.3d 21 [109 Cal.Rptr. 573] (no due process right to bail while parole violation proceedings are pending); In re Valrie (1974) 12 Cal.3d 139 [115 Cal.Rptr. 340] (revocation hearing requirements apply even when parole violation also charged as new criminal offense).

170. Morrissey v. Brewer (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]; Vanes v. United States Parole Commission (9th Cir. 1984) 741 F.2d 1197 (due process violated by lack of notice of basis for parole violation charge); Rizzo v. Armstrong (9th Cir. 1990) 921 F.2d 855, 858 (failure to give notice of consequences if parole revoked at hearing).

- Disclosure of the evidence against the parolee;^{171/}
- Timely hearing of the charges at a probable cause hearing and a formal revocation hearing;^{172/}
- The right to present witnesses and documentary evidence.^{173/} A parolee can subpoena and present witnesses and documentary evidence to the same extent that the state can.^{174/} A person served with a subpoena for a parole revocation hearing is required to appear at the hearing unless the hearing is held at a place outside the county of his or her residence and more than 75 miles from his or her residence;^{175/}
- The right to confront and cross-examine adverse witnesses.^{176/} A parolee has a conditional right under the federal and California constitutions to cross-examine people whose statements are used against him or her in a parole violation proceeding. Thus, upon the parolee's request, the people who gave the information that proves the parole violation charge should be made available for questioning by the parolee at the hearing, unless the hearing officer determines that requiring the witness to appear would create a risk of harm. If the state has "good cause" for failing to present a witness and that good cause outweighs the parolee's right to confront the witness, the witness's prior hearsay statements may be presented. The more important the witness's testimony is to the case, the stronger the parolee's right to confront that witness is.^{177/} Courts may overturn a parole revocation if the hearing officer relies on unsworn hearsay without

171. Morrissey v. Brewer (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]; People v. Moore (1983) 34 Cal.3d 215 [193 Cal.Rptr. 404] (state has duty to preserve and disclose material physical evidence).

172. Morrissey v. Brewer (1972) 408 U.S. 471, 485 [92 S.Ct. 2593; 33 L.Ed.2d 484]; People v. Woodall (2013) ___ Cal.App.4th ___; [157 Cal.Repr.3d 220] (decision not yet final as of 6/26/2013) (probation revocation procedures that fail to provide probable cause hearing do not violate due process rights if full hearing occurs relatively soon or if preliminary hearing on any new criminal charges is conducted).

173. Morrissey v. Brewer (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484].

174. In re Carroll (1978) 80 Cal.App.3d 22, 34 [145 Cal.Rptr. 334, 341].

175. Government Code § 11185(a).

176. Morrissey v. Brewer (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]; Valdivia v Schwarzenegger (9th Cir. 2010) 599 F.3d 984, 989.

177. United States v. Comito (9th Cir. 1999) 177 F.3d 1166; Valdivia v Schwarzenegger (9th Cir. 2010) 599 F.3d 984, 989; People v. Arreola (1994) 7 Cal.4th 1144, 1154 [31 Cal.Rptr.2d 631].

determining the unavailability of the declarant or the reliability of the hearsay, or without considering the parolee's interests prior to admitting the evidence.^{178/}

Witnesses may not be required to testify in front of the parolee if they are deemed fearful or confidential. "Fearful witnesses" are witnesses whose identity is known to the parolee but who: (1) have indicated that they are at risk of harm if they testify in the presence of the parolee; or (2) have requested that their contact information not be provided to the parolee. Testimony of a fearful witness can be taken outside the parolee's presence, but the parolee's attorney must be present. A "confidential witness" is one whose identity is not known to the parolee and who would be at risk of harm if his or her identity were disclosed.^{179/} However, if confidential information is used as part of the basis for the charges, a parolee can request that the prosecutor disclose the information or prove that disclosure would create an undue risk of harm to the informant.^{180/}

