

## CHAPTER 63. CONDITIONS GOVERNING PAROLE

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### Cross References

This chapter cited in 37 Pa. Code § 67.1 (relating to general requirements).

### § 63.1. Granting of parole.

(a) The Board may grant paroles of its own motion under section 22 of the Pennsylvania Board of Probation and Parole Law (61 P. S. § 331.22).

(b) Applications for parole may be submitted to the Board under section 22 of the Pennsylvania Board of Probation and Parole Law (61 P. S. § 331.22).

(c) After review and consideration of each application, the Board will grant or deny approval to each applicant who is seeking parole.

(d) If the Board grants parole, notice of such action will be sent to the parolee, setting forth the effective date of parole. The date of parole may be postponed until a satisfactory plan is arranged for the parolee and approved by the Board.

### Notes of Decisions

#### *Actions in Mandamus*

The prisoner did not allege filing an application for parole with the Board of Probation and Parole; therefore, the prisoner established neither a right to a decision regarding parole nor a duty on the part of the Board to issue one. Since the prisoner failed to establish a clear right to relief or a clear duty on the part of the Board, the prisoner cannot maintain the mandamus action. *Kelly v. Board of Probation and Parole*, 686 A.2d 883 (Pa. Cmwlth. 1996).

#### *Reasons for Decision*

The Board's regulations require that applications for parole are subject to section 22 of the act of August 6, 1941 (P. L. 861) (61 P. S. § 331.22), which requires the Board to provide its reasons for denying or granting parole. Since the Board did not do so, its demurrer to inmate's mandamus petition is overruled. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002), appeal denied 813 A.2d 844 (Pa. 2002).

### § 63.2. Legal custody.

The parolee shall remain in the legal custody of the Board until the expiration of his maximum sentence, or until he is legally discharged.

**§ 63.3. Violation of parole.**

If the parolee violates the conditions of parole, at a time during his period on parole, the Board may cause his detention or return to a correctional institution.

**§ 63.4. General conditions of parole.**

If parole is granted, the parolee shall be subject to the following conditions:

- (1) Report in person or in writing within 48 hours to the district office or suboffice specified by the Board and not leave that district without prior written permission of the parole supervision staff.
- (2) Live at the residence approved by the Board at release and not change residence without the written permission of the parole supervision staff.
- (3) Maintain regular contact with the parole supervision staff by:
  - (i) Reporting regularly as instructed and following written instructions of the Board or the parole supervision staff.
  - (ii) Notifying the parole supervision staff within 72 hours of one of the following:
    - (A) Arrest.
    - (B) Receipt of a summons or citation for an offense punishable by imprisonment upon conviction.
  - (iii) Notifying the parole supervision staff within 72 hours of a change in status including but not limited to employment, on the job training and education.
- (4) Comply with municipal, county, State and Federal criminal statutes, as well as the Vehicle Code and the Liquor Code (47 P. S. §§ 1-101—9-902).
- (5) Additionally:
  - (i) Abstain from the unlawful possession or sale of narcotics and dangerous drugs and abstain from the use of controlled substances within the meaning of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) without a valid prescription.
  - (ii) Refrain from owning or possessing firearms or other weapons.
  - (iii) Refrain from an assaultive behavior.
- (6) Pay fines, costs and restitution imposed by the sentencing court in accordance with the instructions contained in the Conditions Governing Parole/Reparole form.

**Authority**

The provisions of this § 63.4 issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186); amended under section 506 of The Administrative Code of 1929 (71 P. S. § 186); and the act of August 6, 1941 (P. L. 861, No. 323) (61 P. S. §§ 331.1—331.34).

**Source**

The provisions of this § 63.4 amended January 21, 1977, effective March 1, 1977, 7 Pa.B. 223; amended January 16, 1981, effective January 17, 1981, 11 Pa.B. 353; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial page (120716).

