

# Memorandum

Date: February 29, 2012

To: Whom It May Concern

Subject: Notice of Regulation Effective Date

The following regulations were filed with the Secretary of State on February 23, 2012 and will become effective on March 23, 2012.

## California Code of Regulations, Title 15

### § 4845. Introduction.

(a) Definitions. For the purpose of the regulations contained in this article, the following words shall have the following meanings:

(1) Charges. Behaviors and corresponding codes describing the alleged violation(s) of parole conditions.

(2) Corrective Action Plan, DJJ 3.221 (REV 04/09) incorporated by reference. A treatment and supervision sanction in the community developed at the parole field unit level, imposed upon parolees in response to parole violations as an alternative to revocation for which detention is not warranted.

(3) Date of Discovery. The date that the Division of Juvenile Justice obtains knowledge that an alleged violation of parole has occurred.

(4) Detention Criteria. Factors or behavior(s) that may demonstrate a need for detention:

(A) Parolee is a danger to himself/herself;

(B) Parolee is a danger to the person or property of another;

(C) Parolee is a risk to abscond from parole supervision; or

(D) Parolee's mental state has deteriorated to the point where it is likely that there is a threat to public safety.

(5) Disability. A physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment or condition; or being regarded as having such an impairment or condition.

(6) Effective Communication. Communication with persons with disabilities or those with limited English skills and reading ability that is as effective as communication with others. Effective communication may require the use of an appropriate auxiliary aid or service, or may be achieved by methods such as speaking clearly or using simple language and soliciting feedback to ensure understanding.

(7) Good Cause. Justifiable, legitimate, and unforeseeable reason for the delay, asserted in good faith and caused by factors that are beyond the control of the Division of Juvenile Parole Operations, the Juvenile Parole Board, or the Division of Juvenile Justice.

(8) Not-In-Custody. A parolee who is not on a Division of Juvenile Justice parole hold.

(9) Notice of Charges, DJJ 3.274 (REV 04/09), incorporated by reference. An official action conducted by Division of Juvenile Justice staff to personally serve a parolee notice of the charges against him/her including a short factual summary of the charged conduct.

(10) Notice of Parole Revocation Rights and Acknowledgement, DJJ 3.270 (REV 08/10), incorporated by reference. An advisement to a parolee of his/her procedural and due process rights in parole revocation proceedings.

(11) Parole Hold. Any invocation by the Division of Juvenile Justice of their authority to involuntarily detain a parolee for revocation proceedings and/or commence revocation proceedings pursuant to Welfare & Institutions Code §1767.3. This term shall not apply to the detention of a parolee who has absconded from the State of California until he or she is physically returned to the State of California and is in custody.

(12) Parole Violator. A parolee who violated a condition of parole, and who has been revoked and returned to custody.

(13) Probable Cause Hearing. A hearing in which the juvenile parolee appears and at which it is determined whether there is probable cause to believe that the juvenile parolee has violated a condition of parole and, if so, whether the juvenile parolee should be detained during the revocation process.

(14) Reasonable Accommodation. A modification or adjustment that will help provide equal access to programs, activities and services for parolees with disabilities or effective communication needs.

(15) Revocation Extension Hearing. The two-phase hearing (evidentiary and disposition) in which a parole violator appears before the Juvenile Parole Board, at which it is determined whether the preponderance of the evidence shows that the parole violator committed Willful Program Failure or Serious In-Custody Misconduct, and in which the parole violator's parole revocation period may be extended. A parole violator's parole revocation period may not be extended because of the Division of Juvenile Justice's failure to provide a recommended program at all or in a timely manner.

(16) Revocation Extension Probable Cause Hearing. A hearing in which the parole violator appears and at which it is determined whether there is probable cause to believe that the parole violator committed either Serious In-Custody Misconduct or Willful Program Failure.

(17) Revocation Hearing. A two-phase hearing (evidentiary and disposition) at which it is determined whether the preponderance of the evidence shows that a parolee violated a condition of parole and whether the parolee should be returned to parole supervision or remanded to custody.

(18) Revocation Proceeding/Revocation Process. All stages of the process by which a parolee/parole violator may be returned to or retained in custody following an alleged parole violation up to and including the revocation or revocation extension hearing and any administrative appeal. In the case of alleged parole violators who are not in custody, the revocation process begins when the parolee is notified of the pending charges and of his/her rights.

(19) Revocation Release Date. The date in which a parole violator will be released to the community.

(20) Serious In-Custody Misconduct. In-Custody behavior by a parole violator that poses an immediate and serious threat to the safety and security of youth, staff or property within the facility.

(21) Violation Levels.

(A) Level 1: Minor violations of parole for which detention may not be warranted.

(B) Level 2: Selected minor law violations, moderate technical violations, or repetitive Level 1 behavior for which detention may not be warranted.

(C) Level 3: Any behavior that the Division of Juvenile Parole Operations believes represents a risk or threat to public safety. Level 3 violations are mandatory referrals to the Juvenile Parole Board.

(22) Willful Program Failure. Repeated and intentional refusal to attend and/or participate in a treatment and training program. The repeated refusal shall be documented by treatment staff. Staff shall specify the dates of non-participation and shall include information demonstrating that the parole violator does not have a mental or physical impairment that prevents him/her from fully participating in the program. A parole violator shall not be charged with willful program failure when program unavailability, facility lockdown, instructor absence or other circumstances beyond the parole violator's control prevent him/her from completing the program prior to the expiration of his/her revocation term.

Note: Authority cited: Sections 1712 and 1751, Welfare and Institutions Code. Reference: Section 1752, Welfare and Institutions Code.

## **§ 4846. Purposes of Search.**

A Parole Agent, or any peace officer designated by a Division of Juvenile Justice Parole Agent for a specific purpose, may search the person, property or residence of a parolee as a necessary adjunct to parole supervision and surveillance. The purposes of such searches are to:

- (a) Discover evidence of a law or parole violation.
- (b) Assure that evidence indicating a law or parole violation is not destroyed.
- (c) Assure that no dangerous weapon is possessed by a parolee arrested by the Parole Agent or peace officer.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1752 and 1766, Welfare and Institutions Code; and Section 830.5, Penal Code.

#### **§ 4847. Guidelines for Search.**

- (a) Searches shall be conducted pursuant to a Parole Agent having reasonable cause to believe that evidence indicating a law or parole violation will be disclosed.
- (b) A request from another agency or person to search a parolee or his/her premises shall include supportive evidence or information to constitute reasonable cause for a Parole Agent's search.
- (c) Lawful searches that would otherwise violate any policies as prescribed in Sections 4846 through 4848 may be conducted under unusual circumstances upon approval of the Supervising Parole Agent.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1752 and 1766, Welfare and Institutions Code; and Section 830.5, Penal Code.

#### **§ 4848. Search of Premises.**

- (a) A search of a parolee's premises shall be conducted without use of force and in the parolee's presence.
- (b) Notwithstanding the provisions of subsection (a), a Parole Agent may search a parolee's premises without his presence when the Parole Agent has reasonable cause to believe that the parolee has a firearm or other deadly weapons at his/her premises or the Parole Agent believes that:
  - (1) It will be dangerous to conduct a search in the parolee's presence, or
  - (2) Failure to search or delay of search will endanger public safety.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1752 and 1766, Welfare and Institutions Code; and Section 830.5, Penal Code.

#### **§ 4848.5. Warrants of Arrest/Detention.**

A warrant of arrest shall be used to secure the arrest and/or detention for a parolee wanted or detained by the Division of Juvenile Justice.

- (a) A warrant shall not be valid beyond the age at which a parolee's commitment terminates by law.
- (b) In those cases where a parolee has an expiration date fixed by offense, that date may be extended by the length of time the parolee is missing from supervision.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1767.3 and 1766, Welfare and Institutions Code; and Sections 830.5, Penal Code.

#### **§ 4849. Arrest/Detention of a Parolee.**

The criteria to warrant detention of a parolee are outlined in Section 4978.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1752, 1766, and 1767.3, Welfare and Institutions Code; and Sections 830.5, 833, and 836, Penal Code.

#### **§ 4850. Detention of a Parolee.**

Following arrest, a parolee may be subject to continued detention without bail pending a Juvenile Parole Board hearing whereupon there is a proper showing that detention criteria are met. Such detention shall be in accordance with the criteria and time constraints set forth in Section 4978. If the Juvenile Parole Board orders that the parolee not be further detained, the Division of Juvenile Justice parole hold must be withdrawn and, assuming there are no other holds, the parolee released as soon as possible, but no later than three (3) business days from the date of the order.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1752, 1766 and 1767.3, Welfare and Institutions Code.