If a material state witness fails to attend a hearing, and the hearing cannot fairly proceed without the witness, the court can postpone the hearing or dismiss the case. Whether the witness's testimony would be "material" is determined by weighing the importance of the witness's expected testimony against the availability and reliability of any alternative source of the same information. Also, if the state's material witnesses fail to appear, but the parolee's witnesses are present, the parolee and his attorney may want to ask that the testimony of the parolee's witnesses be taken before postponing the rest of the hearing;

- A neutral and detached hearing body;^{181/} and
- A written statement of the decision, the evidence relied on, and the reasons for revoking parole.^{182/}

178. See, e.g., In re Miller (2006) 145 Cal.App.4th 1228 [52 Cal.Rptr.3d 256].

179. See United States v. Comito (9th Cir. 1999) 177 F.3d 1166; 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]. But see People v. Stanphill (2009) 170 Cal.App.4th 61 [87 Cal.Rptr.3d 643] (no need for balancing test where statement meets hearsay exception as "spontaneous statement").

180. See In re Prewitt (1972) 8 Cal.3d 470, 478 [105 Cal.Rptr. 318]; In re Love (1974) 11 Cal.3d 179 [113 Cal.Rptr. 89] (due process violation in failure to disclose contents of "confidential" report where disclosure would not endanger any informant).

181. Morrissey v. Brewer (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484].

182. Morrissey v. Brewer (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484].

In another case, Gagnon v. Scarpell, the U.S. Supreme Court discussed the due process requirements for when counsel must be appointed for a probationer (or by analogy, a parolee) facing a revocation proceeding. Although counsel need not be appointed in all cases, there is a presumptive right to counsel where the parolee has a timely and “colorable” claim that he or she has not committed a violation or that there are substantial reasons justifying or mitigating the violation that are complex or difficult to present. In considering a request for counsel, the responsible authority should consider whether the parolee appears capable of speaking effectively for him- or herself.^{183/} Note that California requires appointment of counsel for all probation revocations (other than summary revocations where the probationer has absconded);^{184/} if the courts use the same procedures for parole revocations, counsel should be appointed in all cases.

Despite Morrissey and Gagnon, for many years California parole authorities rarely appointed attorneys in parole revocation cases and often conducted “unitary” revocation hearings many weeks or months after parole holds were placed. Unfortunately, California courts were reluctant to order remedies for delays in individual cases unless a parolee could show that the delay was unreasonable and that he or she was prejudiced by it.^{185/}

In 2002, a federal court held that California’s former parole revocation practices violated parolees’ procedural due process rights.^{186/} In 2004, the court approved new CDCR and BPH procedures as described in the Valdivia v. Schwarzenegger Permanent Injunction. The procedures set timelines, required the BPH to conduct probable cause hearings prior to holding

183. Gagnon v. Scarpelli (1973) 411 U.S. 77, 790-791 [93 S.Ct. 1756; 36 L.Ed.2d 656]; In re Love (1974) 11 Cal.3d 179 [113 Cal.Rptr. 89] (no constitutional requirement that every parolee be represented by counsel at parole violation hearing).

184. People v. Vickers (1972) 8 Cal.3d 451, 461 [105 Cal.Rptr. 305].

185. See, e.g., In re Valrie (1974) 12 Cal.3d 139 [115 Cal.Rptr. 340]; In re La Croix (1974) 12 Cal.3d 146, 156 [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]; see also In re O’Connor (1974) 39 Cal.App.3d 972 [114 Cal.Rptr. 883] (upholding as “reasonable” delays of 41 days before holding pre-revocation hearing and 117 days before revocation hearing); In re Moore (1975) 45 Cal.App.3d 285, 293 (delay of 55 days is reasonable); Meador v. Knowles (9th Cir. 1992) 990 F.2d 503 (15-month delay not prejudicial when parolee allowed to remain at liberty). But see In re Marquez (2007) 153 Cal.App.4th 1 [62 Cal.Rptr.3d 429] (ordering dismissal of charges and release where parolee prejudiced by delays and other due process violations).