**Notes of Decisions***Assaultive Behavior*

Assaultive behavior, if it does not involve actual physical harm, must be such that it clearly evokes a reasonable apprehension of bodily harm in the person assaulted; while an inmate's unsolicited hugging of a prison employee may offend the employee and constitute a violation of internal policies, the inmate's behavior cannot be interpreted as a threat to the employee or offer to do harm. *Jackson v. Board of Probation and Parole*, 885 A.2d 598, 601—602 (Pa. Cmwlth. 2005).

Parolee admittedly struck the 5-year old child and although parolee testified that the spanking was done to discipline the child, it still fit within the definition of assault, as it was a violent physical attack and, therefore, was assaultive behavior. The parolee was neither the parent nor guardian of the child and was not acting at the request of the child's parent or guardian in spanking the child; thus, parolee was not justified in spanking the child and should be recommitted as a technical parole violator. *Delgado v. Board of Probation and Parole*, 679 A.2d 268 (Pa. Cmwlth. 1996).

A parolee's assaultive behavior during a bank robbery was not co-extensive with his conviction for the robbery, and he could, therefore, be recommitted to serve separate terms as a convicted parole violation and a technical parole violator. *McDaniel v. Board of Probation and Parole*, 587 A.2d 42 (Pa. Cmwlth. 1991).

Convicted parole violator who does not post bail is not given credit against recommitment sentence for time served pending hearing on new charges. Appointed counsel's petition for leave to withdraw is granted when convicted parole violator insists on pursuing meritless claim. *Morrison v. Board of Probation and Parole*, 578 A.2d 1381 (Pa. Cmwlth. 1990).

Board agent's testimony that on three separate occasions he visited parolee's approved residence but parolee was not present was sufficient to support Board's finding that parolee violated a condition of his parole. *Gibbs v. Board of Probation and Parole*, 579 A.2d 1021 (Pa. Cmwlth. 1990).

While the Court agreed with the Board that a sock filled with sand, used in connection with a robbery, could be viewed as a weapon for purposes of a technical parole violation, in light of *Rivenbark v. Board of Probation and Parole*, 509 Pa. 248, 501 A.2d 1110 (1985), the petitioner could not be recommitted for a technical violation for acts constituting a new crime. *Ackerman v. Board of Probation and Parole*, 531 A.2d 834 (Pa. Cmwlth. 1987); appeal denied 561 A.2d 742 (Pa. 1989).

Under the holding of *Rivenbark v. Board of Probation and Parole*, 509 Pa. 248, 501 A.2d 1110 (1985), petitioner was entitled to have all references to his previous technical violation deleted, but was not entitled to receive credit on a subsequent unrelated parole revocation for time served on a prior invalid recommitment. *DeVault v. Board of Probation and Parole*, 533 A.2d 1133 (Pa. Cmwlth. 1987).

A teletype from authorities in Florida regarding petitioner's arrest and detention constituted a business record qualifying as an exception to the hearsay rule and therefore could be relied on as evidence of a technical violation of leaving the parole district and/or changing his residence without permission. *Fenton v. Board of Probation and Parole*, 532 A.2d 1223 (Pa. Cmwlth. 1987).

Prior inconsistent statements of the witnesses at a parole hearing for a technical violation under this section could be used as substantive evidence against the parolee under the holdings of *Commonwealth v. Brady*, 507 A.2d 66 (Pa. 1986), *Wilson v. Board of Probation and Parole*, 97 Pa. Comm. 202, 509 A.2d 1335 (1986) and *Miller v. Board of Probation and Parole*, 522 A.2d 720 (Pa. Commw. 1987). *Gregory v. Board of Probation and Parole*, 530 A.2d 1048 (Pa. Cmwlth. 1987); vacated and remanded 533 A.2d 509 (Pa. Cmwlth 1987).

Testimony by parole agent that he telephoned the approved residence of parolee and was told by petitioner's girlfriend that he no longer lived there was sufficient evidence under this section and could be used as substantive evidence of a parole violation by the Board even though the statement was inconsistent with the girlfriend's testimony at the parole revocation hearing. *Gregory v. Board of Probation and Parole*, 530 A.2d 1048 (Pa. Cmwlth. 1987).

