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## **REPRESENTATION IN PAROLE REVOCATION PROCEEDINGS**

### **Parole Revocation Warrant a/k/a “Blue Warrant”**

A parole revocation warrant is commonly called a “blue warrant.” It is issued by the TDCJ Parole Division and subjects the releasee (the person on parole or mandatory supervision) to immediate arrest pending the outcome of the revocation hearing. Upon arrest, the releasee will be jailed – either in the county in which he lives or the county in which he was arrested by the police – until the revocation process is complete.<sup>1</sup> If the releasee is arrested out of state, he will be returned directly to the custody of the TDCJ and his revocation hearing will be held in a prison unit instead of a county jail. The time between the issuance of the warrant and the arrest of the releasee does not count as part of the time served on the releasee’s sentence.

#### **A parole revocation warrant or summons can be issued if:**

- There is reason to believe that the person has been released although not eligible for release;
- The person has been arrested for an offense;
- There is a document that is self-authenticating as provided by Rule 902 of the Texas Rules of Evidence, stating that the person violated a rule or condition of release; or
- There is reliable evidence that the person has exhibited behavior during the person’s release that indicates to a reasonable person that the person poses a danger to society that warrants the person’s immediate return to custody.

TEX. GOV’T. CODE §508.252. Added by Acts 1997, 75th Leg., ch. 165, Sec. 12.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 10.30, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 264, Sec. 2, eff. Sept. 1, 2003.

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<sup>1</sup> For the purpose of revocation, the terms “parole” and “mandatory supervision” are interchangeable and reference to either of said terms includes the other. *See* TEX. ADMIN. CODE 141.11(25).

## **Summons**

Instead of the issuance of a warrant, the Parole Division may issue a summons requiring the person to appear for a hearing under Texas Government Code §508.281 if the person is not a releasee who is:

- on intensive supervision or superintensive supervision;
- an absconder; or
- determined by the division to be a threat to public safety;

**or**

is charged only with committing a new offense that is alleged to have been committed after the first anniversary of the date the person was released on parole or to mandatory supervision

**if:**

- the new offense is a Class C misdemeanor under the Penal Code, other than an offense committed against a child younger than 17 years of age or an offense involving family violence, as defined by Section 71.004, Family Code;
- the person has maintained steady employment for at least one year;
- the person has maintained a stable residence for at least one year; and
- the person has not previously been charged with an offense after the person was released on parole or to mandatory supervision;

**and**

- shall issue to the person a summons requiring the person to appear for a hearing under Texas Government Code §508.281 if the person:
  - is charged only with committing an administrative violation of release that is alleged to have been committed after the first anniversary of the date the person was released on parole or to mandatory supervision;
  - is not serving a sentence for, and has not been previously convicted of, an offense listed in or described by Article 62.001(5), Code of Criminal Procedure; and
  - is not a releasee with respect to whom a summons may not be issued under Subdivision (1).

A summons issued must state the time, date, place, and purpose of the hearing.

Texas Government Code §251. Added by Acts 1997, 75th Leg., ch. 165, Sec. 12.01, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 264, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 546 (H.B. 2735), Sec. 1, eff. September 1, 2011. Acts 2015, 84th Leg., R.S., Ch. 693 (H.B. 710), Sec. 1, eff. September 1, 2015.

### **Incarceration pending the revocation hearing**

A person who is the subject of a warrant may be held in custody pending a determination of all facts surrounding the alleged offense, violation of a rule or condition of release, or dangerous behavior.

The releasee will be incarcerated during the revocation process and until the revocation hearing except that a magistrate of the county in which the person is held in custody may release the person on bond pending the hearing if:

- (1) the person is arrested or held in custody only on a charge that the person committed an administrative violation of release;
- (2) the division, in accordance with Subsection (e), included notice on the warrant for the person's arrest that the person is eligible for release on bond; and
- (3) the magistrate determines that the person is not a threat to public safety.

The Parole Division is required to include on the warrant for the person's arrest a notice indicating that the person is eligible for release on bond under Subsection (d) if the division determines that the person has not been previously convicted of:

- an offense under Chapter 29, Penal Code;
- an offense under Title 5, Penal Code, punishable as a felony;

or

- an offense involving family violence, as defined by Section 71.004, Family Code;

and

- is not on intensive supervision or super-intensive supervision;
- is not an absconder;

and

- is not a threat to public safety.

