

**CHAPTER 71. ARREST AND HEARING FOR PAROLE VIOLATORS**

- Sec.  
71.1. Initiation of proceedings.  
71.2. Procedure for violation of parole conditions.  
71.3. Return for a new criminal charge.  
71.4. Conviction for a new criminal offense.  
71.5. General.

**Source**

The provisions of this Chapter 71 adopted August 4, 1972, effective August 14, 1972, 2 Pa.B. 1465, unless otherwise noted.

**Notes of Decisions***Jurisdiction*

The Commonwealth Court has exclusive jurisdiction over an action which challenges the conduct of a Board hearing, but the challenge should be by way of a mandamus action and not through a writ of habeas corpus. *Moore v. Roth*, 331 A.2d 509 (Pa. Super. 1974).

*Regulation*

Revocation of administrative parole is governed by the detailed regulations promulgated by the parole board and are separate from the revocation procedures used by the common pleas courts, which govern maximum terms of imprisonment of less than 2 years. *Commonwealth v. McDermott*, 547 A.2d 1236 (Pa. Super. 1988).

**§ 71.1. Initiation of proceedings.**

(a) If an agent has reason to believe that a parolee has violated the conditions of his parole, that action of the Board is necessary, and that an arrest or the lodging of a detainer is appropriate, the agent may apply to his district supervisor for permission to arrest and for the issuance of a “Warrant to Commit and Retain” (PBPP-141).

(b) An application should normally be responded to either by the granting of permission to arrest with the issuance of the Board warrant or by a refusal to issue the warrant promptly.

(c) The warrant shall be executed forthwith, with every diligent effort being made to locate and arrest, as promptly as possible, the parolee named in the Board warrant.

(d) If the agent is unable to contact the district supervisor or feels that immediate confinement of the parolee is imperative, he may utilize an “Order to Detain for 48 hours” (PBPP-142), as warrant to commit and retain the parolee. If the warrant is used, the agent shall apply to his district supervisor for a “Warrant to Commit and Retain” (PBPP-141), as promptly as possible.

(e) In those instances where the parolee is already in custody on another charge, the “Warrant to Commit and Retain” (PBPP-141) shall be lodged as a detainer at the institution where the parolee is held.

**Source**

The provisions of this § 71.1 adopted August 4, 1972, effective August 14, 1972, 12 Pa.B. 1465; amended February 18, 1977, effective March 1, 1977, 7 Pa.B. 487. Immediately preceding text appears at serial page (32640).

**Notes of Decisions***Detainer Proper*

The Board's detainer was proper insofar as the petitioner was required to serve Federal sentence and back time under prior State sentence before serving new sentence. *Bellochio v. Board of Probation and Parole*, 559 A.2d 1024 (Pa. Cmwlth. 1989).

*Timeliness*

The effect of this regulation was to toll the running of any period of time in which the Board of Probation and Parole was required to act until the parolee was returned to State custody. Therefore, where the preliminary hearing was held 11 days after the parolee's return to this Commonwealth it was a timely hearing. *Fulton v. Board of Probation and Parole*, 663 A.2d 865 (Pa. Cmwlth. 1995).

Because the parole agent did not have reason to believe that the parolee violated the conditions of parole before the expiration date of the original sentence, the Board of Probation and Parole did not err in failing to lodge a detainer prior to that date. *Williams v. Board of Probation and Parole*, 654 A.2d 235 (Pa. Cmwlth. 1995).

Where the Board filed a detainer warrant on December 31, 1979, under this section, a preliminary hearing held on January 16, 1980 was held within the 15 day limit, since January 15 was an official Commonwealth holiday. *Anderson v. Board of Probation and Parole*, 471 A.2d 593 (Pa. Cmwlth. 1984).

*Warrant*

A parolee's assertion that arrest occurred without the lodging of the proper warrant as required by this section was dismissed as meritless when the record was found to contain a Board warrant to commit and detain the parolee issued the same date as the arrest. *Prough v. Board of Probation and Parole*, 467 A.2d 1234 (Pa. Cmwlth. 1983).

**§ 71.2. Procedure for violation of parole conditions.**

The following procedures shall be followed if a parolee, not already detained after appropriate hearings for other technical violations or criminal charges, has been charged with a technical violation:

- (1) After a parolee is detained under a Board warrant, the parolee shall be visited by a representative of the Board. The parolee shall be notified of the following:
  - (i) The charges against the parolee specifying the conditions of parole violated.
  - (ii) That a preliminary hearing will be held within 14 days and that the parolee will be notified of the exact date.
  - (iii) The parolee's right to speak, to have voluntary witnesses appear and to present documentary evidence at the preliminary hearing.
  - (iv) The right to retain counsel, and the name and address of the public defender of the county of confinement.

- (v) That the purpose of the hearing is to determine whether there is probable cause to believe that the parolee has committed a parole violation, and to resolve by admissions, agreements or stipulations as many factual matters as possible.
- (2) After the preliminary hearing is scheduled, the parolee and counsel shall be given a copy of the written notice of the charges and of the date and time of the hearing.
- (3) The preliminary hearing shall be held within 14 days of the detention of the parolee on the Board warrant.
- (4) The preliminary hearing shall be held before an examiner. The parolee has the right to be present during the entire proceeding, unless the parolee waives that right, refuses to appear or behaves disruptively.
- (5) When the parties are present and assembled for the preliminary hearing, the examiner shall verbally advise the parolee and counsel of the following: the parolee may retain counsel for the proceedings; the parolee may, with leave of the examiner, waive the right to the preliminary hearing; and, if the preliminary hearing is waived, the hearing may proceed as a violation hearing before the examiner, unless the parolee asserts the right to be heard by a panel at a violation hearing.
- (i) Counsel for the parolee shall enter a written appearance.
- (ii) A parolee may waive in writing the right to counsel.
- (iii) If counsel is not present but the parolee desires counsel, that fact shall be documented by the examiner and acknowledged by the parolee. The examiner shall terminate the proceeding. The preliminary hearing shall be held within 14 days.
- (iv) If the parolee waives both the right to a preliminary hearing and the right to be heard by a panel at a violation hearing, both waivers shall be signed by the parolee. The examiner may follow the procedures governing violation hearings, and the Board may treat the proceeding as a violation hearing.
- (v) If the parolee waives the right to a preliminary hearing but does not wish to waive the right to be heard by a panel, the examiner shall terminate the proceedings, and the parolee shall be scheduled to be heard by a panel at a violation hearing.
- (vi) If the parolee does not wish to waive the right to the preliminary hearing and where a waiver of, or appearance by, counsel has been signed as prescribed in this section, the examiner shall conduct a preliminary hearing.
- (6) A representative of the Board who is familiar with the facts which constitute the alleged violation shall be present to testify.
- (7) The examiner shall make a summary which shall state:
- (i) Which violations are supported by probable cause.
- (ii) A summary of the evidence presented.
- (iii) Which of the violations have been admitted, agreed to or stipulated.

(8) If the examiner finds that none of the allegations were supported by probable cause, the parolee shall be released as soon as practicable.

(9) If the examiner finds probable cause and is of the opinion that a violation hearing is warranted, the examiner shall initiate the scheduling of a violation hearing, if desired by the parolee or by the Board's representative to resolve remaining contested relevant facts.

(10) If a violation hearing is scheduled, it shall be held not later than 120 days after the preliminary hearing.

(11) Before the violation hearing the parolee or counsel shall be notified of the following:

(i) The charges, specifying the conditions of parole violated and setting forth the circumstances of the violations.

(ii) The date set for the hearing and of the right to be heard by a panel.

(iii) The right to speak, to have witnesses appear and to present documentary evidence.

(iv) The right to cross-examine an adverse witness who appears at the hearing, unless the panel or examiner specifically finds good cause for not allowing confrontation.

(v) The right to representation by counsel at the hearing, the right to free counsel, if the parolee is unable to afford to retain counsel, and the name and address of the public defender.

(vi) That there is no penalty for requesting counsel.

(12) If the parolee is unable to afford counsel, the Board will notify the appropriate public defender by transmitting a copy of the written notice given to the parolee.

(13) The following procedures apply during a violation hearing:

(i) A violation hearing shall be held before a panel, or, if the parolee has waived hearing by a panel, the hearing shall be held before an examiner other than the examiner who conducted the preliminary hearing, if practicable.

(ii) The parolee has the right to be present during the entire proceeding, unless the parolee expressly waives that right, refuses to appear or behaves disruptively.

(14) If a parolee appears without counsel at the violation hearing, the panel or examiner shall determine whether the parolee understands the right to free counsel if unable to afford counsel, and that there is no penalty for requesting counsel.

(15) A representative of the Board who is familiar with the facts which constitute the violation shall be present to testify.

(16) If a violation hearing is conducted by an examiner, the examiner shall prepare a written report and file it with the other panel member for decision. The report shall state:

- (i) Which violations have been proved by a preponderance of the evidence.
- (ii) The evidence relied upon.
- (iii) A decision as to disposition and the reasons for it.
- (17) If the hearing is before a panel, the panel shall act promptly.
- (18) If revocation is ordered, the revocation decision shall specifically state the reasons for revocation. The decision shall be transmitted to the parolee or to counsel of record.
- (19) The panel may not find that a violation was proved except by a preponderance of the evidence.

#### Authority

The provisions of this § 71.2 issued under: section 506 of The Administrative Code of 1929 (71 P. S. § 186); and section 23 of the act of August 6, 1941 (P. L. 861, No. 323) (61 P. S. § 331.23); 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 § 71.2 adopted August 4, 1972, effective August 14, 1972, 2 Pa.B. 1465; amended February 18, 1977, effective March 1, 1977, 7 Pa.B. 487; amended May 23, 1980, effective May 24, 1980, 10 Pa.B. 2049; amended September 12, 1980, effective September 13, 1980, 10 Pa.B. 3667; amended September 17, 1982, effective September 18, 1982, 12 Pa.B. 3290; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial pages (104838) to (104843).

#### Notes of Decisions

##### *Appeals*

If a petition charges that the Board misapplied paragraph (11), and thereby essentially charges the Board with mistakes of law and failure of the Board to act, the petitioner has properly sought review in the nature of a complaint in mandamus. *Donnell v. Board of Probation and Parole*, 434 A.2d 846 (Pa. Cmwlth. 1981).

##### *Application*

Since the parolee remained in violation of the conditions of parole until parolee's arrest 9 months after the effective date of the amended rules, the 120-day time period of this amended section applied, rather than the 30-day time period of the previous paragraph (10) (relating to procedure for violation of parole conditions). *Slayton v. Board of Probation and Parole*, 394 A.2d 1084 (Pa. Cmwlth. 1978).

##### *Computation of Time*

Where convict objected at his revocation hearing that the length of time between the first preliminary hearing and a second preliminary hearing exceeded 14 days, the time for a second hearing began to run when the convict was detained on the second warrant which contained a new charge not addressed at the original preliminary hearing. *Person v. Board of Probation and Parole*, 701 A.2d 1381 (Pa. Cmwlth. 1997); appeal denied 717 A.2d 1030 (Pa. 1998).

The 24-hour period within which a parolee is to be visited after a detainer by his parole agent does not include hours falling on a Saturday or Sunday and this same principle applies to the 72-hour period within which a parolee is to satisfy his agent of a parole violation, citing *Donnell v. Board of*

*Probation and Parole*, 453 A.2d 36 (Pa. Cmwlth. 1982). *Dennis v. Board of Probation and Parole*, 532 A.2d 1230 (Pa. Cmwlth. 1987).

#### *Constitutional Rights*

If the notice to the parolee alleged one ground for violation of parole and the Board actually revoked his parole on another ground, the parolee's due process rights have been violated. *Champion v. Board of Probation and Parole*, 395 A.2d 671 (Pa. Cmwlth. 1978).

#### *Continuance*

When a parolee requested a continuance, but did not request in writing that the parole hearing be rescheduled, the 120 day rule did not start to run again. *Stevens v. Board of Probation and Parole*, 538 A.2d 108 (Pa. Cmwlth. 1988).

The 120 day rule requiring that a violation/revocation hearing not be held more than 120 days from the petitioner's preliminary hearing is waived when the pardon requests a continuance. *Dennis v. Board of Probation and Parole*, 532 A.2d 1230 (Pa. Cmwlth. 1987).

The terms "revocation hearing" and "violation hearing" have acquired specific meanings in the context of parole, thus the defendant's request for a "continuance of his violation/revocation hearing" related to both hearings and the delay caused by request for continuances will not be considered in determining timeliness of above-described hearings. *Tarrant v. Board of Probation and Parole*, 521 A.2d 997 (Pa. Cmwlth. 1987); appeal denied 535 A.2d 84 (Pa. 1987).

Under this section, Board of Probation and Parole is not responsible for any delay of timely scheduled hearing which is continued at the request of the parolee. *Nicastro v. Board of Probation and Parole*, 518 A.2d 1320 (Pa. Cmwlth. 1987).

The 120-day rule requiring a violation hearing is inapplicable when a petitioner or petitioner's attorney request a continuance. *Rodriquez v. Board of Probation and Parole*, 516 A.2d 116 (Pa. Cmwlth. 1986).

