ALABAMA BOARD OF PARDONS AND PAROLES
ADMINISTRATIVE CODE

CHAPTER 640-X-9
PAROLE VIOLATIONS AND REVOCATIONS

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640-X-9-.01 Parole Violations.

A probation and parole officer who has received information indicating that a parolee under his or her supervision may have violated a condition of parole shall investigate the alleged violation in a timely manner. The thoroughness of the investigation shall be proportionate to the seriousness of the alleged violation. The officer should make a preliminary determination of the seriousness of the charges. Appropriate violation responses should be used or recommended by the supervising officer, including non-confinement-based as well as confinement-based sanctions in accordance with the Agency's Supervision Response Matrix. The Supervision Response Matrix is not a public record. If the officer believes no further action is required, he or she may report the investigation in the "Notice of Violation" format to Field Operations.

Author: Meridith H. Barnes, Laura B. Mest, Greg Locklier
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640-X-9-.02 Confinement-Based Sanctions ("Dips") And Revocation Caps ("Dunks").

(1) Confinement-based sanctions ("dips") for parole violations may be imposed by the Board or the supervising probation and parole officer in accordance with applicable law. If the violation at issue is appropriate for a 2-3 day period of confinement ("dip"), such will be imposed by the supervising officer with approval from

the officer's supervisor after the parole violator signs an appropriate waiver form, approved by the Agency, giving notice of the specific violation charges alleged by the supervising officer and those rights defined by Alabama law. The parole violator, the supervising officer, and the supervisor of the supervising officer all must sign the waiver in order for it to be effective under law. The waiver must specify the number of days of confinement that will be imposed and the date/time of release. No further delinquency action will follow on a "dip" and the signed and completed waiver form will be adequate documentation to accompany a violator presented by the supervising officer to the local jail. The same form will serve as sufficient documentation for the violator to be released back to supervision as of a date/time specified on the form. However, the supervising officer shall monitor the "dipped" parole violator while serving the confinement-based sanction and coordinate the release of the parole violator back to supervision with local jail officials.

(2) The supervising officer's authority to impose "dips" is limited to 2-3 days at a time, no more than 6 days per month, and not more than 18 days for the parolee's supervision term.

(3) Should a parole violator refuse a "dip," Alabama law allows for the violator to request a Parole Court hearing within ten (10) days of refusal. In such event, or if the nature of the violation is more appropriate for full revocation, Rule 640-X-9-.03 procedures will apply, subject to statutory revocation caps ("dunks").

(4) Alabama law requires that three (3) periods of confinement be imposed by the Board on all parole violations of up to 45 days ("dunks") before the Board may revoke parole unless the parole violator's current offense for which he/she is being supervised is a violent Class A or sex offense or if the charged parole violator was arrested, convicted, or absconded. "Absconding" shall be defined as willfully avoiding supervision or by willfully making the parolee's whereabouts unknown to the supervising parole officer.

(5) The Board may not exceed three (3) "dunks." However, the Board holds authority, itself, to directly impose unlimited short periods of confinement of up to three (3) days ("dips"). Moreover, Alabama law provides that the Board may revoke the parole violator's balance of the original sentence or any or any portion thereof, calculated from the date of delinquency.
Author: Meridith H. Barnes, Laura B. Mest, Greg Locklier.
Statutory Authority: Code of Ala. 1975, §§ 15-22-21, 29, 32, 37.
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640-X-9-.03 Parole Revocation.

The following process shall govern parole revocation, leading up to Parole Court:

(a) In pursuit of revocation and subject to statutory revocation caps ("dunks"), whether outright or in the event a "dip" is refused by the parole violator, the parole officer, after investigating the alleged violation and determining that the allegations are well founded, shall submit a written report in the "Report of Parole Violation" format, to the Field Operations Division, the Revocation Unit, the regional Parole Court Hearing Officer, and the parole violator.

(b) The submission of the Report of Parole Violation shall initiate the Parole Court Hearing process. The parolee shall be directed to appear before the Parole Court for an evidentiary hearing.