#### **§ 4852. Parole Violation.**

A violation of any condition of parole shall be established by the Juvenile Parole Board in accordance with the provisions of Section 4982.

(a) Prior to discussing a possible violation of any condition of parole with a parolee, the Notice of Parole Revocation Rights and Acknowledgement, DJJ 3.270 (REV 08/10), Notice of Charges, DJJ 3.274 (REV 04/09), Request for Accommodation and Assistance, DJJ 3.260 (NEW 01/09), and Accommodation and Assistance Grievance, DJJ 3.261 (NEW 01/09) forms, incorporated by reference, shall be served and explained to the parolee.

(b) Parole staff shall prepare reports for Juvenile Parole Board review when parole violation reporting criteria set forth in Section 4982 are met. Reports shall be submitted to the Juvenile Parole Board for review within seven (7) business days from the date of the Division of Juvenile Justice parole hold, or in the case of Not-In-Custody violation reports, within 20 business days of the notice of rights and charges. The Violation Report, DJJ 3.264A (REV 09/09), incorporated by reference, shall contain:

(1) The charges.

(2) A summary of the alleged facts including the parolee's version, if any.

(3) The evidence and sources of evidence relied on.

(4) Recommendations concerning the parolee's immediate and future liberty.

(c) A parolee may be returned to custody for up to one (1) year for a parole violation consistent with the Parole Revocation Assessment Matrix, REV 11/2008, incorporated by reference, established by the Juvenile Parole Board.

(d) Parole violations that consist of Level I or Level II behaviors may be resolved by the Parole Agent and Supervising Parole Agent at the field unit level without requiring final approval by the Juvenile Parole Board.

(e) If a parolee rejects a Corrective Action Plan, DJJ 3.221 (REV 04/09), recommendation made in response to a Level I or Level II violation, the case will be handled through the parole revocation process using the date the parolee rejected the Corrective Action Plan, DJJ 3.221 (REV 04/09), as the date of discovery.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1752, 1766 and 1767.3, Welfare and Institutions Code.

#### **§ 4853. Parole Revocation.**

(a) Parole Revocation shall address Level III parolee behavior which parole staff are required to report to the Juvenile Parole Board, including serious technical and/or law violations, and/or any Level I or Level II behavior that is exacerbated by repetition, severity and/or relation to the youth's original commitment offense.

(b) If a parolee is not in custody, no later than ten (10) business days after the date of discovery, the Notice of Parole Revocation Rights and Acknowledgement, DJJ 3.270 (REV 08/10), Notice of Charges, DJJ 3.274 (REV 04/09), Request for Accommodation and Assistance, DJJ 3.260 (NEW 01/09), and Accommodation and Assistance Grievance, DJJ 3.261 (NEW 01/09) forms shall be served and explained to the parolee.

(c) If a parolee remains in custody, no later than three (3) business days after the placement of the Parole Hold, the Notice of Parole Revocation Rights and Acknowledgement, DJJ 3.270 (REV 08/10), Notice of Charges, DJJ 3.274 (REV 04/09), Request for Accommodation and Assistance, DJJ 3.260 (NEW 01/09), and Accommodation and Assistance Grievance, DJJ 3.261 (NEW 01/09) forms shall be served and explained to the parolee.

(d) For rights and procedures governing Revocation proceedings, see Sections 4977 through 4983.5.

(e) All charges arising from the conduct for which a parolee was taken into custody shall be adjudicated at the final Revocation Hearing within thirty-five (35) calendar days from the placement of the Parole Hold absent good cause. Charges may not be split going beyond thirty-five (35) days in the absence of good cause.

(f) If chargeable behavior known to the Division of Juvenile Parole Operations prior to notice being served on the Parolee is not included in the initial notice of charges, such conduct cannot serve as the basis for subsequent charges.

(g) If chargeable behavior is discovered after the notice of rights, but before the revocation packet has been submitted to the Juvenile Parole Board, the parolee can be served on the new charges, and the new charges incorporated into the initial revocation packet.

(h) Any supplemental charges must be based on conduct that occurs or is discovered by the Division of Juvenile Parole Operations after the parole hold, but before the Revocation Hearing. These supplemental charges must be raised 48 hours prior to the Revocation Hearing.

(i) The parole revocation term imposed by the Juvenile Parole Board may not exceed 12 months and must be consistent with the Parole Revocation Assessment Matrix, REV 11/2008. A parolee's revocation period can only be extended through the revocation extension process as described in Section 4854.

(j) The Juvenile Parole Board shall track the timeliness of the revocation process and reasons proffered for any delays.

(k) Timely and reasonable accommodations for effective communication and meaningful participation shall be provided to parolees at all parole revocation proceedings. This includes accommodations for parolees with limited English skills, effective communication needs, and/or disabilities.

(l) Parolees charged with Serious In-Custody Misconduct involving violence against a person that occurs while the parolee is in custody pending revocation proceedings may be assessed up to an additional 12 months based upon relevant assessments as provided in the Revocation Extension Matrix, REV 12/2008, incorporated by reference.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1752, 1766 and 1767.3, Welfare and Institutions Code; and Section 830.5, Penal Code.

#### **§ 4854. Parole Revocation Extension Process.**

(a) A parole violator who commits an act of Serious In-Custody Misconduct or Willful Program Failure while in revoked status is subject to revocation extension proceedings.

(b) Revocation extension proceedings will take place if qualifying misconduct occurs while the parole violator is in a local county facility, state prison, Division of Juvenile Justice facility or other detention facility.

(c) The Division of Juvenile Parole Operations shall be responsible for the revocation extension process for those parole violators under the jurisdiction of the Division of Juvenile Justice and housed in non-Division of Juvenile Justice facilities.

(d) The Division of Juvenile Facilities shall be responsible for the revocation extension process for parole violators housed in Division of Juvenile Justice facilities.

(e) If the Juvenile Parole Board sustains revocation extension charges, the period of revocation may be extended up to twelve (12) months from the current Revocation Release Date, based on relevant assessments as provided in the Revocation Extension Matrix, REV 12/2008.

(f) The Juvenile Parole Board may extend a parolee's revocation period only after appointment of an attorney, a Probable Cause Hearing, and if the case is not resolved at this stage, a Revocation Extension Hearing, which shall take place before a Juvenile Parole Board hearing officer. Unless the parole violator waives or seeks continuance of a timely Revocation Extension Hearing, such a hearing shall take place at the earliest practical time after the alleged conduct that is grounds for the charge and no later than thirty-five (35) calendar days after the parole violator is served with notice of his/her charges and rights.

(g) A parole violator's parole revocation period may not be extended because of the Division of Juvenile Justice's failure to provide a recommended program at all or in a timely manner.

(h) In the event that the alleged conduct that is grounds for the charge occurs within thirty (30) days prior to the parole violator's Revocation Release Date, the Revocation Extension Hearing must occur at the earliest practical time after the alleged conduct, but, in any event, no later than thirty-five (35) days after his/her Revocation Release Date, absent good cause for going beyond that time.

(i) A parole violator may only be charged with one act of Serious In-Custody Misconduct or Willful Program Failure for each revocation extension referral. However, the parole violator may be subject to additional revocation extension actions for future incidents of Serious In-Custody Misconduct or Willful Program Failure.

(j) For rights and procedures governing the revocation extension process, see sections 4977 through 4983.5.

(k) The Juvenile Parole Board shall track the timeliness of revocation extension proceedings and reasons proffered for any delays.

Note: Authority cited: Section 1751, Welfare and Institutions Code. Reference: Sections 1752, 1766 and 1767.3, Welfare and Institutions Code.

#### **§ 4900. Rules of Construction and Definitions.**

(a) (Reserved)

(b) Definitions. For the purpose of the regulations contained in this chapter the following words shall have the following meanings:

(1) Annual Good Cause Review. Re-examination of individual parolee cases by the Juvenile Parole Board which is held at intervals not exceeding one year for the purpose of determining whether existing orders and dispositions should be modified or continued in force.

(2) Board Coordinating Parole Agent. Juvenile Parole Board agent responsible for coordination and facilitation of parole revocation proceedings, ensuring coordination and communication with counsel and witnesses, assisting with the provision of necessary accommodations and effective communication for parolees, and providing security at parole revocation proceedings.