Where parolee had appeared at preliminary/detention hearing, requested continuance until disposition of then pending criminal charges and executed waiver of right to prior written notice of additional criminal charges for which parolee had not yet been officially arrested parolee's argument that his continuance request had been ineffective as to the additional criminal charges and that the subsequent parole revocation hearing was, as a result, untimely, was wholly frivolous and counsel was permitted to withdraw. *Reale v. Board of Probation and Parole*, 512 A.2d 1307 (Pa. Cmwlth. 1986).

The delay caused by the request of the parolee for a continuance will not be considered in determining whether the time limits have been met. *Corbin v. Board of Probation and Parole*, 399 A.2d 1202 (Pa. Cmwlth. 1979).

The preliminary hearing was timely since it was originally scheduled for a date which was only 12 days after the arrest of the parolee but was continued at the request of the parolee. *Adams v. Board of Probation and Parole*, 395 A.2d 1035 (Pa. Cmwlth. 1979).

#### *Counsel*

Although a parolee was improperly denied counsel through the failure of the Board of Probation and Parole to include the hearing date in its notice of hearing, the parolee was later granted a proper hearing and the error of the Board was therefore made harmless. *McCloud v. Board of Probation and Parole*, 407 A.2d 484 (Pa. Cmwlth. 1979).

#### *Date Certain*

The prisoner failed to prove that there was a clear right to have a date certain provided by the Board of Probation and Parole; thus, the prisoner's petition for a writ of mandamus must be denied. *Bostic v. Board of Probation and Parole*, 682 A.2d 401 (Pa. Cmwlth. 1996).

*Evidence*

Where alleged parole violator told hearing examiner of desire for a full Board of Probation and Parole hearing, the examiner violated the regulations by proceeding to take testimony and rule on objections; since the examiner ruled on objections, the hearing tape forwarded for full Board consideration could not be considered analagous to a deposition transcript (wherein all testimony would be included subject to rulings by the Board on objections). *Hartman v. Petsock*, 509 A.2d 935 (Pa. Cmwlth. 1986).

*Evidence/Hearsay*

Witness being “too busy” to attend is not sufficient to support finding of good cause for admitting hearsay testimony. *Wagner v. Board of Probation and Parole*, 498 A.2d 1007 (Pa. Cmwlth. 1985).

Admission of hearsay evidence at a revocation hearing over objection without a finding of good cause constituted reversible error and a witness being “too busy” to attend was not sufficient to support finding of good cause for admitting hearsay testimony. *Wagner v. Board of Probation and Parole*, 498 A.2d 1007 (Pa. Cmwlth. 1985); reversed and remanded, 522 A.2d 155 (Pa. Cmwlth. 1987).

The Board of Probation and Parole acceptance of purely hearsay evidence at a recommitment hearing was in violation of paragraph (16) as well as the parolee’s rights to due process of law, unless the Examiner or the Board specifically found grounds for not allowing the parolee to confront the witnesses against the parolee and enunciated those findings as part of the record of the case. *Razderk v. Board of Probation and Parole*, 463 A.2d 111 (Pa. Cmwlth. 1983).

The requirement of paragraph (16) prohibits the Board of Probation and Parole from admitting hearsay evidence obtained from an out-of-court declarant over objection without a finding of good cause for abridging the parolee’s rights of confrontation and cross-examination. *Washington v. Board of Probation and Parole*, 458 A.2d 645 (Pa. Cmwlth. 1983).

The introduction of hearsay evidence at a revocation hearing was not improper unless the parolee objected to the admission of the hearsay evidence and it was admitted over parolee’s objection without a finding of good cause. *Sinwell v. Board of Probation and Parole*, 406 A.2d 597 (Pa. Cmwlth. 1979).

The right of a parolee to confront and cross-examine adverse witnesses under paragraph (16) is denied if the evidence presented consists almost entirely of the hearsay testimony of parole agents and there is no specific finding of good cause for not allowing confrontation of other witnesses. *Kemp v. Board of Probation and Parole*, 402 A.2d 708 (Pa. Cmwlth. 1979).

*Evidence/Witnesses*

Following *Commonwealth v. Brady*, 507 A.2d 66 (Pa. 1986), the prior inconsistent statement of a nonparty witness may be admitted and relied upon as substantial evidence in a probation and parole revocation hearing. *Wilson v. Board of Probation and Parole*, 509 A.2d 1335 (Pa. Cmwlth. 1986).

Board of Probation and Parole’s finding that parolee had violated condition 5A (non-use of controlled substances) was improper where no custodian or qualified witness testified in support of the hospital urinalysis report, as required by the rules of evidence, 42 Pa.C.S. § 6108(b) (relating to business records), and the Board made no finding of good cause, under paragraph (16), for the nonappearance of the witness. *Whitmore v. Board of Probation and Parole*, 504 A.2d 401 (Pa. Cmwlth. 1986).

Reliance upon affidavit evidence at preliminary hearing did not constitute denial of the process where parolee failed to request the witness’ presence at the preliminary hearing under paragraph (1)(v) and where witness actually testified at the full violation hearing under paragraph (16). *Fallings v. Board of Probation and Parole*, 502 A.2d 787 (Pa. Cmwlth. 1986).

Where the witness was identified, so that the witness’s life could not have been endangered any more by her physical presence at the hearing than it was by the witness’s written statement, the court

held that the Board of Probation and Parole had not shown good cause for the witness's absence and therefore the petitioner should not have been deprived of the right to confront and cross-examine the witness. *Tyson v. Board of Probation and Parole*, 479 A.2d 52 (Pa. Cmwlth. 1984).

Since the only basis of the charges was the affidavit of the arresting police officer, and since there was no finding of good cause for not requiring the presence of the officer at the hearing, those charges should not have been considered to have been proved. *Jones v. Board of Probation and Parole*, 408 A.2d 156 (Pa. Cmwlth. 1979).

#### *General Comment*

The Board of Probation and Parole's final action relative to charges of technical parole violations was not violative of the time limits set forth in paragraph (10) if no preliminary hearing was held. *Nicastro v. Board of Probation and Parole*, 455 A.2d 295 (Pa. Cmwlth. 1983).

If the Board of Probation and Parole conducts a violation hearing before a single examiner because a parolee previously waived his right to a quorum under paragraph (14)(i), the examiner must verbally readvise the parolee and his attorney of the parolee's right to be heard before a quorum of the board, and if the parolee still wishes to waive his right to a full board hearing and the examiner is satisfied that the waiver is knowing, intelligent and freely made, paragraph (14)(ii)(A) requires the examiner accept and make a part of the record a written waiver to that effect, but if, after being advised of his rights, the parolee wishes to be heard by a quorum of the Board, paragraph (14)(ii)(B) requires the examiner to document that fact, terminate the proceedings, return the parolee to custody, and initiate the scheduling of a full board hearing. *Laboy v. Board of Probation and Parole*, 459 A.2d 916, 917 (Pa. Cmwlth. 1983); 465 A.2d 78 (Pa. Cmwlth. 1983).

#### *Good Cause*

If in a defendant's hearing before the parole revocation board, counsel objects to the admission of a laboratory report, the hearing examiner would have been required under Board of Probation and Parole'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).

#### *Hearing Prejudicial*

It was prejudicial to the petitioner's case for the hearing examiner to state that he intended to dismiss two of the violations and subsequently find petitioner guilty of those same violations without an opportunity to present evidence on those violations. *Dennis v. Board of Probation and Parole*, 532 A.2d 1230 (Pa. Cmwlth. 1987).

#### *Notice*

Notice of charges and hearing must only include sufficient information to afford parolee the alleged basis for revocation and enables petitioner to prepare a defense and need not include language describing the evidence to be proffered by the Board in support of a technical parole violation. *Mignone v. Board of Probation and Parole*, 545 A.2d 483 (Pa. Cmwlth. 1988).

The Board of Probation and Parole followed required procedure by including on its revocation order a notice indicating that a copy of the decision had been sent to the attorney who represented parolee at revocation hearing, and it was incumbent on petitioner to promptly request further legal representation by hearing counsel. *Snipes v. Board of Probation and Parole*, 527 A.2d 1080 (Pa. Cmwlth. 1987).

Notice of a parole revocation hearing is deemed sufficient if it is adequate, clear and spells out with particularity the alleged violation, the circumstances surrounding the violation, the condition violated and the time and place of the violation. *Plair v. Board of Probation and Parole*, 521 A.2d 989 (Pa. Cmwlth. 1987).



Although the general rule is that notice of a Board decision given to counsel is notice to the client, where there is no evidence of direct notice to the client and the public defender admits making no effort to inform client these are exceptional circumstances justifying an exception to the general rule. *Lewis v. Board of Probation and Parole*, 508 A.2d 644 (Pa. Cmwlth. 1986).

A parolee was not given adequate notice of a revocation hearing since it was originally scheduled to be a preliminary hearing but was changed to a revocation hearing after the parolee appeared for the preliminary hearing and informed the Board of Probation and Parole that parolee had been convicted of the new criminal charges. *Champion v. Board of Probation and Parole*, 399 A.2d 447 (Pa. Cmwlth. 1979).

#### *Notice of Revocation*

A notice of revocation made subsequent to a revocation hearing, at which the parolee admitted a technical parole violation, which gave the admission as reason for revocation was sufficient to comply with the provision of paragraph (19). *Bunner v. Board of Probation and Parole*, 379 A.2d 1368 (Pa. Cmwlth. 1977).

#### *Preliminary Hearings*

The primary purpose of the preliminary parole revocation hearing is to prevent unwarranted detention of the parolee; if a prisoner is not being detained because of a parole violation charge, no parole preliminary hearing is constitutionally required citing *Leese v. Pennsylvania Board of Probation and Parole*, 570 A.2d 641, 644 (1990); *Jones v. Board of Probation and Parole*, 952 A.2d 710, 712 (Pa. Cmwlth. 2008)

Where appellant was sentenced to a maximum sentence of less than 2 years, the court of common pleas had the authority to grant or revoke his parole under the procedures of 61 P. S. § 314 and Pa.R. Crim.P. 1409; therefore, neither the parole revocation procedures outlined in this section, nor the time limits therein, applied to appellant. *Commonwealth v. Ferguson*, 761 A.2d 613 (Pa. Super. 2000).

Where Board of Probation and Parole, acting as agent for State of Connecticut under the Uniform Act for Out-of-State Supervision (61 P. S. §§ 321—322), had afforded detained parolee a preliminary hearing, the Board also had a duty, as the agent for Connecticut, to provide a full Board hearing, providing the procedural rights owed by the principal. *Pugh v. Board of Probation and Parole*, 514 A.2d 284 (Pa. Cmwlth. 1986).

Where, after a parolee charged with a violation waives the right to a hearing by a quorum of the Board, the hearing examiner failed to advise the parolee of the right to be heard by a Board quorum, as required by paragraph (14)(ii), the recommitment decision of the Board was vacated and remanded for a hearing before a quorum of the board. *Laboy v. Board of Probation and Parole*, 459 A.2d 916 (Pa. Cmwlth. 1983); 465 A.2d 78 (Pa. Cmwlth. 1983).

A criminal preliminary hearing or the detention hearing mandated by 37 Pa. Code § 71.3(1)(iv) (relating to arrest for a new criminal offense) must be held within 15 days, since § 71.3(9) requires the Board of Probation and Parole to follow the same procedures as those in paragraphs (1)—(8), and paragraph (3) requires a hearing to be held within that time. *Whittington v. Board of Probation and Parole*, 402 A.2d 1105 (Pa. Cmwlth. 1979).

#### *Preliminary Hearings/Timeliness*

The failure to hold a preliminary hearing within 14 days of return to Pennsylvania is not per se prejudicial. Where a preliminary hearing was later held and Petitioner admitted the technical parole violation charges against him, and where he failed to aver or demonstrate any prejudice caused by the delay, the order of the Board of Probation and Parole will be affirmed. *McKenna v. Board of Probation and Parole*, 782 A.2d 1105 (Pa. Cmwlth. 2001).

Although this regulation requires that a preliminary hearing “be held within 14 days of the detention of the parolee on the Board warrant,” 37 Pa. Code § 71.5 provides that “if the parolee is in custody in another state, . . . the Board may lodge its detainer but other matters may be deferred until the parolee has been returned to a State correctional facility in this Commonwealth.” Thus, a prisoner who was returned to Pennsylvania on February 28, 1994, had a timely preliminary hearing when that hearing was scheduled for March 11, 1994. *Fulton v. Commonwealth*, 663 A.2d 865 (Pa. Cmwlth. 1996); appeal denied, 673 A.2d 337 (Pa. 1996).

Since parolee did not suffer any deprivation or prejudice as a result of Board of Probation and Parole’s failure to hold a timely preliminary hearing, counsel’s failure to object to untimeliness did not support claim of ineffective assistance of counsel. *Pickert v. Board of Probation and Parole*, 514 A.2d 252 (Pa. Cmwlth. 1986).

Where preliminary hearing was originally scheduled 12 days after the Board of Probation and Parole's warrant was lodged, but was continued due to petitioner's unavailability caused by petitioner's hospitalization, there was no violation of paragraph (1)(ii) (requiring that hearing be scheduled within 15 days of lodging of warrant). *Chancey v. Board of Probation and Parole*, 477 A.2d 22 (Pa. Cmwlth. 1984).

