

NEBRASKA ADMINISTRATIVE CODE

TITLE 270 - NEBRASKA BOARD OF PAROLE
Chapter 11 - Review of Parole Hearing

001 Whenever a parolee is charged with a violation of his parole, he shall be entitled to a prompt hearing on such charge by the Board of Parole, which in no event shall occur more than thirty days after the receipt of the parole officer's written report.

002 At such hearing, the parolee shall be permitted to be present, to testify, to produce witnesses, to cross-examine adverse witnesses, and to introduce such other evidence as may be pertinent.

003 The parolee shall be informed of his right to request counsel at such hearing, and if he thereafter makes such request, based on a timely and colorable claim that:

003.01 He has not committed the alleged violation of the conditions upon which he is at liberty, or;

003.02 Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present, and upon consideration of whether or not the parolee appears to be capable of speaking effectively for himself, the Board in the exercise of sound discretion may provide counsel unless retained counsel is available to the parolee. In every case when a request for counsel is refused, the grounds for refusal shall be stated in the record.

004 An alleged parole violator is entitled to a Review of Parole Hearing by the Board of Parole.

005 The hearing must be tendered within a reasonable amount of time after the parolee is taken into custody, but no later than thirty days after receipt of results of the preliminary hearing.

006 The hearing on an alleged violation is not an adversary hearing.

006.01 The decision shall be made after weighing mitigating and aggravating factors as to what best benefits society and the parolee.

006.02 The hearing shall be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in adversary criminal trial.

007 The evidence offered at the hearing is not subject to the Nebraska Rules of Evidence.

TITLE 270
Chapter 11

008 The Board shall have the power to issue subpoenas, compel the attendance of witnesses, production of books, papers, and other documents pertinent to the subject of an inquiry and to administer oaths and take the testimony of persons under oath.

009 Counsel may be provided or secured as follows:

009.01 The parolee shall be informed of the right to request counsel or to secure counsel of his/her own choosing.

009.02 Unless retained counsel is available to the parolee, the Board may appoint counsel if the reasons for the alleged violation are complex and the parolee does not appear to be able to speak effectively for himself/herself.

009.03 In every case where Board appointed counsel is requested by the parolee and the request is refused by the Board, the grounds for refusal shall be stated in the record.

010 At the hearing, the parolee shall be furnished the following:

010.01 Written notice of the claimed violations.

010.02 Disclosure of the evidence of the alleged violations.

010.03 The opportunity to be heard in person and to present witnesses and documentary evidence.

011 If the Board finds that the parolee has engaged in criminal conduct, used drug or alcohol, or refused to submit to a drug or alcohol test while on parole, the Board may order revocation of the parolee's parole. If the Board finds that the parolee did violate a condition of parole but is of the opinion that revocation of parole is not appropriate, the Board may order that:

011.01 The parolee receive a reprimand and warning.

011.02 Parole supervision and reporting be intensified.

011.03 Good time granted pursuant to section 83-1,108 be forfeited or withheld.

011.04 The parolee be required to conform to one or more additional conditions of parole which may be imposed in accordance with the Nebraska Treatment and Corrections Act.

012 A parolee whose parole is revoked shall be recommitted to the department until discharge from the custody of the state becomes mandatory or until reparaoled by the Board.

TITLE 270
Chapter 11

013 The time from the date of the parolee's declared delinquency until the date of the arrest for the custody of the board shall not be counted as any portion of the time served.

014 A parolee whose parole has been revoked shall be considered by the Board for reparole at any time in the same manner as any other committed offender eligible for parole, except that no offender whose parole has been revoked as a result of a conviction of a felony committed while on parole shall receive another parole on the original sentence.

015 Except in the case of a parolee who has left the jurisdiction or his or her place of residence, action revoking a parolee's parole and recommitting the parolee for violation of the conditions of parole must be taken before the expiration of the parole term less good time. A parolee who has left the jurisdiction or his or her place of residence shall be treated as a parole violator and, when apprehended, shall be subject to recommitment or to supervision for the balance of the parole term as of the date of violation.

016 A person shall be guilty of a felony if, while on parole under the provisions of sections 29-2401, 29-2402, 60-4,101, 83-124, 83-151, 83-152, 83-170 to 83-1,135, 83-305.03, 83-415, 83-417, 83-420, 83-465, 83-472, 83-473, 83-473.01, and 83-487, he violates his parole by leaving the State of Nebraska without the authority of the Board of Parole, and shall, upon conviction thereof, be punished by commitment to the Department of Correctional Services for not more than five years.

017 A parolee charged with a violation of this section shall be tried in Lancaster County or in the county where the parolee last resided. The state shall pay for expenses incurred in returning the parolee to the county in which the action is to be tried.

018 If a warrant or detainer is placed against a committed offender by a court, parole agency, or other authority of this or any other jurisdiction, the administrator shall inquire before such offender becomes eligible for parole whether the authority concerned intends to execute or withdraw the warrant or detainer when the offender is released.

019 If the authority notifies the administrator that it intends to execute the warrant or detainer when the offender is released, the administrator shall advise the authority concerned of the sentence under which the offender is held, the time of parole eligibility, any decision of the board relating to the offender, and the nature of the offender's adjustment during imprisonment and shall give reasonable notice to such authority of the offender's release date.

020 The board may parole an offender who is eligible for release to a warrant or detainer. If an offender is paroled to such a warrant or detainer, the board may

TITLE 270
Chapter 11

provide, as a condition of release, that if the charge or charges on which the warrant or detainer is based are dismissed, or are satisfied after conviction and sentence, prior to the expiration of the offender's parole term, the authority to whose warrant or detainer the offender is released shall return the offender to serve the remainder of the parole term or such part as the board may determine.

021 If a person paroled to a warrant or detainer is thereafter sentenced and placed on probation, or released on parole in another jurisdiction, prior to the expiration of the parole term less good time in this state, the board may permit the person to serve the remainder of the parole term or such part as the board may determine concurrently with the person's new probation or parole term. Such concurrent terms may be served in either of the two jurisdictions, and supervision shall be administered in accordance with section 29-2637.

FILED

JUL 24 1996

SECRETARY OF STATE

37

STATUTORY AUTHORITY

83-1,120
83-1,122 through 83-1,125

OTHER AUTHORITY

Morrissey v. Brewer (1972)

APPROVED

JUL 24 1996

31

Benjamin Nelson
BENJAMIN NELSON
GOVERNOR

APPROVED
DON STENBERG
ATTORNEY GENERAL

MAY 30 1996

BY *Linda L. Willard*
Assistant Attorney General