

WAC 381-70-160 Rights and privileges relating to revocation hearings.

(1) An alleged parole violator shall be entitled to a fair and impartial hearing of the charges of the parole violation within thirty days of service of suspension in the state of Washington, reasonably near the site of the alleged violation(s).

(2) The alleged parole violator shall be entitled to be represented by an attorney of his own choosing and at his own expense and shall have the right to present evidence and witnesses.

Upon satisfactory evidence of indigency and upon request, the board may cause the appointment of an attorney to represent the parolee at an on-site parole revocation hearing. In such cases, the cost of representation shall be paid by the board at a rate determined by legislative appropriation.

Counsel may ask, in writing, for exception to the established rate. Such requests should be directed to the executive secretary, indeterminate sentence review board.

(3) Discovery. The community corrections officer shall provide, within ten days of suspension of parole, the parolee's defense attorney with a copy of the violations specified, the violation report, and all evidence relating to the violations charged intended for introduction at the hearing, either as factual evidence or in support of a dispositional recommendation.

Such documents, materials, and information may include, but not be limited to, copies of the parole order and addenda, copies of prior violation reports submitted to the board, and copies of all board actions or hearing findings issued during the current parole.

In addition, the CCO must provide to the parolee's attorney any material or information within the CCO's knowledge or possession which tends to negate the parolee's guilt as to the violations charged.

(4) The board shall have the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence, provided that an offer has been made to pay the statutory fees and mileage.

(5) The alleged parole violator may be requested to testify during the on-site hearing and any such testimony shall not be used against him in any criminal prosecution (RCW 9.95.124).

(6) The allegations of violations of the conditions of parole must be proven by a preponderance of evidence. At the conclusion of the hearing, or within ten days thereafter, the board shall make written findings and conclusions concerning the allegations.

(7) If the member, having heard the matter, should conclude that the allegations of violations of conditions of parole have not been proven by a preponderance of evidence or those that have been proven by a preponderance of evidence are not sufficient cause for revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions.

(8) If the member or members, having heard the matter, should conclude that the allegations of violations of conditions of parole have been proven by a preponderance of evidence and constitute sufficient cause for revocation of parole, then such member or members shall enter an order of parole revocation and return to state custody. Within thirty days of the return of such parole violator to a state correctional institution for convicted felons, the board shall enter an order determining a new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court.

(9) A parolee who has been convicted and sentenced to prison on a new felony charge will have the right to a hearing pertaining to dis-

position only pursuant to *In Re Akridge*, 90 Wn.2d 350 (1978), and the hearing will be held at the institution of confinement. Chapter 98, Laws of 1969 provides that an alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights, may admit to one or more of the alleged violations and waive the on-site hearing. If the board accepts the waiver, it shall either:

(a) Reinstate the parolee on parole under the same or modified conditions; or

(b) Revoke the parole of the parolee and enter an order of parole revocation and return to state custody for determination of a new minimum sentence. Such determination shall be made within thirty days of the return of such parole violator to a state correctional institution for convicted felons, and the board shall enter an order determining the new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was convicted or the maximum fixed by the court.

[WSR 91-14-029, § 381-70-160, filed 6/26/91, effective 7/27/91.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.