Where the petitioner was already properly detained and was subject to remain in detention regardless of the outcome of the preliminary hearing, petitioner was not prejudiced by the failure of the Board of Probation and Parole to comply with the 15 day requirement of paragraph (3) and the recommitment based upon such a violation was upheld. *Anderson v. Board of Probation and Parole*, 471 A.2d 591 (Pa. Cmwlth. 1984).

Where a parolee was charged with violating the conditions of parole, the Board of Probation and Parole was required to hold a preliminary hearing within 15 days of either the arrest of the parolee on a Board warrant, or the lodging of the warrant as a detainer at the facility where the parolee was confined. *Woods v. Board of Probation and Parole*, 469 A.2d 332 (Pa. Cmwlth. 1983).

If probable cause to believe that the parolee violated parole conditions is found to exist, paragraphs (9) and (11) require that a violation hearing, if determined to be warranted, be scheduled within 120 days of the preliminary hearing. *Woods v. Board of Probation and Parole*, 469 A.2d 332 (Pa. Cmwlth. 1983).

When a parolee is released from custody in another state, the Board of Probation and Parole must hold a preliminary hearing within 15 days of either the arrest of the parolee on the Board warrant or its being lodged as a detainer at the facility where the parolee is confined. *Keeler v. Board of Probation and Parole*, 464 A.2d 623 (Pa. Cmwlth. 1983).

In ruling that the time requirements of paragraphs (3) and (11) and § 71.3(8) are tolled while a parolee is in custody in another state or in Federal custody, the Court observed that, under 37 Pa. Code § 71.2(5), the parolee waived a preliminary and full Board of Probation and Parole hearing at the time the violation and revocation hearing was held. *Elliot v. Board of Probation and Parole*, 458 A.2d 1068 (Pa. Cmwlth. 1983).

Under Board of Probation and Parole regulations, parole violation hearings must be held not later than 120 days after a preliminary hearing. There is no corresponding time limit regarding rehearings, however. *Lewis v. Board of Probation and Parole*, 456 A.2d 729 (Pa. Cmwlth. 1983).

A parolee may not object to the timeliness of the preliminary hearing required by paragraph (3) after parole has been revoked at a violation hearing. *Donnelly v. Board of Probation and Parole*, 457 A.2d 145 (Pa. Cmwlth. 1983).

Failure to make objections to the timeliness of parole revocation hearings under paragraph (3) and § 71.3(1)(ii) prior to the revocation hearing constituted a waiver of those issues as grounds for challenging the validity of the parole revocation hearings ultimately held. *Nicastro v. Board of Probation and Parole*, 455 A.2d 295 (Pa. Cmwlth. 1983).

Delays in holding the hearing because of the vacation of the parole officer and because the parole officer was assaulted the day before the rescheduled hearing are not excusable grounds for not holding the hearing within the required 120-day period. *Capers v. Board of Probation and Parole*, 400 A.2d 922 (Pa. Cmwlth. 1979).

#### *Preliminary Hearings/Unnecessary*

Preliminary hearing on charges of parole violations within 14 days of detention was not required where parolee was detained on new criminal charges. *Lanzetta v. Board of Probation and Parole*, 568 A.2d 283 (Pa. Cmwlth. 1989).

#### *Relief*

In order to establish grounds for relief based on the failure of the Board of Probation and Parole to comply with notice and hearing procedures, it is necessary to allege, or the record must show, that the maximum expiration date of the original sentence was affected. *Simmons v. Board of Probation and Parole*, 381 A.2d 221 (Pa. Cmwlth. 1978).

#### *Res Judicata*

The doctrine of res judicata applies to prevent the Board of Probation and Parole from holding a revocation hearing board on alleged technical violations of parole where the Board had previously held in favor of the parolee at a prior revocation hearing and no new evidence to support the alleged violations had since become apparent. *Knox v. Board of Probation and Parole*, 588 A.2d 79 (Pa. Cmwlth. 1991).

*Sentence within Range*

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

*Technical Violations*

Petitioner who was charged as a technical violator and not as a convicted violator was not entitled to a revocation hearing and the petitioner's due process rights were not violated. *Obringer v. Board of Probation and Parole*, 547 A.2d 449 (Pa. Cmwlth. 1988); appeal denied 557 A.2d 728 (1989).

*Timeliness*

Where the parolee initially waived his right to a panel hearing, then later asserted it, he cannot complain that the hearing was not timely, even though the initial waiver was made upon the advice of an agent of the Board of Probation and Parole. *Fetter v. Board of Probation and Parole*, 808 A.2d 611 (Pa. Cmwlth. 2002), appeal denied 829 A.2d 1159 (Pa. 2003).

Continuances granted to the Commonwealth because of the unavailability of the victim-witness were reasonable and necessary, and the fact that the hearing was held after the 120-day period was not grounds for dismissal. *Majors v. Board of Probation and Parole*, 808 A.2d 296 (Pa. Cmwlth. 2002), appeal denied 816 A.2d 1103 (Pa. 2003).

This regulation addresses procedures to be followed when a violation of parole conditions is alleged; it does not limit the authority of the Board of Probation and Parole to recharge a parolee. *Person v. Board of Probation and Parole*, 701 A.2d 1381 (Pa. Cmwlth. 1997), appeal denied 717 A.2d 1030 (Pa. 1998), appeal denied 737 A.2d 745 (1999), February 25, 1999).

In calculating the number of days required to comply with the procedures for violation of parole conditions as set forth in 37 Pa. Code Chapter 71, the prescriptions of 1 Pa.C.S. § 1908 (relating to computation of time) are to be applied. Thus, Saturday and Sunday shall be excluded from computation in meeting the requirement that a parole officer visit the parolee within 24 hours of a Board of Probation and Parole warrant being lodged as a detainer. *Donnell v. Board of Probation and Parole*, 453 A.2d 36 (Pa. Cmwlth. 1982).

A parolee whose combined violation and revocation hearing was untimely as to the technical violation charges under paragraph (11) was not prejudiced thereby, because the revocation component of the hearing was timely, due to the fact that the limitation period for criminal parole violations provided by paragraph (2)(i) had not begun to run on the date of the hearing due to the parolee's interim county prison incarceration, and parolee's original maximum sentence was extended solely because of criminal, not technical, parole violations. *Hines v. Board of Probation and Parole*, 420 A.2d 381 (Pa. 1980).

Although the parolee did not receive a timely detention hearing as required by paragraph (3), the failure to raise the issue before the final revocation hearing means that the parolee has suffered a wrong for which there is no remedy. *Whittington v. Board of Probation and Parole*, 404 A.2d 782 (Pa. Cmwlth. 1979).

Since the parolee was being held outside the Commonwealth of Pennsylvania but was released upon the condition of returning to Pennsylvania and reporting to the Board, the parolee's failure to report delays the running of the time period for the hearing until parolee is within the jurisdiction of the Board. *Slayton v. Board of Probation and Parole*, 394 A.2d 1084 (Pa. Cmwlth. 1978).

The rule providing for a preliminary hearing within 15 days after the filing of warrant or detainer applies only where there has been no arrest for a new crime. *Washington v. Jacobs*, 386 A.2d 631 (Pa. Cmwlth. 1978).

The hearing must actually be held within 30 days rather than merely scheduled within 30 days. *Kemp v. Board of Probation and Parole*, 383 A.2d 568 (Pa. Cmwlth. 1978).

#### Waiver

The failure of the hearing examiner to conduct an adequate inquiry into the parolee's waiver of counsel at his revocation hearing, and the failure to fully advise the parolee of his right to counsel, make the waiver not a knowing one as required by § 71.2. *Worthington v. Board of Probation and Parole*, 784 A.2d 275 (Pa. Cmwlth. 2001).

The on-the-record colloquy required by Pa.R.Crim.P. No. 318 (relating to waiver of counsel) in criminal court is not a prerequisite for effective waiver of counsel in a parole revocation hearing; compliance by the Board of Probation and Parole with its own regulations is sufficient. *Pitch v. Board of Probation and Parole*, 514 A.2d 638 (Pa. Cmwlth. 1986).

Record of extended exchange between parolee and Board of Probation and Parole members established that Board had complied with paragraph (15) and parolee had made a knowing, intelligent and free waiver of right to counsel at revocation hearing. *Oliver v. Board of Probation and Parole*, 494 A.2d 10 (Pa. Cmwlth. 1985).

A remand was required where the Board of Probation and Parole failed to make any findings or conclusions with regard to a petitioner's argument that the signature of the waiver of the preliminary hearing form and continuance request form was not petitioner's, thus making the violation hearing untimely because it was not held within 120 days of the preliminary hearing. *Davis v. Board of Probation and Parole*, 481 A.2d 714 (Pa. Cmwlth. 1984).

#### Cross References

This section cited in 37 Pa. Code § 71.3 (relating to return for a new criminal charge).

### § 71.3. Return for a new criminal charge.

The following procedures shall be followed if a parolee, not already detained after appropriate hearings for other criminal charges or technical violations, has been charged with a new criminal offense:

- (1) A parolee may be detained on a Board warrant pending disposition of a criminal charge following the occurrence of one of the following:
  - (i) A district justice has conducted a criminal preliminary hearing and concluded that there is a prima facie case against the parolee.
  - (ii) The parolee waives a criminal preliminary hearing and is held for court.
  - (iii) The parolee is convicted of a crime at a trial before a judge of the Philadelphia Municipal Court or a district justice.
  - (iv) An examiner conducts a detention hearing.
- (2) A parolee detained on a Board warrant upon the occurrence of one of the events enumerated in paragraph (1) may be held, without further hearing, pending disposition of the new criminal charge.
- (3) If the decision of the agent, with concurrence of the district director, is to detain a parolee, the agent shall file a written report with the Board stating the reasons for detention.

(4) The Board may either concur in the decision of the agent to detain or reject the decision and order the parolee continued on parole pending disposition of the new criminal charge.

(5) If the Board concurs with the agent's decision to detain the parolee, the parolee shall be notified of the decision in writing.

(6) If an agent determines that a parolee poses a risk to the community or to self and that immediate incarceration or continued detention of the parolee is necessary, the agent shall apply to the district director for authorization to detain.

(7) If application is made under paragraph (6), the district director shall promptly grant or deny the request.

(8) If the application is granted, the parolee may be detained up to 30 days without the occurrence of one of the events enumerated in paragraph (1).

(9) The Board will follow the procedures generally governing preliminary hearings contained in § 71.2(1)—(8) (relating to procedure for violation of parole conditions) in conducting detention hearings, except that a detention hearing shall be held within 30 days of the parolee's detention. After the detention hearing, a panel shall determine whether to continue to detain the parolee pending disposition of the new criminal charge.

(10) In determining whether a parolee should be detained under this section, the agent and the district director shall consider the following criteria:

- (i) Risk to the community if the parolee is not detained.
- (ii) Evidence that the parolee has violated parole in a sufficiently serious manner to warrant return as a technical violator.
- (iii) The history of the parolee while under supervision.
- (iv) Whether the parolee is in delinquent status by absconding.
- (v) Seriousness of the offense with which the parolee has been charged.
- (vi) Possibility that the parolee may abscond from parole supervision if not detained.
- (vii) Whether the new criminal charge involves an alleged use of a weapon or physical assault.
- (viii) Whether the parolee already has another pending criminal charge.

#### **Authority**

The provisions of this § 71.3 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 § 71.3 adopted August 4, 1972, effective August 14, 1972, 2 Pa.B. 1465; amended February 18, 1977, effective March 1, 1977, 7 Pa.B. 487; amended July 10, 1981, effective July 11, 1981, 11 Pa.B. 2478; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial pages (122535) to (122537).

**Notes of Decisions***Continuances*

The terms “revocation hearing” and “violation hearing” have acquired specific meanings in the context of parole, thus the defendant’s request for a “continuance of his violation/revocation hearing” related to both hearings and the delay caused by request for continuances will not be considered in determining timeliness of above-described hearings. *Tarrant v. Board of Probation and Parole*, 521 A.2d 997 (Pa. Cmwlth. 1987); appeal denied 535 A.2d 84 (Pa. 1987).

*Detainers*

The issuance of a detainer does not violate a parolee’s constitutional rights when he has been arrested for a new offense, if a committing magistrate has conducted a preliminary hearing and concluded there is a prima facie case against the parolee. *Ježick v. Board of Probation and Parole*, 530 A.2d 1031 (Pa. Cmwlth. 1987).

*Detention Hearings*

The Board of Probation and Parole did not need to hold a detention hearing after the conviction of a parole violation. *Williams v. Board of Probation and Parole*, 654 A.2d 235 (Pa. Cmwlth. 1995).

A Magistrate’s determination under 37 Pa. Code § 71.3(1) that there is a prima facie case against a parolee on new criminal charges obviates the need for a detention hearing, so that any defect in procedures at that hearing is harmless error. *Boone v. Board of Probation and Parole*, 457 A.2d 229 (Pa. Cmwlth. 1983).

*Preliminary Hearings*

Since the parolee was afforded a preliminary hearing after his arrest at which a prima facie case was established, the parolee could be detained, under 37 Pa. Code § 71.3(1)(i) and (2) (relating to arrest for a new criminal offense), without a preliminary detention hearing. *Battle v. Board of Probation and Parole*, 403 A.2d 1063 (Pa. Cmwlth. 1979).