Texas Government Code §508.254. Added by Acts 1997, 75th Leg., ch. 165, Sec. 12.01, eff. Sept. 1, 1997. Amended by: Acts 2015, 84th Leg., R.S., Ch. 472 (S.B. 790), Sec. 1, eff. September 1, 2015.

While incarcerated, the releasee will be visited by a parole officer. It might be his regular parole officer, but it could be a regional parole officer or an institutional parole officer. This parole officer may try to persuade the parolee/releasee to waive his constitutional right to a revocation hearing. He may even tell the parolee/releasee that if he waives his rights, he will make a favorable recommendation to the Board, or that he will not be revoked, or that he will be sent to an ISF (Intermediate Sanction Facility) or a SAFP (Substance Abuse Felony Punishment Facility), or treatment center. The parole officer may even tell the parolee/releasee that by waiving his rights and signing a waiver, he will get out of jail sooner, or start earning time credit faster. **None of this is true.** As long as the parolee/releasee is incarcerated under a blue warrant, he will earn time credit, including good time credits toward a new parole review date (if he is entitled to good time credits and the offense is not a flat-time only offense). However, the time between the date of the issuance of the warrant to the date of the parolee/releasee's arrest is not counted as part of the time served under the sentence. *See* TEX. GOV'T. CODE §508.253.

Regardless of what the parole officer tells the parolee/releasee, he should never waive his rights to anything related to the revocation process. He should invoke all of his rights, including his right to a preliminary hearing. **He should tell the parole officer that he wants a preliminary hearing and a revocation hearing.**

Also, the parolee/releasee should not discuss the facts of his case with the parole officer. Remember, the parole officer is not on the parolee/releasee's side. His job is to represent the State (the prosecution) at the parole revocation hearing on the alleged parole violation(s). Anything said to the parole officer can and will be used against the parolee/releasee. If the parole officer wants to discuss the facts of the case, the parolee/releasee should politely inform him that he has been advised by his attorney not to discuss the facts of the case, or waive any of his rights. **The parolee/releasee should tell the parole officer that he wants a preliminary hearing and a revocation hearing.**

**If the parolee/releasee does waive his right to due process (the hearings), it is very likely that his parole or mandatory supervision will be revoked without the parolee/releasee ever having a chance to tell his side of the story.**

## Due Process in the Revocation Process

In 1972, in *Morrissey v. Brewer*, 408 U.S. 471 (1972), the United States Supreme Court recognized that releasees have a substantial liberty interest in their freedom and that their liberty interest is protected by the Fourteenth Amendment of the United States Constitution.<sup>2</sup> In its historic opinion, the Court stated:

“The liberty of a parolee enables him to do a wide range of things open to persons who have never been convicted of crime. The parolee has been released from prison based on an evaluation that he shows reasonable promise of being able to return to society and function as a responsible, self-reliant person. Subject to the conditions of his parole, he can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.

Though the State properly subjects him to many restrictions not applicable to other citizens, his condition is very different from that of confinement in a prison.

He may have been on parole for a number of years and may be living a relatively normal life at the time he is faced with revocation. The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.”

*See Morrissey*, 408 U.S. 482.

The Court held that releasees facing the loss of their freedom are entitled to due process in the form of:

1. Written notice of the claimed violations of parole;
2. Disclosure of the evidence against the releasee;
3. The opportunity to be heard in person and to present witnesses and documentary evidence;
4. The right to confront and cross-examine adverse witnesses;
5. A neutral and detached hearing body such as a Parole Board; and
6. A written statement by the fact finders as to the evidence relied on and reasons for revocation

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<sup>2</sup> One year later, in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), the Supreme Court gave the same due process protections to probationers.

*The Court articulated a two-stage process for revoking a releasee's freedom. **The first stage is a preliminary hearing.***

A preliminary hearing is held to determine whether probable cause or reasonable grounds exist to believe that the releasee committed an act that would constitute a violation of a condition of release. A preliminary hearing will occur unless the releasee:

- waives the preliminary hearing; or
- has been charged only with an administrative violation of a condition of release; or
- has been adjudicated guilty of or has pleaded guilty or nolo contendere to an offense committed after release, other than an offense punishable by fine only involving the operation of a motor vehicle, regardless of whether the court has deferred disposition of the case, imposed a sentence in the case, or placed the inmate or person on community supervision.

Texas Government Code §508.2811. Added by Acts 1999, 76th Leg., ch. 62, Sec. 10.32, eff. Sept. 1, 1999.