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

full revocation hearings, and required appointment of attorneys for all parolees facing violation charges.^{187/}

In 2008, when voters passed Proposition 9 (“Marsy’s Law”) to limit parolee’s rights in revocation hearings, the federal judge overseeing the Valdivia case ruled that almost all of those limits were unconstitutional.^{188/} However, because the State has made major changes to its parole laws, the court overseeing Valdivia recently decided that the Valdivia Injunction is no longer in effect and that any problems with the new parole revocation procedures will have to be raised in new cases.^{189/} As of early August 2013, the parolees’ attorneys are asking the court to reconsider its decision and to continue to oversee the revocation process to ensure that parolees’ rights are protected.^{190/}

Parolees should note that the “exclusionary rule” for evidence obtained in violation of the Fourth Amendment to the U.S. Constitution does not apply in revocation hearings. Thus evidence is admissible in parole revocation proceedings even if it would be excluded in a criminal case as illegally obtained evidence or as an illegally obtained confession. Accordingly, evidence suppressed in an earlier criminal proceeding is likely to be admissible at a subsequent parole revocation hearing.^{191/}

Parolees may waive their rights, either expressly or by implication as a result of failure to assert the right.^{192/} Therefore, it is important that a parolee take advantage of his or her rights and complain if a right is violated.

187. Valdivia v. Schwarzenegger (E.D. Cal. Mar. 9, 2004) No. S94-0671LKK/GGH, Stipulated Order of Permanent Injunctive Relief (“Valdivia Injunction”). The Valdivia Injunction required placement of a hold within 48 hours (or the next business day if the hold was placed on a holiday or weekend), notice to the parolee within 3 business days after placement of the hold, a probable cause hearing within 13 business days after the hold, and a full revocation hearing within 45 calendar days after the hold. Valdivia Injunction, ¶ IV.11(b) and (d). The BPH was also required to appoint an attorney to represent the parolee in every case within 6 business days after the hold. Id., ¶¶ 11(b)(i), 13, and 14.3.

188. Valdivia v. Brown (E.D. Cal. Jan. 24, 2012) No. S-94-671 LKK/GGH, Order. The only change the judge approved was holding the final revocation hearing within 45 days after placement of the hold, rather than the 35 days required by the original Valdivia Injunction.

189. Valdivia v. Schwarzenegger (E.D. Cal. July 3, 2013) No. S94-0671LKK/GGH, Order.

190. Valdivia v. Schwarzenegger (E.D. Cal. July 19, 2013) No. S94-0671LKK/GGH, Plaintiffs’ Motion for Reconsideration of Order of July 3, 2103.

191. Pennsylvania Board of Probation & Parole v. Scott (1998) 524 U.S. 357 [118 S.Ct. 2014; 141 L.Ed.2d 344] (exclusion of evidence at parole hearing would hinder functioning of parole system); In re Martinez (1970) 1 Cal.3d 641, 649-652 [83 Cal.Rptr. 382, 387-390], disapproved on other grounds in In re Tyrell J. (1994) 8 Cal.4th 68 [32 Cal.Rptr.2d 33]; In re Love (1974) 11 Cal.3d 179, 190 [113 Cal.Rptr. 89].

192. In re La Croix (1974) 12 Cal.3d 146, 153 [115 Cal.Rptr. 344].

B. Rights Regarding Accommodations for Disabilities

Parolees with disabilities are entitled to reasonable accommodations under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 et seq., during parole violation proceedings. Examples of accommodations include ensuring access to the hearing room for a parolee with mobility impairments, providing Braille or taped documents or reading assistance for a vision-impaired parolee, providing assistance in communicating for a developmentally disabled parolee, or providing sign language interpretation for a hearing-impaired parolee.