(c) If the parole officer has reason to believe that the public would be endangered or that the parolee would abscond supervision if left at liberty, pending further action, he or she may issue an "authorization to arrest" writ and cause the parolee to be held in the local county jail. The officer submitting the report shall coordinate with the regional Parole Court Hearing Officer to schedule Parole Court and must do so within seventy-two (72) hours of any arrest. This hearing must occur within twenty (20) business days from receipt of notice from the Department of Corrections of the return of the parole violator to custody or the individual will be released from custody pending his/her Parole Court hearing.

(d) The Field Operations Division will review notices and reports of parole violation when received from the field officer through the supervisory chain of command. Field Operations will determine whether there is reasonable cause to believe the parolee has violated the terms of parole in an important respect and whether the violation is sufficiently serious to warrant referral to the Board for declaration of delinquency. Declarations of delinquency shall be docketed for the Board's consideration on a weekly basis by Field Operations unless the Board has no regularly scheduled meetings during a particular week.

(e) Field Operations shall notify the Department of Corrections of the date the Board declares a parolee delinquent.

(f) Field Operations shall also determine whether the alleged violation is sufficiently serious to authorize the Department of Corrections to issue a fugitive warrant. If so, notice authorizing the issuance of a fugitive warrant by the Department of Corrections shall be promptly transmitted.

(g) If at any time prior to the Parole Court hearing, the investigating officer needs to supplement the Report of Parole Violation, and/or Field Operations directs modification or supplementation of the report, a supplemental/corrected report must be recirculated to Field Operations, the Hearing Officer, and the parole violator. Field Operations will, in turn, be responsible for forwarding any supplemental/corrected report to the Board.

(h) The decision whether to incarcerate the parolee pending Parole Court may be reconsidered at any point in the revocation process. The Board retains jurisdiction to reconsider whether to enter or void a declaration of delinquency at any point in the process.

(i) The Parole Court hearing may occur prior to the decision to refer the charges to the Board for declaration of delinquency and/or prior to the decision to authorize the Department of Corrections to issue a fugitive warrant.

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640-X-9-.04 Parole Court Hearing.

The procedure for conducting Parole Court shall be as follows:

(a) Designated Parole Court Hearing Officers hold Parole Court and determine the facts pertaining to alleged parole violations. These Hearing Officers are authorized to determine whether the parolee is guilty of alleged violations as well as to determine whether there is probable cause to detain the parolee pending final resolution of the charges.

(b) At the Parole Court hearing, the Hearing Officer will decide whether parole violation charges are proven, evidence in mitigation and/or aggravation will be heard, and the Hearing Officer will determine whether it is appropriate to detain the parolee pending the Board's decision. The Hearing Officer may also determine whether probable cause exists to detain the parolee and continue the hearing until a later date for determination of guilt. The evidence taken at the Parole Court hearing may be considered in the determination of guilt.

If there is no reasonable cause to detain the parolee pending further hearing, the Board shall be promptly notified in writing.

(c) The investigating or charging officer shall provide the parolee with a copy of the Report or Notice containing the charges of violation prior to or contemporaneously with notice of the date, time, and place of Parole Court if the parolee is incarcerated. If the parolee is not incarcerated, the officer may deliver those documents by U.S. Mail, addressed to the parolee's address of record (as reflected in the parole officer's supervision notes). The officer serving these papers shall return a written certificate of service to the Revocation Unit.

(d) The Hearing Officer may accept a knowing, intelligent guilty plea to parole violation charges. Before doing so, the Hearing Officer shall read the specific charges to the parolee and explain the rights he/she waives by entering a plea. The Hearing Officer shall not accept a guilty plea unless the parolee does, in fact, acknowledge violation of the conditions of parole. The Hearing Officer shall document the facts admitted to by the parolee and have the parolee sign the acknowledgement of guilt.

(e) The parolee is responsible for notifying his or her legal counsel and witnesses of the date, time, and place of the Parole Court hearing. He or she is also responsible for forwarding a copy of the charges to legal counsel. Bureau staff may assist in contacting counsel or witnesses as a courtesy to the parolee and may provide copies of the charges or other documents pertaining to Parole Court to the parolee's legal counsel. Documents will be served on the parolee, either by personal service or U.S. Mail to provide reasonable notice of the charges and proceedings.

(f) The Parole Court Hearing Officer may exercise reasonable discretion if any party requests a continuance of a hearing. The entire hearing may be rescheduled or the Parole Court may hear such evidence as is available and continue the hearing for further evidence, as may best serve the ends of justice. If the parolee requests a continuance and the continuance is denied, the Parole Court should enter into the record the request, the stated grounds for the request, and the reasons for denying the request.