A criminal preliminary hearing or the detention hearing mandated by 37 Pa. Code § 71.3(1)(iv) (relating to arrest for a new criminal offense) must be held within 15 days, since 37 Pa. Code § 71.3(9) (relating to arrest for a new criminal offense) requires the Board to follow the same procedures as those in 37 Pa. Code § 71.2(1)—(8) (relating to procedure for violation of parole conditions), and 37 Pa. Code § 71.2(3) (relating to procedure for violation of parole conditions) requires a hearing to be held within that time. *Whittington v. Board of Probation and Parole*, 402 A.2d 1105 (Pa. Cmwlth. 1979).

A detention hearing conducted by the Board is unnecessary when there is a criminal preliminary hearing at which a prima facie case is established. *Ryles v. Board of Probation and Parole*, 399 A.2d 151 (Pa. Cmwlth. 1979).

*Relief*

In order to establish grounds for relief based on the failure of the Probation and Parole Board to comply with notice and hearing procedures, it is necessary to allege, or the record must show, that the maximum expiration date of the original sentence was affected. *Simmons v. Board of Probation and Parole*, 381 A.2d 221 (Pa. Cmwlth. 1978).

*Timeliness*

Where Board of Probation and Parole held detention hearing 26 days after it lodged warrant and detainer against parolee, hearing was timely under present regulations. *McCain v. Curione*, 527 A.2d 591 (Pa. Cmwlth. 1987).

If a parolee is detained without hearing, pending disposition of new criminal charges, and a final revocation hearing is held 22 days after the conviction of the parolee on the new criminal charges, the

Board has complied with the requirement that a hearing be held within 120 days from the date the Board receives official verification of a plea of nolo contendere or a guilty verdict at the highest trial court level. *Mirando v. Cuyler*, 412 A.2d 916 (Pa. Cmwlth. 1980).

#### *Waiver*

Failure to make objections to the timeliness of parole revocation hearings under 37 Pa. Code §§ 71.2(3) and 71.3(1)(ii) prior to the revocation hearing constitutes a waiver of those issues as grounds for challenging the validity of the parole revocation hearings ultimately held. *Nicastro v. Board of Probation and Parole*, 455 A.2d 295 (Pa. Cmwlth. 1983).

### **§ 71.4. Conviction for a new criminal offense.**

The following procedures shall be followed before a parolee is recommitted as a convicted violator:

(1) A revocation hearing shall be held within 120 days from the date the Board received official verification of the plea of guilty or nolo contendere or of the guilty verdict at the highest trial court level except as follows:

(i) If a parolee is confined outside the jurisdiction of the Department of Corrections, such as confinement out-of-State, confinement in a Federal correctional institution or confinement in a county correctional institution where the parolee has not waived the right to a revocation hearing by a panel in accordance with *Commonwealth ex rel. Rambeau v. Rundle*, 455 Pa. 8, 314A.2d 842 (1973), the revocation hearing shall be held within 120 days of the official verification of the return of the parolee to a State correctional facility.

(ii) A parolee who is confined in a county correctional institution and who has waived the right to a revocation hearing by a panel in accordance with the *Rambeau* decision shall be deemed to be within the jurisdiction of the Department of Corrections as of the date of the waiver.

(2) Prior to the revocation hearing, the parolee will be notified of the following:

(i) The right to a revocation hearing, the right to notice of the exact date and the right at the revocation hearing to be heard by a panel.

(ii) The right to retain counsel, the right to free counsel if unable to afford to retain counsel and the name and address of the public defender.

(iii) There is no penalty for requesting counsel.

(iv) The right to speak, to have voluntary witnesses appear and to present documentary evidence.

(v) The purpose of the hearing is to determine whether to revoke parole and that if revocation is ordered, the parolee will receive no credit for time spent at liberty on parole.

(3) If the parolee cannot afford counsel, the Board will notify the appropriate public defender by transmitting a copy of the written notice given to the parolee.

(4) The revocation hearing shall be held by a panel or, when the parolee has waived the right to a hearing by a panel, by an examiner.

(5) If a parolee appears without counsel at a revocation hearing, it shall first be determined whether the parolee understands the right to retain counsel, the right to free counsel if unable to afford counsel and that there is no penalty for requesting counsel. If the parolee then wishes to exercise the right to counsel, the panel or examiner shall terminate the proceedings and the revocation hearing shall be rescheduled.

(6) The parolee has the right to be present during the entire proceeding, unless the parolee waives that right, refuses to appear or behaves disruptively.

(7) If the hearing is conducted by an examiner, the examiner shall file a report with the other panel member for decision.

(8) If revocation is ordered, the revocation decision shall be transmitted to the parolee and to counsel of record.

#### Authority

The provisions of this § 71.4 issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186); and section 23 of the act of August 6, 1941 (P. L. 861, No. 323) (61 P. S. § 331.23).

#### Source

The provisions of this § 71.4 adopted August 4, 1972, effective August 14, 1972, 2 Pa.B. 1465; amended February 18, 1977, effective March 1, 1977, 7 Pa.B. 487; amended May 26, 1978, effective May 27, 1978, 8 Pa.B. 1468; amended May 23, 1980, effective May 24, 1980, 10 Pa.B. 2049; amended September 12, 1980, effective September 13, 1980, 10 Pa.B. 3667; amended September 17, 1982, effective September 18, 1982, 12 Pa.B. 3290; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial pages (122538) to (122548).

#### Notes of Decisions

##### *Accrual*

Confinement in a county correctional facility is confinement outside of the Department of Corrections. Upon return to a State correctional facility, and in the absence of a waiver by the parolee, the Board must hold a panel revocation hearing within 120 days of return to the State facility. *Copeland v. Board of Probation and Parole*, 771 A.2d 86 (Pa. Cmwlth. 2001).

Parole revocation hearing shall be held within 120 days of the official verification of the return of the parolee to a state correctional facility or, when the record contains no verification, the 120-day period begins to run on the date the Board could have obtained official verification. Unreasonable and unjustifiable delays which are not attributable to the parolee or the parolee's counsel do not toll the running of the 120 days. *Williams v. Board of Probation and Parole*, 579 A.2d 1369 (Pa. Cmwlth. 1990); appeal denied 618 A.2d 405 (Pa. 1992).

The Board must hold a parole or revocation hearing within 120 days from the date the Board receives official notice of a plea of guilty or nolo contendere or of the guilty verdict at the highest trial court level and it is not necessary for the Board to await a final conviction before imposing backtime on the parole violator. *McClinton v. Board of Probation and Parole*, 546 A.2d 759 (Pa. Cmwlth. 1988).

An off the record statement by a hearing examiner that the petitioner was aware that his continuance request included the handwritten words "including sentencing," which would have extended the 120 day limit, was not sufficient evidence to carry the Parole Board's burden of proof. *Dennis v. Board of Probation and Parole*, 532 A.2d 1230 (Pa. Cmwlth. 1987).



The parole revocation hearing must be held within 120 days of the date the Board receives official verification of a parolee's conviction and not 120 days from the date of conviction. *James v. Board of Probation and Parole*, 530 A.2d 1051 (Pa. Cmwlth. 1987).

The terms "revocation hearing" and "violation hearing" have acquired specific meanings in the context of parole, thus the defendant's request for a "continuance of his violation/revocation hearing" related to both hearings and the delay caused by request for continuances will not be considered in determining timeliness of above-described hearings. *Tarrant v. Board of Probation and Parole*, 521 A.2d 997 (Pa. Cmwlth. 1987); appeal denied 535 A.2d 84 (Pa. 1987).

The 120-day period for holding a full board hearing did not begin with date of parolee's conviction in New York, but with the date he was returned to a Pennsylvania facility. *Davis v. Board of Probation and Parole*, 498 A.2d 6 (Pa. Cmwlth. 1985); appeal denied 531 A.2d 1120 (Pa. 1987).

Where parolee was not charged with parole violation until after conviction of new crime, the 120-day time period for disposition of parole violation charge commenced on the date the parolee was charged with parole violation and not on the date of conviction of the new crime. *Carr v. Board of Probation and Parole*, 494 A.2d 1174 (Pa. Cmwlth. 1985).

Where Board did not charge parolee with violation of parole until after conviction and sentencing for other crime the 120 day time period of 37 Pa. Code § 71.4(2), for providing a parolee with Revocation Hearing, commences on the date parolee is charged with parole violation, not on the date of finding or plea of guilty. *Carr v. Board of Probation and Parole*, 494 A.2d 1174 (Pa. Cmwlth. 1985).

Where a petitioner does not waive his right to a full Board Hearing, the 120 days in which the Board has to give a convicted violator a hearing, paragraph (2), does not commence until petitioner's return to a State Correction Institution. *Chancey v. Board of Probation and Parole*, 477 A.2d 22 (Pa. Cmwlth. 1984).

A Board revocation hearing is timely where it is held within 120 days of receipt of notification of the guilty plea or verdict of guilt, or 120 days of official verification of the parolee's return to a state correctional facility such 120-day period to be computed exclusive of time when the parolee is out of the jurisdiction of the Pennsylvania Bureau of Correction, under paragraph (2)(i). *Toth v. Board of Probation and Parole*, 470 A.2d 206 (Pa. Cmwlth. 1984).

Where a parolee has been convicted of a new criminal offense, paragraph (2) requires that a parole revocation hearing be held within 120 days of the date the Board receives official verification of the conviction. *Woods v. Board of Probation and Parole*, 469 A.2d 332 (Pa. Cmwlth. 1983).

Board regulations require that parole revocation hearings, where the violation charged is a conviction for a new offense, must be held within 120 days from the date the Board receives official notice of conviction. There is no corresponding time limit regarding rehearings, however. *Lewis v. Board of Probation and Parole*, 456 A.2d 729 (Pa. Cmwlth. 1983).

The 120 day period for holding the hearing does not begin to run until the Board receives official verification of the transfer of a parolee from a county correctional institution to a state correctional facility. *Harold X. (Smith) v. Board of Probation and Parole*, 417 A.2d 1350 (Pa. Cmwlth. 1980).

For purposes of revoking parole, the fact that the court deferred sentencing on the new convictions has no significance; the event justifying such action is a conviction on new charges. *Ganter v. Board of Probation and Parole*, 405 A.2d 989 (Pa. Cmwlth. 1979).

Since the first trial of the parolee ended in a mistrial and a retrial had not yet taken place, the criminal charges were still pending and thus no violation of the 120 day time limit of 37 Pa. Code § 71.4(2) (relating to conviction for a new criminal offense) was yet possible. *Battle v. Board of Probation and Parole*, 403 A.2d 1063 (Pa. Cmwlth. 1979).

The provisions of 37 Pa. Code § 71.4 (relating to conviction for a new criminal offense) does not become operative until a conviction on the new charges has been obtained. *Ryles v. Board of Probation and Parole*, 399 A.2d 151 (Pa. Cmwlth. 1979).

If a parolee is confined in a county correctional institution, the 120-day period in which a parole revocation hearing must be held begins to run when the Board receives official verification of the parolee's transfer to a state correctional facility rather than from the date of the Board's reception of official verification of the parolee's guilty plea. *Perry v. Board of Probation and Parole*, 398 A.2d 739 (Pa. Cmwlth. 1979).

The 120-day period begins to run on the date on which the parolee is returned to the jurisdiction of the Bureau rather than on the date on which the parole violation warrant is filed. *Terrell v. Jacobs*, 390 A.2d 1379 (Pa. Cmwlth. 1978).

The 120-day period for holding the hearing does not begin to run until the Board receives official verification of the transfer of a parolee from a county correctional institution to a state correctional facility. *Alger v. Zaccagni*, 388 A.2d 769 (Pa. Cmwlth. 1978).

#### Calculation

Although 37 Pa. Code § 71.4(5)(iv) (relating to conviction for a new criminal offense) is specifically directed to revocation hearings before an Examiner on waiver of hearing before a quorum of the Board, there is no reason to not apply it to a Board hearing. *Dobson v. Jacobs*, 406 A.2d 1207 (Pa. Cmwlth. 1979).

#### Delay

For offenders facing a revocation hearing based on new criminal conviction, the period of time that an offender is confined to a county prison does not count towards the 120 days that the Board of Probation and Parole has to provide the offender with a revocation hearing. *Koehler v. Board of Probation and Parole*, 935 A.2d 44, 51 (Pa. Cmwlth. 2007)

Because the Board lodged the detainer, filed the parole violation charge and held the revocation hearing well beyond 120 days after the parolee's return to State correctional institution, the parole violation charge must be dismissed with prejudice. It is well established that unreasonable and unjustifiable delay, which is not attributable to the parolee or parolee's counsel, does not toll the running of the 120-day period. *McDonald v. Board of Probation and Parole*, 673 A.2d 27 (Pa. Cmwlth. 1996).

Where a parolee's right to a revocation hearing within 120 days was waived by his request for a continuance pending disposition of all criminal charges, the burden is not on the Board to keep track of when this event occurred. *Williams v. Board of Probation and Parole*, 561 A.2d 866, 867 (Pa. Cmwlth. 1989); appeal denied 575 A.2d 120 (Pa. 1990).

Where parolee had been convicted in Philadelphia Municipal Court but had then appealed de novo to the Philadelphia County Common Pleas Court, the Municipal Court conviction was effectively nullified and the 120-day period for holding a parole revocation hearing commenced with the date of conviction in Common Pleas Court, not with the Municipal Court conviction date. *Johnson v. Board of Probation and Parole*, 511 A.2d 894 (Pa. Cmwlth. 1986).