CDCR parole staff should use effective communication and provide accommodations when arresting parolees, modifying conditions of parole, or imposing sanctions like flash incarceration.^{193/} A disabled parolee who is having problems receiving help from parole staff can submit a CDCR Form 1824 Request for Modification or Reasonable Accommodation, as more fully described in Section 5, above. CDCR parole staff should also alert jail staff and appointed counsel to the needs of disabled parolees when revocation proceedings are initiated.

For cases heard by the BPH (those in which holds were pending before July 1, 2013, and some proceedings for people on life-long parole), the BPH must provide accommodations during the hearing process. Parolees seeking accommodations should use the BPH Form 1073. If the request is denied, the denial can be immediately appealed prior to the hearing by using BPH Form 1074.^{194/}

For revocation cases started on and after July 1, 2013, the parolee's attorney and the court should be responsible for ensuring that a disabled parolee's needs are met during the court processes.

193. See Armstrong Remedial Plan (Jan. 3, 2001), § IV.S; Clark Remedial Plan (Mar. 1, 2002), § VIII.

194. Armstrong v. Davis (N.D. Cal. Aug. 4, 2000) No. C94-2307CW, Stipulation and Order Approving Defendant's Policies and Procedures, § VIII.A and B; 15 CCR § 2251.5.

22. HOW LONG IS A PAROLE REVOCATION TERM? CAN A PAROLE VIOLATOR EARN GOOD CONDUCT CREDITS?

Nearly all parolees serve their parole revocation terms in county jails.^{195/} Also, for most parolees, the maximum return-to-custody term is 180 days, even if there are multiple grounds for the revocation.^{196/} These parolees are no longer subject to extensions of their revocation terms for in-custody misconduct.^{197/} Further, parolees can earn “half-time” credit (two days good conduct credit for every two days actually served in custody) on parole revocation terms, regardless of the nature of the commitment offense or parole violation. If a person serving a parole revocation term violates jail rules or refuses to perform assigned work, then some or all of the conduct credits may be forfeited.^{198/}

There are different rules for people who are on parole from indeterminate prison terms of life with the possibility of parole. Those parolees can get revocation terms of up to 12 months, are not entitled to earn good conduct credits, and are subject to extensions of their revocation terms if they violate rules while they are in custody.^{199/}

There also are special rules for people with maximum parole periods that are life-long (some sex offenders and some murderers). If a person with a life-long parole period gets revoked, he or she will be returned to prison rather than sent to county jail.^{200/} Within a year of the return to custody, a two-member BPH panel will hold a hearing.^{201/} The panel must release the person within one year of the date of the revocation unless it determines the seriousness of the parole violation is such that public safety requires longer incarceration.^{202/} If the panel keeps the prisoner in custody longer than one year, the prisoner is entitled to annual parole consideration hearings thereafter.^{203/}

195. Penal Code § 3056(a).

196. Penal Code § 3056(a). A parolee may not be kept in custody beyond the maximum parole discharge date (see Section 16.C, above).

197. See Penal Code § 3057(e).

198. Penal Code § 4019.

199. Penal Code § 3057(e).

200. Penal Code §§ 3000.08(h) and 3056(b).

201. Penal Code § 3000.1(d).

202. Penal Code § 3000.1(d).

203. Penal Code § 3000.1(d).

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

Sometimes.

A. Proposition 36

Proposition 36 allows or requires a judge 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 if the drug charge is the only parole violation and the parolee has not failed in prior Prop. 36 treatments. The types of parole violations for which Prop. 36 may be used include failure to participate in drug testing; possession or use of a controlled substance; possession of paraphernalia; presence in a place where drugs are used, sold, or given away; or failure to register pursuant to Health and Safety Code § 11590. If a parolee is revoked for a non-violent drug offense and other technical violations of parole, the BPH or court can return him or her to custody based on the non-drug-related violation.^{204/}

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 be required as a condition of parole for up to six more months. Thus, some parolees choose not to take advantage of Prop. 36 diversion if the treatment program term is longer than their likely revocation term.