The technical violation under this section of a parolee failing to report in person or in writing within 48 hours and leaving the district is a separate and distinct violation from the failure to live at the residence approved by the Board. *Novitski v. Board of Probation and Parole*, 530 A.2d 1025 (Pa. Cmwlth. 1987); appeal denied 559 A.2d 41 (1989).

The criminal conduct of escaping the county prison and the technical violation of absenting oneself from the parole district without permission and changing residence without permission do not constitute the same act; therefore parolee could be recommitted to separate terms of "back time" as convicted parole violator and technical parole violator. *Novitski v. Board of Probation and Parole*, 530 A.2d 1025 (Pa. Cmwlth. 1987); appeal denied 559 A.2d 41 (1989).

Parole may be revoked for violating conditions of parole by changing residence without permission of the parole supervision staff, and parolee's admission to parole officer of this fact is an exception to the hearsay evidence rule because it is an admission against interest. *Falasco v. Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987).

Failure to appear before parole officer is a technical violation of parole for which parole may be revoked. *Falasco v. Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987).

A parolee that fails to report to his parole officer as instructed will be deemed a technical parole violator and his parole will be revoked. *Falasco v. Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987).

Testimony of two witnesses who state parolee hit them several times in the face is substantial evidence of assaultive behavior and the Board was free to disregard conflicting evidence presented by parolee as it is the Board's duty to assess evidentiary weight and evaluate witness credibility. *Harper v. Board of Probation and Parole*, 520 A.2d 518 (Pa. Cmwlth. 1987); appeal denied 531 A.2d 432 (Pa. 1987).

Under 234 Pa. Code Rule 56, the payment of fines and costs of a summary criminal citation constitutes a guilty plea and a guilty plea constitutes substantial evidence that the parolee disobeyed Federal, State or municipal laws and thus violated general parole conditions. *Harper v. Board of Probation and Parole*, 520 A.2d 518 (Pa. Cmwlth. 1987).

Summary citations issued under 234 Pa. Code Rule 51(b) do not constitute "arrest" which parolees are required to report to the parole supervision staff. *Harper v. Board of Probation and Parole*, 520 A.2d 518 (Pa. Cmwlth. 1987).

Where parolee is recommitted after a conviction of aggravated assault and his possession of a weapon is an element of that conviction, then additional recommitment of the parolee as a technical parole violator for possessing the same weapon is erroneous. *Weimer v. Board of Probation and Parole*, 519 A.2d 1103 (Pa. Cmwlth. 1987); appeal denied 535 A.2d 85 (Pa. 1987).

Pink slip copies of citations for summary offenses, where the charges are open and pending, the police officer hasn't received notice of a hearing, the hearings haven't taken place and defendant has

neither received notice of a hearing or pled guilty of charges, are not substantial evidence to support a violation of parole. *Arentz v. Board of Probation and Parole*, 516 A.2d 843 (Pa. Cmwlth. 1986).

Laboratory report constituted hearsay evidence; therefore, if parolee's counsel had objected to the admission of the report the hearing examiner would have been required under the Board's regulations and due process to make a good cause finding. *Vereen v. Board of Probation and Parole*, 515 A.2d 637 (Pa. Cmwlth. 1986).

Possession or use of a controlled substance without a valid prescription is a clear violation of general parole condition 5A. *Vereen v. Board of Probation and Parole*, 515 A.2d 637 (Pa. Cmwlth. 1986).

Fact that possession of nunchakus does not, in particular circumstances, constitute prohibited possession of an offensive weapon under 18 Pa.C.S. (relating to Crimes Code), does not control determination of whether such possession violates parole condition 5(b), see paragraph (5)(ii), requiring parolee to refrain from possessing other weapons. *Keastead v. Board of Probation and Parole*, 514 A.2d 265 (Pa. Cmwlth. 1986).

Although Board had authority to recommit parolee as a technical parole violator for carrying a weapon in violation of the general parole condition set forth in paragraph (5)(ii), when parolee was later convicted of criminal violation based on same conduct, the Board should have vacated the earlier recommitment and proceeded to recommit as a convicted parole violator. *Johnson v. Board of Probation and Parole*, 511 A.2d 894 (Pa. Cmwlth. 1986).

