

TITLE 42 – CRIMINAL JUSTICE

Chapters:
01 Parole

TITLE 42 – CHAPTER 01 – PAROLE

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I. GENERAL PROVISIONS AND PAROLE BOARD

42.0101 Authority.

The rules codified in this chapter are adopted pursuant to authority granted in 4.1002 A.S.C.A.

History: Rule 6-75, eff 14 Jul 75. § 401.

42.0102 Powers of the parole board.

The parole board has the power:

- (1) to determine date of parole eligibility based on applicable statute and the sentence of the court;
- (2) to parole prisoners at its discretion in accordance with prevailing statutes and this chapter;
- (3) to provide the manner and conditions for the supervision of paroled prisoners;
- (4) to issue warrant for retaking of parole violators;
- (5) to modify the manner and conditions of supervision of paroled prisoners;
- (6) to revoke parole; and
- (7) to parole prisoners whose parole has been revoked and to provide the manner and conditions for the supervision of reparaoled prisoners.

History: Rule 6-75, eff 14 Jul 75, § 402.

42.0103 Meetings-Quorum.

- (a) The parole board shall meet when the chairman deems it necessary or on the written request to the chairman of at least 2 members. Hearings shall be conducted as required by this chapter.
- (b) The presence of 3 members shall constitute a quorum. A vote of the majority of board members present is required to decide any issue.

History: Rule 6-75, eff 14 Jul 75, 5 403(b).

42.0104 Administrative duties of chairman, parole officer.

The chairman of the board shall be responsible for preparation and submission of records and reports and

be generally responsible for the administrative work of the board. The parole officer shall provide assistance as required by the chairman.

History: Rule 6-75, eff 14 Jul 75, § 404.

II. PAROLE PROCEDURE

42.0110 Application eligibility waiver.

A prisoner desiring to apply for parole shall execute an application for parole and such other forms as are prescribed by the board. Such forms shall be provided to prisoners eligible for parole no less than 15 days before the date of eligibility. Failure to execute such forms may be considered a waiver of parole eligibility.

History: Rule 6-75, eff 14 Jul 75. § 405.

42.0111 Eligibility determination and notice.

Determination that a prisoner has completed one-third of his sentence shall be made from the confinement order. The prison warden shall give the chairman of the board and the prisoner no less than 15 days written notice of the prisoner's date of eligibility.

History: Rule 6-75, eff 14 Jul 75, § 406.

42.0112 Recommendations and report-Hearing notice.

- (a) The prison warden shall be responsible for forwarding the application to the parole officer along with his comments on the merits of the application. The parole officer shall prepare a background report. He shall then forward the application with the warden's comments, his own comments on the merits of the application, and his background report to the chairman of the board.
- (b) The chairman shall then set a hearing date, notify all parties concerned, and send each member of the board copies of the application, background report and comments by the warden and parole officer prior to the hearing.

History: Rule 6-75, eff 14 Jul 75, § 407.

42.0113 Hearing-Appearance of applicant.

The applicant for parole shall have the right to personally appear before the board to state his case.

History: Rule 6-75. eff 14 Jul 75, § 408.

42.0114 Grant of parole-Factors in decision making.

- (a) The grant of parole rests in the discretion of the board. In general it is granted when, in the judgment of the board, a prisoner who has made a satisfactory adjustment and is otherwise eligible will avoid further violation of law and when the factors which will affect him and his dependents upon release assure adequate public security. These factors vary in every case. The board evaluates each case on its merits and may grant or deny parole or continue the case for further hearing.
- (b) The board may consider the following factors and others deemed relevant, at its discretion, in its decisions on parole applications:
 - (1) Sentence:
 - (A) Type of sentence;
 - (B) Length of sentence; and
 - (C) Recommendation of judge, attorney general, and other responsible officials;
 - (2) Facts and circumstances of the offense:
 - (A) Mitigating and aggravating factors; and
 - (B) Activities following arrest and prior to confinement, including adjustment on bond or probation, if any;
 - (3) Prior criminal record:
 - (A) Nature and pattern of offenses;
 - (B) Adjustment of previous probation, parole, and confinement; and
 - (C) Warrants for parole violations;
 - (4) Changes in motivation and behavior:
 - (A) Changes in attitude toward self and others;
 - (B) Reasons underlying changes; and
 - (C) Personal goals and description of personal strength of resources