Section 71.4(2) providing that a full board hearing will be held within 120 days of official verification of the Board of the admission of a parolee from a county correctional institution to a state correctional facility does not violate a parolee's right to a hearing within a reasonable period of time, does not violate equal protection and is not unconstitutionally vague. *Andrews v. Board of Probation and Parole*, 510 A.2d 394 (Pa. Cmwlth. 1986).

The 120 day rule requires that a violation/revocation hearing not be held more than 120 days from the date of the Board's receipt of official verification of the guilty verdict handed down. *Dennis v. Board of Probation and Parole*, 532 A.2d 1230 (Pa. Cmwlth. 1987).

Revocation hearing was timely, since delay beyond statutory period was attributable to parolee's request for a continuance. *Pierce v. Board of Probation and Parole*, 525 A.2d 1281 (Pa. Cmwlth. 1987).

This section requires the Board of Parole and Probation to hold a hearing within 120 days of the date on which it receives official verification of parolee's conviction for parole violation, and fact that

defendant's attorney know of his conviction previously to the Board's receipt of verification does not render the hearing untimely. *Tarrant v. Board of Probation and Parole*, 521 A.2d 997 (Pa. Cmwlth. 1987); appeal denied 535 A.2d 84 (Pa. 1987).

Where parolee, who had been arrested for new crime, requested a continuance of his violation and revocation hearing "pending disposition of criminal charges and sentencing, if convicted," the 120 day period for hearing began when the Board received verification of sentencing, not with the date the continuance was requested. *Robinson v. Board of Probation and Parole*, 503 A.2d 1048 (Pa. Cmwlth. 1986); appeal after remand 520 A.2d 1230 (Pa. Cmwlth. 1987).

Where Petitioner had requested and been granted a continuance of his parole revocation hearing, his contention on appeal that the 120-day rule of paragraph (2) had been violated was "wholly frivolous"; appointed counsel was granted leave to withdraw and the Board of Probation and Parole's denial of administrative relief was affirmed. *Craig v. Board of Probation and Parole*, 502 A.2d 758 (Pa. Cmwlth. 1985).

Under paragraph (2), the Board has a 120-day period in which to provide a parolee a revocation hearing following a new criminal conviction; however, under paragraph (2)(i), the 120-day period does not commence for a parolee housed in a county prison who requests a full Board hearing until the parolee is received at a State correctional facility. *Coades v. Board of Probation and Parole*, 480 A.2d 1298 (Pa. Cmwlth. 1984).

A parolee confined in a county correctional facility who waives his right to a Full Board revocation hearing is deemed to be within the jurisdiction of the Bureau of Corrections beginning with the date of his waiver, and the 120-day period begins to run as of that date. *Woods v. Board of Probation and Parole*, 469 A.2d 332 (Pa. Cmwlth. 1983).

If a parolee who is confined outside the jurisdiction of the Bureau of Corrections does not waive his right to a Full Board revocation hearing, the 120-day period begins to run when the parolee is returned to a state correctional institution. *Woods v. Board of Probation and Parole*, 469 A.2d 332 (Pa. Cmwlth. 1983).

Where a parolee is sent a notice captioned "Revocation Hearing—New Conviction" and makes an appearance for the hearing within the time prescribed in 37 Pa. Code § 71.4(1), and where the parolee then requests continuance of the hearing until such time as he is prepared to proceed, and the hearing is then held on the same day petitioner notifies the Board that he is prepared, the Board is excused from meeting the time constraints of 37 Pa. Code § 71.4(1). *Nicastro v. Board of Probation and Parole*, 455 A.2d. 295 (Pa. Cmwlth. 1983); appeal denied 530 A.2d 869 (Pa. 1987).

Since the parolee was confined in county institutions because of an arrest on criminal charges and because of a bench warrant, and since he had requested a continuance of the final hearing until after disposition of the criminal charges, and the final hearing was held within 120 days of the dismissal of the criminal charges, the final hearing was timely. *Hairston v. Jacobs*, 408 A.2d 1195 (Pa. Cmwlth. 1979).

The Board may delay a full revocation hearing until after sentencing in response to a parolee's oral request for a continuance, especially since the parolee was not prejudiced by the delay. *Blair v. Board of Probation and Parole*, 408 A.2d 907 (Pa. Cmwlth. 1979); appeal after remand 454 A.2d 1186 (Pa. Cmwlth. 1983); appeal after remand 467 A.2d 71 (Pa. Cmwlth. 1983); cert. denied 466 U. S. 977 (1984).

Postponements made at the request of the counsel of the parolee cannot be charged against the Board. *Jones v. Board of Probation and Parole*, 404 A.2d 755 (Pa. Cmwlth. 1979).

If a parolee is detained in a county prison awaiting disposition of other charges, that time is excluded from the 120-day requirement of 37 Pa. Code § 71.4(2). *Dobson v. Board of Probation and Parole*, 402 A.2d 1133 (Pa. Cmwlth. 1979).

The delay caused by the request of a parolee for a continuance will not be considered in determining whether the time limits have been met. *Corbin v. Board of Probation and Parole*, 399 A.2d 1202 (Pa. Cmwlth. 1979).

The time a parolee spends in a county prison or detention center awaiting disposition of other charges is excluded from the 120-day requirement. *Tate v. Board of Probation and Parole*, 396 A.2d 482 (Pa. Cmwlth. 1979).

The time limit for the hearing does not include any time which was the result of a request for a continuance, nor any time which was the result of a hearing waiver. *Cohen v. Board of Probation and Parole*, 390 A.2d 345 (Pa. Cmwlth. 1978).

#### *Due Process*

Delaying a revocation hearing beyond the 120-day requirement just so an inmate may serve an unspecified amount of time on his new sentence, without any further justification, does not equate with holding a hearing within a reasonable time or comport with due process. *Williams v. Board of Probation and Parole*, 757 A.2d 436 (Pa. Cmwlth. 2000).

The Board must afford a convicted parole violator a final parole revocation hearing within a reasonable time after guilt is established and when there is a nine month delay between conviction and sentencing on the new criminal charges, the practice of delaying the final parole revocation hearing until after sentencing violates a parolee's due process rights. *United States ex rel. Burgess v. Lindsey*, 395 F. Supp. 404 (E. D. Pa. 1975).

#### *Equal Protection*

Equal protection is not violated by paragraph (2) on the theory that it makes an arbitrary distinction between county-confined parolees who waive full Board hearings and county-confined parolees who do not so waive. *Bronson v. Board of Probation and Parole*, 468 A.2d 1205 (Pa. Cmwlth. 1983); appeal after remand 501 A.2d 704 (Pa. Cmwlth. 1985).

Requiring incarcerated parolees confined in county institutions who desire prompt revocation hearings to waive their right to full hearing before Board of Probation and Parole is reasonable, and thus is not violative of equal protection. *Blair v. Board of Probation and Parole*, 467 A.2d 71 (Pa. Cmwlth. 1983); cert. denied 466 U. S. 977, 104 S.Ct. 2358 (1984).

The provisions of 37 Pa. Code § 71.4(2)(i) excluding from computation the 120 day period the time of confinement spent outside of a State correctional facility do not violate equal protection principles. *Emmi v. Board of Probation and Parole*, 460 A.2d 889 (Pa. Cmwlth. 1983).

The Parole Board's regulations require that an unrepresented, indigent parolee facing a revocation hearing must be supplied with the address of the local public defender to whom he may apply for representation prior to the hearing. *O'Hara v. Board of Probation and Parole*, 487 A.2d 90 (Pa. Cmwlth. 1985).

#### *Evidentiary Issues*

Board could not take administrative notice of timeliness of revocation hearing where document necessary to establish date of verification of conviction was not time-stamped by Board; thus, Board's determination was not supported by substantial evidence, and Board failed to meet its burden of proof by a preponderance of the evidence that hearing was timely. *Abbruzzese v. Board of Probation and Parole*, 524 A.2d 1049 (Pa. Cmwlth. 1987).

Where a violator's recommitment is based upon both his municipal court and common pleas convictions and the revocation hearing was not held within 120 days of the date the Board received notice as to one of those convictions, the court will not assume that either conviction would have been independently sufficient in the Board's judgment to recommit the violator for the remainder of his unexpired term. *Davis v. Board of Probation and Parole*, 481 A.2d 714 (Pa. Cmwlth. 1984).

The provisions of paragraph (2)(i) does not violate equal protection requirements, but merely provides two different mechanisms by which the board may obtain the jurisdiction necessary for its hearings and determinations to have validity. *Woods v. Board of Probation and Parole*, 469 A.2d 332 (Pa. Cmwlth. 1983).

#### *Exception*

Where a parolee is confined in a county institution, the 120-day time limit does not begin to run for purposes of parole revocation until the Board receives official verification of the parolee's transfer to a State correctional facility. *McMahon v. Board of Probation and Parole*, 559 A.2d 595 (Pa. Cmwlth. 1989).

Although parolee was held in county prison in this Commonwealth he was held there by Federal authorities and, under paragraph (2)(i), the time held there was not counted in computing the 120-day period within which parolee must be afforded a parole revocation hearing. *Scott v. Board of Probation and Parole*, 498 A.2d 31 (Pa. Cmwlth. 1985).

Since parolee was confined in a Federal institution and not in a county institution, he did not come under that part of paragraph (2)(i) which provides that the 120-day period for hearing on a convicted

parole violator charge begins with the date a county confinee waives the final revocation hearing by a quorum of the Board of Probation and Parole. *Cameron v. Board of Probation and Parole*, 496 A.2d 419 (Pa. Cmwlth. 1985).

When a parolee is confined in a county correctional institution, the Board acquires jurisdiction over him when a waiver of his right to a full Board revocation hearing is executed, and a hearing held within 120 days of the date of the waiver is timely. *D'Nicuola v. Board of Probation and Parole*, 467 A.2d 1383 (Pa. Cmwlth. 1983).

#### *General Comment*

Under 37 Pa. Code § 71.5, which provided only general rules governing Chapter 71, this section was a special provision pertaining to parolees who have been convicted of a new criminal offense. *Geiger v. Board of Probation and Parole*, 655 A.2d 214 (Pa. Cmwlth. 1995).

#### *Jurisdiction*

After being detained and revoked, the parolee was temporarily transferred to the Federal Detention Center in Philadelphia to plead guilty to Federal charges. The parolee's temporary transfer to the Federal detention center did not constitute confinement outside the jurisdiction of the Department of Corrections. *Morgan v. Board of Probation and Parole*, 814 A.2d 300 (Pa. Cmwlth. 2003).

Although the parolee was moved from a State correctional facility to a county one for a nonjury trial on new charges, he was at all times serving State backtime and was under a Department jurisdiction. *Montgomery v. Board of Probation and Parole*, 808 A.2d 999 (Pa. Cmwlth. 2002).

Because a parolee confined outside the jurisdiction of the Department of Corrections is clearly not "available" to begin serving backtime for the original offense, any new sentence a parolee is ordered to serve at an institution different from that which he or she was paroled from must precede backtime. *Griffin v. Department of Correction*, 862 A.2d 152, 155 N. 4 (Pa. Cmwlth. 2004).

The provisions of 37 Pa. Code § 71.4 (relating to conviction for a new criminal offense) is not applicable if the parolee is at all times within the jurisdiction of the Board and is being held in a county institution, not at the request of the county authorities but at the request of the Board itself. *Hammond v. Board of Probation and Parole*, 396 A.2d 485 (Pa. Cmwlth. 1979).

Time spent in a State hospital did not constitute within the jurisdiction of the Department of Corrections, and therefore, the 120-day rule did not apply. *Slater v. Board of Probation and Parole*, 542 A.2d 200 (Pa. Cmwlth. 1988).

Since the parolee was being held in a county institution at the time of his full-board hearing, the Board had no jurisdiction over him and did not violate his rights in ordering him recommitted as a convicted parole violator "when available" and in setting no date for reparole reconsideration. *Rothman v. Jacobs*, 392 A.2d 903 (Pa. Cmwlth. 1978).

#### *Notice*

A parolee was not given adequate notice of a revocation hearing since it was originally scheduled to be a preliminary hearing but was changed to a revocation hearing after the parolee appeared for the preliminary hearing and informed the Board that he had been convicted of the new criminal charges. *Champion v. Board of Probation and Parole*, 399 A.2d 447 (Pa. Cmwlth. 1979).

#### *Official Verification*

If the record does not disclose the date of notification, then the date of the return of the prisoner to the state correctional institution is considered to be the date of notification. *Cohen v. Board of Probation and Parole*, 390 A.2d 345 (Pa. Cmwlth. 1978).

#### *Preliminary Hearing*

A preliminary detention hearing need not be held within ten days when a parolee is given a preliminary hearing relative to the criminal charges and is later tried and convicted on those charges. *Alger v. Zaccagni*, 388 A.2d 769 (Pa. Cmwlth. 1978).

#### *Reasonable Time*

Although the Board may delay final revocation hearing until after the trial on the criminal charges without violating due process, the final hearing must be held within a reasonable time and a nine month delay is unreasonable. *United States ex rel. Burgess v. Lindsey*, 395 F. Supp. 404 (E. D. Pa. 1975).