(g) The Hearing Officer shall preside over the hearing and govern its conduct. The Hearing Officer shall ensure that the record accurately reflects all necessary notices and compliance with all procedural safeguards. Witnesses may appear and present testimony by video conference.

(h) The charging officer or his or her designee shall present the case of the alleged parole violations and may question any witness. The officer may testify in narrative format if he or she is a competent witness to any issue.

(i) The parolee shall be allowed to present evidence in his or her own defense. The parolee's witnesses shall be subject to cross-examination. The parolee shall be allowed to cross-examine accusing witnesses, unless the Hearing Officer specifically finds good cause to believe the witness would be endangered by confrontation. If confrontation is disallowed, the Hearing Officer will make reasonable efforts to balance the parolee's need for cross-examination.

(j) The Hearing Officer may question any witnesses and should permit each side to ask follow-up questions.

(k) The Hearing Officer may exercise reasonable discretion to disallow or limit any question that seeks to elicit information not pertinent to the issues or tending towards abuse or harassment. The Hearing Officer should include in the record any questions disallowed and the reason(s) for the ruling.

(l) For purposes of determining whether probable cause exists, the Hearing Officer may consider any relevant information, including hearsay. For purposes of determining guilt, the Hearing Officer shall consider any evidence that would be admissible under either the Alabama Rules of Evidence or the Federal Rules of Evidence. The Hearing Officer may also consider any other evidence, including hearsay, that appears to be reliable and probative, but may not determine guilt based solely upon hearsay evidence. Commonly accepted treatises on evidence, including Gamble's, McElroy's, Wigmore's, and McCormick's should be considered persuasive authority for determining the admissibility of evidence. The Hearing Officer must state the evidence relied upon in making his/her determination.

(m) The Parole Court shall allow the parolee great leeway in presenting mitigating information. For purposes of mitigation, the Hearing Officer shall consider any information offered by the parolee. Any objections shall go to the weight of the evidence and not to its admissibility.

(n) The Hearing Officer may take judicial notice of conditions of parole imposed by the Board or by another state pursuant to the Interstate Compact. The parolee may introduce evidence that he or she was not aware of a condition. The Hearing Officer shall take judicial notice of the laws of the State of Alabama. In the absence of proof to the contrary, the Hearing Officer may rely on a copy of a municipal ordinance or of a statute of another jurisdiction as evidence of the law in that

jurisdiction. The Hearing Officer may presume, in the absence of proof to the contrary, that each municipality in Alabama has adopted an ordinance incorporating the penal provisions of the Alabama Code into its municipal law. The Hearing Officer may accept a certified copy of a judgment of conviction as conclusive evidence that the parolee is guilty of violating a law, provided that, in the case of a conviction in municipal court or district court, the time for appealing to circuit court for trial de novo has run before the certification was issued.

(o) The Hearing Officer may determine that a parolee is guilty of violating a law, but that the offense was less than that named in the delinquency report. The Hearing Officer may also determine that a parolee is guilty of violating a law other than that named in the delinquency report, if the report provided fair notice to the parolee of the wrongful conduct at issue.

(p) If the parolee has not been incarcerated pending the Parole Court hearing, the Parole Court shall determine whether incarceration is appropriate pending the Board's final decision.

Author: Meridith H. Barnes, Laura B. Mest, Greg Locklier.
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640-X-9-.05 Parole Court Reports.

Subsequent to conducting Parole Court, the Hearing Officer shall compose a Parole Court report for the Board, subject to the following:

(a) The Parole Court report shall contain written findings of fact. The report shall state what evidence was relied upon in reaching conclusions. The report shall clearly state whether each charge was proven. If the parolee is found guilty of violating the terms of parole, the Hearing Officer shall also include in his or her report a detailed assessment of the mitigating and/or aggravating circumstances.

(b) The Hearing Officer's report shall address applicable statutory limitations, i.e., whether statutory revocation caps ("dunks") apply.

(c) The Revocation Unit shall serve a copy of the Hearing Officer's report on the parolee and place a copy of the certificate of service in the parolee's file.

(d) The Hearing Officer's written report is the official record of the Parole Court hearing.