The **second stage** is the parole revocation hearing. Before parole is revoked, the releasee must be given an opportunity to be heard and to show that he did not violate the conditions, and/or present mitigating evidence suggesting that the violation does not warrant revocation. The revocation hearing is divided into two parts. The first part is to hear evidence in support of the allegation against the releasee and to hear the releasee's evidence showing that he did not commit the violation. The second part is called the "adjustment phase." During the adjustment phase, the parole officer and the releasee present evidence of the releasee's adjustment while on supervised release. For example, employment, payment of fees, positive or negative drug tests, etc.

### **Deadlines**

The final revocation hearing must be held within a reasonable time after the parolee/releasee is taken into custody. In *Morrissey*, the Supreme Court suggested that a lapse of two months between the arrest and the final revocation hearing is not unreasonable.

Under Texas Government Code, §508.282, the Board of Pardons and Paroles has 41 days from the date of arrest to give the releasee a hearing. However, the rule is subject to certain exceptions. For example, if the releasee is arrested in another state, the 41-day rule does not take effect until he is back in Texas.

Because the revocation process is an administrative process, the standard in the revocation hearing is “preponderance of the evidence,” which is a much lower standard than in a criminal trial which is “beyond a reasonable doubt.” The proceeding is far less formal than a criminal trial and the rules of procedure and evidence are not as strict. There is no court reporter<sup>3</sup> and polygraph results and hearsay, which are not admissible at criminal trials, are admissible in revocation hearings.

At the conclusion of the revocation hearing, the parole officer will make a recommendation to the hearing officer. The hearing officer will then prepare a written report of the hearing, make his recommendation, and forward the report to the Board. The Board will then make its decision and provide the releasee with written notice of the decision. *See* TEX. ADMIN. CODE TITLE 37, §147.7. The Board does not have to accept the recommendation of either the parole officer or the hearing officer. The process usually takes at least 30 days. During this time, the releasee will remain incarcerated on the blue warrant.

### **Sanctions**

After the hearing the Board may recommend that parole/mandatory supervision be revoked, modified or continued.

If parole/mandatory supervision of a person described by Texas Government Code §508.149(a) is revoked, the releasee may be required to serve the remaining portion of his sentence. He will not receive credit for the time from the date of his release to the date of revocation.

If parole/mandatory supervision of a person other than a person described by Texas Government Code §508.149(a) is revoked, the person may be required to serve the remaining portion of the sentence on which the person was released. For a person who on the date of issuance of a warrant or summons initiating the revocation process is subject to a sentence the remaining portion of which is greater than the amount of time from the date of the person's release to the date of issuance of the warrant or summons, the remaining portion is to be served without credit for the time from the date of the person's release to the date of revocation. For a person who on the date of issuance of the warrant or summons is subject to a sentence the remaining portion of which is less than the amount of time from the date of the person's release to the date of issuance of the warrant or summons, the remaining portion is to be served without credit for an amount of time equal to the remaining portion of the sentence on the date of issuance of the warrant or citation.

If a warrant is issued charging a violation of a release condition or a summons is issued for a hearing under Section 508.281, the sentence time credit may be suspended until a determination is made in the case. The suspended time credit may be reinstated if the parole, mandatory supervision, or conditional pardon is continued.

If a person's parole or mandatory supervision is modified after it is established that the person violated conditions of release, the Board may require the releasee to remain under custodial supervision in a county jail for a period of not less than 60 days or more than 180 days. A sheriff is required to accept an inmate sanctioned under this subsection only if the commissioners court of the county in which the sheriff serves and the Texas Department of Criminal Justice have entered into a contract providing for the housing of persons sanctioned under this subsection.

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<sup>3</sup> Revocation hearings are digitally recorded. The hearing officer operates the machine and the quality varies depending on the location of the hearing. If it becomes necessary to appeal a Board decision, the hearing tape will have to be transcribed. The cost of transcription will depend on the length of the hearing and the quality of the recording.

Texas Government Code §508.283. Added by Acts 1997, 75th Leg., ch. 165, Sec. 12.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 10.34, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 856, Sec. 7, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1197, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(62), eff. Sept. 1, 2003.

## **Appeal**

If the Parole Board votes to revoke parole, there is one administrative appeal called a Motion to Reopen. The releasee or his attorney has 60 days from the date of the Board Panel's revocation decision to request a reopening of the case for any "substantial error" in the revocation process or upon newly discovered information. *See* TEX. ADMIN. CODE TITLE 37, §146.11.