(3) Board Panel. A Juvenile Parole Board panel comprised of two qualified hearing officers. A quorum for a Board panel shall be two qualified hearing officers.

(4) Charges. Behaviors and corresponding codes describing the alleged violation(s) of parole conditions.

(5) Corrective Action Plan, DJJ 3.221 (REV 04/09), incorporated by reference. A treatment and supervision sanction in the community developed at the parole field unit level, imposed upon parolees in response to parole violations as an alternative to revocation for which detention is not warranted.

(6) Date of Discovery. The date that the Division of Juvenile Justice obtains knowledge that an alleged violation of parole has occurred.

(7) Day(s). Calendar days, unless otherwise specified.

(8) Detention Criteria. Factors or behavior(s) that may demonstrate a need for detention:

(A) Parolee is a danger to himself/herself;

(B) Parolee is a danger to the person or property of another;

(C) Parolee is a risk to abscond from parole supervision; or

(D) Parolee's mental state has deteriorated to the point where it is likely that there is a threat to public safety.

(9) Disability. A physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment or condition; or being regarded as having such an impairment or condition.

(10) Disciplinary Decision Making System. The Division of Juvenile Justice facility disciplinary system which has the ability to impose a sanction, deprive a youth of something possessed, or deny something which a youth reasonably expects as part of his/her prescribed program because the youth commits an institutional rule or law violation.

(11) Dismissal. Action required if there is insufficient evidence to support a probable cause finding at the Probable Cause Hearing, if there is insufficient admissible evidence to make a finding of good cause by a preponderance of the evidence at the Revocation Hearing or Revocation Extension Hearing, or in the interest of justice.

(12) Dual Commitment. A person who is under the jurisdiction of both the Division of Juvenile Justice and Division of Adult Operations of the California Department of Corrections and Rehabilitation.

(13) Effective Communication. Communication with persons with disabilities or those with limited English skills and reading ability that is as effective as communication with others. Effective communication may require the use of an

appropriate auxiliary aid or service, or may be achieved by methods such as speaking clearly or using simple language and soliciting feedback to ensure understanding.

(14) Exit Interview. A meeting with a parole violator and a hearing officer of the Juvenile Parole Board prior to a parole violator's Revocation Release Date at which the general and special conditions of parole are issued and explained to the parole violator.

(15) Expedited Probable Cause Hearing. A Probable Cause Hearing held at an earlier stage in the proceedings upon sufficient offer of proof by the parolee or his/her counsel that there is a complete defense to all parole violation charges that are the basis for the parole hold.

(16) Full Board En Banc: A Juvenile Parole Board hearing conducted by a quorum of the five-member Juvenile Parole Board. Three members are necessary to form a quorum when making case decisions and no action shall be valid unless agreed to by a majority of those present.

(17) Full Board Panel: A Juvenile Parole Board panel comprised of three qualified hearing officers. A Commissioner shall be included in the panel when available.

(18) Good Cause. Justifiable, legitimate, and unforeseeable reason for the delay, asserted in good faith and caused by factors that are beyond the control of the Division of Parole Operations, the Juvenile Parole Board, or the Division of Juvenile Justice.

(19) Hearing Officer. A member or case hearing representative, who conducts youth case hearings.

(20) Not-In-Custody. A parolee who is not on a Division of Juvenile Justice Parole Hold.

(21) Not-In-Custody Hearing. A Revocation Hearing for a parolee who is not under a Division of Juvenile Justice parole hold.

(22) Notice of Charges, DJJ 3.274 (REV 04/09), incorporated by reference. An official action conducted by Division of Juvenile Justice staff to personally serve a parolee notice of the charges against him/her including a short factual summary of the charged conduct.

(23) Notice of Conditions of Parole, DJJ 3.207 (REV 04/10), incorporated by reference. A document that notifies a parolee of behavior and treatment requirements while under parole supervision.

(24) Notice of Parole Revocation Rights and Acknowledgement, DJJ 3.270 (REV 08/10), incorporated by reference. An advisement to a parolee of his/her procedural and due process rights in parole revocation proceedings.

(25) Parole Hold. Any invocation by the Division of Juvenile Justice of their authority to involuntarily detain a parolee for revocation proceedings and/or commence revocation proceedings pursuant to Welfare & Institutions Code §1767.3. This term shall not apply to the detention of a parolee who has absconded from the State of California until he or she is physically returned to the State of California and is in custody.

(26) Parole Placement Plans. A report prepared by the Division of Juvenile Parole Operations and provided to the Juvenile Parole Board in preparation for a parole violator's release to parole supervision, which includes but is not limited to: identified placement, recommended special conditions of parole, supervision plans, educational/vocational plans, and community treatment plans.

(27) Parole Violator. A parolee who violated a condition of parole, and who has been revoked and returned to custody.

(28) Preponderance of Evidence. Standard of proof that requires a finding that it is more likely than not that a fact or charge is true.

(29) Probable Cause. Facts as would lead a person of ordinary caution and prudence to conscientiously entertain a strong suspicion that an alleged charge is true.

(30) Probable Cause Hearing. A hearing in which the juvenile parolee appears and at which it is determined whether there is probable cause to believe that the juvenile parolee has violated a condition of parole and, if so, whether the juvenile parolee should be detained during the revocation process.

(31) Projected Juvenile Parole Board Date. Formerly known as parole consideration date, it is an interval of time in which a youth may reasonably and realistically be expected to achieve readiness for parole. It is not a fixed term or sentence, nor is it a fixed parole release date. It applies to youth who are serving their initial commitments to Division of Juvenile Justice and have not been paroled yet.

(32) Reasonable Accommodation. A modification or adjustment that will help provide equal access to programs, activities and services for parolees with disabilities or effective communication needs.

(33) Referee. Any qualified hearing officer sitting alone for the purpose of hearing cases.

(34) Rescission Hearing. A Juvenile Parole Board hearing which may result in rescinding a youth's referral to parole.

(35) Return to Custody Assessment or Revocation Extension Assessment. A recommended disposition offered by the Juvenile Parole Board which is presented to the parolee prior to a Probable Cause Hearing (also referred to as "The Offer").

(36) Revocation Extension Hearing. The two-phase hearing (evidentiary and disposition) in which a parole violator appears before the Juvenile Parole Board, at which it is determined whether the preponderance of the evidence shows that the parole violator committed Willful Program Failure or Serious In-Custody Misconduct, and in which the parolee's parole violator's parole revocation period may be extended. A parole violator's parole revocation period may not be extended because of the Division of Juvenile Justice's failure to provide a recommended program at all or in a timely manner.

(37) Revocation Extension Probable Cause Hearing. A hearing in which the parole violator appears and at which it is determined whether there is probable cause to believe that the parole violator committed either Serious In-Custody Misconduct or Willful Program Failure.

(38) Revocation Hearing. A two-phase hearing (evidentiary and disposition) at which it is determined whether the preponderance of the evidence shows that a parolee violated a condition of parole and whether the parolee should be returned to parole supervision or remanded to custody.

(39) Revocation Proceeding/Revocation Process. All stages of the process by which a parolee/parole violator may be returned to or retained in custody following an alleged parole violation up to and including the Revocation or Revocation Extension Hearings and any administrative appeal. In the case of alleged parole violators who are not in custody, the revocation process begins when the parolee is notified of the pending charges and of his/her rights.

(40) Revocation Release Date. The date in which a parole violator will be released to the community.

(41) Serious In-Custody Misconduct. In-Custody behavior by a parole violator that poses an immediate and serious threat to the safety and security of youth, staff or property within the facility.

(42) Sufficient Offer of Proof. A reasonable likelihood that a parolee would produce un-controverted evidence of his/her innocence at an expedited probable cause hearing.

(43) Victim. A person against whom a parole violation has been committed.

(44) Violation Levels.

(A) Level 1: Minor violations of parole for which detention may not be warranted.

(B) Level 2: Selected minor law violations, moderate technical violations, or repetitive Level 1 behavior for which detention may not be warranted.

(C) Level 3: Any behavior that the Division of Juvenile Parole Operations believes represents a risk or threat to public safety. Level 3 violations are mandatory referrals to the Juvenile Parole Board.

