

This rule was filed as PB Rule 82-14.

TITLE 22 COURTS
CHAPTER 510 PAROLE
PART 15 PAROLE REVOCATION HEARINGS

22.510.15.1 ISSUING AGENCY: New Mexico Parole Board.
[Recompiled 12/31/01]

22.510.15.2 SCOPE: [RESERVED]
[Recompiled 12/31/01]

22.510.15.3 STATUTORY AUTHORITY: [RESERVED]
[Recompiled 12/31/01]

22.510.15.4 DURATION: [Permanent]
[Recompiled 12/31/01]

22.510.15.5 EFFECTIVE DATE: [Filed December 2, 1982]
[Recompiled 12/31/01]

22.510.15.6 OBJECTIVE: [RESERVED]
[Recompiled 12/31/01]

22.510.15.7 DEFINITIONS: [RESERVED]
[Recompiled 12/31/01]

22.510.15.8 PAROLE REVOCATION HEARINGS: The provisions of this paragraph [now 22.510.15.8 NMAC] apply to all parolees facing parole revocation.

A. Parolees charged with parole violation will receive a preliminary probable cause parole revocation hearing upon such charge or charges in accordance with rules and regulations of the corrections department.

B. Final parole revocation hearings are scheduled to commence on the third Wednesday of each month, and continuing on through Thursday and Friday, if necessary.

C. Field services division staff will serve the parolee with proper documentation of alleged violation(s) of parole.

D. The parole board will serve the public defender's office with the proper documentation of alleged parole violation(s) a minimum of at least 10 working days before the scheduled hearing.

E. The parole board may, however, conduct a final revocation hearing at any time at the request of the parolee or the parolee's attorney.

F. The parolee's return to the penitentiary of New Mexico at Santa Fe (or other correctional facility) subsequent to a finding of probable cause at such preliminary parole revocation hearing will receive a prompt final parole revocation hearing.

G. Parolees will be afforded the opportunity to request assistance of counsel. Parolees requesting assistance of counsel at their final parole revocation hearings will be interviewed by a member of the parole board to determine whether such parolees need assistance of counsel in accordance with the following criteria:

(1) whether the parolee claims he has not committed the alleged violation;

(2) whether there are substantial reasons which justified or mitigated the violation and makes revocation inappropriate;

(3) whether such reasons (referred in (2) above) are complex or otherwise difficult to develop or present;

(4) whether the parolee appears capable or incapable of speaking effectively for himself;

(5) whether the parolee had counsel at the preliminary probable cause parole revocation hearing.

H. If the parolee's request for counsel is refused, the board shall state the reasons for such refusal.

I. If the parole board determines that counsel is necessary for an indigent parolee, the New Mexico public defender's office shall be notified and requested to represent the parolee.

J. At the final parole revocation hearing, the following due process requirements will be observed at

a minimum:

- (1) written notice to the parolee of the claimed violation(s) of parole;
- (2) disclosure to the parolee of the evidence against him;
- (3) opportunity to be heard in person and to present witnesses and documentary evidence;
- (4) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically

finds good cause for not allowing confrontation);

(5) a written statement by the fact finders as to the evidence relied on and the reasons for revoking parole or the reasons for other action taken by the board.

K. Hearsay evidence which the parole board deems reliable may be admitted at such parole revocation hearing. The board may consider evidence, including letters, affidavits and other material that may not be admissible in a criminal prosecution.

L. If the parole violation charged is established, the parole board may continue or revoke the parole, or enter any other order deemed appropriate.

M. At the final parole revocation hearing, a parolee cannot relitigate issues determined against him in other forums, as in the situation presented when revocation is based on conviction of a crime.

N. Parolees confined in institution outside of New Mexico, by reason of a new conviction subsequent to release on parole, will receive a final parole revocation hearing upon their return to the actual, physical custody of New Mexico corrections department.

O. Credit for time served while on parole will be given, unless (1) the parolee is a fugitive from justice; or (2) the parolee was convicted in another jurisdiction and was sentenced to confinement in a penal institution outside of New Mexico. However, the parole board may exercise discretion in determining whether to grant or disallow credit for those periods of time while on parole prior to revocation. Credit while the parolee is either a fugitive from justice or is serving a sentence in another jurisdiction will not ordinarily be allowed for such time periods, unless the parolee can demonstrate good cause why credit should be allowed for such periods of time. [Recompiled 12/31/01]

HISTORY OF 22.510.15 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the State Records Center: PB 71-1, Parole Hearing Board, Procedures Manual, filed 11/17/71.

PB 76-1, Rules, Regulations, Procedures and Parole Board Statutes, filed 8/2/76.

PB 80-1, Rules, Regulations, Procedures and Parole Board Statutes (February 1979 Revision), filed 10/17/80.

PB Rule 82-14 Parole Revocation Hearings, filed 12/2/82.

History of Repealed Material: [RESERVED]