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- available to maintain motivation for law-abiding behavior;
- (5) Personal and social History:
- (A) Family and marital;
 - (B) Intelligence and education;
 - (C) Employment and military experience;
 - (D) Leisure time;
 - (E) Religion; and
 - (F) Physical and emotional health;
- (6) Institutional experience:
- (A) Program goals and accomplishments in these areas:
 - (I) Academic;
 - (II) Vocational education, training, or work assignments;
 - (III) Recreation and leisure time use;
 - (IV) Religion; and
 - (V) Therapy; and
 - (B) General adjustment:
 - (I) Interpersonal relationships with staff and inmates; and
 - (II) Physical and emotional health, and treatment;
- (7) Community resources, including release plans:
- (A) Residence: live alone, with family or others;
 - (B) Employment, training, or academic education; and
 - (C) Special needs and resources to meet them;
- (8) Use of scientific data and tools:
- (A) Psychological and psychiatric evaluations;
 - (B) Statistical data; and
 - (C) Standardized tests;
- (9) Written or oral statements or recommendations by:
- (A) Prisoner;
 - (B) Parole officer; and
 - (C) Any other person; and
- (10) Comments by board members at parole hearing:
- (A) Impressions formed by members at the hearing; and
 - (B) Impressions based on personal familiarity with prisoner or other relevant data.

History: Rule 6-75, eff 14 Jul 75, § 409.

42.0115 Decision-Notice.

Any decision to parole or refuse parole shall be in writing with reasons for the decision stated therein. The applicant shall be notified and a copy of the decision delivered to him.

History: Rule 6-75, eff 14 Jul 75, § 410.

42.0116 Review after denial.

- (a) Where initial application for parole has been denied, a prisoner's case may be subsequently reviewed by the board. A request for a review will be granted when the chairman determines that such review is justified on the basis of receipt of sufficiently significant information which was not known to the board at the time of any previous consideration.
- (b) In the absence of such significant information, the board may call for review at any time when they determine such review is merited by the circumstances. In all cases, the board must review decisions at least once each year after a denial.

History: Rule 6-75, eff 14 Jul 75, § 411.

42.0117 Release plan-Preparation.

Upon determination that parole is to be granted, the board shall prepare a release plan for the particular individual, which shall include the manner and conditions of supervision on parole. The plan shall be

prepared by the board after the hearing and with consultation of the parole officer.

History: Rule 6-75, eff 14 Jul 75, § 412.

42.0118 Release plan-Elements.

The following elements shall be considered any release plan, but this enumeration shall not be exclusive to other elements the board deems appropriate:

- (a) Date of release;
- (b) Any travel restrictions imposed upon parolee;
- (c) Dates the parolee is to report to the parole officer and the supervision and reporting required of such officer;
- (d) Designation of any advisor other than the parole officer, who shall be a responsible citizen living in or near the community in which the parolee will reside and be available to the parolee;
- (e) Reports required of the parolee relative to his own conduct;
- (f) Requirements of the board pertaining to legitimate employment of the parolee;
- (g) Assurances of necessary care available to the parolee for medical or other demonstrable problems of any nature requiring special attention;
- (h) General restrictions as to the conduct of the parolee; i.e., consumption of alcohol or drugs, future criminal activity;
- (i) Deportation from American Samoa and prohibition for reentry; and
- (j) Payment of any fine the court may have imposed and/or any restitution of any property damaged or stolen during commission of a crime.

History: Rule 6-75, eff 14 Jul 75, § 413.