Parole Board's finding that parolee failed to report arrest within 70 hours must be vacated where parole agent filed warrant and parole violation charges 1 day after parolee turned himself into police. *Lawson v. Board of Probation and Parole*, 524 A.2d 1053 (Pa. Cmwlth. 1987).

Kitchen knife which was capable of totally incapacitating parolee's wife in "accidental" stabbing was properly classified as deadly weapon. *Ransom v. Board of Probation and Parole*, 523 A.2d 841 (Pa. Cmwlth. 1987).

There was substantial evidence to support a finding that parolee violated this section, where parolee admitted stabbing wife with kitchen knife but claimed it was an accident, since 18 Pa.C.S. (relating to Crimes Code) defines simple assault as negligently causing bodily injury to another with a deadly weapon. *Ransom v. Board of Probation and Parole*, 523 A.2d 841 (Pa. Cmwlth. 1987).

A post office box mailing address is not within the meaning of "residence" as used in paragraph (2) since it is not the actual dwelling place or habitation of the parolee. *McCauley v. Board of Probation and Parole*, 510 A.2d 877 (Pa. Cmwlth. 1986).

Under *Rivenbark v. Board of Probation and Parole*, 501 A.2d 1110 (Pa. 1985), Board cannot recommit as technical parole violator for violation of paragraph (5)(ii) and (iii) where the violations constitute new crimes for which parolee has been convicted. *Pitt v. Board of Probation and Parole*, 508 A.2d 1314 (Pa. Cmwlth. 1986).

Constructive possession of a firearm is enough to warrant a violation of parole condition 5 B, as set forth in paragraph (5)(ii). *Nickens v. Board of Probation and Parole*, 502 A.2d 277 (Pa. Cmwlth. 1985).

Fact that parolee was acquitted of the criminal charges of possession of a Prohibited Offensive Weapon, 18 Pa.C.S. § 908 (relating to prohibited offensive weapons), and of Former Convict not to Own a Firearm, 18 Pa.C.S. § 6105 (relating to former convict not to own a firearm, etc.), does not collaterally estop the Board from recommitting for violation of paragraph (5)(ii), general parole condition against owning or possessing firearm, since the elements required to be proven are not identical. *Nickens v. Board of Probation and Parole*, 502 A.2d 277 (Pa. Cmwlth. 1985).

Criminal conduct is not required to establish a violation of the parole condition which mandates that a parolee refrain from owning or possessing firearms; the parole condition covers a broader range of conduct than that prohibited by the Crimes Code. *Anderson v. Board of Probation and Parole*, 497 A.2d 947 (Pa. Cmwlth. 1985).

Since the elements of a technical parole violation of paragraph (5)(ii) were different from the elements of the Uniform Firearms Act charge on which parolee was acquitted, the Board was not collaterally estopped by the parolee's acquittal; and, the eyewitness testimony of a police officer that a loaded revolver was found in the driver's compartment of the stolen vehicle of which parolee was sole occupant, supported by fact a prima facie case had been found at preliminary hearing, was sufficient to support Board's finding of a technical parole violation. *Hawkins v. Board of Probation and Parole*, 490 A.2d 942 (Pa. Cmwlth. 1985).

The Board's imposition of 48 months backtime for violation of conditions of parole pertaining to ownership of firearms and assaultive behavior required by paragraph (5) was within the presumptive ranges and was supported by substantial evidence in the record. *Chapman v. Board of Probation and Parole*, 484 A.2d 413 (Pa. Cmwlth. 1984).

In the absence of a specific definition for the word "weapon" as found in paragraph (5)(ii), the Board was not wrong in ruling that a folding knife with a 3 1/2 inch blade was a weapon for parole violation purposes. *Michael v. Board of Probation and Parole*, 481 A.2d 711 (Pa. Cmwlth. 1984).

Fifteen months backtime given by the Board was within the 6 to 18 months presumptive range for multiple violations of general parole conditions in paragraph (1) (obtaining permission to leave parole district) and paragraph (5)(ii) (refraining from owning or possessing any weapon). *Lantzy v. Board of Probation and Parole*, 477 A.2d 18 (Pa. Cmwlth. 1984).