(45) Willful Program Failure. Repeated and intentional refusal to attend and/or participate in a treatment and training program. The repeated refusal shall be documented by treatment staff. Staff shall specify the dates of non-participation and shall include information demonstrating that the parole violator does not have a mental or physical impairment that prevents him/her from fully participating in the program. A parole violator shall not be charged with willful program failure when program unavailability, facility lockdown, instructor absence or other circumstances beyond the parole violator's control prevent him/her from completing the program prior to the expiration of his/her revocation term.

Note: Authority cited: Section ~~4724~~,1725, Welfare and Institutions Code. Reference: Sections 1711, 1714, 1716, ~~4717~~, 1719, 1720, ~~4721~~,~~4722~~ and 1723, Welfare and Institutions Code.

#### **§ 4925. Level of Decision Making.**

The classification or category of youth cases or the type of hearing determines the level of decision making exercised by the Juvenile Parole Board. This chapter sets forth certain case decisions which shall be made by the Full Board En

Banc or by a Board Panel. A referee is authorized to make youth case decisions in all hearings for Categories 6 and 7 (Sections 4956 - 4957), and annual and progress reviews for youth housed at or committed to any non-Division of Juvenile Justice facility. Hearings may be conducted by the authorized or a higher level of decision making.

Note: Authority cited: Sections 1712 and 1719, Welfare and Institutions Code. Reference: Sections 1703(d), 1719, and 1723, Welfare and Institutions Code.

#### **§ 4926. Case Decisions.**

(a) In order for a case decision made by the Full Board En Banc or a Board Panel to be effective, a majority of the Juvenile Parole Board members present shall agree in the decision.

(b) All case decisions shall be recorded on a written Juvenile Parole Board Order. Youth/parolees/parole violators shall be given a copy of the Juvenile Parole Board Order for their case.

Note: Authority cited: Sections 1712, and 1719, Welfare and Institutions Code. Reference: Sections 1703(d), 1719, and 1723, Welfare and Institutions Code.

#### **§ 4927. Youth/Parolee/Parole Violator Appearance and Audio Recording of Hearings.**

(a) All hearings shall be audio recorded when the youth/parolee/parole violator is present, with the exception of Probable Cause Hearings and Exit Interviews. The youth/parolee/parole violator who is the subject of the hearing, his/her attorney, and with the youth's consent, anyone else eligible to appeal a Juvenile Parole Board Order, shall be permitted to listen to the recording. Recordings shall be retained for a period of 15 months from the date of the hearing.

(b) A youth shall attend all Division of Juvenile Justice facility hearings, with the exception of:

(1) Youth unable to attend due to medical reasons as determined by Division of Juvenile Justice medical staff.

(2) Youth housed at or committed to any non-Division of Juvenile Justice facility.

(3) Annual and/or progress reviews for youth on parole.

(c) Subsection (b) does not apply to revocation proceedings.

Note: Authority cited: Sections 1001, 1004, 1712, and 1719, Welfare and Institutions Code. Reference: Sections 224.70(e), 1703(d), and 1723, Welfare and Institutions Code.

#### **§ 4928. Board Panel Unable to Agree and Dissents.**

(a) When a Juvenile Parole Board panel is unable to agree on a case decision, the matter shall be referred to the Executive Officer or his/her designee. Each hearing officer shall prepare a proposed Juvenile Parole Board Order setting forth his/her motion and the reasons for his/her order. The Executive Officer or his/her designee shall consider the case and concur with one of the proposed orders.

(b) In cases in which a hearing officer dissents from a Full Board Panel or Full Board En Banc decision, he/she shall so indicate on the Juvenile Parole Board Order and shall state his/her reason(s) on the order.

Note: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1719 and 1723, Welfare and Institutions Code.

#### **§ 4929. Conditions of Parole.**

The Juvenile Parole Board shall set conditions of parole at the time parole is granted. Special conditions of parole may be added or deleted as appropriate and deemed necessary by the Juvenile Parole Board during the time a parolee is on parole.

(a) Notice of Conditions of Parole, DJJ 3.207 (REV 04/10). The following are general conditions of parole:

(1) You must follow the instructions of your Parole Agent.

(2) You must obey all laws and ordinances. Conduct prohibited by law is considered a parole violation, even if you are not charged or convicted in court.

- (3) You must not change your house/placement without the prior permission of your Parole Agent. You shall not avoid parole supervision.
- (4) You must not leave the State of California without the written permission of your Parole Agent, and you are required to return to the State of California within the timeframe specified. Timeframes for processing any violations of parole will not begin until you return to the State of California.
- (5) You and your residence, and any other property under your control, may be searched with or without a warrant and with or without probable cause by a parole agent of the California Department of Corrections and Rehabilitation, a parole agent of the Juvenile Parole Board, and/or any peace officer at any time of day or night.
- (6) You must not own, possess, use, have under your control or have access to any deadly weapons, firearms (any kind of gun), knives (with blade longer than 2 inches), crossbows, explosive devices, tasers or ammunition.
- (7) You must not own, use, possess, or have under your control or have access to any simulated weapons, which would cause a reasonable person to believe that you are in possession of a deadly weapon, firearm, knife, explosive device or ammunition (i.e. toy guns, BB guns, Air Soft guns, plastic guns or knives).
- (8) You must report all arrests/citations to your Parole Agent or his/her designee within one business day of such contact.
- (9) You must not be in the United States illegally.
- (10) You must provide proof of employment, education or vocational training, or proof of actively seeking such activity.
- (11) You must not own, use, possess, sell, have under your control or access to, any controlled substance, dangerous drug, narcotic, including marijuana, or other mind altering substance without a valid prescription from a licensed physician.
- (12) You must not own, use, possess, sell, have under your control or access any drug paraphernalia (i.e. crack pipes, roach clips, bongs, meth pipes, rolling papers, spoons, syringes).
- (13) You must submit to drug testing for illegal drugs, prescription drugs, and/or alcohol as directed by your Parole Agent.
- (14) You must not loiter in areas in which known drug sale activities are occurring.
- (15) You must pay in full any restitution fine or restitution order imposed by the court as a result of your commitment. Payment shall be in installments set in an amount consistent with your ability to pay as defined by WIC 1766.1.
- (16) You must sign this agreement containing the conditions of parole or your parole will be rescinded/revoked.
- (b) Special Conditions of Parole. The Juvenile Parole Board may prescribe special conditions of parole based on an individual parolee's offense history, commitment offense/current violation, or future criminality broadly defined to take into account the parolee's entire social history.

Note: Authority cited: Section 1719, Welfare and Institutions Code. Reference: Sections 1714, 1719, 1725, 1730, 1766 and 1767.2, Welfare and Institutions Code.

#### **4935. General Policy.**

An appeal is a written request to the Executive Officer or his/her designee for relief from any Juvenile Parole Board Order or policy which affects an individual youth/parolee/parole violator. Appeals may be filed by the youth/parolee/parole violator, parent or duly appointed guardian if the youth/parolee/parole violator is under 18 years of age, or by an attorney representing the youth/parolee/parole violator. A youth/parolee/parole violator shall be provided an Appeal Form, DJJ 1.316 (Rev 10/07) for appealing non-revocation related issues or an Appeal of Parole Revocation Decisions form, DJJ 3.290 (NEW 01/09) for revocation related issues, both incorporated by reference, to submit appeals, while other eligible appellants may appeal by letter. The time limitations in which an appeal may be filed as set forth in this chapter may be waived by the Executive Officer or his/her designee.

Note: Authority cited: Section 1719, Welfare and Institutions Code. Reference: Section-1723, Welfare and Institutions Code.

#### **4936. Appeal Criteria.**

The basis for appeal shall be one or more of the following:

- (a) The decision of the Juvenile Parole Board was based on a mistake of law.
- (b) The decision of the Juvenile Parole Board was based on a mistake of fact.
- (c) The parolee was unable to understand the proceeding and/or provided ineffective assistance of counsel due to mental illness or other physical disability that was not adequately accommodated.
- (d) The Juvenile Parole Board failed to provide an impartial hearing officer.
- (e) The decision of the Juvenile Parole Board was contrary to any of the provisions contained in Division 4.0, Chapter 4, Article 5 and Division 4.5 of Title 15, California Code of Regulations, and the outcome of the hearing would have been substantially different had the provisions been followed.
- (f) The audio recording of the hearing is inaudible.
- (~~g~~) There are extraordinary circumstances involved in the case which require Juvenile Parole Board action in order to further the interest of justice.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections ~~1721~~1719 and 1723, Welfare and Institutions Code.

