



Rules of Department of Corrections

Division 80—State Board of Probation and Parole Chapter 4—Rights of Alleged Probation, Parole, or Conditional Release Violator

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Title 14—DEPARTMENT OF CORRECTIONS

Division 80—State Board of Probation and Parole

Chapter 4—Rights of Alleged Probation, Parole, or Conditional Release Violator

14 CSR 80-4.010 Arrest and Detention of an Alleged Violator

PURPOSE: There is statutory authority governing the arrest and detention of persons who have allegedly violated the conditions of parole, and this rule complies with this statute.

(1) An alleged probation, parole, or conditional release violator may be arrested by any probation and parole officer, or anyone s/he may deputize to do so, when in the judgment of the officer the probationer, parolee, or conditional releasee has violated the conditions of probation, parole, or conditional release. A statement in writing is given to the arresting officer. A written copy of the alleged violations is furnished to the detaining authority.

(2) After arrest and detention, the probationer, parolee, or conditional releasee is given a copy of the warrant setting out the alleged violations.

AUTHORITY: sections 217.040, 217.720, and 217.722, RSMo 2000. This rule was previously filed as 13 CSR 80-4.010. Original rule filed Feb. 5, 1968, effective Feb. 15, 1968. Amended: Filed July 1, 1970, effective July 11, 1970. Amended: Filed March 15, 1974, effective March 25, 1974. Emergency amendment filed Aug. 6, 1979, effective Aug. 16, 1979, expired Nov. 11, 1979. Amended: Filed Aug. 6, 1979, effective Dec. 13, 1979. Amended: Filed July 15, 1988, effective Nov. 1, 1988. Amended: Filed Dec. 22, 2011, effective June 30, 2012.*

**Original authority: 217.040, RSMo 1982, amended 1989, 1993, 1995; 217.720, RSMo 1982, amended 1989, 1990, 1994; and 217.722, RSMo 1989, amended 1990, 1995.*

Douglas v. Buder, 412 U.S. 430, 93 S.Ct. 2199, 37 L.Ed.2d 52 (1973). Issuance of a traffic citation is not an “arrest” under either Missouri or Arkansas law for which failure to report cannot be grounds for revocation of probation without violating due process.

14 CSR 80-4.020 Preliminary Hearing

PURPOSE: An alleged supervised released

*violator is entitled to a preliminary hearing under the provisions of a United States Supreme Court decision, **Morrissey v. Brewer**, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).*

(1) Every alleged violator has the right to an informal hearing to determine if there is probable cause a violation of supervised release has occurred.

(2) The alleged violator may indicate his/her desire for a hearing, or his/her waiver of a hearing, by so indicating on a form entitled, Request for Waiver of Preliminary Hearing, which will be furnished to him/her by his/her parole officer.

(3) There are certain conditions to be met in the conducting of a preliminary hearing.

(A) The preliminary hearing will be held as promptly as is convenient after the arrest.

(B) The preliminary hearing will be held reasonably near the place of the alleged violation or arrest. The officer will notify the alleged violator of the date, time, and location of the hearing and will designate the officer who will conduct the hearing. The charges brought against him/her will also be furnished to him/her. In no instance will the officer conducting the hearing be the alleged violator’s supervising officer or that officer’s immediate supervisor.

(C) The hearing officer will be in charge of the hearing and only the alleged violator and the hearing officer will be present, unless the hearing officer feels a security officer should be in attendance. Only one (1) witness will be allowed in the hearing room at a time. The hearing officer will initiate all questioning of witnesses and may terminate any questioning if the testimony becomes irrelevant, repetitious, or excessive.

1. The alleged violator may present his/her own testimony and present any documents or other evidence or mitigating circumstances which may explain the violation.

2. The alleged violator may present his/her own witnesses who can give relevant information concerning the violator. The witnesses cannot just be character witnesses. It will be the responsibility of the alleged violator to produce his/her own witnesses, and if s/he is in custody, the officials in charge of the detaining facility will allow him/her to make contacts as may be necessary. The hearing officer does not have subpoena power, and there are no funds available to issue the appearance of any witness nor to pay any other expenses incurred by the alleged violator in preparation for or resulting from the preliminary hearing.

3. The alleged violator may confront or cross-examine any adverse witnesses unless the hearing officer determines that the witnesses may be subject to risk of harm if their identity is disclosed.

4. The alleged violator will not be allowed to have an attorney present, as this is an informal review to establish probable cause. The only exception shall be if the hearing officer has reason to believe the alleged violator is incapable of understanding the proceedings.

5. Upon completion of the hearing, the hearing officer will forward a written hearing report to the court or the board for further action. The alleged violator will receive a copy of the report as soon as it can be prepared and delivered.