*Revocation Decision*

For the purpose of determining whether defendant's revocation hearing was timely, criminal arrest and disposition report could not be considered when determining the date on which the Board of Probation and Parole received official verification of defendant's guilty plea where the report was never entered into the record at the hearing. *Johnson v. Board of Probation and Parole*, 890 A.2d 45, 49 (Pa. Cmwlth. 2006).

The Board's failure to send counsel of record a copy of a recommitment order constituted negligence by the Board and the parolee's attorney's submission of a request for administrative relief 34 days after the order was issued was excused. *Calcagni v. Board of Probation and Parole*, 582 A.2d 1141 (Pa. Cmwlth. 1990).

As long as the Board follows its regulations regarding informing the parolee of the right to counsel, provides the parolee with a form PBPP 340 containing the written notice of the right to counsel as well as the name and address of the applicable public defender, and documents the waiver of counsel by a Form PBPP 72 at the time of the hearing which becomes part of the record, the parolee's waiver of counsel will be deemed informed and voluntary and given effect. *Coades v. Board of Probation and Parole*, 480 A.2d 1298 (Pa. Cmwlth. 1984).

An order by the Board, dated March 19, 1981, computing backtime and fixing the time for reparole as a result of a hearing held on September 3, 1975, did not violate any of the parolee's rights under 37 Pa. Code § 71.4(9). *Brown v. Board of Probation and Parole*, 456 A.2d 1141 (Pa. Cmwlth. 1983).

Although the Board failed to follow the requirements of 37 Pa. Code § 71.4(9) (relating to conviction for a new criminal offense) in that notice of the Board's decision was not sent until some months after the decision was made, the petitioner was not prejudiced, since his failure to receive notice was due to his unauthorized absence from the detention facility where notice was actually sent. *Grady v. Jeffes*, 401 A.2d 1386 (Pa. Cmwlth. 1979).

*Revocation Hearing*

The 120-day time period for the Board of Probation and Parole to conduct a parole revocation hearing began to run from the date the board received the court history detailing defendant's conviction; the court history constituted the "official" verification of defendant's conviction which started the 120-day period, and the fact that the Board or parole agents had knowledge of defendant's new conviction prior to the receipt of the official verification did not trigger the 120-day period. *Taylor v. Board of Probation*, 931 A.2d 114, 120 (Pa. Cmwlth. 2007)

Revocation of parole hearing which resulted in decision to recommit parolee to serve backtime as a convicted parole violator was held in a timely manner by Board of Probation and Parole where hearing occurred within the 120 days from date Board received official verification parolee's sentence. *Reavis v. Board of Probation and Parole*, 909 A.2d 28, 35—36 (Pa. Cmwlth. 2006).

Petitioner who was charged as a technical violator and not as a convicted violator was not entitled to a revocation hearing and his due process rights were not violated. *Obringer v. Board of Probation and Parole*, 547 A.2d 449 (Pa. Cmwlth. 1988); appeal denied 557 A.2d 728 (Pa. 1989).

Parolee's due process rights were not violated where Board held full violation and revocation hearing while parolee was still incarcerated in county prison and before 120 day period, provided for in 37 Pa. Code § 71.4(2)(i), began to run. *Inmon v. Board of Probation and Parole*, 504 A.2d 373 (Pa. Cmwlth. 1986).

Section 71.4 requires that a final parole revocation hearing be held within 20 days of official verification of parolee's guilty verdict. *Taylor v. Board of Probation and Parole*, 402 A.2d 1153 (Pa. Cmwlth. 1979).

The revocation hearing must be held within the required time if the parolee is being confined in a county correctional facility solely as a result of the Board's action and thus is being held exclusively under the Board's jurisdiction. *Dobson v. Board of Probation and Parole*, 398 A.2d 252 (Pa. Cmwlth. 1979).

*Right to Counsel*

The Board complied with this section in granting a continuance to permit the petitioner to obtain legal representation since he expressed desire to be represented by counsel, even though petitioner refused to sign the continuance form because he felt he would be harmed by signing. *Africa v. Board of Probation and Parole*, 556 A.2d 506 (Pa. Cmwlth. 1989); appeal denied 564 A.2d 917 (Pa. 1989).

The on-the-record colloquy required by 234 Pa. Code Rule 318 in criminal court is not a prerequisite for effective waiver of counsel in a parole revocation hearing; compliance by the Board with its own regulations is sufficient. *Pitch v. Board of Probation and Parole*, 514 A.2d 638 (Pa. Cmwlth. 1986).

Two days' notice over a weekend is inadequate notice to counsel of a parole revocation hearing and parolee's waiver of counsel cannot be considered freely made where hearing examiner, knowing parolee desired prompt treatment for pre-AIDS syndrome and treatment was not available in parolee's then present prison, explained the choice as between going ahead without counsel or postponing to a later unpredictable date. *Murray v. Jacobs*, 512 A.2d 785 (Pa. Cmwlth. 1986).

The Board must ensure that the parolee is aware of the right to counsel, however the Board's counseling is not required to be done on the record and may be done by waiver of counsel form PBPPP72. *Coades v. Board of Probation and Parole*, 480 A.2d 1298 (Pa. Cmwlth. 1984).

The Board is required to assure the parolee that he will not be penalized in any way for requesting counsel. *Coades v. Board of Probation and Parole*, 480 A.2d 1298 (Pa. Cmwlth. 1984).

An indigent parolee in a Board parole revocation hearing shall, upon proper request, be provided counsel by the public defender of the county in which the parolee is incarcerated, and not, if the parolee was convicted in a different county, by the public defender of the county of conviction. *Pas-saro v. Board of Probation and Parole*, 424 A.2d 561 (Pa. Cmwlth. 1981).

#### *Timeliness*

The parolee's revocation hearing was held within the 120-day limit; however, in preparation of the parolee's appeal, the Board discovered that the tape of the hearing was blank, preventing the creation of a transcript. Upon petition and order of Commonwealth Court, a rehearing was held after the original 120-day period had expired. Under these circumstances, the hearing is deemed to be timely. *Joyce v. Board of Probation and Parole*, 811 A.2d 73 (Pa. Cmwlth. 2002).

Under subsection (i), where a parolee was confined in a county correctional institution and had waived the right to a panel revocation hearing, the parolee was deemed to be within the jurisdiction of the Department of Corrections as of the date of the waiver. In such a case, the 120 day period began to run on the date of the waiver or the date of official verification of the conviction, whichever was later. *Hartagen v. Board of Probation and Parole*, 662 A.2d 1157 (Pa. Cmwlth. 1995).

The Board of Probation and Parole's acquisition of jurisdiction triggered the running of the 120 day period in which to conduct a probation revocation hearing. Because the period did not begin to run when the convicted parole violator was returned to the state facility, petitioner's parole violation charges are dismissed. *Mack v. Board of Probation and Parole*, 654 A.2d 129 (Pa. Cmwlth. 1995).

#### *Timely Hearing*

Evidence supported the Board of Probation and Parole's position that petitioner's parole revocation hearing was timely in that it was held 67 days after receipt of official verification of his conviction; parole agent testified when Board received official verification and the criminal arrest and disposition report indicated that official verification of petitioner's conviction was received by the Board on that date. *Eaton v. Bd. of Probation and Parole*, 959 A.2d 477, 480 (Pa. Cmwlth. 2008).

Where it is alleged that the Board was aware of the conviction and the availability of the conviction records, but did not retrieve them, a remand was required to determine whether a 143 day period between a parolee's conviction and the receipt of the conviction records by the Board rendered a parole revocation hearing untimely. *Fitzhugh v. Board of Probation and Parole*, 623 A.2d 376 (Pa. Cmwlth. 1993).

A recommitment order is a final, appealable order, and by failure to appeal a recommitment order, the petitioner waived issues relating to timeliness of his revocation hearing. *Woodard v. Board of Probation and Parole*, 582 A.2d 1144 (Pa. Cmwlth. 1990).

Failure to provide revocation hearing 120 days from date of receipt of verification of conviction resulted in prejudice; parole violation charges dismissed. *Johnson v. Board of Probation and Parole*, 566 A.2d 918 (Pa. Cmwlth. 1989); appeal granted 575 A.2d 118 (Pa. 1990); affirmed 583 A.2d 790 (Pa. 1991).

Where parolee had requested continuance pending sentencing for new crime, fact that the hearing was held prior to sentencing did not nullify the continuance but only gave parolee basis to object to prematurity of hearing. *Robinson v. Board of Probation and Parole*, 503 A.2d 1048 (Pa. Cmwlth. 1986); appeal after remand 520 A.2d 495 (Pa. Cmwlth. 1987).

A parolee could not argue that he was denied due process and should have received a revocation hearing within 120 days of his plea of guilty when he was free on bail and not incarcerated during that time period. *Myers v. Board of Probation and Parole*, 554 A.2d 622 (Pa. Cmwlth. 1989).

Where Board failed to meet its burden of proof by a preponderance of the evidence that hearing was timely, proper remedy is a dismissal of parole violation charges with prejudice. *Abbruzzese v. Board of Probation and Parole*, 524 A.2d 1049 (Pa. Cmwlth. 1987).

Where convicted parole violator alleged that his revocation hearing was untimely, it is for the Board to prove by a preponderance of the evidence that it was, in fact, timely. *Abbruzzese v. Board of Probation and Parole*, 524 A.2d 1049 (Pa. Cmwlth. 1987).

Where a revocation hearing is scheduled and held by the Board of Probation and Parole within 120 days from the date the Board received notification of a plea of guilty by a parolee, such a hearing is timely under paragraph (2) notwithstanding the fact that the Board scheduled a re-hearing to hear evidence on an objection by the petitioner beyond the 120 day limit. *Hughes v. Board of Probation and Parole*, 473 A.2d 225 (Pa. Cmwlth. 1984).

Where the Board, under a timely hearing, recommit a parolee solely on the basis of a conviction for one of two charges on which the parolee was simultaneously convicted, the Board cannot then recommit on the basis of conviction on the second charge, if the hearing on that charge is held after the expiration of the 120-day limit contained in this section. *McSorley v. Board of Probation and Parole*, 463 A.2d 1234 (Pa. Cmwlth. 1983).

The 120-day rule of 37 Pa. Code § 71.3 is satisfied when the Board holds a full violation and revocation hearing within 120 days of conviction but that hearing is continued because the parolee is not represented by counsel, even if the eventual hearing where the parolee is represented by counsel is held after expiration of the 120-day period, as it is not the responsibility of the Board to provide counsel. *Ruza v. Board of Probation and Parole*, 458 A.2d 662 (Pa. Cmwlth. 1983).

The Board has complied with the time limitations of 37 Pa. Code § 71.4(2) if it offers a hearing within 120 days from the date the Board receives official notification of an attorney who purports to represent the parolee, regardless of whether any attorney-client relationship actually exists. *Jones v. Board of Probation and Parole*, 455 A.2d 778 (Pa. Cmwlth. 1983).

If a parolee is detained without hearing, pending disposition of new criminal charges, and a final revocation hearing is held 22 days after the conviction of the parolee on the new criminal charges, the Board has complied with the requirement that a hearing be held within 120 days from the date the Board receives official verification of a plea of nolo contendere or a guilty verdict at the highest trial court level. *Mirando v. Cuyler*, 412 A.2d 916 (Pa. Cmwlth. 1980).

A parolee whose combined violation and revocation hearing was untimely as to the technical violation charges under the provisions of 37 Pa. Code § 71.2(11) (relating to procedure for violation of parole conditions) was not prejudiced thereby, because the revocation component of the hearing was timely, due to the fact that the limitation period for criminal parole violations provided by 37 Pa. Code § 71.4(2)(i) had not begun to run on the date of the hearing due to the parolee's interim county prison incarceration, and his original maximum sentence was extended solely because of criminal, not technical, parole violations. *Hines v. Board of Probation and Parole*, 420 A.2d 381 (Pa. Cmwlth. 1980).

Since the revocation hearing was held within 120 days of the parolee's return to a state correctional facility from a penitentiary in another state, the hearing was timely. *Auman v. Board of Probation and Parole*, 394 A.2d 686 (Pa. Cmwlth. 1978).

Since the final revocation hearing was held within 120 days of the parolee's return to the state correctional facility from a federal penitentiary, the hearing was timely held. *Harris v. Board of Probation and Parole*, 393 A.2d 510 (Pa. Cmwlth. 1978).

Since the parole violation hearing was held within 120 days of the return of the parolee to the state correctional institution from a county correctional institution, the hearing was timely held. *Gaito v. Board of Probation and Parole*, 392 A.2d 343 (Pa. Cmwlth. 1978); affirmed 412 A.2d 568 (Pa. 1980).

Holding the hearing over five months after conviction is not a violation of this section if the parolee is being held at a county prison and is not transferred to a state correctional institution until well after the hearing is held. *Thomas v. Board of Probation and Parole*, 391 A.2d 714 (Pa. Cmwlth. 1978).

The final revocation hearing for a parolee convicted of a new crime was held within a proper time after conviction where it was set for three months after conviction and was delayed for an additional two months because of the parolee's request for a continuance. *Washington v. Jacobs*, 386 A.2d 631 (Pa. Cmwlth. 1978).