#### **§ 4937. Appeals.**

- (a) All appeals will be decided by the Executive Officer or his/her designee.
- (b) For appeals relating to the parole revocation and revocation extension proceedings, there is only one level of appeal.
- (c) For appeals relating to all other proceedings:
  - (1) The first level of appeal is the Executive Officer or his/her designee.
  - (2) The second level of appeal is the appeal panel which has the same composition as a Full Board Panel. Whenever possible, the appeal panel shall not include those persons whose decision is being appealed.
  - (3) The final level of appeal is the Full Board En Banc.

Note: Authority cited: Section ~~1722~~1725, Welfare and Institutions Code. Reference: Sections ~~1721~~1719 and 1723, Welfare and Institutions Code.

#### **§ 4938. Time Limits.**

- (a) There is a 20 business day time limit from the date of receipt of the written decision to file an appeal.
- (b) The Executive Officer or his/her designee shall decide on the appeal within ten (10) business days of receipt of the appeal.
- (c) No appeal shall be dismissed or denied because of technical defects.
- (d) The appeal decision shall be served on the youth/parolee/parole violator within five (5) business days of the appeal decision.
- (e) Appeals from the decision of the Executive Officer or his/her designee shall be filed within ten (10) business days of receipt of the decision, and may be filed only when there is substantial new evidence not previously available to the Juvenile Parole Board.
- (f) Rehearings for appeals shall be scheduled within ten (10) business days of the order of any appeal body. Rehearings may be granted when a determination is made that there is insufficient information upon which to make an informed decision. Factual material deemed critical to the case decision shall be made known to those conducting the rehearing. Whenever possible, the rehearing shall be conducted by persons other than those persons whose decision was appealed.

Note: Authority cited: Section 1719, Welfare and Institutions Code. Reference: Sections 1723 and 1725, Welfare and Institutions Code.

#### **§ 4939. Authorized Appeal Actions for Non-Revocation Related Appeals.**

- (a) The Executive Officer or his/her designee may take any one of the following actions:

- (1) Deny the appeal.
- (2) Order a rehearing.
- (3) Order the matter referred to the appeal panel.
- (4) Order the matter referred to the Full Board En Banc, when the Executive Officer or his/her designee:
  - (A) Determines a unanimous Full Board En Banc panel decision merits further action.
  - (B) Determines an appeal justifies reconsideration of a Juvenile Parole Board policy.
  - (b) The Executive Officer or his/her designee shall not modify prior Juvenile Parole Board actions.
  - (c) The appeal panel may grant the appeal, deny the appeal, modify prior Juvenile Parole Board action, order a rehearing, or refer the case to the Full Board En Banc.
  - (d) The Full Board En Banc may grant the appeal, deny the appeal, modify prior Juvenile Parole Board action, order a rehearing, and/or may consider a change in policy as a result of the appeal.

Note: Authority cited: Section 1719, Welfare and Institutions Code. Reference: Sections 1723 and 1725, Welfare and Institutions Code.

#### **§ 4939.5. Authorized Actions Relating to Parole Revocation Administrative Appeals**

(a) The Executive Officer or his/her designee may take any one of the following actions:

- (1) Deny the appeal,
- (2) Reverse the decision and grant appropriate relief,
- (3) Grant a new hearing within ten (10) business days after the issuance of the Appeal Board Order, DJJ 1.311 (Rev 11/08), incorporated by reference. New hearings shall be scheduled according to Section 4938 and shall be conducted by a hearing officer other than the original hearing officer.
- (b) If a new hearing is granted solely because the audio recording was inaudible, at the rehearing the Juvenile Parole Board shall not order a revocation term longer than the term imposed at the initial hearing.

Note: Authority cited: Section 1719, Welfare and Institutions Code. Reference: Sections 1723 and 1725, Welfare and Institutions Code.

#### **4940. Orders and Completion of Appeals.**

(a) Every decision of the Executive Officer or his/her designee shall be recorded on an Appeal Board Order, DJJ 1.311 (Rev 11/08). The Appeal Board Order, DJJ 1.311 (Rev 11/08) shall state the reasons for the action taken and how the authorized criteria were applied to the issues raised in the appeal. The Executive Officer or his/her designee shall forward a copy of the Appeal Board Order, DJJ 1.311 (Rev 11/08) and such communication as he/she deems appropriate to the appellant within five (5) business days from the date of decision.

Note: Authority cited: Section 1719, Welfare and Institutions Code. Reference: Sections 1723 and 1725, Welfare and Institutions Code.

## Article 4. Actions in Institutions

### Section 4961. remains unchanged.

#### **§ 4961.1 In-Custody Misconduct for Parole Violators.**

(a) Disciplinary Decision Making System as set forth in Sections 4630 through 4654 applies to parole violators where the sanctions imposed do not extend a parole violator's confinement or Revocation Release Date.

(b) Any recommendation for an extension of the Revocation Release Date shall be referred to the Juvenile Parole Board for revocation extension proceedings. Parole violators undergoing revocation extension proceedings shall be provided the rights and processes outlined in Sections 4853 and 4977.

(c) Extensions of a parole violator's Revocation Release Date shall not occur except where the Juvenile Parole Board finds by a preponderance of the evidence that a parole violator has committed Serious In-Custody Misconduct or Willful Program Failure as defined in Section 4900.

(d) Pending a District Attorney Referral. If Level 3 Serious In-Custody Misconduct has been referred to the District Attorney for prosecution and charges have been filed, a parole violator may conditionally accept the Revocation Extension Assessment and conditionally waive a Revocation Extension Hearing. He/she retains, however, the option to request a hearing once criminal proceedings are completed.

(1) This type of waiver is referred to as an "optional waiver".

(2) In order for a parole violator to be eligible to optionally waive his/her Revocation Extension Hearing, criminal charges must have been filed with the District Attorney on the same behavior as the Level 3 Serious In-Custody Misconduct.

(3) A hearing request must be received by the Juvenile Parole Board no later than 35 days before expiration of the revocation period as ordered by the Juvenile Parole Board.

(4) Upon receipt of a hearing request, the Juvenile Parole Board shall schedule an Optional Waiver Review. At the hearing, the hearing officer may take any appropriate action not to exceed the Revocation Extension Assessment.

(e) Dual Commitment Cases. The Division of Juvenile Parole Operations shall be responsible for revocation extension referrals for parole violators housed in institutions other than those operated by the Division of Juvenile Justice.

NOTE: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Sections 1719, Welfare and Institutions Code.

#### **§ 4977. Protections Afforded a Parolee/Parole Violator in Parole Violation Matters.**

(a) Parolees/parole violators detained in custody will have the following rights in revocation and revocation extension proceedings:

(1) To receive written notice of the rights outlined herein. For parole revocation cases, this notice of rights must be served on the parolee within three (3) business days after the parole hold.

(2) To receive written notice of the charges against him or her. For parole revocation cases, this notice of charges must be served on the parolee within three (3) business days after the parole hold.

(3) To receive a copy of all evidence that will be used against the parolee/parole violator unless it is deemed confidential.

(4) An attorney to represent the parolee/parole violator during the revocation and revocation extension process in accordance with Section 4979. A parolee/parole violator has the right to retain a private attorney or to be represented by his/her public defender.

(5) A Probable Cause Hearing.

(A) In the revocation process this shall occur within thirteen (13) business days following the parole hold.

(B) In the revocation extension process this shall occur within thirteen (13) business days following service of the notice of rights to the parole violator.

(C) The parolee/parole violator has the right to request an expedited Probable Cause Hearing if there is evidence that shows he or she is completely innocent of the charges.

(6) If the charges are not resolved at the Probable Cause Hearing, the parolee/parole violator will have a right to a Revocation or Revocation Extension Hearing.

(A) Revocation Hearings shall take place within thirty-five (35) calendar days following a parole hold.

(B) Revocation Extension Hearings shall take place within thirty-five (35) calendar days following the notice of rights to the parole violator.

(C) He/she shall have the right to receive notice of the date and time of the hearing.

(7) To be heard in person and to present witnesses and documentary evidence in his/her defense at a Revocation or Revocation Extension Hearing.

(A) For Parole Revocation Hearings, the parolee shall have the right to subpoena witnesses and present evidence to the same extent and on the same terms as the Division of Juvenile Justice, including the right to question live witnesses through his/her attorney.