In upholding a 10 month recommitment for a parolee's conviction of the summary offense of harassment, the court noted that a condition that the parolee "refrain from overt behavior which threatens or presents a clear and present danger to yourself and others" is not identified as one of the five general conditions of parole enumerated in this section, even though it resembled the assaultive behavior provision of paragraph (5)(iii). *Lewis v. Board of Probation and Parole*, 459 A.2d 1339 (Pa. Cmwlth. 1983).

If a parole agent personally substantiates violations of paragraphs (3), (5) and (6), probable cause exists for the Board to issue an arrest warrant. *Commonwealth v. Gaito*, 3 Pa. D. & C. 3d 339, (1977); affirmed 377 A.2d 169 (Pa. Super. 1977).

### § 63.5. Special conditions of parole.

(a) Parolees shall comply with special conditions which are imposed by the Board or which are subsequently imposed by the parole agent.

(b) If problems arise or questions occur concerning the conditions of parole, the parolee shall consult with the parole agent, as it is the responsibility of the latter to help the parolee in the interpretation of the conditions of parole. If a parolee is unable to contact his parole agent, he should contact the agent in charge of the district parole office.

#### Notes of Decisions

##### *Credit*

Participation in required inpatient drug and alcohol treatment program need not be credited against unexpired prison term of parole violator where program lacks custodial aspects which would be characteristic of confinement. *Jackson v. Board of Probation and Parole*, 568 A.2d 1004 (Pa. Cmwlth. 1990).

It is within the discretion of the Board, unless it acts arbitrarily or plainly abuses its discretion, to make a factual determination whether a drug rehabilitation program is equivalent to incarceration or whether the parolee is at liberty on parole. *Cox v. Board of Probation and Parole*, 493 A.2d 680 (Pa. 1985).

Where as a special condition of parole the parolee had entered and completed drug rehabilitation program, at a subsequent recommitment hearing the Board must make a factual determination and develop a record as to whether participation in such program constitutes “time at liberty on parole” for which no credit may be given under 61 P. S. § 331.21(a). *Cox v. Board of Probation and Parole*, 493 A.2d 680 (Pa. 1985); reversed 493 A.2d 680 (Pa. 1985).

#### *Employment*

Since fashioning of a condition over which parolee had no control would be abuse of authority, “must maintain employment” is interpreted to mean “must make a good faith effort to maintain employment.” *Wagner v. Board of Probation and Parole*, 498 A.2d 1007 (Pa. Cmwlth. 1985); reversed and remanded, 522 A.2d 155 (Pa. Cmwlth. 1987).

#### *Technical Parole Violation*

Failure to consult parole officer prior to leaving inpatient drug rehabilitation program without permission constituted a technical parole violation under this section. *Englerth v. Board of Probation and Parole*, 505 A.2d 647 (Pa. Cmwlth. 1986).

#### *Understanding*

Since it is the obligation of every parolee to become familiar with the terms and conditions of his parole, parolee’s misunderstanding of special conditions imposed by parole officer when granting travel permission was no excuse. *Sigafoos v. Board of Probation and Parole*, 503 A.2d 1076 (Pa. Cmwlth. 1986).

#### **Cross References**

This section cited in 37 Pa. Code § 67.1 (relating to general requirements).

### **§ 63.6. [Reserved].**

#### **Source**

The provisions of this § 63.6 reserved January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial page (122534).

### **§ 63.7. [Reserved].**

#### **Source**

The provisions of this § 63.7 reserved January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial page (122534).

#### **Notes of Decisions**

The obligation to acquaint himself with the conditions of his parole is upon the parolee, and there is no prerequisite to a valid parole condition that the parolee must agree to its terms. *Benefiel v. Board of Probation and Parole*, 426 A.2d 242 (Pa. Cmwlth. 1981).

### **§ 63.8. [Reserved].**

#### **Source**

The provisions of this § 63.8 reserved January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial page (122534).

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