(e) If no charges are proven to the reasonable satisfaction of the Hearing Officer, the Revocation Unit shall prepare a draft order for the Board's signature, directing withdrawal of any warrant issued by any authority of the Agency. The draft order and Hearing Officer's report shall be placed in the parolee's file to be presented to the Board for action by the most expeditious means.

(f) A parolee who has been accused of a specific violation after the charge is found "not proven" at Parole Court shall not have parole revoked for that violation, unless the charge is subsequently proven in a subsequent evidentiary hearing or unless he or she is convicted of an underlying criminal charge.

(g) If the parolee is found guilty of any charge, the Hearing Officer's report shall be filed with the Revocations Unit, which will present the Parole Court report and recommendation of the Hearing Officer to the Board as soon as practicable.

(h) The Revocation Unit and the supervising officer shall be responsible for tracking the number of "dunks" imposed on each parolee.

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640-X-9-.06 Board Action Subsequent to Parole Court.

(1) The Board shall consider Parole Court dockets during regularly scheduled open public meetings. After consideration of the Parole Court report, the Board shall decide whether to continue parole, reinstate parole, impose an up-to-45-day period of confinement ("dunk") or other sanction, or revoke parole. The Board will only consider revocation on charges proven to the reasonable satisfaction of the Parole Court. However, the Board may remand any charge for further hearing.

(2) Any Board order "dunking" or revoking parole shall state the reasons for revocation and shall refer to the evidence relied upon in determining that revocation is appropriate.

(3) If the Board is inclined to reinstate parole, the case may be continued pending verification of a home and job plan or the Board may reinstate parole supervision contingent upon verification of a

home and job plan, withholding notification of reinstatement to the Department of Corrections pending verification of the same.

(4) If the Board is of the opinion that the interests of justice will be served by remanding a case for further hearing, either to ensure that the parolee has received due process or to ensure that society is properly served by a more thorough fact-finding process, such proceedings shall be conducted as promptly as may be practicable.

(5) The Board retains jurisdiction to reconsider any revocation matter that they may later determine to have been improvidently ordered.

(6) The Revocation Unit shall notify the Department of Corrections of any order "dunking" or revoking parole or returning a parolee to parole supervision within five (5) business days of Board action.

(7) The Revocation Unit shall ensure Field Operations receives copies of any necessary dockets, orders, and records.
Author: Meridith H. Barnes, Laura B. Mest, Greg Locklier
Statutory Authority: Code of Ala. 1975, §§15-22-21, 15-22-32, 15-22-37.
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640-X-9-.07 Revocation Reconsideration Procedures.

(1) Following revocation of parole or mandatory supervision, the person supervised may request reconsideration by the board.

(2) Persons seeking revocation reconsideration may do so by submitting an ABPP-7 within either six months of:

(a) the board's order revoking supervision; or

(b) an acquittal, dismissal (with prejudice), or nolle prosequi (with prejudice and without conditions) of all criminal charges relied upon by the Board to revoke parole.

(3) Reconsideration requests submitted pursuant to section (2)(b) must include a copy of the relevant court order.

(4) Bureau staff will screen submitted applications for completeness before forwarding to the Legal Division for legal review. Staff may summarily reject incomplete or procedurally improper requests without obtaining legal review.

(5) At minimum, legal review will consist of determining if:

(a) the sanction imposed by the board was lawful,

(b) the revocation proceedings complied with due process requirements,

(c) there is clear and convincing evidence of innocence,

(d) the parole court record contains non-hearsay evidence supporting the hearing officer's findings, and

(e) the terms of the court order and circumstances of its issuance justify reconsideration for requests submitted pursuant to (2)(b) above.

(6) The Legal Division will forward appropriate requests passing legal review together with any recommendations to the board.

(7) The board may deny or grant reconsideration requests and, when granted, order any relief it deems appropriate.

(8) Appropriate bureau staff will inform the requestor by mail of any procedural rejection or final merits decision made on the request.

(9) Nothing in this rule shall create a right, expectation, or liberty interest in having the revocation of supervision reconsidered by the board.

Author: Eric Anderson, Gary Willford, Jr., James Walters.
Statutory Authority: Code of Alabama 1975, §§ 15-22-21, 15-22-32, 15-22-37.
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