A written request to reopen the revocation hearing or reinstate supervision submitted later than 60 days from the date of the Board Panel's revocation decision will not be considered unless under exceptional circumstances, including but not limited to:

- judicial reversal of a judgment of conviction of a criminal offense where the offense constituted an underlying factor in the initial revocation decision;
- judicial order requiring a hearing;
- initial revocation effected without opportunity for a hearing or waiver as required under law

Any request for re-opening must be in writing and delivered to the Board or placed in the U.S. Mail (certified mail, return receipt requested), and addressed to the Texas Board of Pardons and Paroles, Attention: General Counsel, 8610 Shoal Creek Blvd., Austin, Texas 78757.

A parole panel designated by the Chair (other than the original panel) shall dispose of the motion by:

- granting the motion and ordering that the hearing be reopened for a stated specified and limited purpose;
- denying the motion; or
- reversing the panel decision previously entered and withdrawing the Board's revocation warrant, under the same terms and provisions as provided in §146.10 of this title (relating to Final Board Disposition)

Texas Administrative Code §146.11 adopted to be effective June 19, 2002, 27 TexReg 5217; amended to be effective January 16, 2006, 31 TexReg 306; amended to be effective December 9, 2007, 32 TexReg 8855; amended to be effective January 31, 2013, 38 TexReg 388; amended to be effective February 11, 2016, 41 TexReg 972.

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## Statutory Language - Deadlines

The charges against the releasee must be disposed of before the 41st day after the date on which

- A warrant issued as provided by Texas Government Code 5§08.251 is executed, if the inmate or person is arrested only on a charge that the inmate or person has committed an administrative violation of a condition of release, and the inmate or person is not charged before the 41st day with the commission of an offense described by §508.2811(2)(B); or
- The sheriff having custody of an inmate or person alleged to have committed an offense after release notifies the department that:
  - the inmate or person has discharged the sentence for the offense; or
  - the prosecution of the alleged offense has been dismissed by the attorney representing the state in the manner provided by Article 32.02, Code of Criminal Procedure; or
- Within a reasonable time after the date on which the inmate or person is returned to the custody of the department, if:
  - immediately before the return the inmate or person was in custody in another state or in a federal correctional system; or
  - the inmate or person is transferred to the custody of the department under Section 508.284.

The Board is not required to dispose of the charges within the 41 day time period if:

- the inmate or person is in custody in another state or a federal correctional institution;
- the parole panel or a designee of the Board is not provided a place by the sheriff to hold the hearing, in which event the department, parole panel, or designee is not required to dispose of the charges against the inmate or person until the 30th day after the date on which the sheriff provides a place to hold the hearing; or
- the inmate or person is granted a continuance by a parole panel or a designee of the Board in the inmate's or person's hearing under Section 508.281(a), but in no event may a parole panel, a designee of the Board, or the department dispose of the charges against the person later than the 15th day after the date on which the parole panel, designee, or department would otherwise be required to dispose of the charges under this section, unless the inmate or person is released from custody and a summons is issued under Section 508.251 requiring the inmate or person to appear for a hearing under Section 508.281.

Texas Government Code §508.282. Added by Acts 1997, 75th Leg., ch. 165, Sec. 12.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 10.33, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 264, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1194, Sec. 1, eff. Sept. 1, 2003.

The charges against a releasee for whom a warrant is issued under Section 508.281(c)<sup>4</sup> shall be disposed of not later than the 31st day after the date on which the warrant is issued.

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<sup>3</sup> Texas Government Code §508.281(c) provides: "If a designated agent of the Board determines that a releasee who appears in compliance with a summons has violated a condition of release, the agent shall notify the Board. After the Board or a parole panel makes a final determination regarding the violation, the division may issue a warrant requiring the releasee to be held in a county jail pending the return of the releasee to the institution from which the releasee was released."

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**From the Texas Board of Pardons and Paroles Website**  
Updated 02/12/2015

[http://www.tdcj.state.tx.us/bpp/revocation/How\\_Admin\\_Hearing\\_Process\\_Works.html](http://www.tdcj.state.tx.us/bpp/revocation/How_Admin_Hearing_Process_Works.html)

## **PAROLE REVOCATION PROCESS**

### **HOW DOES THE ADMINISTRATIVE HEARING PROCESS WORK?**

Generally, offenders arrested under a Parole Division warrant fall into two categories:

- Those entitled to both preliminary and revocation hearings, and
- Those entitled to a revocation/mitigation hearing only.