*Vagueness*

The right to parole is not a fundamental right; the regulation providing that the 120-day period for hearing commences upon release from county authorities into state custody is reasonable and is not unconstitutionally vague. *Andrews v. Board of Probation and Parole*, 510 A.2d 394 (Pa. Cmwlth. 1986).



**Cross References**

This section cited in 37 Pa. Code § 71.5 (relating to general).

**§ 71.5. General.**

(a) If the parolee is in custody in another state, or in Federal custody, the Board may lodge its detainer but other matters may be deferred until the parolee has been returned to a State correctional facility in this Commonwealth.

(b) In hearings conducted under this chapter, documentary evidence and reports, including, but not limited to, depositions, written interrogatories, affidavits, laboratory reports, business records, public records, official records and letters rogatory, may be utilized solely, if the panel or examiner is satisfied as to their authenticity, relevancy, accuracy and reliability.

(c) In determining the period for conducting hearings under this chapter, there shall be excluded from the period, a delay in any stage of the proceedings which is directly or indirectly attributable to one of the following:

(1) The unavailability of a parolee or counsel.

(2) Continuances granted at the request of a parolee or counsel, in which case the Board is not required to reschedule the hearing until it receives a written request to reschedule the hearing from the parolee or counsel.

(3) Reasonable or necessary continuances granted to, or occurrences related to, the Board or its employees.

(4) A change of decision by a parolee either to waive the right to be heard by a panel after asserting it or to assert that right after waiving it. In this case, the hearing shall be held within 120 days of the last change of decision.

(5) An event which could not be reasonably anticipated or controlled by the Board, including, but not limited to, illness, injury, acts of nature and prison or civil disorder.

(d) The number of days set forth in this chapter shall be calculated as prescribed by 1 Pa.C.S. § 1908 (relating to computation of time).

(e) Notwithstanding § 71.4 (relating to conviction for a new criminal offense), the Board may defer the revocation hearing until either partial or full service of a new sentence which a parolee receives.

**Authority**

The provisions of this § 71.5 issued under: section 506 of The Administrative Code of 1929 (71 P. S. § 186); and section 23 of the act of August 6, 1941 (P. L. 861, No. 323) (61 P. S. § 331.23); 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 § 71.5 adopted August 4, 1972, effective August 14, 1972, 2 Pa.B. 1465; amended February 18, 1977, effective March 1, 1977, 7 Pa.B. 487; amended May 23, 1980, effective May 24, 1980, 10 Pa.B. 2049; amended September 17, 1982, effective September 18, 1982, 12 Pa.B. 3290; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial pages (122548) to (122554).

**Notes of Decisions***Administrative Relief*

The 30-day period for filing for administrative relief applied to parolees unrepresented and represented by counsel. *Cadogan v. Board of Probation and Parole*, 541 A.2d 832 (Pa. Cmwlth. 1988); appeal denied 553 A.2d 970 (Pa. 1988).

*Appeal*

Convicted parole violator had an adequate remedy at law in the form of the Board of Probation and Parole's appeal process embodied under this section, and failure to avail oneself of that remedy or unsuccessful appeal did not give a right to bring an action in mandamus based on the same claim. *Rausser v. Board of Probation and Parole*, 528 A.2d 290 (Pa. Cmwlth. 1987).

Where Board of Probation and Parole had provided a publicized procedure for an appeal, it was not also required to extend additional notice of those rights; moreover, since the Board addressed parole violator's application for administrative relief on the merits, any error regarding notice must be deemed harmless. *Johnson v. Board of Probation and Parole*, 524 A.2d 528 (Pa. Cmwlth. 1987); appeal denied 532 A.2d 21 (Pa. 1987).

A timely appeal filed by counsel for a parolee who had properly sought administrative relief from the Board of Probation and Parole would not be prejudiced by the quashing of a prior pro se appeal that failed to exhaust the available administrative remedies. *Robinson v. Board of Probation and Parole*, 520 A.2d 1230 (Pa. Cmwlth. 1987).

In view of conflicting allegations as to the evidence received at the Board's hearing of petitioner's request for administrative review pursuant to subsection (h), the Court directed the Board to furnish a transcript of the hearing to enable it to perform its appellate review. *Lowe v. Board of Probation and Parole*, 457 A.2d 206 (Pa. Cmwlth. 1983).

*Evidence*

Laboratory report indicating that a urine specimen tested positive for cocaine was properly admitted through the testimony of a parole agent, as the report was on laboratory letterhead and contained the signature of the certifying scientist. The report contained sufficient indicia of reliability to allow its admission. *Bolden v. Board of Probation and Parole*, 794 A.2d 440 (Pa. Cmwlth. 2002), appeal denied 806 A.2d 863 (Pa. 2002).

Where a laboratory report contained the laboratory letterhead and was signed by a doctor, the requisite indicia of reliability was present to permit the Board of Probation and Parole to find good cause to admit the report without the necessity to provide the parolee with a right to conformation. *Ward v. Board of Probation and Parole*, 538 A.2d 971 (Pa. Cmwlth. 1988).

It was proper to admit laboratory reports during a technical violation parole hearing where the persons with knowledge were beyond the subpoena power of the Board of Probation and Parole. *Dameron v. Board of Probation and Parole*, 531 A.2d 592 (Pa. Cmwlth. 1987).

Photocopies of certified court records, rather than the certified copies of the records themselves, may be used as documentary evidence by the Board of Probation and Parole if the Board was satisfied that the evidence is authentic, relevant and accurate. *Blackwell v. Board of Probation and Parole*, 516 A.2d 856 (Pa. Cmwlth. 1986).

If in a defendant's hearing before the Board of Probation and Parole counsel objects to the admission of a laboratory 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).

Admission of drug screen report in form of unsigned computer printout without authentication testimony and reliance solely thereon for finding of technical parole violation was improper under subsection (d) since there were insufficient indicia of regularity and reliability, and the document itself may not provide the factual basis for a finding of good cause for denying parolee's right to confront

and cross-examine persons who performed drug screen test and prepared the report. *Powell v. Board of Probation and Parole*, 513 A.2d 1139 (Pa. Cmwlth. 1986); appeal denied 523 A.2d 346 (Pa. 1986).

The Board of Probation and Parole properly admitted into evidence photocopies of court docket sheets which had not been certified under seal since section 6103 of the Judicial Code, 42 Pa.C.S. § 6103, is inapplicable to Board of Probation and Parole proceedings and the United States Supreme Court has held that probation revocation proceedings need not be conducted with the same formality as criminal trials and subsection (d) permitted the Board to utilize documentary evidence if it was satisfied that the evidence was authentic, relevant and accurate. *Anderson v. Board of Probation and Parole*, 497 A.2d 947 (Pa. Cmwlth. 1985).

Photocopies of court records not certified in accordance with section 6103 of the Judicial Code, 42 Pa.C.S. § 6103, could form the basis for revocation of a violator's parole as a convicted violator in a technical violation hearing if the examiner was satisfied as to their authenticity, relevancy and accuracy. *Davis v. Board of Probation and Parole*, 481 A.2d 714 (Pa. Cmwlth. 1984).

#### *Evidence/Hearsay*

Where the record indicates that the Commonwealth made every effort to secure the appearance of the victim-witness, but was unable to do so, it was not error to permit hearsay evidence as the basis for the Board's finding. *Majors v. Board of Probation and Parole*, 808 A.2d 296 (Pa. Cmwlth. 2002); appeal denied 816 A.2d 1103 (Pa. 2003).

The Board of Probation and Parole properly admitted into evidence certified documents prepared by out-of-State authorities which contained sufficient indicia of authenticity concerning the arrest and conviction of a parolee as the documents constituted a "good cause" exception to hearsay. *Carter v. Board of Probation and Parole*, 544 A.2d 107 (Pa. Cmwlth. 1988).

A parolee's failure to object to hearsay evidence at the parole revocation hearing allowed the Board of Probation and Parole to consider the evidence without having to find "good cause." *Maxfield v. Board of Probation and Parole*, 538 A.2d 628 (Pa. Cmwlth. 1988).

Even though a parole revocation order cannot be based solely on hearsay, hearsay evidence was admissible upon a finding on the record of good cause to deny the parolee the rights of confrontation and cross-examination. *Jones v. Board of Probation and Parole*, 520 A.2d 1258 (Pa. Cmwlth. 1987).

In a parole revocation hearing, while the revocation order cannot be based solely on hearsay, hearsay evidence was admissible upon a finding on the record of good cause to deny the parolee the rights of confrontation and cross-examination. *Rodriquez v. Board of Probation and Parole*, 516 A.2d 116 (Pa. Cmwlth. 1986).

Parole revocation testimony submitted by New York authorities, not subject to cross examination was properly admitted, through hearsay, when the Board's decision was based on petitioner's admissions and stipulations to violations. *Myers v. Board of Probation and Parole*, 510 A.2d 387 (Pa. Cmwlth. 1986).

The introduction of hearsay evidence at a revocation hearing, over counsel's objection, where the Hearing Examiner failed to make a finding of good cause for admitting such testimony, constituted reversible error. *Grello v. Board of Probation and Parole*, 477 A.2d 45 (Pa. Cmwlth. 1984).

#### *Evidence/Witness*

Where the hearing examiner admitted an affidavit over counsel's objection without making the requisite finding of good cause and this was the only evidence introduced to show that the parolee committed the parole violation, revocation of parolee's probation constituted reversible error. *Scott v. Board of Probation and Parole*, 668 A.2d 584 (Pa. Cmwlth. 1995).

Prior testimony in the form of a court transcript of an unavailable witness was admissible and an exception to the hearing rule in a Board of Probation and Parole hearing where the parole violator

had an adequate opportunity to cross-examine the witness during a prior proceeding. *Wallace v. Board of Probation and Parole*, 548 A.2d 1291 (Pa. Cmwlth. 1988).

#### *General Comment*

This section provided only general rules governing this chapter. *Mack v. Board of Probation and Parole*, 654 A.2d 129 (Pa. Cmwlth. 1995).

#### *Hearings*

The Board of Probation and Parole did not lose jurisdiction over the parolee for failure to extend or readjust the parolee's sentence before the original maximum sentence expired in that the sentence was extended by the amount of time the parolee was at liberty or on parole before the recommitment—no credit was given for time at liberty on parole. Parolee's due process rights were not violated by the delay in holding the violation hearing in that the parolee requested the continuance. *Harris v. Vaughn*, 767 F.Supp. 667 (1991); affirmed 950 F.2d 722 (3rd. Cir. (Pa.) 1991).

#### *Jurisdiction*

If a parolee was in custody in another state the Board of Probation and Parole may lodge its detainer but all other matters shall be deferred until the parolee has been returned to a State correctional facility in this Commonwealth. *Keeler v. Board of Probation and Parole*, 464 A.2d 623 (Pa. Cmwlth. 1983).

The transfer of a parolee between counties to answer criminal charges in each county did not render the parolee unavailable under this section. *Corbin v. Board of Probation and Parole*, 399 A.2d 1202 (Pa. Cmwlth. 1979).

#### *Notice*

Delay in holding revocation hearing attributable to Board of Probation and Parole failure to provide adequate notice did not toll 120-day period within which hearing was required to be held. *Saunders v. Board of Probation and Parole*, 568 A.2d 1370 (Pa. Cmwlth. 1989).

Although the general rule was that notice of a board decision given to counsel was notice to the client, where there was no evidence of direct notice to the client and the public defender admitted making no effort to inform the client these are exceptional circumstances justifying an exception to the general rule. *Lewis v. Board of Probation and Parole*, 508 A.2d 644 (Pa. Cmwlth. 1986).

#### *Petitions*

A petition for administrative relief must set forth the specific facts or legal basis for the relief sought and not simply contain boiler-plate allegations of error or it will be dismissed. *McCaffrey v. Board of Probation and Parole*, 537 A.2d 78 (Pa. Cmwlth. 1988).

#### *Procedure*

Since the administrative relief provisions of subsection (h) are the only available administrative remedies with the Board of Probation and Parole and since it applies only to parole revocation orders, the exhaustion of administrative remedies doctrine had no application in an appeal from a release order. *Jamieson v. Board of Probation and Parole*, 495 A.2d 623 (Pa. Cmwlth. 1985).

The administrative remedy exhaustion doctrine precluded court consideration of a petition for review where no administrative relief was sought under subsection (h). Although in this case, the petition for review was filed 6 months after the Board's Order, if it had been filed within 30 days, the court could have dismissed without prejudice to petitioner's right to file for administrative relief, and the application for relief could have been filed within 30 days from the court's dismissal. *St. Clair v. Board of Probation and Parole*, 493 A.2d 146 (Pa. Cmwlth. 1985).

Request for administrative review under subsection (h) was properly denied where the request was mailed within, but not received until after, expiration of the 30-day time period. *Maldonado v. Board of Probation and Parole*, 492 A.2d 1202 (Pa. Cmwlth. 1985).

Under subsection (h), a letter from a parolee seeking correction of the “injustice” done to the parolee when the Board of Probation and Parole refused to continue the Revocation Hearing and proceeded to hold that hearing in absentia, would be treated as a request for administrative relief. *O’Hara v. Board of Probation and Parole*, 487 A.2d 90 (Pa. Cmwlth. 1985).