6. When the preliminary hearing is being held by the sentencing court, that court may combine the preliminary and revocation hearings. When this occurs, the hearing shall be governed by the rules of that court and the provisions of this administrative rule.

7. When the probationer is not arrested in the jurisdiction of the sentencing court, the preliminary hearing may be conducted by the judge or associate circuit judge in the county of the alleged violation or arrest having original jurisdiction to try criminal offenses. When this occurs, the hearing shall be governed by the rules of that court and the provisions of this administrative rule.

AUTHORITY: sections 217.040, 217.720, and 217.722, RSMo 2000. This rule was previously filed as 13 CSR 80-4.020. Original rule filed March 15, 1974, effective March 25, 1974. Emergency amendment filed Aug. 6, 1979, effective Aug. 16, 1979, expired Nov. 11, 1979. Amended: Filed Aug. 6, 1979, effective Dec. 13, 1979. Amended: Filed July 15, 1988, effective Nov. 1, 1988. Emergency amendment filed Dec. 18, 1991, effective Feb. 1, 1992, expired May 30, 1992. Amended: Filed Dec. 18, 1991, effective June 25, 1992. Amended: Filed Dec. 22, 2011, effective June 30, 2012.*

**Original authority: 217.040, RSMo 1982, amended 1989, 1993, 1995; 217.720, RSMo 1982, amended 1989, 1990, 1994; and 217.722, RSMo 1989, amended 1990, 1995.*

14 CSR 80-4.030 Revocation Hearing

*PURPOSE: An alleged supervised released violator is entitled to a revocation hearing by the parole board under statutory authorization and under the provisions of a United States Supreme Court decision, **Morrissey v. Brewer**, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).*



(1) When the board chooses to pursue revocation of probation, parole, or conditional release, the alleged violator has the right to a revocation hearing before the authority that originally granted the probation, parole, or conditional release. The hearing will be held within a reasonable time frame after the alleged violator has been made available to the granting authority either by return to the Department of Corrections for appearance before the parole board or return to the jurisdiction of the court.

(A) An alleged probation, parole, or conditional release violator will be contacted by an institutional or field probation or parole officer and given a "Request for or Waiver of Preliminary Hearing," included herein, form to sign indicating whether s/he requests a revocation hearing or whether s/he waives a hearing.

(B) Alleged probation violators will appear before the court and make their desires known at that time as to whether they want a revocation hearing.

(C) The alleged violator may present his/her own testimony regarding the alleged violation, and may present any other documents or evidence of mitigating circumstances which may explain the violation.

(D) The alleged violator may present his/her own witnesses who have relevant information concerning this violation. These witnesses are not just to be character witnesses. It will be the alleged violator's responsibility to produce his/her own witnesses, and s/he will be given an opportunity to make contacts as may be necessary to assure the appearance of any witnesses or to pay any expenses incurred by the alleged violator in preparation for or resulting from the hearing.

(E) The alleged violator may confront and cross-examine any adverse witness unless the board finds good cause for not allowing a confrontation or cross-examination.

(F) The alleged probation, parole, or conditional release violator may have a representative of his/her choice at the revocation hearing. The representative may be a family member, a friend, an employer, or legal counsel.

(G) A statement by the court or the board as to the evidence relied on and reasons for revoking shall be supplied to the probationer, parolee, or conditional releasee.

(2) After the revocation hearing of an alleged probation, parole, or conditional release violator, the board will reach a decision within a reasonable amount of time. The inmate will receive a written notice of the board's action as soon as the notice can be prepared and

delivered. Following is a possible list of decisions the board may make, but does not exhaust the decisions open to the board:

(A) The board may request additional information by means of various types of reports from the supervising parole officer, consulting psychologist or psychiatrist, or any other party or agency that might be able to supply additional information regarding the violation;

(B) The board may schedule the alleged violator for another personal hearing before the board to look more deeply into the violation;

(C) The board may revoke and reschedule the violator for a hearing or release.

1. If the remaining time on the sentence from the date of revocation is less than twelve (12) months, it is very likely the board will give a complete denial of further parole consideration.

2. If the remainder of the sentence to serve after revocation is more than twelve (12) months, the board may schedule a hearing. The hearing will be held within one (1) year for technical violators and absconders. A violator with a new sentence to the Missouri Department of Corrections will be held in accordance with board policy; and

(D) The board may not revoke, but consider the alleged violator for reinstatement on parole or conditional release. The release will occur as soon as a satisfactory plan is approved by the board.