(B) For Revocation Extension Hearings, the right to call witnesses and present documentary evidence is limited by institutional safety and correctional goals.

(8) To accommodations and assistance sufficient to ensure equal access to and effective communication during the revocation/revocation extension process as outlined in Section 4977.6.

(9) To a neutral and detached hearing officer.

(10) To a written decision by the hearing officer addressing the evidence relied on and the reasons for the decision.

(11) To receive an audible audio recording of the Revocation or Revocation Extension Hearing within ten (10) business days from the date the Juvenile Parole Board receives a written request for the recording.

(12) To file an appeal with the assistance of an attorney within 20 business days of receipt of the written hearing decision.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1719, and 1723, Welfare and Institutions Code.

#### **§ 4977.5. Not-In-Custody Hearings.**

(a) A parolee who is not detained in custody on a Division of Juvenile Justice parole hold while undergoing revocation proceedings is considered to be a Not-In-Custody status case.

(b) A parolee charged with a violation of parole who is Not-In-Custody has the following rights:

(1) To receive written notice of the rights outlined herein within ten (10) business days after the date of discovery.

(2) To receive written notice of the charges against him/her within ten (10) business days after the date of discovery.

(3) To receive a copy of all evidence that will be used against the parolee unless it is deemed confidential.

(4) An attorney to represent the parolee during the revocation process in accordance with Section 4979. A parolee has the right to retain a private attorney or to be represented by his/her public defender.

(5) A Revocation Hearing that shall take place within sixty (60) calendar days after the parolee has been served with the notice of rights and charges.

(6) To be heard in person and to present witnesses and documentary evidence in his/her defense at the Revocation Hearing.

(7) To accommodations and assistance sufficient to ensure equal access to and effective communication during the revocation extension process as outlined in Section 4977.6.

(8) To a neutral and detached hearing officer.

(9) To a written decision by the hearing officer addressing the evidence relied upon and the reasons for the decision.

(10) To receive an audible audio recording of the Revocation Hearing within ten (10) business days of Juvenile Parole Board's receipt of a written request.

(11) To file an appeal with the assistance of an attorney within twenty (20) business days of receipt of the written hearing decision.

(c) A parolee charged with a violation of parole who is Not-In-Custody does not have the right to a Probable Cause Hearing.

Note: Authority cited: Sections 1001, 1004, and 1712, Welfare and Institutions Code. Reference: Sections 1714 and 1719, 1723 Welfare and Institutions Code.

**§ 4977.6 Accommodations and Assistance for Parolees/Parole Violators with Disabilities and/or Effective Communication Needs.**

(a) Parolees/parole violators shall have the following rights to reasonable accommodations and effective communication during revocation and revocation extension proceedings to ensure meaningful participation:

(1) To receive accommodation for disabilities and effective communication assistance throughout the revocation or revocation extension process.

(2) To receive help talking, reading, hearing, seeing, understanding or getting to hearings.

(3) To receive help in meeting with counsel.

(4) To receive the assistance of a foreign language interpreter if the parolee/parole violator does not speak English.

(5) To receive the assistance of a sign language interpreter if the parolee/parole violator is deaf and uses sign language.

(6) To receive help reading all related forms and papers.

(7) To use special transportation if needed to attend hearings.

(8) To file a grievance or appeal if the parolee/parole violator did not receive the help he/she needed.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1714, 1719, and 1767.35, Welfare and Institutions Code.

**§ 4977.7 Remedies for Late Hearings in the Parole Revocation Process.**

(a) Any reduction for timeframe violations that a parolee is entitled to as explained within this section shall not affect the hearing officer's determination of the appropriate case disposition.

(b) Late Probable Cause Hearing Remedy.

(1) If the Probable Cause Hearing for an In-Custody parolee occurs after the thirteenth (13th) business day but before the thirty-fifth (35th) calendar day following placement of the parole hold without a showing of good cause, the remedy shall be a hearing to be held at the earliest possible date.

(2) If the Probable Cause Hearing for an In-Custody parolee occurs after the thirty-fifth (35th) calendar day following placement of the parole hold without a showing of good cause, the parolee shall be entitled to a reduction in his/her return to custody by one day for every day the Probable Cause Hearing occurs beyond the thirty-fifth (35th) calendar day.

(c) Late Revocation Hearing Remedy.

(1) If the Revocation Hearing for an in-custody parolee occurs after the thirty-fifth (35th) calendar day following placement of the parole hold without a showing of good cause, the parolee shall be entitled to a reduction in his/her return to custody by one day for every day the Revocation Hearing is late.

(2) If the Revocation Hearing for an In-Custody parolee occurs after ninety (90) calendar days following the placement of a parole hold without a showing of good cause, prejudice shall be presumed, the case shall be dismissed, the Division of Juvenile Justice parole hold must be withdrawn and, assuming there are no other holds, the parolee released as soon as possible but no later than three (3) business days from the ninety-first (91st) day.

(d) Late Not-In-Custody Revocation Hearing Remedy.

(1) If the Not-In-Custody Revocation Hearing occurs after the sixtieth (60th) calendar day following service to the parolee of the notice of charges without a showing of good cause, the remedy shall be a hearing unless the parolee can demonstrate actual prejudice as a result of the delay.

(e) Late Revocation Extension Hearing Remedy.

(1) If the Revocation Extension Hearing occurs after the thirty-fifth (35th) calendar day following service to the parolee of the notice of charges with or without a showing of good cause, the hearing shall be held at the earliest possible date.

(2) For parole violators held beyond their Revocation Release Date due to pending revocation extension charges, if the Revocation Extension Hearing occurs after the thirty-fifth (35th) calendar day following the notice of charges without a showing of good cause, the parole violator shall be entitled to a reduction in his/her extension by one day for every day the Revocation Extension Hearing is late.

(3) For parole violators held beyond their Revocation Release Date, if the Revocation Extension Hearing does not occur within ninety (90) calendar days following the notice of charges without a showing of good cause, prejudice shall be presumed, the case shall be dismissed, an Exit Interview shall be conducted, the Division of Juvenile Justice parole hold must be withdrawn and, assuming there are no other holds, the parole violator released as soon as possible but no later than three (3) business days from the ninety-first (91st) day.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1719 and 1723, Welfare and Institutions Code.

#### **§ 4978. Detention.**

(a) Criteria for Detention. A parolee may be detained when it is determined it is more likely than not there is a substantial risk that unless he/she is detained:

(1) The parolee is a danger to himself/herself;

(2) The parolee is a danger to the person or property of another;

(3) The parolee is a risk to abscond from parole supervision; or

(4) The parolee's mental state has deteriorated to the point where it is likely that there is a threat to public safety.

(b) Authority to Detain.

(1) The Juvenile Parole Board may detain a parolee upon a determination that a criterion for detention criteria has been met and that probable cause exists to believe a parolee has violated a condition of parole.

(c) Time Limits on Detention Prior to Juvenile Parole Board Hearings.

(1) No later than two (2) business days after the parole hold is placed, the Parole Agent and the Supervising Parole Agent will confer to determine:

(A) Whether there is probable cause to believe that the parolee violated a condition of parole.

(B) Whether the parolee meets any of the detention criteria and should be detained pending a formal Probable Cause Hearing.

(2) A parolee who is in custody and has been charged with a parole violation has a right to a Probable Cause Hearing before the Juvenile Parole Board within thirteen (13) business days of a Division of Juvenile Justice initiated parole hold to determine:

(A) Whether there is probable cause to believe that he/she has violated a condition of parole; and

(B) Whether he/she should remain in custody pending the outcome of the revocation proceedings.

(3) If the Juvenile Parole Board finds that a criterion for detention has not been met, or that there is no probable cause to believe that a parolee violated a condition of parole, the Division of Juvenile Justice parole hold must be withdrawn and, assuming there are no other holds, the parolee released as soon as possible but no later than three (3) business days from the date of the hearing.

(d) Changes to Conditions Supporting Detention.

(1) A Parole Agent shall ensure that a detained parolee can communicate with him/her at any reasonable time when the parolee has new information which might possibly change a detention decision.

(2) When a hearing officer has ordered a parolee detained, release from detention requires approval by the Juvenile Parole Board. Parole staff shall contact the hearing officer making the original order, or in his/her absence, another hearing officer when new information indicates detention is no longer required. The hearing officer may give verbal approval for withdrawal of the detention order with the stipulation that a written report will be presented at a non-appearance parole calendar explaining the action.