Parolees who are not eligible for drug diversion under Prop. 36 include:

- Any parolee who has ever been convicted of one or more serious or violent felonies (as listed in Penal Code §§ 667.5 or 1192.7).
- Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and also commits either a misdemeanor not related to the use of drugs or any felony.^{205/}
- Any parolee who refuses drug treatment as a condition of parole.

204. Penal Code § 3063.1(d)(1).

205. Penal Code § 3063.1(b)(2).

Prop. 36 usually can apply to only two parole violations. If a parolee violates a third time for a drug-related offense, he or she is not eligible for Prop. 36 and may be returned to custody.^{206/} Parole may also be revoked if, during drug treatment under Prop. 36, a parolee is either arrested for an offense other than a nonviolent drug possession offense or violates a non-drug-related condition of parole.

B. Drug Treatment Programs with Providers Who Contract with the CDCR

The CDCR may place a parolee in an In Custody Drug Treatment Program (ICDTP) instead of placing a parole hold for a drug-related parole violation. The ICDTPs are run by private providers who contract with the CDCR, and take place in community-based drug treatment facilities. The ICDTPs consist of a 90-day residential phase and a 60-day outpatient phase. A parolee must agree to the ICDTP placement as a condition of parole. Parolees who are not eligible for Prop. 36 can still be placed in an ICDTP. However, parolees who are required to register as sex offenders or who have gang affiliations are excluded from most ICDTPs.

A parolee who is placed in an ICDTP is not serving a parole revocation term, so any time spent in custody awaiting placement or in the program does not extend his or her parole discharge date. However, any time spent in custody waiting for a program space to open up does not count toward the time the parolee is required to spend in the ICDTP.

24. HOW CAN A PAROLEE CHALLENGE A REVOCATION DECISION?

CDCR staff are responsible for the first parts of the revocation process, starting with issuing a parole hold and ending with filing a revocation petition. A parolee can challenge a CDCR actions or lack of action in these stages by filling out a CDCR Form 602 administrative appeal and submitting it to the CDCR parole agent. Possible uses for a 602 appeal include challenging the CDCR's decision to place a parole hold or find probable cause for a violation, asking for an attorney for the early stage of the revocation process, or challenging a delay in filing a formal petition. There are two reasons for filing a 602 appeal and re-filing it to the highest level necessary. One reason is that it might solve the problem. The second reason is that courts usually require parolees to "exhaust administrative remedies" before filing a lawsuit claiming that the CDCR violated their legal rights.

The BPH is still responsible for holding parole revocation hearings in a few types of cases. The BPH does not have any general administrative appeal process. This means that parolees usually do not need to file an administrative appeal before taking complaints about a BPH action or inaction to court. However, there are two BPH administrative remedies that parolees should pursue for certain types of issues. First, when parolees with physical or mental disabilities do not get the help they need for BPH proceedings, they can send a BPH Form 1074

206. Penal Code § 3063.1(d)(3)(B).

or grievance letter to the following address: Board of Parole Hearings, ADA Compliance Unit, P.O. Box 4036, Sacramento, CA 95812. Second, if a BPH commissioner makes a “non-discretionary” error (meaning a simple mistake like a clerical mistake or a mistake about a mandatory date of discharge from parole or credit eligibility during a revocation term), a parolee can write a letter to: Board of Parole Hearings, Quality Control Unit, P.O. Box 4036, Sacramento, CA 95812.

After exhausting any required administrative remedies, parolees can challenge a CDCR or BPH action or decision by filing a state court petition for a writ of habeas corpus. If the court issues an “order to show cause,” it must then appoint an attorney to represent the parolee at state expense if the parolee requests an attorney and shows that he or she does not have enough money to pay an attorney.