(3) Following are the rules regarding time accredited to a parole or conditional release violator's sentence:

(A) For those offenders who were arrested for a crime while on parole or conditional release and received a conviction and sentence to be served outside the Department of Corrections, the board shall determine what part, if any, of the time from the date of arrest until completion of the sentence imposed, is counted as time served under the sentence from which they were paroled or conditionally released;

(B) For those offenders who violate parole or conditional release by absconding, the board shall determine what part, if any, from the date of the board's official Order of Arrest and Return issuance to his/her return to the Department of Corrections is counted as time served under the original sentence;

(C) Those offenders sentenced to the Department of Corrections under section 195.221, RSMo, for selling, giving, or delivering a controlled substance and were paroled prior to August 13, 1984, are compelled to serve the full amount of their sentences if paroled, plus an additional five (5) years. If

they violate this parole, they must serve any time remaining on their sentences from the date of the release on parole;

(D) In case of consecutive sentence, time is accredited as any other case. If one (1) parole is revoked and there are remaining consecutive paroles issued, all are automatically revoked;

(E) Time served on conditional release does count as time served on an inmate's sentence; and

(F) If the board revoked the parole or conditional release, the paroled person shall serve the remainder of his/her prison term and all the conditional release term, as an additional prison term, and the conditionally released person shall serve the remainder of the conditional release term as an additional prison term, unless s/he is sooner released on parole.

(4) If an inmate is revoked as a parole violator or a conditional release violator, s/he is not eligible for conditional release, but can be considered for parole at a later time.



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
BOARD OF PROBATION AND PAROLE
REQUEST FOR OR WAIVER OF PRELIMINARY HEARING

OFFENDER NAME	DOC NUMBER	DATE
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VIOLATION(S)

The charges brought against you consist of the following violation(s) of the conditions of your probation, parole or conditional release:

OFFENDER'S REQUEST / WAIVER OF PRELIMINARY HEARING

I have read a copy of the Rights of Offender to Preliminary and Revocation Hearing Booklet and I fully understand my rights to a preliminary hearing. I hereby:

- REQUEST a preliminary hearing
- WAIVE a preliminary hearing

BOARD CASES: I understand that the Board of Probation and Parole does not have subpoena power and that by waiving my on-site preliminary hearing I may forfeit my right to cross-examine adverse witnesses if I elect to appear before the Board for a final revocation hearing.

INTERSTATE CASES: Offenders must sign a written admission in order to waiver their hearing.

OFFENDER STATEMENT

I, _____ admit to violating all or some of the above listed conditions of my supervision by:

OFFENDER SIGNATURE	DATE	WITNESS SIGNATURE	DATE
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NOTICE OF PRELIMINARY HEARING

THIS IS TO INFORM YOU, THAT AT YOUR REQUEST, A HEARING WILL BE HELD →	DATE
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TIME	LOCATION
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THE HEARING OFFICER WILL BE	NAME	OFFENDER NAME
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The purpose of this hearing is to determine whether probable cause or reasonable grounds exist to refer your case to the Missouri Board of Probation and Parole or to the Court having jurisdiction. The preliminary hearing is NOT a revocation hearing. Based on information and evidence placed before him/her, the Hearing Officer will determine if probable cause exists for your case to be referred to the authority having jurisdiction.

MO 931-2163 (05-11)



AUTHORITY: sections 217.040, 217.720, 217.722, and 558.031, RSMo 2000, and section 217.690, RSMo Supp. 2011. This rule was previously filed as 13 CSR 80-4.030. Original rule filed Feb. 5, 1968, effective Feb. 15, 1968. Amended: Filed July 1, 1970, effective July 11, 1970. Amended: Filed March 15, 1974, effective March 25, 1974. Emergency amendment filed Aug. 6, 1979, effective Aug. 16, 1979, expired Nov. 11, 1979. Amended: Filed Aug. 6, 1979, effective Dec. 13, 1979. Emergency amendment filed April 3, 1984, effective April 13, 1984, expired Aug. 10, 1984. Amended: Filed April 3, 1984, effective Aug. 11, 1984. Amended: Filed July 15, 1988, effective Nov. 1, 1988. Emergency amendment filed Dec. 18, 1991, effective Feb. 1, 1992, expired May 30, 1992. Amended: Filed Dec. 18, 1991, effective June 25, 1992. Amended: Filed Dec. 22, 2011, effective June 30, 2012.*

**Original authority: 217.040, RSMo 1982, amended 1989, 1993, 1995; 217.720, RSMo 1982, amended 1989, 1990, 1994; 217.722, RSMo 1989, amended 1990, 1995; and 558.031, RSMo 1977, amended 1990, 1995.*

***Douglas v. Buder**, 412 U.S. 430, 93 S.Ct. 2199, 37 L.Ed.2d 52 (1973). Issuance of a traffic citation is not an “arrest” under either Missouri or Arkansas law for which failure to report cannot be grounds for revocation or probation without violating due process.*