(3) When court action is extended and the parolee is detained, the Division of Juvenile Justice may consider placing the parolee in a Division of Juvenile Justice facility. This may occur when it is deemed to be in the best interest of the parolee, and provided it does not interfere with the court process.

(e) Parolees undergoing court action in other states and/or being held by the Division of Juvenile Justice in other states, will be processed in the same manner as other parolees in the violation process except as follows:

(1) Detention of parolees in other states by the Division of Juvenile Justice will be reported to the Juvenile Parole Board at a parole calendar within sixty (60) days of such detention.

(2) Revocation process limits for parolees being detained out of state will be suspended until the date the parolee is returned to California.

Note: Authority cited: Sections 1767.3, and 1767.6 Welfare and Institutions Code. Reference: Sections 1719, 1766, and 1767.35 Welfare and Institutions Code.

#### **§ 4979. Right to Legal Counsel.**

The Juvenile Parole Board shall appoint counsel to represent all parolees and parole violators in the revocation and revocation extension processes.

##### (a) Appointment of Attorneys

(1) For revocation proceedings, the Division of Juvenile Parole Operations shall notify a parolee's counsel of record or public defender, who represented him/her for the committing court offense, of the imposition of a parole hold within four (4) business days after the hold.

(2) An attorney will be appointed to represent a parolee/parole violator:

(A) On or before the eighth (8th) business day following the parole hold for detained/in-custody parole revocation proceedings.

(B) On or before the twenty-first (21st) business day following service of the Notice of Charges, DJJ 3.274 (REV 04/09), for Not-In-Custody parole revocation proceedings, or

(C) On or before the eighth (8th) business day from the date of notice to the parole violator for revocation extension proceedings.

(3) A parolee/parole violator shall have the right to be represented by counsel during the administrative appeal of the Juvenile Parole Board's revocation or revocation extension decision.

(4) A parolee/parole violator shall have the right to obtain counsel of his or her own choosing at his or her own cost. Such counsel shall have the same rights, except as to compensation, as to counsel appointed by the Juvenile Parole Board.

##### (b) Attorney Access.

(1) At the time of appointment, counsel shall be provided with all of the evidence in the State's possession on which it intends to rely or which may be exculpatory.

(2) A parolee/parole violator's counsel shall not be denied reasonable access to all of his/her client's files.

(3) At the time of appointment, counsel representing parolees/parole violators who have difficulty in communicating or participating in revocation or revocation extension proceedings because of a disability or effective communication needs, shall be informed of the nature of the difficulty, including but not limited to mental illness, other cognitive or communication impairments, illiteracy, limited-English language proficiency, and the need for a foreign language or sign language interpreter.

(4) Counsel shall be given reasonably adequate time to represent the parolee/parole violator properly at each stage of the proceeding, including administrative appeals.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1714, 1719, and 1767.35, Welfare and Institutions Code.

#### **§ 4980. Rules for Parole Violation Hearings.**

The Juvenile Parole Board has established the following rules for all hearings relating to parole violation proceedings.

(a) When a parolee is being held in custody, the hearings to determine probable cause or violation of parole shall be held within the county or within fifty (50) miles of where the alleged violation occurred, absent a waiver.

(b) The parolee shall be present during the hearing. If the parolee is under 18 years of age, the parents or guardians shall be notified and may attend the hearing.

(c) The hearing officer shall familiarize himself/herself with necessary reports and supporting evidence prior to the hearing. This review will be limited to those materials relevant to the type of hearing to be conducted.

(d) The parolee may challenge any allegation of a violation brought exclusively by the Division of Juvenile Justice but cannot challenge a court conviction.

(e) The hearing officer shall limit the scope of the hearing to issues relevant to the particular hearing which is being held.

(f) During Probable Cause Hearings, the hearing officer may assume staff reports are true unless the accuracy of the information is successfully challenged at the hearing.

(g) Parolees shall have the right to subpoena witnesses to appear at a Revocation Hearing. The parolee shall be advised of the witnesses that the Division of Juvenile Justice intends to subpoena. If a hearing officer determines based on objective factors that a witness is fearful and that face-to-face confrontation would result in significant emotional distress to the witness, that witness may testify outside of the presence of the parolee. The hearing officer shall allow the parolee's counsel to cross examine the witness and a reasonable amount of time to consult with the parolee about the witness's testimony.

(h) Evidence or documents not provided to the parolee's counsel at least forty-eight (48) hours prior to the hearing shall not be admitted or considered in the hearing unless the Division of Juvenile Justice can show good cause for the delay.

(i) The use of hearsay evidence in a Revocation Hearing shall be limited by the parolee's confrontation rights in the manner set forth in controlling legal authority.

(j) Any person, including the parolee, who disrupts a hearing, may be excluded from further participation by the hearing officer.

(k) The hearing officer is responsible for assuring that the parolee has had a full opportunity to present all relevant information in his/her own behalf.

(l) The hearing officer shall record findings of specific violations with respect to the charges shown in the notice of charges. He/she shall record all orders made at the hearing.

(m) All Revocation and Extension Hearings shall be audio recorded and a written record will be made for the proceeding. The parolee shall be informed of his/her right to receive an audible copy of the audio recording of the hearing. Division of Juvenile Justice shall take necessary steps to ensure that such proceedings are appropriately recorded. Probable Cause Hearings/Optional Waiver Reviews may not be recorded.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1723, Welfare and Institutions Code.

#### **§ 4981. Probable Cause/Detention Hearing.**

(a) A parolee who is in custody while undergoing parole revocation proceedings initiated by Division of Juvenile Justice has a right to a Probable Cause Hearing before the Juvenile Parole Board. This hearing shall be conducted no later than thirteen (13) business days after imposition of a Division of Juvenile Justice parole hold. The Probable Cause Hearing has two (2) purposes:

(1) To determine whether there is probable cause to believe the parolee has violated a law or condition of parole. Probable cause requires facts that would lead a person of ordinary caution and prudence to conscientiously entertain a strong suspicion that the alleged charge is true.

(2) To determine, where probable cause is established the Juvenile Parole Board, whether the parolee should continue to be detained pending resolution of the alleged charges.

(b) Probable cause for a law violation may be established by:

(1) A finding by a court that a crime was committed and that the parolee committed the crime. In this instance the hearing officer shall establish probable cause by determining the parolee appearing before him/her is the same subject who appeared before the court.

(2) A finding by the hearing officer that a violation of law occurred and that there is probable cause to believe the parolee was the person who committed the crime.

(c) A hearing officer may order a parolee detained following the establishment of probable cause provided the parolee meets a criteria for detention as set forth in Section 4978.

~~(ed) When a hearing officer finds probable cause but orders that a parolee not be detained pending resolution of the charges, the Youth Authority Division of Juvenile Justice detention order shall be removed within 24 hours parole hold must be withdrawn and assuming there are no other holds, the parolee released as soon as possible, but no later than three (3) business days from the date of the hearing. If released, the parolee will have a Not-In-Custody Revocation Hearing. Regardless of whether the parolee is being held on other holds, timeframes for Not-In-Custody Revocation Hearings will apply.~~

~~(d) A parolee may waive a timely probable cause/detention hearing provided such waiver is voluntary, and made knowingly and intelligently. A waiver of such a hearing shall in general meet the same test as a waiver of the right to request legal counsel. A waiver signed by the parolee shall be presented to the Board along with appropriate violation and detention reports prepared by parole staff. The Board may on a non appearance basis, establish probable cause and order detention when appropriate criteria are met. A waiver of a timely hearing shall not be considered an admission of the truth of the charges pending in court.~~

~~(e) When a hearing officer dismisses the charges or orders that the parolee be continued on parole, the Division of Juvenile Justice parole hold must be withdrawn and, assuming there are no other holds, the parolee released as soon as possible, but no later than three (3) business days from the date of the hearing.~~

~~(e) When at a scheduled probable cause hearing it is discovered court action has been completed the hearing officer may conduct a disposition hearing provided:~~

~~(1) Parole staff is recommending to continue the ward on parole.~~

~~(2) The parolee waives notice of the disposition hearing and service of a written disposition report.~~

Note: Authority cited: Section ~~4722~~1719, Welfare and Institutions Code. Reference: Sections~~471,~~1719, ~~4721 and~~ 1723, and 1766, Welfare and Institutions Code.