At the initial interview, offenders may choose to waive one or both administrative hearings.

#### **Hearings follow these procedures:**

##### **Preliminary hearing requested:**

- After a pre-revocation interview, the parole officer schedules a preliminary hearing and notifies the offender of the date and time.
- A hearing officer conducts the preliminary hearing, reviews all information and evidence, and decides whether probable cause exists to believe that a violation occurred.

If probable cause is found for at least one parole violation, the hearing officer will decide if the case should proceed to a revocation hearing and afford the offender an opportunity to either be heard at the revocation hearing, or to waive the hearing.

If the offender decides to have the hearing, typically the parole officer will be instructed to schedule a revocation hearing upon disposition of any pending charges. If a law violation is alleged, but no charges are pending, a date will generally be scheduled at the conclusion of the preliminary hearing and all parties will be notified at that time.

**If the offender waives the hearing, or the hearing officer finds the case does not merit a revocation hearing, the hearing officer will forward the waiver or preliminary hearing report to a Parole Panel for disposition. The panel generally will respond by taking one of the following actions:**

- Continue the parole or mandatory supervision in a manner warranted by the evidence, which may include transferring the offender to a treatment facility, halfway house, Substance Abuse Felony Punishment Facility, or an Intermediate Sanction Facility.
- Direct the case to proceed to a revocation hearing, or
- Revoke the offender's administrative release status (Only when the revocation hearing has been waived)

**Preliminary hearing waived:**

If the hearing is waived at the initial offender interview, the parole officer forwards the waiver with attachments to the Parole Panel for disposition. After reviewing the waiver, a Board Analyst, if there is probable cause to believe a violation occurred, may refer the case to a parole officer to schedule a revocation hearing, or may present the case to a Parole Panel for disposition.

When a panel receives a preliminary hearing waiver packet, the panel generally takes one of the following actions:

- Continue the parole or mandatory supervision in a manner warranted by the evidence, which may include transferring the offender to a treatment facility, halfway house, Substance Abuse Felony Punishment Facility, or an Intermediate Sanction Facility.
- Direct the case to proceed to a revocation hearing, or
- Revoke the offender's administrative release status (Only when the revocation hearing has been waived)

**The following procedures are used for offenders entitled to a revocation hearing only.**

**Revocation hearing requested**

- After the initial pre-revocation interview, the parole officer schedules a revocation hearing and notifies the offender of the date and time.
- A hearing officer acts as the Board's representative in conducting the revocation hearing.
- The hearing officer reviews all information and evidence to determine if a preponderance of credible evidence exists to believe a violation occurred. If evidence indicates at least one parole violation, the hearing officer moves to the mitigation phase of the hearing.
- Within a reasonable time after the hearing, the hearing officer forwards to the Parole Panel a report summarizing the evidence, including all submitted documents. The hearing officer and parole officer each make a recommendation for resolving the case. A Board Analyst, who also makes a recommendation, presents the case to the Parole Panel. The panel disposes of the case by either:
  - Continuing the parole or mandatory supervision as warranted by the evidence, which may include transferring the offender to a treatment facility, halfway house, Substance Abuse Felony Punishment Facility or an Intermediate Sanction Facility,
  - Directing the case to go to a revocation hearing (only when considering a waiver of the hearing),
  - Revoking the offender's administrative release status, or
  - Referring the case back to the hearing officer for further development of factual or legal issues.

If revoked, the supervising parole officer provides the offender a copy of the hearing officer's report and notice of the right to petition to reopen the hearing.

## **Waiving the revocation hearing**

If the revocation hearing is waived at the initial offender interview, the parole officer forwards the waiver with attachments to the panel. A Board Analyst reviews the waiver and attachments to decide if a preponderance of evidence shows that a violation of parole or mandatory supervision occurred.

The analyst presents the case to a panel for final disposition. When revocation hearings are waived, the panel will choose one of the following options:

- Continuing the parole or mandatory supervision as warranted by the evidence, which may include transferring the offender to a treatment facility, halfway house, Substance Abuse Felony Punishment Facility or an Intermediate Sanction Facility,
- Directing the case to go to a revocation hearing (only when considering a waiver of the hearing),
- Revoking the offender's administrative release status, or
- Referring the case back to the hearing officer for further development of factual or legal issues.

## **Texas Board of Pardons and Paroles Rules For the Revocation Process** **Texas Administrative Code** **Title 37** **Chapter 146**

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=37&pt=5&ch=146&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=37&pt=5&ch=146&rl=Y)