

of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of § 2.48(b) to assist him in completing this written application.

(b) If the prisoner is serving a new federal sentence, the Regional Commissioner, following a dispositional record review, may:

(1) Pursuant to the general policy of the Commission, let the warrant stand as a detainer and order that the revocation hearing be scheduled to coincide with the initial hearing on the new federal sentence or upon release from the new sentence, whichever comes first;

(2) Withdraw the warrant, and either order reinstatement of the parolee to supervision upon release from confinement or close the case if the expiration date has passed.

(c) If the prisoner is serving a new state or local sentence, the Regional Commissioner, following a dispositional record review may:

(1) Withdraw the detainer and order reinstatement of the parolee to supervision upon release from custody, or close the case if the expiration date has passed.

(2) Order a revocation hearing to be conducted by a hearing examiner or an official designated by the Regional Commissioner at the institution in which the parolee is confined.

(3) Let the detainer stand and order further review at an appropriate time. If the warrant is not withdrawn and no revocation hearing is conducted while the prisoner is in state or local custody, an institutional revocation hearing shall be conducted after the prisoner's return to federal custody.

(d) Revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. Following a revocation hearing conducted pursuant to this section, the

Commission may take any action specified in § 2.52.

(e)(1) A parole violator whose parole is revoked shall be given credit for all time in federal, state, or local confinement on a new offense for purposes of satisfaction of the reparole guidelines at § 2.20 and § 2.21.

(2) However, it shall be the policy of the Commission that the revoked parolee's original sentence (which due to the new conviction, stopped running upon his last release from federal confinement on parole) again start to run only upon release from the confinement portion of the new sentence or the date of reparole granted pursuant of these rules, whichever comes first. This subsection does not apply to cases where, by law, the running of the original sentence is not interrupted by a new conviction (e.g., YCA; NARA; Mexican or Canadian treaty cases).

(f) If a Regional Commissioner determines that additional information is required in order to make a decision pursuant to paragraph (a)(2) of this section, he may schedule a dispositional hearing at the state or local institution where the parolee is confined to obtain such information. Such hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. The parolee shall have notice of such hearing, be allowed to testify in his behalf, and have opportunity for counsel as provided in § 2.48(b).

[52 FR 17400, May 8, 1987, as amended at 61 FR 33657, June 28, 1996]

§ 2.48 Revocation: Preliminary interview.

(a) *Interviewing officer.* A parolee who is retaken on a warrant issued by a Commissioner shall be given a preliminary interview by an official designated by the Regional Commissioner to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a revocation hearing should be conducted. The official designated to conduct the preliminary interview may be a U.S. Probation Officer in the district where the prisoner is confined, provided he is not

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the officer who recommended that the warrant be issued.

(b) *Notice and opportunity to postpone interview.* At the beginning of the preliminary interview, the interviewing officer shall ascertain that the Warrant Application has been given to the parolee as required by § 2.46(b), and shall advise the parolee that he may have the preliminary interview postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses. The parolee shall also be advised that if he cannot afford to retain an attorney he may apply to a U.S. District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing pursuant to 18 U.S.C. 3006A. In addition, the parolee may request the Commission to obtain the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the parolee admits a violation or has been convicted of a new offense while on supervision or unless the interviewing officer finds good cause for their non-attendance. Pursuant to § 2.51 a subpoena may issue for the appearance of adverse witnesses or the production of documents.

(c) *Review of the charges.* At the preliminary interview, the interviewing officer shall review the violation charges with the parolee, apprise the parolee of the evidence which has been presented to the Commission, receive the statements of witnesses and documentary evidence on behalf of the parolee, and allow cross-examination of those witnesses in attendance. Disclosure of the evidence presented to the Commission shall be made pursuant to § 2.50(d).

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with his recommended decision.

(1) If the interviewing officer's recommended decision is that no probable cause may be found to believe that the

parolee has violated the conditions of his release, the responsible Regional Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible following receipt of the interviewing officer's digest. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that probable cause may be found to believe that the parolee has violated a condition (or conditions) of his release, the responsible Regional Commissioner shall notify the parolee of his final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Notice to the parolee of any final decision of a Regional Commissioner finding probable cause and ordering a revocation hearing shall state the charges upon which probable cause has been found and the evidence relied upon.

(e) *Release notwithstanding probable cause.* If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceeding may nonetheless be ordered if it is determined that:

(1) Continuation of revocation proceedings is not warranted despite the violations found; or

(2) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not constitute a danger to himself or others.

(f) *Conviction as probable cause.* Conviction of a Federal, State, or local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section and no preliminary interview shall be conducted unless otherwise ordered by the Regional Commissioner.

(g) *Local revocation hearing.* A postponed preliminary interview may be conducted as a local revocation hearing by an examiner panel or other interviewing officer designated by the

Department of Justice

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Regional Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, 3409, Jan. 16, 1979; 46 FR 42842, Aug. 25, 1981; 47 FR 25735, June 15, 1982]

§ 2.49 Place of revocation hearing.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision; and

(2) The parolee denies that he has violated any condition of his release.

(b) The parolee shall also be given a local revocation hearing if he admits (or has been convicted of) one or more charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or parole, and requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witness at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(c) If there are two or more alleged violations, the hearing may be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant or summons as determined by the Regional Commissioner.

(d)(1) A parolee shall be given an institutional revocation hearing upon the parolee's return or recommitment to an institution if the parolee:

(i) Voluntarily waives the right to a local revocation hearing; or

(ii) Admits (or has been convicted of) one or more charged violations without contesting any unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or parole.

(2) On his own motion, the Regional Commissioner may designate any case described in paragraph (d)(1) of this section for a local revocation hearing. The difference in procedures between a "local revocation hearing" and an "in-

stitutional revocation hearing" is set forth in § 2.50(c).

(e) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Regional Commissioner under § 2.48(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons under § 2.44 shall remain on supervision pending the decision of the Commission.

(f) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement or consents to a postponed revocation proceeding, or if a parolee by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, 3409, Jan. 16, 1979; 68 FR 41530, July 14, 2003]

§ 2.50 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) The alleged violator may present witnesses, and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocation may be based. Those witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged