

# THE VERMONT PAROLE BOARD MANUAL



## MISSION STATEMENT

The Vermont Parole Board as an independent entity that considers eligible offenders for parole, rendering just decisions by balancing victim needs, the risk to public safety, while promoting offender accountability and success.

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## Chapter 1 – Definitions

**Absconded:** When a parolee’s whereabouts is unknown by the Vermont Department of Corrections and the Vermont Parole Board, and a parole warrant has been issued by the Vermont Parole Board for his or her arrest.

**Bail Release:** When a hearing officer releases from incarceration an SCS offender or Parolee who has been incarcerated for an alleged violation(s). The offender is released pending future violation hearings the offender must attend. This action is taken subsequent to a Bail Hearing.

**Board:** The Vermont Parole Board.

**Commissioner:** Commissioner of the Vermont Department of Corrections.

**Condition Modification:** When the Parole Board changes the conditions of a parolee’s supervision conditions subsequent to a Condition Modification (CM) hearing.

**Deliberative Session:** The process of weighing, examining and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties. Deliberative session is conducted with only Board members and supporting staff present.

**Detainer:** Documents submitted or received from another state securing custody interest in a criminal offender.

**Direct Family Members:** Family members including spouse, children, parents, siblings and grandparents.

**Executive Session:** Testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person.

**Interview:** A Board proceeding concerning parole and/or Supervised Community Sentence eligibility, status or modification, including a personal appearance by the offender.

**Maximum Date:** When an offender’s criminal sentence is completed as determined by a criminal court’s mittimus.

**Minimum Date:** The earliest time an offender becomes eligible for parole or SCS termination, as determined by a criminal court’s mittimus.

**Offender:** Someone who has been convicted of a criminal offense or criminal offenses and may fall under the Board’s jurisdiction.

**Open Session:** When Board members convene for proceedings and the general public is allowed to attend.

**Parole:** The release of an offender by the Board to community-based supervision, subject to conditions imposed by the Board, supervision and control of the commissioner, and legal rights afforded parolees by Vermont and Federal laws.

**Parolee:** An offender released on parole by the Board.

**Parole Early Release:** When the Parole Board terminates a parolee’s term of parole, subsequent to a Parole Early Release (PER) hearing, before his or her predetermined term of parole supervision has expired.

**Parole Interview:** An offender appearing before the Board for consideration of parole eligibility.

**Parole Plan:** The prospective residence, job and case plan submitted by the offender for verification by the field parole officer or institutional caseworker prior to final Board approval for release to parole.

**Parole Violation Hearing:** A hearing before the Board including both the defendant parolee and a Department of Corrections representative alleging the defendant parolee has violated the terms of his or her parole. During these hearings, the Board shall determine if the alleged violations are supported by a preponderance of the evidence and may determine disposition.

**Preliminary Hearing:** A hearing before a Hearing Officer, either a Board member or Parole Board Director, held to determine if there is probable cause to believe that a parolee has violated conditions of parole and whether he or she should remain in custody pending a final hearing.

**Probable Cause:** The burden of proof required to determine that a Department of Corrections officer has sufficient evidence to arrest a parolee or SCS offender.

**Reintegration Furlough:** An intensive community-based custody status determined and supervised by the Vermont Department of Corrections.

**Reprimand Proceeding:** A hearing for the purpose of addressing wrongful conduct that would constitute a violation of parole or SCS conditions, committed by a parolee or SCS offender, at the request of the supervising officer in lieu of initiating formal violation proceedings. The Board will either vote to reprimand the offender or suggest that the supervising officer initiate formal violation proceedings.

**Review:** When the Board convenes and considers issues concerning parole or Supervised Community Sentence eligibility, status or modification, without a personal appearance by the offender.

**Preponderance of the Evidence:** The burden of proof required by the Board to find a parolee or SCS offender guilty of alleged violations of conditions. Preponderance of the evidence means that it is more likely than not that a violation occurred.

**Supervised Community Supervision (SCS):** An intensive community-based custody status imposed by criminal courts and supervised by the Vermont Department of Corrections.

**SCS Violation Hearing:** A hearing before the Board including both the defendant SCS offender and a Department of Corrections representative alleging the defendant SCS offender has violated the terms of his or her SCS. During these hearings, the Board shall determine if the alleged violations are supported by a preponderance of the evidence and may determine disposition.

**Victim:** The victim of a crime including those defined by 13 V.S.A. 5301(4).

## Chapter 2 - Code of Ethics and Conflict of Interest

### *Authority*

28 V.S.A. § 503

### *Policy*

It is the policy of the Vermont Parole Board to maintain the highest ethical standards in all matters. This Code supplements those ethical standards set forth in Executive Order No. 10-03, September 13, 2003 and reflects the guiding precepts of each member on the Vermont Parole Board.

### *Procedure*

#### I. Code of Ethics:

##### A. The members and staff of the Vermont Parole Board shall:

1. Be professional and respectful to those involved in all matters that come before the Board, including the offender, victims and those who support or oppose an offender's release.
2. 2. To the best of their ability, be prepared to hear all cases, which come before them and render decisions with integrity and accuracy.
3. 3. Respect, value and appreciate the views, recommendations and decisions of fellow Board members and those of colleagues in the criminal justice system.
4. 4. Strive, with fellow Board members and colleagues in the criminal justice system, to enhance the effectiveness of the parole and SCS hearing process.
5. 5. Recognizing that the Parole Board is a symbol of public trust, do their utmost to sustain that trust.

#### II. Conflict of Interest

##### A. As participants in a quasi-judicial, public process, parole board members shall ensure objective, fair, and impartial decision making, and will disclose any facts concerning any relationship with parties involved in the hearing to the rest of the sitting board. The sitting board shall decide ahead of the hearing whether or not the issues give rise to an actual conflict of interest or bias, and if warranted excuse the affected board member from participating in the hearing. These facts shall include, but not be limited to the following:

1. A Board member has a direct relationship to the offender.
2. A Board member has worked for, or the offender has worked for a Board member.
3. When a Board member has a bias or personal animosity toward the offender.
4. When a Board member has information about an offender that might affect their ability to render an impartial decision.

#### III. Enforcement:

- ##### A. All complaints about the possible or anticipated violation of any of these ethical standards shall be brought to the attention of the Chair and the entire Board, and addressed at the earliest possible time, in no event later than the next regularly scheduled general meeting of the Board.

## Chapter 3 - Policy and Procedures Development

### *Authority*

28 V.S.A. §503, 28 V.S.A §354, 28 V.S.A. §552(b)(1)

### *Policy*

The Board may adopt rules, regulations and policies necessary to perform its function as dictated by Vermont Statutes.

### *Procedure*

- I. Outline of Policy and Procedure Development Process:
  - A. Policy and procedures shall be formulated and approved by action of a majority of the Board.
  - B. All Board members are encouraged to bring issues of concern to the full Board for consideration and action.
  - C. Copies of the approved Policy and Procedures shall be made available for distribution to agencies and the public.
  - D. The Parole Board Director shall maintain the master file of the Policy and Procedures in the Administrative Office and shall:
    1. Maintain a complete set of rules.
    2. Maintain a record of all documents relating to proposed policy development and any action taken.
    3. Maintain a complete set of all revisions, addendums and supplements.
  - A. A review of policies, procedures and rules shall be scheduled annually by the Board Chair. Suggested amendments, supplements or new policy may be acted upon at any administrative meeting.
  - B. The Parole Board Director shall maintain a file of issues that may be appropriate for policy consideration.
- II. Development and maintenance of a crime severity index.
  - A. The Board shall develop an index setting forth in the number of categories it determines is necessary, the relative severity of the criminal offense of Vermont and shall meet yearly to review this index and make changes as it deems necessary. This index shall be available to the public.



## Chapter 4 - Eligibility for Parole Interview or Review

### *Authority*

28 V.S.A. §501, 28 V.S.A §502 and 28 V.S.A. §503, 28 V.S.A. §453

### *Policy*

It is the policy of the Vermont Parole Board to interview and consider all offenders eligible for parole in or before the month of their eligibility date as determined by the Vermont Department of Corrections based upon the applicable statutes. Initial interviews and subsequent interviews and reviews shall be conducted in accordance with applicable statutes and the following procedures. In the event that parole is granted, actual release shall not take place before parole agreements and any other documents required are signed, and the expiration of the inmate's minimum sentence.

### *Procedure*

#### I. Initial Consideration for Parole:

- A. The Vermont Department of Corrections is responsible for providing the Parole Board with parole summaries of offenders eligible for parole in each month. Upon receipt of these summaries, Board staff shall docket, as set forth in the Board's procedures for Scheduling and Docketing of Parole and SCS Proceedings in Chapter 6, offenders whose parole summaries have been received for an initial interview.
- B. In order to assure timely processing, offenders completing their minimum sentence may be scheduled for an initial parole interview within 30 days before the expiration of their minimum sentence.
- C. Offenders receiving a sentence with no minimum term or a zero minimum are eligible for parole consideration within twelve months after commitment to a correctional facility.

#### II. Subsequent Consideration for Parole:

- A. Offenders who are serving maximum sentences of less than 15 years and are denied parole at their initial parole interview by the Board shall receive subsequent parole interviews and reviews as follows:
  1. The Board shall review the offender's Parole Board file, which shall include and updated parole summary prepared by DOC, for possible parole in the 12<sup>th</sup> month following the denial and every 12 months thereafter.
  2. The Board shall conduct an interview of the offender if requested to do so in writing by the Department of Corrections.
  3. The Board shall conduct an interview at the time of their 12 month review, upon written request of the offender, but no more than once in any 24 month period.
- B. Offenders who are serving maximum sentences of 15 years or more, including those with life sentences and who are denied parole at their initial parole interview by the Board shall receive subsequent parole interviews and reviews as follows:
  1. The Board shall review the offender's Parole Board file for possible parole in the 24<sup>th</sup> month following the denial and every 24 months thereafter.

2. The Board shall conduct an interview of the offender if requested to do so in writing by the Department of Corrections.
  3. The Board shall conduct an interview in that 24<sup>th</sup> month upon written request of the offender.
- C. Following each interview or review in which parole is denied; Board staff shall prepare documentation containing reasons for denial for signature of the Board Chair. Copies of this documentation are distributed to the Department of Corrections for distribution to the offender, and the Department of Corrections records.

III. Offender Request for Continuances and Waivers of Reviews and Interviews:

- A. The Board Chair, or his or her designee, may authorize continuance of a scheduled parole review or interview.
1. The request shall be made in writing by the offender through the supervising officer or offender's attorney, and shall state the reason for the request.
  2. Continuances shall only be for a period not to exceed three months.
  3. The request shall be received at the office of the Parole Board no later than 10 days prior to the scheduled hearing or review.
  4. The request shall be reviewed by the Parole Board Chair, or his or her designee, within five business days.
  5. Within five business days, Board staff shall notify the offender, or the offender's attorney, of the Board decision.
- B. An offender may waive a scheduled review or interview
1. The waiver shall be in writing by the offender through the supervising officer or offender's attorney
  2. The waiver serves as a notice to the Board not to conduct the scheduled interview or review for that year.
  3. The offender may revoke the waiver prior to the scheduled interview or review and may have the interview or review scheduled for the following month.
  4. The waiver shall result in a denial of parole and the offender shall be eligible for subsequent reviews and interviews as set forth in procedure II of Chapter 4. The date of the scheduled interview or review shall be the date used to calculate the time periods governing subsequent reviews or interviews.

## Chapter 5 - Pardons

### ***Authority***

28 V.S.A. §453

### ***Policy***

The Vermont Parole Board may act as an advisory board for the Governor in investigating or hearing matters pertaining to pardons, and may make recommendations to him or her regarding such matters.

### ***Procedure***

#### I. Request from the Governor:

- A. The Board Chair or his or her designee shall determine in consultation with the Governor's office the nature and scope of the requested inquiry.

#### II. Proceedings:

- A. The Board staff will schedule hearings and other proceedings that are necessary for the consideration of the pardon investigation request, but which are not consistent with those provided for in this manual.
- B. The Board Chair or his or her designee shall act as a communication liaison with the Governor's Office during the Board's involvement.

## Chapter 6 - Scheduling and Docketing of Parole and SCS Proceedings

### *Authority*

28 V.S.A. §501, 28 V.S.A. §502, 28 V.S.A. §503 and 28 V.S.A. §371

### *Policy*

It is the policy of the Parole Board to establish timely parole interview and review dates, parole revocation hearing dates, and supervised community sentence revocation or termination hearing dates to ensure compliance with applicable laws and to coordinate the scheduling of such matters so as to facilitate the work of all those involved in preparing for these matters.

### *Procedure*

#### I. Tentative Schedule:

- A. Parole Board staff shall prepare a tentative monthly Board schedule indicating hearing dates and locations at least sixty days in advance of the month being scheduled, allowing an appropriate number of days for hearings at each facility. The Parole Board shall coordinate the scheduling of hearings with the various hearing sites. This tentative schedule shall be distributed to:
  1. All Vermont Correctional Facilities
  2. All Community Correctional Services Center Offices
  3. The Prisoners' Rights Offices
  4. Department of Libraries
  5. Parole Board Chair and Members assigned to each site
  6. Department of Corrections Central Office
  7. Victim Services Team
- B. This schedule may be revised by staff as needed based upon the needs of the individuals and agencies involved prior to the date of the actual proceedings. Such revisions shall note that the document has been revised, including the date of the revision, and shall be distributed, as was the original.

#### II. Final Hearing Schedule:

- A. Parole Board staff shall prepare a final schedule of offender interviews and reviews for each session of Board matters at a site prior to the Board's scheduled hearings at that site. The Board will request changes to this schedule within a 48 hour period. Another schedule will be prepared after the 48 hour period has lapsed if changes have been made. Any changes to this revised schedule must be communicated to the Board on the day of the proceedings before they begin.
- B. This final schedule shall be forwarded to each hearing site along with a request that the offenders appearing on this schedule be notified of the upcoming session, and that the identified inmates be made available for the proceedings.
- C. Cases shall not be added to the final hearing schedule once the schedule has been issued, without the approval of the Board Chair or his or her designee.

## Chapter 7 - Access to Information

### ***Authority***

28 V.S.A. §204(d), 28 V.S.A. §502 (a), 28 V.S.A. §502 2(d) and 28 V.S.A. §504 (a). 28 V.S.A. §374, *Giallella v. Vermont Parole Board*; No. SO459-Wnc (Washington County Superior Court, March 5, 1990)

### ***Policy***

It is the policy of the Vermont Parole Board to receive and consider all pertinent information, both from the Vermont Department of Corrections and other sources, prior to considering any matters before it and making any release or revocation decisions. This information must be brought before the Board as a whole and provided to the offender prior to his or her hearing, to the extent required by law.

### ***Procedure***

#### I. Department of Corrections Parole Consideration Report:

- A. No later than 10 days prior to the scheduled date of the Parole interview and review proceedings, the Department of Corrections staff shall submit to the Parole Board members and Director, a report prepared in a format determined by the Board (commonly referred to as a “parole packet”), containing the following information:
  - 1. Identifying information – name, date of birth, crime(s), residence, sentence information, including minimum and maximum sentence terms, and date sentence began.
  - 2. Recommendation of the Department of Corrections.
  - 3. Dates of prior board appearances, action taken, and any special Board notations.
  - 4. Number of times previously on probation, parole, or another form of community supervision, including prior revocations.
  - 5. List of disciplinary actions while incarcerated or on community supervision.
  - 6. Details of the offense, including the facts and circumstances of the offense as it actually occurred and the details of any plea negotiations. Personal history, including marital status, employment history, educational history, proposed Parole Plan and other relevant information.
  - 7. Summary of any assessments.
  - 8. Summary and history of the offenders participation in treatment programs, including completion summaries, termination summaries or progress reports.
  - 9. Dates victim notification was sent by certified mail and dates of return receipt, as well as comments received from the victim(s), or evidence of victim’s denial to comment.
  - 10. Central Office case staffing for sex offenses and treatment provider recommendation.
- B. Department of Corrections staff shall have available at all hearings the following information:
  - 1. Criminal history, including juvenile and adult convictions with dispositions of offenses, “Triple I” and Motor Vehicle checks, all completed within 30 days of the hearing date.
  - 2. Psychological information and reports.

- C. In the event this report is not received by the Parole Board office at least 10 days prior to the hearing date, the interview or review of the offender may be postponed to the following month.
- D. In the event the information in section I: B is not available at the hearing, the Interview or review may be postponed to the following month.
- E. In the event the offender scheduled for an interview or review is incarcerated in an institution outside of the State of Vermont, the same report (“parole packet”) and information required by procedures I. A and I. B shall be submitted and available to the Parole Board.
- F. The offender shall be allowed access to their pre-sentence investigation report, if included in the parole packet, at least 7 days before the proceeding.

II. Information from other Sources:

- A. The Board may receive information from sources other than the Department of Corrections and shall consider such information to the extent and with such weight as the Board deems appropriate.
- B. Individual Board members shall not consider in deciding any matters before the Board, information received by them individually outside the normal course of business.
  - 1. Board members shall not meet individually with offender families, victims, supporters or any other person or entity that either supports or opposes a particular decision for any offender.
  - 2. Any Board member who receives information, including but not limited to letters and other correspondence outside of the normal course of business, that may relate to a matter before the Board, shall immediately notify the Director. The Director shall consult with the Board Chair and determine if the Board member will be excused from proceedings or decisions concerning that particular matter.

III. Board Subpoenas:

- A. The Board may issue subpoenas to compel the attendance of persons and the production of records, books, papers and documents, as it may consider necessary for investigation of any matter or person before it.
  - 1. Parole Board staff may prepare subpoenas for signature of any Board member, or the Parole Board Director as the Board’s designee, upon request of such subpoena by the Department of Corrections’ representative, or legal counsel for the offender.
  - 2. Upon issuance, the Director shall send the subpoena to the Department of Corrections supervising personnel. Board subpoenas may be served by a probation/parole officer, corrections officer, or law enforcement officer.
  - 3. Upon service of the subpoena, the Department of Corrections staff shall return the original or signed copy of the subpoena to the Parole Board.
  - 4. Subpoenas requested by counsel for the offender will not be served by Department of Corrections personnel.
- B. Subpoenas issued by the Parole Board have the same enforcement authority and penalties for non-compliance as subpoenas issued by the State’s District Courts. The Director shall, upon learning that a Board subpoena has not been complied with and after consultation with the Board Chair, immediately notify the legal counsel of the Board or a representative of the Vermont Attorney General’s office to request the commencement of an enforcement action.

IV. Offender Access to Information Considered by the Board:

- A. No proceeding shall be conducted unless, 7 days before the offender is scheduled to be seen by the Board, the Department of Corrections provides the offender with the documentation that it has submitted to the Parole Board except as noted below.
- B. The offender may waive the 7 day notice either in writing or on the record.
- C. The following types of information shall not be provided to the offender.
  - 1. Diagnostic opinions, which, if made known to the offender, could lead to serious disruption of his or her institutional programming, treatment or therapy.
  - 2. Any document or testimony, which reveals sources of information, obtained upon a promise of confidentiality.
  - 3. Any information for which there is reasonable causes to believe that, if disclosed, might result in harm, physical or otherwise, to any person.
- D. If documents or testimony are found by the Parole Board to fall within the exclusionary provisions mentioned in section C, the Board shall use reasonable alternatives to redact from said document or testimony only such excludable material, and provide the prisoner with access to the remainder of the document or testimony.
- E. Where the Board does exclude any such material, it shall:
  - 1. Identify the withheld material.
  - 2. State the exemption to disclosure as referred to above; and
  - 3. Provide the offender with a summary of the basic content of the material withheld with as much specificity as possible without revealing the non-disclosable information.
- F. Parole Board Members or staff shall not reveal such information to the offender at any time during the proceeding or in any other manner.

## Chapter 8 - Victim Notification and Participation

### ***Authority***

28 V.S.A. §502, 28 V.S.A. §507 and 13 VSA §5301, *Giallella v. Vermont Parole Board*; No. SO459-Wnc (Washington County Superior Court, March 5, 1990)

### ***Policy***

It is the policy of the Vermont Parole Board to treat victims and survivors with respect and sensitivity, and to ensure that those hurt by crime are informed about and involved in the Board's activities.

### ***Procedure***

#### I. Victim Input:

- A. Victims shall be given the opportunity to personally appear, submit written comments or submit information by audio or video.
- B. Information received from the victim or the victim's family shall be limited to the following:
  - 1. The continuing nature and extent of any physical, psychological or emotional trauma suffered.
  - 2. The extent of any loss of earnings or inability to work suffered by the victim.
  - 3. The continuing effect of the crime upon the victim's family.
  - 4. Any threats or reprisals from the offender, his family or anyone on his behalf.
- C. All information provided by the victim shall be made part of the Board's files and marked confidential. This information shall only be available to the offender in a redacted summary consistent with procedure IV in chapter 7. If the victim does not wish the information to be confidential, they shall indicate "non-confidential" at the time the information is provided.
- D. Victims shall be allowed to testify prior to the offender's scheduled appearance before the Board for interviews or reviews in executive session. When scheduling parole proceedings that include victims and offenders, staff shall make every effort to prevent either visual, auditory, or physical contact between victims and offenders and their families.

#### II. Communication with Victims' Group:

- A. The Parole Board is encouraged to maintain communication with victims, victims' advocates and victim advocacy groups and attend training on victims issues so that they remain informed of issues affecting those who have been victimized by crime.



## Chapter 9 - Conduct of Proceedings

### ***Authority***

28 VSA § 502 and 28 VSA §503, 28 VSA §505 and 28 VSA §507, 1 V.S.A 331-339, 1 V.S.A. §312 (5)(e), 28 V.S.A. §313(a)8 13 V.S.A §5301(4)

### ***Policy***

It is the policy of the Vermont Parole Board to conduct proceedings as appropriate in all matters before it in a full, fair, open and impartial manner and in compliance with all applicable authority. A complete record shall be made of all proceedings conducted by the Board except those that take place in deliberative session.

### ***Procedure***

#### **I. Interviews and Hearings:**

- A. All parole and SCS hearings and interviews conducted by the Board are open to the public subject to the Department of Corrections need to maintain the safety and security of the institutions where the proceeding is conducted. Children under the age of 16 will not be permitted at the proceedings unless accompanied by an adult. Children under the age of 16 who desire to testify must have the written permission of the adult who has guardianship.
- B. Because the Board's deliberations contain discussions of confidential information, the reliability of witnesses, the validity and relevance of information, and are of a quasi-judicial nature, the Board may conduct them in private deliberative session.
- C. The Board shall allow the following persons to attend and participate in the hearings and interviews.
  1. The offender and direct family members of the offender.
  2. Department of Corrections' personnel offering testimony.
  3. Legal counsel for the Board.
  4. Board staff as deemed necessary by the Board.
  5. Language interpreters or interpreters for the hearing impaired if deemed necessary by the Board.
  6. Victims shall not be required to testify or present information in the presence of the offender.
- D. Persons attending hearings in addition to those listed above may do so only as observers, unless the Board elects to consider their testimony.
- E. If an offender is not available for his or her interview due to emergency situations, his or her interview shall be postponed to the following month, or when he or she can reasonably be expected to be available.
- F. The Board is not bound by the strict rules of evidence in the conduct of a parole and SCS release, review, interview, or a violation hearing.
  1. The Board may consider all evidence presented, so long as the evidence is not cumulative, repetitive, or inherently unreliable and so long as it has relevance to the decision.

2. Persons offering information during a parole interview shall not be sworn.
3. Persons giving testimony in a parole violation hearing and all SCS hearings shall be sworn.
4. In an interview, the offender shall be allowed to address the Board and present letters or other documents.
5. The Board may require that information be submitted in writing in lieu of in-person statements.

G. Location of hearing and interview:

1. Parole and SCS hearings and interviews shall take place at the facility incarcerating the offender or the supervising field unit. Parole interviews may be conducted by video-conferencing or telephone if no other means of communication is available at the discretion of the Board.

H. Parole and SCS hearings and interviews shall be conducted by at least 3 members of the Board.

II. Reviews:

- A. Annual reviews of offenders eligible for parole shall consist of at least 3 Board members considering written information and testimony regarding an offender's status, and whether or not parole is appropriate at the time of review. The Board may request a subsequent interview of an offender after the review, to be scheduled consistent with procedures in Chapter 6. The Board will not grant parole without a personal interview with the offender.

III. Recording Board matters:

- A. An audio recording shall be made of any matter or any portion of a matter in which the Board receives information other than from review solely of written material.
- B. The deliberations of the Board members and information received in executive session shall not be recorded.
- C. The votes of the Board members and the announcement of the decision of the Board shall be recorded.

## Chapter 10 - Deliberation and Voting

### *Authority*

28 V.S.A. §451 28 V.S.A. §501 28 V.S.A §502a 28 V.S.A §503 and 28 V.S.A §553

### *Policy*

It is the policy of the Vermont Parole Board that parole is granted only to those eligible offenders that the Board determines are capable of fulfilling the obligations of a law abiding citizen, and when there is a reasonable probability that the offender can be released without detriment to the community or to the offender, and the offender is willing and capable of fulfilling all obligations of a law abiding citizen. Parole shall be ordered for the best interest of the community and the offender, and shall not be considered a reduction of sentence or pardon. The decision to parole an offender may be rescinded before the parole agreement is signed by the offender.

### *Procedure*

#### I. Deliberation:

- A. Following the parole interview, review or rescission hearing, by at least 3 members, the Board may go into deliberative session and deliberate on its decision.
  - 1. The Board shall discuss, to the extent required by the members present, the information presented to them concerning the matter before them.
  - 2. After all Board members have been fully heard, the Board shall vote in open session. Voting will begin by the Board Chair requesting a motion, and subsequently an initial motion from any Board member. A second motion by another Board member not bringing forth the initial motion shall establish a motion for voting.

#### II. Factors to be considered:

- A. In reaching its decisions, the Board may use a validated empirical risk assessment instrument to assess the offender's risk of re-offending and shall consider the following factors:
  - 1. Seriousness of the crime committed.
  - 2. Danger to the public.
  - 3. The offender's risk of re-offending.
  - 4. Any input given by the victim, including, but not limited to the emotional damage done to the victims and the victim's family.
  - 5. The offender's parole plan – including housing, employment, need for community treatment, and follow-up resources.
  - 6. Recommendation of the Department of Corrections.
- B. In reaching its decision, the Board shall consider all pertinent information which includes, but not limited to, the factors listed below:
  - 1. History of prior criminal activity.
  - 2. Prior history on probation, parole, or other form of supervised release.
  - 3. Abuse of drugs or alcohol.
  - 4. Poor institutional adjustment.

5. Success or failure of treatment.
6. Attitude toward authority - before and during incarceration.
7. Comments from the prosecutor's office, the Office of the Attorney's General's Office, the judiciary or other criminal justice agency.
8. Education and job skills.
9. Employment history.
10. Emotional stability.
11. Mental status - capacity and stability.
12. History of deviant behavior.
13. Official and community attitudes toward accepting an inmate back into the community.
14. Other factors involved that relate to public safety or the inmate's needs.

### III. Decisional Options:

- A. Continuation: The Board may continue a matter if it does not have enough information upon which it can reach a reasoned and rational decision. This continuance can be until the next available date for such proceedings or until a date when the deficiency can reasonably be expected to be remedied. The written order of continuance shall recite the reason.
- B. Denial: The Board may deny parole if it determines that the offender is not suitable for parole at the time his or her case is considered.
  1. The Board shall state its reasons for denying parole in writing.
  2. The Board may make suggestions to the offender for improving his or her chances for being granted parole in the future. Compliance with these recommendations does not give rise to any expectation or promise that parole will be granted in the future.
  3. Further reviews for parole consideration shall be made as provided in procedure II of Chapter 4.
- C. Grant Parole Eligibility: If the Board determines that an inmate is a suitable candidate for release on parole, the Board shall grant parole eligibility subject to one of the following actions:
  1. **Parole to plan as approved.** The Board approves the parole plan as submitted by the offender. The offender shall be released upon completion of all required documents.
  2. **Approve to regular minimum, and to plan as presented.** The Board has conditionally approved parole release subject to the offender reaching his or her minimum date. The parole plan as presented by the offender has been accepted.
  3. **Approved to detainer, date to be determined.** The Board has approved parole release conditioned upon the offender being transferred to another jurisdiction, or US Immigration and Customs Enforcement agency for deportation. The date of release is determined by the date custody is transferred.

4. **Approved subject to out-of-state supervision.** The offender has submitted a parole plan requesting supervision in another state. The Board will first conduct a preliminary hearing to consider parole to another state; it will document the conditions for parole to another state in its tentative approval form. Request for supervision to another state can then be requested. If the receiving state accepts supervision, the board will convene an administrative hearing to formally grant parole to the receiving state.
- D. The Board shall note in its written document approving parole the type of parole release it is granting.
- E. All decisions recommending parole eligibility are subject to the offender being otherwise eligible for release on parole and having served that portion of his or her sentence required by statute and procedures I and II of Chapter 4.
- F. All decisions recommending parole eligibility are conditioned upon the offender's continued good conduct while incarcerated or on Reintegration Furlough. Parole is not effective until the offender signs a parole agreement.
- G. A decision to grant parole shall also include a decision as to the conditions that the parolee must be subject to during their term of parole supervision. The Parole Board may grant parole based on a parole plan and conditions that the Department of Corrections has proposed, or modified parole conditions as determined by the Board members.

#### IV. Vote Requirements for Board Action:

- A. Three members of the Board constitute a quorum for the purpose of making a decision concerning any matter before the Board, except a matter of general policy.
- B. A vote of the Board is reached once a majority of the members of the quorum concur in all aspects of the vote. In the event of a tie vote, only in a parole release proceeding, another hearing shall be scheduled and the matter continued for no more than 30 days. The offender's status shall not change during this period of time the matter is being continued.

#### V. Withdrawing Parole

- A. A decision of the Board to grant parole to an offender may be withdrawn at any time before the offender signs his or her parole agreement and it becomes effective.
- B. A decision of the Board to recommend parole to an offender may be rescinded for any of the following reasons:
  1. The offender presented false or misleading information to the Board or engaged in conduct that resulted in false or misleading information being presented to the Board.
  2. Another person acting on his or her behalf presented false or misleading information that is found to have been material to the Board's decision.
  3. New information is discovered from any source that is found to have been material to the Board's decision.
  4. The offender commits a violation of the law or commits a violation of rules as set forth by an institution or form of community supervision.
  5. The offender escapes.

6. ICOTS If an offender, previously paroled out of state, in good faith voluntarily returns to Vermont prior to his/her maximum sentence, he/she shall be schedule for a recession hearing at the next available date. If an offender is in good standing, a hearing to consider reparole in Vermont may be convened immediately following the recession hearing
- C. If personnel from the Department of Corrections or some other source notify the Board that it has reason to believe that any of the above conditions exist or events have taken place:
    1. The staff or members who receive such information shall immediately bring it to the attention of the Board Chair, or his or her designee.
    2. The Parole Board Chair or his or her designee shall make an initial determination whether the new information or conduct may have resulted in a different decision by the Board.
    3. If the Board Chair or his or her designee decides that the new information or conduct may have resulted in a different decision by the Board, he or she shall refer the matter to Board members for a rescission decision. The rescission decision may include a proceeding if deemed necessary by the Board.
  - D. Board staff shall immediately notify The Department of Corrections that a decision to rescind a parole decision has been made, or that the Board intends to conduct a rescission interview. The parole eligibility decision is suspended pending the rescission decision. The offender shall not be released on parole pending a decision on the rescission.
  - E. If a rescission interview is deemed necessary by the Board, the interview shall be conducted during the next available date, consistent with policies in Chapter 6, at a location where the offender is incarcerated or supervised.
    1. If the Board decides not to rescind its earlier parole eligibility determination, the offender may be released upon completion of the proper documents. The Board may add, delete or modify the conditions of supervision previously ordered or may amend the type of release to any of the options contained in procedure III: C of Chapter 10.
    2. A decision of the Board to rescind parole release shall act as a denial of parole as set forth in procedure III: B of Chapter 10. Further reviews shall be conducted as set forth in procedure II of Chapter 4, with the date of the rescission interview being the date used to calculate the time periods governing subsequent reviews or interviews.

## Chapter 11 - Setting conditions

### ***Authority***

28 V.S.A. §502 28 V.S.A. §502(c) and 28 V.S.A. §503 13 V.S.A. §7043(E)(1)

### ***Policy***

It is the policy of the Vermont Parole Board that all paroles shall be granted subject to general conditions of parole, and any additional special conditions that the Board may require, including restitution if the original sentence order requires restitution and specifies a dollar amount.

Offenders convicted of (3) or more DUI offenses shall normally not be granted driving privileges while on parole. Special conditions for driving privileges may be granted to DUI3+ offenders in possession of a “Restricted Driving License” (Ignition Interlock System), or have completed the “Total Abstinence Program”, and been reinstated by the Department of Motor Vehicles. Parolees with a valid operator’s license may be granted special conditions to permit driving privileges pursuant to the process outlined in Chapter 12, Section IV Modifying Conditions of Parole.

The offender shall agree to the general and special conditions in writing prior to the release on parole.

### ***Procedure***

#### **I. General Conditions**

##### **A. These are the General Conditions of parole:**

1. You shall not violate any law(s) or court orders, and you shall notify your Parole Officer within 24 hours of any Law Enforcement contact. You may not act as an informant for any Law Enforcement official.
2. You shall not purchase, possess, or handle firearms and/or ammunition.
3. You shall notify your Parole Officer regarding any changes in your work or residence, report to your Parole Officer as directed by telephone or in person, and permit your Parole Officer or authorized DOC employee to visit you and/or conduct reasonable searches at your residence or elsewhere.
4. You shall not leave the state without permission from your Parole Officer.

#### **II. Special Conditions**

##### **A. These are the Special Conditions of parole;**

1. You shall attend and participate in any program referred by your Parole Officer or the Parole Board and you shall agree to allow the provider to disclose information about your attendance and participation.
2. You shall not purchase, possess or consume alcohol while on Parole and you shall submit to an alcohol test when requested. You shall not enter establishments whose primary purpose is to serve and sell alcoholic beverages.
3. You shall not purchase, possess or consume regulated drugs. You shall not misuse drugs prescribed for you by a physician. You shall submit to a drug test if requested.

4. You shall abstain from voluntary ingestion or inhalation of any substance with the intent to cause intoxication. You shall not purchase, possess or consume any type of designer drug. IE: Bath Salts, Spice, K2, etc.
5. You shall abide by a curfew as imposed by the Parole Board or your Parole Officer.
6. Your Parole Officer may restrict your associates.
7. You shall not associate with any child under the age of 16 without permission from your Parole Officer.
8. You shall pay court ordered restitution through a plan agreed upon with your Parole Officer.
9. You shall not operate a motor vehicle while on parole.
10. You may operate a designated motor vehicle equipped with an approved ignition interlock device and a valid restricted operator's license.
11. You shall provide access to any social networking sites you participate in to your Parole Officer.
12. If placed on electronic monitoring, you shall abide by DOC program rules. IE: charging, no tampering, etc.
13. Special conditions for Domestic Violence Offenders.
14. Special conditions for Sex Offenders.
15. You shall be restricted in traveling to the following area: \_\_\_\_\_
16. You shall reside and work only where approved by your Parole Officer and you shall not establish or change residence or work without prior approval of your Parole Officer.

**B. Special Conditions for Domestic Violence Offenders**

1. The following special conditions may be applied on a case-by-case basis and must be based on the level of risk in the individual case. Each condition being imposed must be tied to an offender risk-related issue.
  - You will not have contact with your victim(s) or children (if applicable). This includes letters, e-mails, text messages, telephone calls, social media, visits or any contact through a third part until approved by your Parole Officer.
  - You shall comply with any specified limitations on driving.
  - You will not associate with any person identified as being detrimental to my supervision, which may include persons with a criminal record, others on supervision or victims or witnesses of your crime(s) as designated by your Parole Officer.
  - If needed as well, Sex Offender Conditions.



C. Special Conditions for Sex Offenders.

1. The following special conditions may be applied on a case-by-case basis and must be based on the level of risk in the individual case. Each condition being imposed must be tied to an offender risk-related issue.
  - I will successfully enroll, participate in, and complete a program/treatment for sex offenders as directed by my Parole Officer or designee and as approved by the Department of Corrections, and assume the costs of my treatment.
  - I will not purchase, possess, or use pornography or erotica. I will not go to adult book stores, sex shops, topless bars, etc.
  - I will not access or loiter in places where children congregate; i.e. parks, playgrounds, schools, etc., unless otherwise approved in advance by my Parole Officer or designee.
  - I will not allow any female passengers ride in my vehicle, unless otherwise approved in advance by my Parole Officer or designee.
  - I will not own, possess or use a camera, recorder, cell phone, or other electronic device that has recording capabilities, without prior permission of my Parole Officer or designee.
  - I will give my Parole Officer or designee search and seizure privileges to search of my persons and/or property without a warrant and confiscate drugs, pornography, erotica, digital media, computer, cellular telephone, iPad, electronic notebook, etc. or any other item which may constitute a violation of my conditions.
  - I will submit to, and pay for, periodic polygraph examinations at the direction of my Parole Officer or designee. These polygraph examinations will be used to determine my compliance with supervision and treatment requirements.
  - I will not own or possess a computer at my residence, and I will not access the internet at my place of employment or anywhere else unless approved, in advance, by my Parole Officer or designee. I will allow my Parole Officer or designee to monitor my computer/internet usage, to include through the use of specific software for monitoring sex offenders. I will also pay for any charges associated with this monitoring.
  - I may be required to have an approved chaperone for supervised visits with minors. If so, my chaperone will be required to undergo any training required by DOC.
  - I will not initiate or maintain contact with \_\_\_ **male** or \_\_\_ **female** or \_\_\_ **male and female (check just one line)** persons under the age of \_\_\_ **16** or \_\_\_ **18**, unless otherwise approved in advance and in writing by my Parole Officer or designee. Said contact may require being accompanied by a responsible adult, approved by my Parole Officer or designee. Contact includes any communications through electronic media including, but not limited to, internet contact, texting, tweeting, communications via Facebook, etc.
  - I will not work or volunteer for any businesses or organization that primarily provides services to persons under the age of \_\_\_ **16** or \_\_\_ **18** years (**check just one line**), unless otherwise approved in advance by my Parole Officer or designee.

- I will inform all persons with whom I have a significant relationship or close affiliation of my sex offending history. My Parole Officer will determine who shall be informed.

- D. The Board shall consider the special conditions proposed by the Department of Corrections in the offender's parole plan
- E. The Board shall take into consideration when formulating conditions the emotional needs of the victim and the victim's family. In addition to those contained in section II: A, the Board may impose any special condition necessary to protect the victim or the victim's family or to meet any of the victim's or victims family's emotional needs.

### III. Restitution

- A. Restitution shall be included as a condition of parole if the original sentence order requires restitution and specifies a dollar amount.
- B. An order of restitution by the Board shall be included as part of the parole agreement signed by the inmate.
- C. An offender may not be charged with a violation of parole for non-payment of restitution.

### IV. Parole to Detainer in Other Jurisdiction

- A. In the event the Board grants parole to the detainer of another jurisdiction as provided for in Chapter 10, Procedure III C (3) and if the offender knowingly, voluntarily, and in writing with the consent of counsel understands the Board may condition the parole to that detainer on the immediate return to Vermont custody following the release from incarceration in the other jurisdiction unless the offender has completed the predetermined maximum term out his/her Vermont sentence. The Board and staff shall follow the procedures set forth Chapter 12 Procedure 1; D.
- B. In the event the Board grants parole to a Federal Immigration and Customs Enforcement (ICE) deportation detainer the Board shall consider eligibility consistent with Chapter 10, and follow procedures set forth in Chapter 11. The Board may grant parole only where it has received from ICE assurance that an order of deportation will be executed, and if granted parole to the ICE detainer the offender will not be released from the custody of ICE, unless such release is a result of deportation. The Board and staff shall follow the procedures set forth in Chapter 12 Procedure I; E.

## Chapter 12 - Parole Agreement

### *Authority*

28 V.S.A. §502(a), 28 V.S.A. §502(c) and 28 V.S.A. §503

### *Policy*

It is the policy of the Vermont Parole Board to provide written notice and direction to all parties affected when a decision is made to parole an offender and to provide a record of the act of the Board and direction as to the terms and conditions of the parole.

### *Procedure*

#### I. Preparation and Issuance of Parole Agreement:

- A. If the Board decides to grant parole to an offender with an approved parole plan that provides for supervision within the State of Vermont, the Board shall:
  1. Complete a document indicating its decision and any conditions needing to be completed before that decision shall be effective as set forth in procedure III: G of Chapter 10.
  2. Forward a copy of this document to the Department of Corrections. This document does not authorize parole until procedure II: B of these procedures has been completed.
  3. As soon as practical after the proceeding, ensure that all necessary information has been submitted to the Parole Board, in order to complete the parole agreement.
  4. Forward the Agreement to the Department of Correction for a meeting with the offender to explain all required conditions, and upon mutual agreement of these conditions, obtain the offender's signature. The parole agreement shall be distributed and a signed original returned to the Parole Board Office; see Cover Instruction Sheet.
- B. If the decision of the Board is to grant parole to an offender, based on a Department of Correction's approved parole plan that provides for supervision outside the state of Vermont:
  1. Board staff shall not prepare a parole agreement unless the Board receives notice that the out-of-state parole plan has been accepted.
  2. Once the Board receives written notice that the out-of-state parole supervision has been accepted, Board staff shall follow the procedures set forth in procedures I: A(1)(2)(3) of this Chapter.
  3. If an offender, previously paroled out of state, in good faith voluntarily returns to Vermont prior to his/her maximum sentence, he/she shall be schedule for a recession hearing at the next available date. If an offender is in good standing, a hearing to consider reparole in Vermont may be convened immediately following the recession hearing
  4. The form shall be signed by the offender and returned to the Parole Board Office for case closure.
- C. If the decision of the Board is to grant parole to an offender, solely to a Out-of-state detainer, the Board shall consider factors for parole eligibility Consistent with Chapter 10, and shall follow the procedures set forth in Chapter 11.

- D. In the event the Board grants parole eligibility to the detainer of another jurisdiction as provided for in Chapter 10, Procedure III C (3) and the offender presents a parole plan that indicates a desire to proceed to the other states jurisdiction's detainer and a willingness to voluntarily return to Vermont custody following release from that detainer, the Board staff shall ensure that the offender and his or her legal counsel execute a written document that clearly evidences the fact that the offender is knowingly and voluntarily agreeing to voluntarily submit to rescinding their parole upon release from the other jurisdiction, and agrees to waive all legal rights he or she may have regarding the termination of their parole.
- E. In the event the Board grants parole to a Federal Immigration and Customs Enforcement (ICE) deportation detainer, Board staff shall ensure that the offender and his/her legal counsel execute a written document that clearly evidences that the offender knowingly and voluntarily agrees to voluntarily submit to Rescission of his/her parole to an ICE deportation detainer should the deportation order be cancelled for any reason.

## II. Contents of Parole Agreement:

- A. The parole agreement shall contain the following:
  - 1. The name of the offender being paroled.
  - 2. The crime the offender was convicted of.
  - 3. The date and place of trial.
  - 4. The sentence.
  - 5. The terms and conditions of parole, including any special conditions of parole.
  - 6. A statement that by accepting parole, the parolee agrees to waive extradition and not contest any effort by any jurisdiction to return him or her to the State of Vermont from any jurisdiction within the continental United States. The cost of being transported back to Vermont shall be paid by the parolee. This provision does not apply to those who are being supervised by another state subject to the Uniform Act for Out of State Parole Supervision.
- B. The parole agreement shall be signed by the Director of the Board and shall become effective when signed by the offender, and when the offender has reached their "minimum" sentence date.
- C. If the offender declines to sign the parole agreement, he or she shall not be released on parole. The following actions shall be taken.
  - 1. Upon receiving notice from the Department of Corrections that an offender declines to sign the parole agreement, the Director shall refer the matter back to the Board for a rescission decision.
  - 2. The matter may be placed on the docket for the next available proceedings conducted at the institution or field office where the offender is held or supervised, consistent with procedures in Chapter 6.
  - 3. The Board may continue the grant of parole or may rescind it.
  - 4. If the offender continues to refuse to sign the parole agreement, the Board shall rescind the grant of parole and shall deny parole, consistent with procedures in Chapter 10.
  - 5. Offenders denied parole because of their refusal to sign their parole agreement shall be eligible for further review as set forth in procedure II of Chapter 4.

### III. Effect of the Parole Agreement:

- A. The parole agreement, once signed by the Director of the Parole Board, shall constitute full authority for the Commissioner of the Department of Corrections to release the offender from custody, or community supervision, and exercise all supervision and control over the parolee as prescribed by law.
- B. Any Parole Agreement signed prior to the minimum date is null and void until the minimum date.