42.0119 Certificate of release.

Upon approval of the release plan, the board shall issue a certificate of release, which shall state therein the release date, the conditions of parole and other relevant aspect of the release plan, and such instructions to the prisoner as the board considers appropriate. The certificate shall be signed by the

chairman and shall provide the authority for the prison warden to release the prisoner from confinement. The certificate shall state the date parole terminates which shall be no later than the maximum term for which he was originally sentenced. A copy of the certificate shall be delivered personally to the prisoner by the prison warden.

History: Rule 6-75, eff 14 Jul 75, § 414.

42.0120 Release.

When an effective release date has been set by the board, release on that date shall be conditioned upon continued good conduct by the prisoner. The board may, on its own motion, reconsider any case prior to release and may reopen and advance, postpone, or deny a parole which has been granted. The board may also add to or modify the conditions of parole.

History: Rule 6-75, eff 14 Jul 75, § 415.

42.0121 Release plan modification.

If any time during the period of the parole it appears to the board, from the reports of the parole officer or from other sources, that the certificate of release should be modified, the board may consider such modification upon consultation with the parole officer and make such modification as it deems necessary. A copy of the modification shall be delivered personally to the parolee by the parole officer.

History: Rule 6-75, eff 14 Jul 75, § 416.

42.0122 Parole officer-Appointment and supervision.

There shall be at least 1 parole officer on the staff of the department of legal affairs, who shall be appointed with the approval of the board and be supervised by the attorney general.

History: Rule 6-75, eff 14 Jul 75, § 417.

42.0123 Parole officer-Responsibility.

- (a) Supervision of all prisoners under parole is invested in the parole officer. The parole officer shall make monthly reports to the attorney general, pertaining to the conduct of each parolee based upon the parole officer's meetings with the parolee and information gathered from other sources in the community. The report shall be forwarded to the chairman of the parole board,

and when the report contains items that should come to the attention of the board, the chairman shall discuss the same with the board.

- (b) When the parole officer is of the opinion that it is necessary to enhance the possibilities of a successful supervision period, he shall request the board to modify the terms of the certificate of release.
- (c) If the parolee fails to abide by any of the conditions of the certificate of release, the parole officer shall notify the board or any member thereof, of such violation.

History: Rule 6-75, eff 14 Jul 75. § 418.

42.0124 Misrepresentation by parolee- Parole revocation.

All grants of parole are predicated on the applicant's good faith and frankness. If, after release on parole, evidence comes to the attention of the board that the parolee has withheld or wilfully concealed material information, the board may act to revoke the parole granted according to procedures of this chapter.

History: Rule 6-75, eff 14 Jul 75. § 419.

III. VIOLATION

42.0130 Reincarceration upon warrant authorized.

If a parolee violates any conditions under which he was released, he may be reincarcerated at the territorial correctional facility upon authority of a warrant issued by a member of the parole board.

History: Rule 6-75, eff 14 Jul 75, § 420.

42.0131 Warrant issuance and execution.

- (a) When satisfactory information of a violation of parole is presented to any member of the parole board such member may sign a warrant for retaking of the parole, provided the maximum time of parole has not expired.
- (b) Any police officer or the parole officer may serve the warrant and return the parolee to the territorial correctional facility. The executed warrant shall be immediately returned to the chairman of the parole board.

History: Rule 6-75, eff 14 Jul 75, § 421.

42.0132 Preliminary interview after retaking.

- (a) Within 48 hours of a retaking, the parole officer shall conduct a preliminary interview to ascertain if the parolee denies or admits the alleged parole violation.
- (b) The parolee shall be advised at the beginning of the interview that he may be represented by an attorney or other counsel throughout the interview and may have voluntary witnesses testify on his behalf but not at the expense of the government. The interview shall be continued for a reasonable time if the parolee desires the representation of an attorney or other counsel or to obtain witnesses.
- (c) The parole officer shall submit a summary or digest of the preliminary interview to the chairman of the board immediately upon completion so that the proceedings required by 42.0133, 42.0134, and 42.0135 of this chapter can be undertaken. The summary or digest shall include the parole officer's recommended disposition to the board.