The administrative appeal from a Board of Probation and Parole order, which must be filed within 30 days from the date of the Board’s order, was a necessary prerequisite to court review of a Board order. *Krantz v. Board of Probation and Parole*, 483 A.2d 1044 (Pa. Cmwlth. 1984).

#### *Records*

Where it was alleged that the Board of Probation and Parole was aware of the conviction and the availability of the conviction records, but did not retrieve them, a remand was required to determine whether a 143 day period between a parolee’s conviction and the receipt of the conviction records by the Board rendered a parole revocation hearing untimely. *Fitzhugh v. Board of Probation and Parole*, 623 A.2d 376 (Pa. Cmwlth. 1993).

#### *Rehabilitation*

The Board of Probation and Parole’s failure to grant a further continuance to allow petitioner to participate in a counselling program was not a violation of subsection (e), where the conviction itself was sufficient grounds to order the petitioner recommitted, and any evidence concerning the petitioner’s potential for rehabilitation would be offered only for purposes of mitigation. *Fahlfeder v. Board of Probation and Parole*, 470 A.2d 1130 (Pa. Cmwlth. 1984).

#### *Request for Reconsideration*

The Board of Probation and Parole acted properly in addressing the applicability of a ruling entitled to retrospective effect, since the letter requesting administrative relief could be addressed by the Board as a request for reconsideration, not subject to 30-day appeal period. *Snipes v. Board of Probation and Parole*, 527 A.2d 1080 (Pa. Cmwlth. 1987).

Parolee’s request for reconsideration of parole revocation order could properly have been considered after the 30 day appeal period, in light of the change in law effected by *Rivenbark*, 501 A.2d 1110 (1985) decision. *Rausser v. Board of Probation and Parole*, 528 A.2d 290 (Pa. Cmwlth. 1987).

The Board of Probation and Parole has administrative discretion to grant or deny a request for reconsideration of a recommitment order after the 30-day period provided for in this section and could only be reversed if abuse of discretion was shown. *Threats v. Board of Probation and Parole*, 518 A.2d 327 (Pa. Cmwlth. 1986).

#### *Sentencing of Violators/Computing Time*

Although the Code did not explicitly state that the Board of Probation and Parole may consider each criminal conviction as a separate parole violation and may aggregate backtime accordingly, that interpretation was implicit in a comparison of the regulations governing the application of presumptive ranges for convicted parole violators, with those governing technical parole violators, 37 Pa. Code § 75.4. *Corley v. Board of Probation and Parole*, 478 A.2d 146 (Pa. Cmwlth. 1984).

There was not an abuse of discretion by the Board of Probation and Parole to deny a parole violator an interview for parole under subsection (h) from a sentence imposed for new charges for which he served the minimum time during pretrial custody, as long as the parolee was serving backtime, and the new sentence was listed as a detainer, but when the backtime was served, the parolee would

immediately be eligible for parole on the second sentence. *Bradshaw v. Board of Probation and Parole*, 461 A.2d 342 (Pa. Cmwlth. 1983).

#### *Timeliness*

In accord with jurisdiction. *Keeler v. Board of Probation and Parole*, 464 A.2d 623 (Pa. Cmwlth. 1983). *Krantz v. Board of Probation and Parole*, 698 A.2d 701 (Pa. Cmwlth. 1997); appeal denied 705 A.2d 1312 (Pa. 1998).

Although 37 Pa. Code § 71.2 requires that a preliminary hearing “be held within 14 days of the detention of the parolee on the Board warrant,” this regulation provides that “if the parolee is in custody in another state, . . . the Board may lodge its detainer but other matters may be deferred until the parolee has been returned to a State correctional facility in this Commonwealth.” Thus, a prisoner who was returned to Pennsylvania on February 28, 1994, had a timely preliminary hearing when that hearing was scheduled for March 11, 1994. *Fulton v. Commonwealth*, 663 A.2d 865 (Pa. Cmwlth. 1996); appeal denied, 673 A.2d 337 (Pa. 1996).

Period of time during which prison was in a state of lock-down due to prisoner uprising was properly excluded from computation of 120-day period within which the Board of Probation and Parole was required to hold petitioner’s violation hearing. *Cadogan v. Board of Probation and Parole*, 571 A.2d 3 (Pa. Cmwlth. 1990).

Proof of receipt of the Board’s recommitment decision was not required and the petitioner’s failure to file an application for administrative relief within 30 days was properly deemed untimely. *Cadogan v. Board of Probation and Parole*, 541 A.2d 832 (Pa. Cmwlth. 1988).

Petitioner who filed pro se request for administrative relief after 30-day limit provided for under this section, and who had notice of the right to legal counsel in pursuing that request, failed to establish adequate grounds for an appeal nunc pro tunc, and thus the Board of Probation and Parole’s denial of administrative relief as untimely was affirmed. *Snipes v. Board of Probation and Parole*, 527 A.2d 1080 (Pa. Cmwlth. 1987); appeal granted 557 A.2d 728 (Pa. 1989); order affirmed 574 A.2d 558 (Pa. 1990).

Parolee’s pro se request for administrative relief was denied as being untimely filed where request was made more than 30 days after revocation hearing. *Helvy v. Board of Probation and Parole*, 526 A.2d 1261 (Pa. Cmwlth. 1987).

Court did not have to reach question of whether language of subsection (h) was mandatory or elective since even if petitioner had appealed directly to the court on the day petitioner filed his petition for review with the Board, the petitioner’s appeal would not have been filed within the 30-day period under Pa. R.A.P. 903. *Blevins v. Board of Probation and Parole*, 491 A.2d 966 (Pa. Cmwlth. 1985).

Where a 30 day time limit regulation did not become effective until after the recommitment order in question, the parolee’s application for administrative relief was held to be filed timely under subsection (h) because the regulation in effect at the time of the order included no specific time limitation. *Coach v. Board of Probation and Parole*, 472 A.2d 280 (Pa. Cmwlth. 1984).

The 15-day limit for preliminary hearings prescribed in paragraph (3) is subject to the calculation provisions of 1 Pa.C.S. § 1908, under subsection (j). *Anderson v. Board of Probation and Parole*, 471 A.2d, 593 (Pa. Cmwlth. 1984).

Where a revocation hearing was scheduled within the 120 day time period but continued due to a prison riot lockdown, the 35 days that elapsed between the date the lockout was lifted and the rescheduled hearing date was “directly” the result of the lockdown following the riot and the aftermath of the lockdown. *Jordan v. Board of Probation and Parole*, 704 A.2d 190 (Pa. Cmwlth. 1997); appeal denied 724 A.2d 937 (Pa. 1998); appeal denied 725 A.2d 1223 (Pa. 1998).

In holding that when a parolee was confined in a county correctional institution, the Board of Probation and Parole acquired jurisdiction when a waiver of parolee’s right to a full Board revocation



hearing was executed, and a hearing held within 120 days of the date of the waiver was timely, the court noted that the application to the Board for administrative review was timely filed under subsection (h). *D'Nicuola v. Board of Probation and Parole*, 467 A.2d 1383 (Pa. Cmwlth. 1983).

A parolee may apply for administrative review and relief within 30 days of any Board of Probation and Parole order which the parolee considers erroneous. *Lewis v. Board of Probation and Parole*, 456 A.2d 729 (Pa. Cmwlth. 1983).

Delays in holding the hearing because of the parole officer's vacation and because the parole officer was assaulted the day before the rescheduled hearing are not excusable grounds for not holding the hearing within the required 120 day period. *Capers v. Board of Probation and Parole*, 400 A.2d 922 (Pa. Cmwlth. 1979).

#### *Timeliness/Computation*

In computing the time taken prior to conducting a revocation hearing, it was proper to apply the rule set forth in 1 Pa.C.S. § 1908 (relating to computation of time) which excluded the first and last day of the period for purposes of computation. *Africa v. Board of Probation and Parole*, 556 A.2d 506 (Pa. Cmwlth. 1989); appeal denied 564 A.2d 917 (Pa. 1989).

In determining to credit time spent in confinement subsequent both to entry of Board of Probation and Parole's detainer for parole violation and to entry of detainer by police department for another crime, the Board must justify its determination by presenting records under subsection (d) which show bail was not posted in the new criminal proceeding; petitioner can then rebut the evidence by demonstrating that the records inaccurately reflect that bail was not posted. *Pierce v. Board of Probation and Parole*, 500 A.2d 181 (Pa. Cmwlth. 1985).

Although parolee was held in county prison in this Commonwealth, the parolee was held there by Federal authorities and, under 37 Pa. Code § 71.4(2)(i), the time held there was not counted in computing the 120-day period within which parolee must be afforded a parole revocation hearing. *Scott v. Board of Probation and Parole*, 498 A.2d 31 (Pa. Cmwlth. 1985).

Where parolee was charged and convicted of Federal crime and held under Federal jurisdiction in county prison and in Federal facility, 120-day period for Probation and Parole Board hearing did not begin until parole violator was released back into State custody. *Scott v. Board of Probation and Parole*, 498 A.2d 31 (Pa. Cmwlth. 1985).

The Board of Probation and Parole is permitted to continue its hearings due to the unavailability of the parolee or defense counsel, or at the request of either the parolee or defense counsel, and such time was excluded from the computation of whether a hearing is timely. *Chancey v. Board of Probation and Parole*, 477 A.2d 22 (Pa. Cmwlth. 1984).

A request for administrative review under subsection (h) delayed the date on which an order would be deemed final until the date on which the Board of Probation and Parole mailed its response to the request for administrative review, and not the date on which an earlier recommitment action was reaffirmed, so that an appeal filed within 30 days of the reaffirmation order but not within 30 days of the response to the request for administrative review was not timely filed as required by Pa. R.A.P. 1512(a)(1). *Manuel v. Board of Probation and Parole*, 463 A.2d 1236 (Pa. Cmwlth. 1983).

The time requirements of 37 Pa. Code §§ 71.2(3) and (11) and 71.3(8) are tolled while a parolee was in custody in another state or in Federal custody, according to subsection (c). *Elliot v. Board of Probation and Parole*, 458 A.2d 1068 (Pa. Cmwlth. 1983).

#### *Timeliness/Continuances*

Continuances granted to the Commonwealth because of the unavailability of the victim-witness were reasonable and necessary, and the fact that the hearing was held after the 120-day period was not grounds for dismissal. *Majors v. Board of Probation and Parole*, 808 A.2d 296 (Pa. Cmwlth. 2002); appeal denied 816 A.2d 1103 (Pa. 2003).

When a parolee requests a continuance but did not request in writing that the parole hearing be rescheduled, the 120 day rule did not start to run again. *Stevens v. Board of Probation and Parole*, 538 A.2d 108 (Pa. Cmwlth. 1988).

Revocation hearing was timely, since delay beyond statutory period was attributable to parolee's request for a continuance. *Pierce v. Board of Probation and Parole*, 525 A.2d 1281 (Pa. Cmwlth. 1987).

Where inmate failed to request a continuance under subsection (e) to permit new public defender additional preparation time and where hearing was held 45 days after transfer from prison in one county to facility in another, the shift from one county public defender to another did not per se constitute ineffective assistance of counsel. *LaCourt v. Board of Probation and Parole*, 488 A.2d 70 (Pa. Cmwlth. 1985).

Requests for continuance of parole violation and revocation hearing may be made by counsel without the parolee's knowledge or consent and need not meet the strict standards applied to waivers of fundamental constitutional rights. *LaCourt v. Board of Probation and Parole*, 488 A.2d 70 (Pa. Cmwlth. 1985).

Any delay in a revocation hearing attributed to the parolee being granted a continuance to obtain counsel or due to counsel's unavailability did not run against the Board of Probation and Parole for timeliness purposes. *O'Hara v. Board of Probation and Parole*, 487 A.2d 90 (Pa. Cmwlth. 1985).

Any periods of delay in conducting a violation hearing which are the result of requests for a continuance are to be excluded from the calculation of the 120-day period. *Woods v. Board of Probation and Parole*, 469 A.2d 332 (Pa. Cmwlth. 1983).

#### *Timeliness*

Where the parolee initially waived his right to a panel hearing, then later asserted it, he cannot complain that the hearing was not timely, even though the initial waiver was made upon the advice of an agent of the Board of Probation and Parole. *Fetter v. Board of Probation and Parole*, 808 A.2d 611 (Pa. Cmwlth. 2002), appeal denied 829 A.2d 1159 (Pa. 2003).

Parolee's revocation hearing, originally scheduled for September 11, 2001, was delayed due to the terrorist attacks which occurred that day. Since the attacks were an event that could not be reasonably anticipated or controlled, the time between September 11, 2001 and October 2, 2001—the next available date—is excluded from calculating the 120-day period. *Wiley v. Pennsylvania Board Probation and Parole*, 801 A.2d 644 (Pa. Cmwlth. 2002).

#### *Timeliness/Credit of Service*

Petitioner was not entitled to credit parole violation backtime retroactively to date before the county court imposed petitioner's sentence for parole violation. *Patrick v. Board of Probation and Parole*, 532 A.2d 487 (Pa. Cmwlth. 1987).

#### *Waiver*

Failure to mention the lack of a full board hearing in a violator's petition for administrative review before the board was not a waiver of the violator's rights under subsection (h). *Laboy v. Board of Probation and Parole*; 459 A.2d 916 (Pa. Cmwlth. 1983); 465 A.2d 78 (Pa. Cmwlth. 1983).

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