### IV. Modifying Conditions of Parole:

- A. Conditions of a parolee's parole agreement may be modified subsequent to a Condition Modification hearing before the Parole Board. This request shall include rationale for the supervising officers support of the request.
  - 1. A condition of parole supervision may be modified by the Board when the modification will:
    - a) Improve the opportunity for the parolee to fulfill the obligations of a law abiding citizen.
    - b) Represent the best interest of the community.
    - c) Not be detrimental or jeopardize public safety.
  - 2. The parolee's supervising parole officer shall submit a request for Condition Modification using a documentation approved by the Board.
  - 3. A hearing shall be scheduled in accordance with procedures in Chapter 6. A "Condition Modification" hearing shall include a Department of Corrections representative and the parolee whose conditions could potentially be modified subsequent to the hearing. The parolee shall have the opportunity to offer testimony regarding the condition modification request at the hearing.
  - 4. In the event the Board grants a condition modification, a new parole agreement shall be prepared by the Parole Board office and become effective when the Parole Board Director, Supervising Parole Officer and parolee have signed the modified agreement.
  - 5. In the event the Board does not grant a Condition Modification, the parolee and supervising parole officer shall be informed immediately by the Board at the end of the hearing.

## Chapter 13 – Termination and Early Discharge of Parole Supervision

### *Authority*

28 VSA § 506 (a)

### *Policy*

A parolee's term of parole supervision shall end when they have completed their predetermined maximum term of parole supervision, if they have not absconded during the term of their parole. The Parole Board may terminate a parolee's period of parole supervision before their predetermined maximum term of parole has expired pursuant to a hearing.

- I. Termination of Parole upon completion of a parolee's predetermined term of parole supervision:
  - A. Upon completion of a parolee's predetermined maximum term of parole supervision, the Department of Corrections shall send documentation informing Parole Board staff that the parolee's parole supervision term has expired. Parole Board staff shall close the parolee's case.
  - B. Parole supervision may not be terminated upon a parolee's predetermined maximum term of parole if:
    1. A parole warrant has been issued before a parolee's predetermined maximum term of parole supervision has expired.
    2. A parolee's predetermined term of parole supervision may be suspended every day an active Vermont Parole Warrant exists for the apprehension of said parolee.
- II. Early termination of parole supervision:
  - A. The Department of Corrections may request the early termination of a parolee's predetermined term of parole supervision by submitting the appropriate documentation. This documentation shall include justification for the request.
  - B. As a general rule the Board may **not** allow hearings for early termination requests that are:
    1. More than (6) months prior to a parolee's predetermined maximum term of parole supervision.
    2. Not support by sufficient good cause and a high probability of continued lawful behavior in the officer's request, as determined by the Board.
    3. While a parolee has unresolved parole violation(s).
    4. While a parolee has unresolved criminal charge(s).
    5. For parolees with a life sentence, not less than (15) years from the date of first confinement.
  - C. Parole Board staff will notify the requesting officer within (5) days after the Board's preliminary decision.
  - D. If the Board votes to allow a (PER) hearing, the hearing shall be schedule by Parole Board staff where the requesting officer typically brings matters before the Board for hearings and/or review.

## Chapter 14 - Medical Parole

### *Authority*

28 VSA §502 a(d)

### *Policy*

To be eligible for medical parole consideration, an offender must have been diagnosed as terminal or suffering from a debilitating condition so as to render the offender unlikely to be physically capable of presenting a danger to society. Eligibility for medical parole has no relationship to eligibility for parole consistent with procedures in Chapter 4 and Chapter 16. The Department of Corrections shall promptly notify the Parole Board upon receipt of medical information of an inmate's diagnosis of a terminal or debilitating condition.

### *Procedures*

#### I. Conditions and Limitations of Medical Parole:

##### A. The Board may consider medical parole under the following conditions.

1. A specific request has been made to the Board, based on documentation confirming that an offender has been diagnosed as terminal or suffering from a debilitating condition so as to render the offender unlikely to be physically capable of presenting a danger to society, from a competent medical practitioner, for the treatment, care, or custody of an offender who has a medical condition consistent with criteria described above.
2. The Board is satisfied the offender will be able to receive proper medical care outside of a correction's institution.

##### B. If a medical parole is granted, the offender shall be required to comply with all conditions of parole as set forth by the Board.

##### C. The Board may grant an offender a medical parole without considering factors as set forth in Chapter 10.

##### D. An offender who has been granted a medical parole will be under the same kind and degree of field supervision as any other parolee unless the Board waives supervision requirements.

## Chapter 15 – Violations of Parole

### ***Authority***

28 V.S.A. §364, 28 V.S.A. §365, 28 V.S.A. §374, 28 V.S.A. §403, 28 V.S.A §504, 28 V.S.A. §551, 28 V.S.A. §553, 13 V.S.A. §7554, *Morrissey v. Brewer*, 93 S.Ct.2600 (1972) and *Relation v. Vermont Parole Board*, 163 Vt. 534 (1994) 28 V.S.A. §403(2)

### ***Policy***

It is the policy of the Vermont Parole Board to provide timely, fair, and impartial hearings that comport with due process to those parolees who are, while on parole, alleged to have violated the terms and conditions of their parole, while protecting the public and the integrity of the parole system. The Board will accomplish this by making reasoned and rational violation decisions that are based upon good and sufficient information.

### ***Procedures***

#### **I. Reprimand Proceedings:**

- A. In lieu of initiating formal violation proceedings, a supervising parole officer may request that the Parole Board deliver a verbal reprimand to a parolee who has exhibited conduct in violation of his or her parole conditions.
  - 1. A parole officer shall submit approved documentation to Parole Board staff and a hearing shall be scheduled pursuant to procedures in Chapter 6.
  - 2. The Parole Board shall decide at a hearing involving both the supervising officer and parolee if the Board will deliver a formal reprimand to the parolee, or the Board may request that the supervising parole officer initiate formal violation proceedings.

#### **II. Arrest of the Parolee:**

- A. Any correctional officer designated by the commissioner of corrections may arrest a parolee without a warrant if the correctional officer has probable cause to believe that the parolee has violated a condition of his or her parole. The correctional officer may deputize any other law enforcement officer to arrest a parolee by giving him or her a written statement setting forth that the parolee has, in the judgment of the correctional officer, violated a condition or conditions of parole.
- B. The Parole Board Director may issue a warrant for the arrest of a parolee, if the Board Director receives information from the Department of Corrections or an out-of-state parole supervising agency that establishes probable cause to believe a parolee has violated condition(s) of parole.
- C. In lieu of a warrant as deemed appropriate by the Parole Board Director, the Board Director may authorize a notice to be served personally upon the offender directing the offender to appear before the board at a location, date, and time set forth in the notice.

#### **III. Release from Custody Pending Hearings:**

- A. Pending a hearing upon any charge of violation, the Parole Board Chair or designee may authorize the offender's release from detention, or authorize continued detention, subsequent to a Bail Hearing.



1. The Parole Board Office will receive requests for Bail Hearings through a parolee's attorney or through the supervising parole officer and a Bail Hearing shall be scheduled within (10) days of the request.
2. The Parole Board Chair or his or her designee will act as the hearing officer with a minimum of the parolee, and the supervising parole officer present at the Bail Hearing.
3. The hearing officer shall determine if the parolee is to be released pending formal violation proceedings or remain at the incarcerating institution, and determine any temporary conditions to include electronic monitoring that may apply to the parolee's release.

#### IV. Initiation and Scheduling of Violation Proceedings for Detained Parolees:

- A. Upon receiving notice from the Department of Corrections that a parolee is detained by the Department of Corrections subsequent to an arrest without a warrant, or an arrest based on a Parole Board warrant, the parolee's detention may be continued pending proceedings before the Board. Board staff shall schedule the proceedings as follows:
  1. If a final violation hearing can be scheduled to convene within 20 days after the arrest and detention of the parolee, a final hearing only shall be scheduled and conducted as set forth in procedure V of this chapter.
  2. If a final violation hearing cannot be scheduled within 20 days after the arrest and detention of the parolee, a Preliminary Parole Violation Hearing shall be scheduled within 20 days after the date of arrest of the parolee. A Preliminary Parole Violation Hearing is not a Bail Hearing and is only required for parolees.
  3. If the Board is not scheduled to appear at the facility incarcerating the parolee within 30 days after the parolee's arrest, and the Department of Corrections is recommending that the parolee remain incarcerated until a Final Violation Hearing takes place, a Final Violation Hearing shall be scheduled within 20 days after the parolee's arrest at the incarcerating facility in lieu of scheduling a Preliminary Parole Violation Hearing.

#### V. Preliminary Parole Violation Hearing:

- A. The preliminary hearing shall be held at the incarcerating facility by a single member of the Parole Board or the Board Director acting as the Hearing Officer.
  1. No Preliminary Parole Violation Hearing shall be conducted until the parolee has been given written notice of the hearing by the Department of Corrections. This notice shall contain the date, time and location of the hearing, the charges being brought against the parolee, and a statement advising the parolee that he or she has a right to be represented by counsel.
  2. The hearing may be held in person, by telephone, or by video conference.
  3. The hearing shall be open to the public as provided in procedure I: A of Chapter 9.
  4. All testimony shall be sworn. The parolee may testify and introduce letters, documents and individuals who can present information relevant to the alleged violations.
  5. The parolee shall be represented by counsel if he or she so desires and counsel shall be appointed to represent him or her if he or she cannot afford to hire counsel. The parolee may waive the right to counsel in writing.
  6. The Hearing Officer shall initially only take testimony on matters relating to the alleged violations.