History: Rule 6-75, eff 14 Jul 75. § 422.

42.0133 Revocation-Hearing-Notice.

Within a reasonable time after the parolee is taken into custody and after receipt of the parole officer's summary or digest of the preliminary interview, parole board shall hold a hearing to determine if parole should be revoked. The requirements of the hearing shall be:

- (a) The hearing shall be preceded by written notice to the parolee which advises the parolee of the alleged violations.
- (b) At all times during the hearing, the parolee shall have the right to be personally present and to be represented by an attorney other counsel but not at the expense of the government.
- (c) The hearing shall be continued for a reasonable time if the parolee desires the representation of an attorney or other counsel.
- (d) Before evidence is taken, the parolee shall be asked if he admits or denies the alleged violations.

- (e) The evidence against the parolee shall be disclosed to him and he shall have the right to confront and cross-examine witnesses against him unless the board finds good cause for not allowing confrontation.
- (f) The parolee has the right to be heard in person and to have voluntary witnesses testify and present other evidence on his behalf, but not at the expense of the government.
- (g) The hearing shall be succeeded by a written statement by the board, delivered personally to the parolee, as to the evidence relied upon and reasons for revoking parole if the parole is revoked.

History: Rule 6-75, eff 14 Jul 75, § 423.

42.0134 Conviction-based revocation-Scope of hearing.

If the sole parole violation alleged is the conviction of a crime, the scope of the hearing shall be limited to whether the conviction amounts to a violation of parole.

History: Rule 6-75, eff 14 Jul 75, § 424.

42.0135 Admitted violation.

In the instances where a parolee admits the parole violation charge filed against him, there shall be no need for an evidentiary hearing. The board shall meet solely to decide what action to take on the violation.

History: Rule 6-75, eff 14 Jul 75, § 425.

42.0136 Options of board.

On the basis of the matters presented at the hearing, the board may reinstate parole, revoke, and terminate the order of parole, or modify the terms and conditions thereof. Under such circumstances, the prisoner may be required to serve all or any part of the remainder of the term for which he was sentenced.

History: Rule 6-75, eff 14 Jul 75, § 426.

42.0137 Unexpired term of imprisonment.

The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to physical custody of the attorney general under the warrant for retaking of the parolee, and the time the prisoner was on parole shall not diminish the time he was sentenced to serve.

History: Rule 6-75, eff 14 Jul 75, § 427.

IV. REMITTANCE, COMMUTATION, REPRIEVE, PARDON

42.0140 Power of Governor-Authority.

The Governor has the sole power to remit fines and forfeitures, commute sentences, and grant reprieves and pardons after conviction for offenses against the laws of American Samoa in accordance with Section 9 of Article IV of the Constitution of American Samoa, 1967, as amended.

History: Rule 6-75, eff 14 Jul 75, § 428. f

42.0141 Application-Action initiation.

- (a) All applications for remittance, commutation, reprieve or pardon must be directed to the Governor. If the board receives an application therefor from a petitioner directly, it shall be returned to him with written instructions to file the same directly with the Governor. A copy of the letter will be sent to the Governor.
- (b) Only when directed by the Governor either to investigate or investigate and make recommendations concerning an application for remittance, commutation, reprieve, or pardon shall the board take any such action thereon.

History: Rule 6-75, eff 14 Jul 75, § 429.

42.0142 Investigation, report, and recommendation.

If the board is directed to consider an application for remittance, commutation, reprieve, or pardon, it may direct the parole officer-to conduct further investigation and prepare a background report. The board may also hold a hearing and allow the applicant to appear personally to state his case. The board shall submit in writing to the Governor the majority report and, if any, minority report of its findings and recommendations. Unless otherwise directed by the Governor, the reports shall be submitted within 60 days of the referral to the board.

History: Rule 6-75, eff 14 Jul 75, § 430.

END OF TITLE 42 – CRIMINAL JUSTICE