Parolees who are challenging a parole revocation decision made by a court should be able to file a direct appeal under the statute that allows an appeal “from any order made after judgment, affecting the substantial rights of the party.”^{207/} To appeal, the parolee must file a notice of appeal in the superior court within 60 calendar days after the court’s decision.^{208/} When a timely notice of appeal is filed, the superior court will prepare a record of the parole revocation proceedings consisting of all the documents filed in the court and transcripts of the hearings and provide these documents to the court of appeal, the state, and the parolee. In a direct appeal, the court of appeal must appoint an attorney to represent the parolee at state expense if the parolee does not have enough money to pay for one.

If a parolee does not file a timely notice of appeal or if the issue involves information outside the court record, then the parolee may be able to raise the issues in a state court petition for a writ of habeas corpus.

There are many types of issues that a parolee can raise in a challenge to a revocation proceeding or decision. Claims can be based on violations of state or federal constitutional due process rights, California or federal statutes, or California administrative rules. For example, a parolee could argue that the revocation hearing is being unreasonably delayed, that he or she was denied the right to cross-examine witnesses at the hearing, or that the revocation decision was not supported by the evidence. Unfortunately, in most cases, the process for raising such challenges will be too slow to provide any relief before the parolee serves the entire revocation term. However, parolees may still benefit by getting their parole revocation cases re-heard, getting their revocations vacated, and/or getting the time served for the revocation deducted from the controlling parole discharge date.

207. Penal Code § 1237(b).

208. California Rules of Court, rule 8.308.

More information on direct appeals and state habeas corpus petitions, including sample forms, can be obtained for free by writing to the Prison Law Office or going to www.prisonlaw.com.

POST-RELEASE COMMUNITY SUPERVISION (PRCS)

25. WHAT IS PRCS AND HOW IS IT DIFFERENT FROM PAROLE?

Some people who are released from prison now serve a period on Post-Release Community Supervision (PRCS) instead of parole. People on PRCS are supervised by county agencies, not the CDCR. How PRCS operates, and what services are available, varies from county to county.

A. Eligibility for PRCS

Before a person is released from prison, a correctional counselor will screen the case and decide whether to refer the person to parole or PRCS. A person who has any of the case factors described in Section 1, above, is placed on parole. All other people are placed on PRCS (unless they have entirely discharged their sentences).^{209/}

People who were paroled from state prison prior to October 1, 2011, stay on parole rather than being placed on PRCS. However, if those parolees are returned to custody for revocation terms, the CDCR will screen their cases to decide if they should be returned to parole or placed on PRCS after serving the revocation term.^{210/}

B. PRCS Term Lengths and Conditions

A PRCS term can last no more than three years.^{211/} Time during which a person absconds and is not available for supervision is not counted toward the PRCS period.^{212/}

The county supervising agency can consider releasing a person from PRCS early if he or she serves six months with no violations; however, whether to grant such a release is up to the discretion of the supervising agency.^{213/} The agency must release a person from PRCS early if he

209. Penal Code § 3451.

210. Penal Code § 3000.09(c).

211. Penal Code § 3451(a).

212. Penal Code § 3451(b).

213. Penal Code § 3456(a)(2)-(3).

or she serves one year on PRCS with no violations; the discharge should be completed within 30 days.

People generally are placed on PRCS in the county of their last legal residence before they went to prison. However, the CDCR can send a person to PRCS in a different county for various reasons, including victim safety concerns or helping the person maintain family ties or benefit from work or educational programs.^{214/} The law also implies that people may ask to transfer to a different county after they are on PRCS.^{215/}

The law says a person placed on PRCS must report “to the supervising county agency.”^{216/} Usually, the supervising county agency will be the Probation Department. Prison correctional counselors should give parolees more specific reporting instructions before their release.

People on PRCS have to comply with supervision conditions.^{217/} The standard conditions are similar to parole conditions, and include agreeing to be searched by law enforcement without probable cause, informing the Probation Department of home and work addresses, and not possessing or having access to weapons.^{218/} The standards for determining whether a PRCS condition is unlawful are generally the same as for parole conditions (see Section 3.E, above.)