7. The parolee may waive the Preliminary Parole Violation Hearing, either with or without the assistance of counsel (if counsel is waived), if he or she does so in writing by admitting that probable cause exists to believe that he or she has violated any of the terms and conditions of his or her parole.
- B. The Hearing Officer shall determine if probable cause exists to believe that the parolee has committed a violation of his or her parole.
1. If the Hearing Officer determines that probable cause does not exist to believe that the parolee has committed any violations of the terms and conditions of his or her parole he or she shall be returned to supervision and, if detained, he or she shall be released. The final violation hearing shall be canceled.
  2. If the Hearing Officer determines that probable cause does exist to believe that the parolee has committed any violations of the terms and conditions of his or her parole the matter shall proceed to a final violation hearing.
  3. Only alleged violations established by probable cause shall be brought forward at the final violation hearing.
- C. If the Hearing Officer finds probable cause that, the parolee has violated the terms and conditions of parole, the hearing officer may consider testimony and evidence relevant to the decision to release or incarcerate the parolee pending the final revocation hearing.
1. The Hearing Officer may continue incarceration, no more than 30 days from the time of arrest, pending the final violation hearing, or may release the parolee and impose additional conditions necessary to ensure the parolee's appearance at the final violation hearing. The Hearing Officer may also require an appearance bond if the parolee is released from incarceration.

#### VI. Final Parole Violation Hearing:

- A. The Final Parole Violation Hearing shall be conducted by a quorum of the Board, which consists of at least three members and shall be conducted as follows:
1. No Final Parole Violation Hearing shall be conducted until the parolee has been given written notice of the hearing by the Department of Corrections. This notice shall contain the date, time and location of the hearing, the charges being brought against the parolee, and a statement advising the parolee that he or she has a right to be represented by counsel and that counsel shall be provided to represent him or her if he or she cannot afford to hire counsel.
  2. The hearing shall be opened by advising the parolee of the charges against him or her and explaining the nature of the hearing.
  3. The supervising parole officer or other representative of the Department of Corrections shall present proof that supports the allegations that the terms and conditions of parole may have been violated, subject to cross-examination by the parolee.
  4. The parolee may submit proof, if he or she so desires, to rebut the Department of Correction's charges, subject to cross examination by a representative of the Department of Corrections. The parolee may also submit proof in mitigation of his or her conduct.
  5. The supervising parole officer or other representative of the Department of Corrections may submit evidence in rebuttal, subject to cross examination.
  6. Any Board member may question any witness.

- B. The Final Parole Violation Hearing shall comport with the following:
1. The Final Violation Hearing shall be conducted within 30 days of the date of arrest.
  2. Those portions of the final violation hearing where evidence is received or a decision is announced shall be conducted as an open session, subject to the Department of Corrections needing to maintain the safety and security of the institution where the proceeding is conducted.
  3. The parolee is entitled to be represented by legal counsel at the hearing, including having counsel appointed to represent him or her if he or she cannot afford counsel. The parolee may waive this right in writing.
  4. The Department of Corrections may be represented by counsel.
  5. The parolee is entitled to hear all information presented, and cross examine witnesses unless, in the opinion of the Parole Board, to do so would be dangerous to the witness. The parolee may present information on his or her behalf, and may testify on his or her behalf. If warranted, the cross examination by the offender's attorney can occur without the presence of the offender.
  6. All persons offering testimony in a final parole violation hearing shall be sworn.
  7. An audio recording shall be made of any portion of a final parole violation hearing in which the Board receives evidence or announces its decision.
  8. The Board is not bound by the strict rules of evidence in the conduct of a final parole violation hearing. The Board may consider hearsay evidence, affidavits, letters and other written documents. However, the parolee must be given the opportunity to confront and cross examine any witnesses who provide testimony or other evidence against him or her, except if good cause is shown to disallow confrontation. In determining whether good cause exists to disallow confrontation, the Board shall take into consideration the indicia of reliability of the evidence and the practical inconvenience of requiring live testimony to support the evidence.
  9. The Board may compel the attendance of witnesses and the production of documents as set forth in procedure III: A of Chapter 7.
- C. The parolee may waive the Final Parole Violation Hearing in writing. If the parolee waives, the matters proceed as if the Board had determined that the parolee had violated the terms and conditions of his or her parole.
- D. Following the submission of all the evidence in the Final Parole Violation Hearing, the Board may go into deliberative session for deliberation. The deliberation following the final hearing shall be conducted in two phases.
1. During the first phase, the Board shall determine, based on a preponderance of the evidence submitted in the Final Parole Violation Hearing, whether the parolee has violated any of the terms and conditions of his or her parole as charged in the notice of hearing.
  2. This determination shall be made by majority vote of the members of the Board present and voting and shall be made as to each of the charges in open session.
  3. If the Board determines that a preponderance of the evidence does not indicate that the parolee has violated any of the terms and conditions of his or her parole, the Board shall issue a written order to this effect and the parolee shall be released from custody and returned to supervision.

- E. If the Board determines in the first phase of deliberation that the parolee did violate one or more conditions of parole, the Parole Board shall choose from the following decisional options by majority vote in open session:
  - 1. Reinstate the parolee on parole with a warning, a reprimand, a requirement for additional or modified parole conditions or any combination thereof.
  - 2. Revoke parole.
  - 3. Enter such other order as the Board deems necessary or desirable and does not conflict with the Board's authority.
  - 4. An incarcerative disposition of no more than 30 days.
- F. The Board shall enter a written order that sets forth the evidence supporting the Board's decision.

## Chapter 16 - Supervised Community Sentence (SCS)

### ***Authority***

28 V.S.A. §352, 28 V.S.A. §362

### ***Policy***

It is the policy of the Vermont Parole Board to consider requests from persons under Supervised Community Supervision (SCS). Consideration will include review of any additions, deletions or modifications made by the Commissioner of the Department of Corrections to the conditions contained in his or her plan for SCS, or to consider all persons on SCS for release to parole at their minimum date. The Board also conducts SCS violation hearings in the event that an offender on SCS status has allegedly violated their conditions of SCS. The Vermont Parole Board will consider these matters in accordance with the procedures set forth elsewhere in this policy manual governing those persons who are sentenced to prison to the extent such procedures are consistent with the applicable law.

### ***Procedure***

#### I. Review of Change in SCS plan:

- A. Upon receipt of a written request from a person on SCS to review an addition, deletion, or modification of conditions made by the Commissioner of the Department of Corrections to his or her SCS plan, the Board Chair or his or her designee shall review the request promptly and determine if:
  1. The addition, deletion or modification substantially changes the plan,
  2. The addition, deletion or modification substantially alters the limits on the offender's liberty without good cause, or
  3. The addition, deletion or modification is clearly unreasonable.
- B. If the Board Chair or his or her designee finds that none of these conditions exist he or she shall deny the request to review and so notify the person making the request.
- C. If the Board Chair or his or her designee concludes that one or more of these conditions exists, he or she shall schedule a review by the Board. This review shall be conducted as follows:
  1. The Board Chair or his or her designee shall determine if the Board will need more information to consider the case appropriately.
  2. If enough information has been received initially, Board staff may schedule a hearing at the facility nearest offender's residence consistent with procedures in Chapter 6.
  3. If the Board does not initially receive enough information to consider a case appropriately, the Board Chair or his or her designee shall contact the offender or his or her representative and may schedule a hearing based on a reasonable time necessary to receive required information.
- D. The change in conditions shall go into effect pending the Parole Board's review.
- E. The decision of the Board is final and there shall be no subsequent reviews of the same additions, deletions or modifications.

#### II. Review at Minimum expiration of sentence:

- A. Upon receipt of Notice from the Department of Corrections that a person under SCS will reach their minimum expiration, Board staff shall schedule that person for a parole interview as set forth in procedure I of Chapter 6.
- B. The procedures set forth in Chapter 7 shall be followed in preparation for the interview.
- C. An interview shall be conducted as set forth in procedures in Chapter 9, except that all witnesses who present information during interviews shall be sworn.
- D. The Board shall render a decision in the case following the procedures set forth in procedure I in chapter 10 except that the decisional options of the Board shall be as follows:
  - 1. Continue the offender under SCS supervision.
  - 2. Terminate the offender from supervision completely.
  - 3. Release the offender under parole supervision.
- E. If the Board continues the person under SCS supervision, he or she shall be entitled to further review as set forth in Chapter 4.

## Chapter 17 - Violations of Supervised Community Sentence (SCS)

### ***Authority***

28 V.S.A. §353, 28 V.S.A. §363, 28 V.S.A. §364, 28 V.S.A. §365, V.S.A. §371, 28 V.S.A. §372, 13 V.S.A §7554

### ***Policy***

It is the policy of the Vermont Parole Board to provide timely, fair and impartial hearings that comport with due process to those SCS offenders who are alleged to have violated the terms and conditions of their SCS and to protect the public and the integrity of the SCS system by making reasoned and rational violation decisions that are based upon good and sufficient information.