## **§ 4982. Violation of Parole.**

~~The Board shall establish that there has been a substantial violation of a condition of parole before a parolee may be deprived of his liberty through revocation of parole.~~

~~(a) Kinds of Violations of Parole:~~

~~(1) Law violation. A court finding of a violation of law establishes a violation of a condition of parole.~~

~~(2) Technical violation. This is a violation of a general or special condition of parole as imposed by the Board. It takes specific Board action to establish a technical violation of parole except when the parolee has made a voluntary admission of such violation.~~

~~(b) Reporting Possible Parole Violations to the Board. Parole staff shall report to the Board when:~~

~~(1) A court has established that a parolee has committed a substantial law violation.~~

~~(2) Parole staff believes a parolee has committed a substantial violation of a general or special condition of parole.~~

~~(A) Parole staff may allege a technical violation of parole when there has been a dismissal or acquittal by court action. This may occur when parole staff believes the behavior charged in the court action represented a substantial violation of parole and it is believed there is sufficient proof to establish the truth of such a violation.~~

~~(c) Options Available to a Parolee: A parolee charged by parole staff with a violation of parole may:~~

~~(1) Waive his right to a timely hearing on alleged technical violations of parole when he has court action pending on a law violation. However, a violation hearing shall be conducted within 72 days of the waiver when court action has not been completed. Any waiver of a timely hearing shall not be considered an admission of the truth of the alleged violation.~~

~~(2) Sign an admission as to the truth of any alleged violation of parole.~~

~~(3) Demand a hearing before the Board to determine the truth of any alleged violation of parole.~~

~~(d) Standard of Proof. A preponderance standard of proof shall be applied by the Board to the fact finding process of determining whether a parolee has violated a condition of parole. This means a hearing officer shall decide whether it is more likely than not that a parolee did violate a condition of parole as alleged.~~

~~(e) Non-substantial Violations of Parole. Parole staff shall report a non-substantial violation of law established by a court to the Board within 15 days of a completed court action. A parole report briefly describing the parolee's behavior and giving the court disposition is to be presented to the Board at a parole calendar.~~

~~(f) Minor Violations of Law and Citations. Vehicle Code traffic violations and citations for possession of marijuana need not be reported to the Board, including when a warrant is issued, except for:~~

~~(1) Hit and run.~~

~~(2) Injury to person or property.~~

~~(3) Driving under the influence of alcohol or drugs.~~

~~(4) Two or more citations for possession of marijuana within a six-month period.~~

~~(5) Two or more traffic warrants within a six-month period.~~

(a) When a parolee is alleged to have violated a condition of parole, he/she is placed into the violation process. There are two (2) categories of parole violations:

(1) Law Violation. A court finding of a violation of law establishes a violation of a condition of parole.

(2) Technical Violation. A violation of a general or special condition of parole.

(b) The Division of Juvenile Parole Operations violation process has three (3) levels:

(1) Level 1: Minor violations of parole for which detention may not be warranted.

(2) Level 2: Selected minor law violations, moderate technical violations, or repetitive Level 1 behavior for which detention may not be warranted.

(3) Level 3: Any behavior that the Division of Juvenile Parole Operations believes represents a risk or threat to public safety. This includes serious technical and/or law violations, and/or any Level 1 or Level 2 behavior that is exacerbated by repetition, severity and/or relation to the youth's original commitment offense.

(c) Level 1 and Level 2 behavior may be resolved at the field parole unit level through the imposition of a Corrective Action Plan, DJJ 3.221 (REV 04/09). Level 3 behavior shall be reported to the Juvenile Parole Board. However, the Juvenile Parole Board must first establish that there has been a violation of a condition of parole before a parolee may be deprived of his liberty through revocation of parole.

(d) A preponderance of the evidence standard of proof shall be applied by the Juvenile Parole Board during a Revocation Hearing to determine whether a parolee has violated a condition of parole. This means a hearing officer shall decide whether it is more likely than not that a parolee did violate a condition of parole as alleged.

Note: Authority cited: Section ~~4722~~1766, Welfare and Institutions Code. Reference: Sections ~~1719, 1721,~~ 1723, 1766 and 1767.3, Welfare and Institutions Code.

### **§ 4983. Disposition of a Parole Violation.**

~~The Board shall make a disposition in all cases where a substantial violation of parole by a parolee has been established.~~

~~(a) Time Limits and Board Actions.~~

~~1) Disposition Review. This review is conducted by the Board on a non-appearance basis at a parole calendar. It shall be held at the earliest opportunity following establishment of a parole violation when the parolee is not in custody or when the Youth Authority detention order has not been withdrawn, and parole staff is recommending that the ward be continued on parole. At this review the Board may order that the ward be continued on parole or order the scheduling of a disposition hearing. If the hearing officer believes the parolee meets the criteria for detention, he may order him detained pending a disposition hearing.~~

~~(2) Disposition Hearing. A disposition hearing shall be held for a parolee when the parole agent is recommending revocation of parole, or when the Board at a review orders a hearing. A disposition hearing may not be waived by a parolee.~~

~~(A) A disposition hearing shall be held within 30 days of:~~

- ~~1. The date of final court action on all matters before the court.~~
- ~~2. The date the Youth Authority established a technical violation of parole if no court action is pending.~~

~~(B) At a disposition hearing the hearing officer may:~~

- ~~1. Continue the ward on parole when he believes it is in the best interests of the community and to the advantage of the parolee.~~
- ~~2. When a parolee is in detention and continued on parole he shall be released from the Youth Authority detainer within 24 hours. If a new placement plan is required the hearing officer shall order the parolee detained temporarily and to be released when an acceptable plan is developed. In making such an order the hearing officer shall set a specific time the case is to be returned to Board if release is not effected.~~
- ~~3. Revoke the parole of a parolee when he determines the parolee is in need of institutional training and treatment.~~

~~(b) Revocation of Parole.~~

~~(1) In ordering revocation of parole at a disposition hearing the hearing officer shall:~~

~~(A) Establish a parole consideration date or order a new clinical study for the parolee.~~

~~(B) Designate the place where the new institutional stay will begin.~~

~~(2) When a parolee has been committed to the Youth Authority by a court as a result of an offense committed while on parole, the parole status of such a parolee shall be revoked at the initial hearing.~~

(a) The Juvenile Parole Board shall make a written order documenting its findings and imposing a disposition in all parole revocation proceedings. A copy of this written board order shall be provided to the parolee and to his/her attorney at the conclusion of the hearing.

(b) The dispositions that the Juvenile Parole Board may consider are:

(1) Dismissal of the charges is warranted

(2) Continuing the parolee on parole.

(3) Revoking parole and imposing a revocation term based upon the Parole Revocation Assessment Matrix, REV 11/2008 or the Revocation Extension Matrix, REV 12/2008, established by the Juvenile Parole Board. Upon revocation, the hearing officer shall establish a Revocation Release Date.

(4) Granting the parolee's request for an Optional Waiver

Note: Authority cited: Section ~~1722~~1719, Welfare and Institutions Code. Reference: Sections 1714, 1719, ~~1721~~, 1723 and 1766, Welfare and Institutions Code.

### **§ 4983.5 Optional Waiver.**

(a) A parolee, who is in custody and undergoing criminal prosecution for the same behavior that is grounds for an alleged violation, may conditionally waive a Revocation or Revocation Extension Hearing while still retaining the option to request a hearing at a later date. Upon receipt of a signed request by the parolee in which he/she elects to optionally waive his/her Revocation or Revocation Extension Hearing, his/her parole will be revoked or extended for the time assessed by the Juvenile Parole Board based upon the established Parole Revocation Assessment Matrix, REV 11/2008 or the Revocation Extension Matrix, REV 12/2008.

(b) A parolee may later request a Revocation or Revocation Extension Hearing prior to the end of the optional waiver period. He/she is entitled to no more than one activation of an optional waiver. A hearing request must be postmarked and received by the Juvenile Parole Board no later than 35 days before expiration of the optional waiver revocation period ordered by the Juvenile Parole Board.

(c) If a parolee is still undergoing criminal prosecution when the optional waiver revocation period ends, the Division of Juvenile Justice parole hold will be dropped. However, the parolee may remain in local custody pending the outcome of the criminal prosecution.

Note: Authority cited: Section 1719, Welfare and Institutions Code. Reference: Sections 1714, 1723 and 1766, Welfare and Institutions Code.