C. PRCS Violations and Revocation

PRCS agencies are supposed to develop and use “intermediate sanctions” for minor violations of PRCS conditions. Intermediate sanctions include programs like drug treatment, mental health counseling, and job assistance.^{219/}

Another type of punishment for violation of a PRCS condition is “flash incarceration.” Flash incarceration is an immediate return to jail for a period of up to ten days. One of the conditions for being placed on PRCS is giving up the right to demand a court hearing before

214. Penal Code § 3003(a)-(c).

215. Penal Code § 3456(a)(5).

216. Penal Code § 3453(c).

217. Penal Code § 3452.

218. Penal Code §§ 3067(a), 3453.

219. Penal Code § 3450(b)(8)

being subject to flash incarceration.^{220/} It is unclear whether this requirement complies with due process and it may be subject to court challenges.

If the PRCS supervising agency decides that more serious punishment is appropriate, the agency will file a petition to modify, revoke, or terminate PRCS. The petition will be filed with a hearing officer appointed by the superior court. Either the supervising agency or the hearing officer can decide to keep a person in custody while the petition is pending.^{221/}

A person facing a PRCS violation petition has the right to a hearing. It appears that, at least in some cases, there is also a right to be represented by an attorney appointed by the county. (See Section 21, above, for more discussion of due process rights and other rights in revocation hearings.) Alternatively, a person on PRCS can give up the right to an attorney and a hearing, admit the violation, and accept the proposed punishment.^{222/}

If a hearing is held, and the hearing officer finds that the person has violated the PRCS conditions, the officer can choose from the following punishments:

- Return the person to PRCS with modified conditions;
- Refer the person to a program or to a re-entry court for assessment for a program; or
- Revoke PRCS and order the person confined to county jail for a term of no more than 180 days.^{223/} People who are ordered to serve county jail time for a PRCS violation can earn two days of good conduct credits for every two days actually served.^{224/}

26. CAN A PERSON CHALLENGE A PRCS CONDITION OR REVOCATION?

Yes. The procedure will depend on whether the decision was made by the supervising agency or the court, and when the challenge is being raised.

220. Penal Code §§ 3453(q) and 3454(c). People earn credit toward their PRCS terms for actual time spent in flash incarceration, but do not earn any good conduct credits for such incarceration. Penal Code §§ 4019(i) and 3450(b)(8)(A).

221. Penal Code § 3455(a), (b), and (c).

222. Penal Code § 3455(a).

223. Penal Code § 3455(a) and (d); Re-entry Court procedures are discussed at Penal Code § 3015.

224. Penal Code § 4019.

If a person is challenging a decision by the supervising agency, such as a condition of PRCs or refusal to release him or her from parole, the person should complete any administrative appeal or grievance process that is available. If there is no administrative appeal process or the administrative appeal is unsuccessful, then the person can file a state petition for a writ of habeas corpus in the local superior court.

If a person is challenging a decision made by the court or a court-appointed hearing officer, the person should be able to proceed with a court challenge. It appears likely that a direct appeal can be filed under the statute that allows an appeal to be filed “from any order made after judgment, affecting the substantial rights of the party.”^{225/} To appeal, the parolee must file a notice of appeal in the superior court within 60 calendar days after the court’s decision.^{226/} When a timely notice of appeal is filed, the superior court will prepare a record of the parole revocation proceedings consisting of all the documents filed in the court and transcripts of the hearings and provide these documents to the court of appeal, the state, and the parolee. In a direct appeal, the court of appeal must appoint an attorney to represent the parolee at state expense if the parolee does not have enough money to pay for one.

If the notice of appeal is not timely filed or if the issue involves information that is not in the court record, then it might be possible to raise the issues in a state court habeas corpus petition.

More information on direct appeals and state habeas corpus petitions, including sample forms, can be obtained by writing to the Prison Law Office or by visiting the Resources page at www.prisonlaw.com.

225. Penal Code § 1237(b).

226. California Rules of Court, rule 8.308.