### ***Procedure***

#### **I. Arrest Warrant or Notice:**

- A. The Parole Board Director may issue a warrant for the arrest of an SCS offender, if the Board Director receives information from the Department of Corrections that establishes probable cause to believe an SCS offender has violated condition(s) of their SCS.
  - 1. The warrant shall authorize any law enforcement officer and any correctional officer to return the offender to the custody of a correctional facility, or to any other suitable detention facility designated by the Board.
  - 2. If the warrant cannot be served, the offender shall, for purposes of extradition only, be considered as having violated the terms of parole.
  - 3. There shall be no right to bail or release. However, pending a hearing, the Parole Board may authorize the offender's release from detention. The Chair of the Parole Board or his or her designee shall act as the judicial officer.
- B. In lieu of a warrant as deemed appropriate by the Parole Board Director, the Board Director may issue a notice to be served personally upon the offender directing the offender to appear before the board at a location, date, and time set forth in the notice.

#### **II. Release from Custody Pending Hearings:**

- A. Pending a hearing upon any charge of violation, the Parole Board Chair or designee may authorize the SCS offender's release from detention, or authorize continued detention, subsequent to a Bail Hearing.
  - 1. The Parole Board Office will receive requests for Bail Hearings through an SCS offender's attorney or through the supervising officer and a Bail Hearing shall be scheduled within (10) days of the request.
  - 2. The Parole Board Chair or his or her designee will act as the hearing officer with a minimum of the SCS offender, counsel for the SCS offender, and the supervising officer present at the Bail Hearing.
  - 3. The hearing officer shall determine if the parolee is to be released pending formal violation proceedings or remain at the incarcerating institution, and determine any temporary conditions that may apply to the SCS offender's release.

#### **III. SCS Violation Hearing:**

- A. The SCS Violation Hearing shall be scheduled consistent with procedures in Chapter 6 and conducted by a quorum of the Board, which consists of at least 3 members and shall be conducted as follows:
1. No SCS Violation Hearing shall be conducted until the offender has been given written notice of the hearing by the Department of Corrections. This notice shall contain the date, time and location of the hearing, the charges being brought against the offender, and a statement advising the offender that he or she has a right to be represented by counsel, and that counsel shall be provided to represent him or her if he or she cannot afford to hire counsel.
  2. The hearing shall be opened by advising the offender of the charges against him or her and explaining the nature of the hearing.
  3. The supervising officer or other representative of the Department of Corrections shall present proof that supports the allegations that the terms and conditions of SCS may have been violated, subject to cross-examination by the offender.
  4. The offender may submit proof, if he or she so desires, to rebut the Department of Correction's charges, subject to cross examination by a representative of the Department of Corrections. The offender may also submit proof in mitigation of his or her conduct.
  5. The supervising officer or other representative of the Department of Corrections may submit evidence in rebuttal, subject to cross examination.
  6. Any Board member may question any witness.
- B. The SCS Violation Hearing shall comport with the following:
1. The violation hearing shall be conducted within 60 days of the date of arrest.
  2. Those portions of the violation hearing where evidence is received or a decision is announced shall be conducted in open session, subject to the Department of Corrections needing to maintain the safety and security of the institution where the proceeding is conducted.
  3. The offender is entitled to be represented by legal counsel at the hearing, including having counsel appointed to represent him or her if he or she cannot afford counsel. The offender may waive this right in writing.
  4. The Department of Corrections may be represented by counsel.
  5. The offender is entitled to hear all information presented, and cross examine witnesses unless, in the opinion of the Parole Board, to do so would be dangerous to the witness. The offender may present information on his or her behalf, and may testify on his or her behalf. If warranted, the cross examination by the offender's attorney can occur without the presence of the offender.
  6. All persons offering testimony in a SCS Violation Hearing shall be sworn.
  7. An audio recording shall be made of any portion of a SCS Violation Hearing in which the Board receives evidence or announces its decision.



8. The Board is not bound by the strict rules of evidence in the conduct of a SCS Violation Hearing. The Board may consider hearsay evidence, affidavits, letters and other written documents. However, the offender must be given the opportunity to confront and cross examine any witnesses who provide testimony or other evidence against him or her, except if good cause is shown to disallow confrontation. In determining whether good cause exists to disallow confrontation, the Board shall take into consideration the indicia of reliability of the evidence and the practical inconvenience of requiring live testimony to support the evidence.
  9. The Board may compel the attendance of witnesses and the production of documents consistent with procedures in Chapter 9.
- C. The offender may waive the SCS Violation Hearing in writing. If the offender waives, the matters proceed as if the Board had determined that the offender had violated the terms and conditions of his or her SCS.
- D. Following the submission of all the evidence in the SCS Violation Hearing, the Board may go into deliberative session for deliberation. The deliberation following the final hearing shall be conducted in two phases.
1. During the first phase, the Board shall determine, based on substantial evidence submitted in the SCS Violation Hearing, whether the offender has violated any of the terms and conditions of his or her SCS as charged in the notice of hearing.
  2. This determination shall be made by majority vote of the members of the Board present and voting and shall be made as to each of the charges in open session.
  3. During the second phase the Board shall render a decision in the case consistent with procedures in Chapter 10 except that the decisional options of the Board shall be as follows:
    - a) Continue the person under SCS supervision.
    - b) Continue the person under SCS supervision and recommend to the Commissioner added or modified conditions.
    - c) Conduct a formal or informal conference with the offender in order to re-emphasize the necessity of compliance with the conditions of the offender's supervised community sentence.
    - d) Revoke SCS and remand to the custody of the Vermont Department of Corrections for all or part of the remaining sentence.
  4. If the Board determines that a preponderance of the evidence does not indicate that the offender has violated any of the terms and conditions of his or her SCS, the Board shall issue a written order to this effect and the offender shall be released from custody and returned to supervision.
  5. The Board shall enter a written order that sets forth the evidence supporting the Board's decision.

## Chapter 18 - Review of Parole Board Decisions and Reconsideration of Previous Decisions

### *Authority*

28 V.S.A. §454; State v. Whitchurch, 155 Vt. (1990); State v. Peck, 149 Vt. 616 (1988); 28 V.S.A. §373

### *Policy*

The Parole Board's decisions about parole and SCS are not subject to court review, with the exception that an offender may ask a court to determine whether the Board, in making a decision, violated any provision of Title 28, Chapter 7, violated the State or Federal constitutional rights of an offender, or violated the Board's own rules. The Board may also grant reconsideration to a previous decision regarding parole or SCS when new information has been revealed to the Board, or other circumstances have significantly jeopardized the Board's previous decision.

### *Procedure*

- I. Request for Reconsideration of prior decision regarding parole or SCS.
  - A. Request for reconsideration shall be submitted to the Board Director in writing by an offender, or an offender's attorney, or the offender's supervising parole officer. The request shall include a detailed explanation of what action the offender or supervising parole officer is seeking from the board in reconsidering the previous decision, and the specific grounds for the request.
  - B. Reconsideration must be approved by at least 3 members of the Board.
    1. If a request for reconsideration is denied, Board staff will notify the offender, and/or the supervising parole officer of the denial promptly.
    2. If a request for reconsideration has been approved by the Board, a hearing will be scheduled consistent with the procedures in the appropriate Chapter 6, or Chapter 15, or Chapter 17.
    3. If the Board Chair, or his or her designee, in consultation with at least 3 Board members, decides not to schedule a hearing, at least 3 Board members will reconsider the previous decision while considering requested changes and determine if modifications will be made. At least 3 members of the Board must agree with the proposed changes, or any modification of a previous decision
    4. Actions taken by the Board if deciding to schedule a reconsideration hearing with respect to previous decisions may include parole or SCS agreement modifications, rescission, and parole, or SCS revocation.
- II. Offender's requests for reconsideration of Parole Decisions:
  - A. The Board is sensitive to the problems of family members of those convicted of committing crimes, but must deal primarily with the offender and the offense. Family circumstances, business affairs, hardship, need, and other problems shared commonly by prisoners, are not usually considered adequate reasons for reconsideration. The only adequate reason for reconsideration shall be that new evidence has been provided which was not available at the time of the proceeding and which would have likely resulted in a different decision by the Board.

- B. Requests for reconsideration must be received by the Parole Board within 30 days of the proceeding.

III. Supervising Parole Officer requests for reconsideration of Parole Decisions:

- A. Parole decisions may be reviewed for reconsideration upon written request from an offender's Supervising Parole Officer, or his/her designee at the Board's regular monthly meeting.
- B. A hearing reconsidering parole shall be scheduled if supported by a majority of the board at its regular monthly staff meeting.
  - 1. Evidence of "Good Cause" shall be included in the written request for reconsideration.
  - 2. Approved hearings shall be scheduled at the convenience of the Parole Board.

IV. Requests for reconsideration of Prior Decision Regarding SCS:

- A. SCS decisions may be reviewed for reconsideration upon written request at the Board's regular monthly business meeting.
- B. A hearing reconsidering an SCS decision shall be scheduled if supported by a majority of the board at its regular monthly business meeting.
  - 1. Evidence of "good cause" shall be included in the written request for reconsideration.
  - 2. Approved reconsideration hearings will be scheduled at the convenience of the Parole Board.