



**State of Arkansas**  
**Bureau of**  
**Legislative Research**

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## **Memorandum**

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**TO:** Members, ALC – Executive Subcommittee

**FROM:** Jessica Sutton, Administrator, Rules and Regulations Section, Legal Services Division

**CC:** Marty Garrity, Director, Bureau of Legislative Research

**DATE:** September 11, 2015

**SUBJECT:** Analysis of Legal Authorization of Arkansas Parole Board to enact proposed emergency rule

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**LEGAL AUTHORIZATION:** The Parole Board shall serve as the revocation review board for any person subject to either parole or transfer from prison. Ark. Code Ann. § 16-93-206(a). Revocation proceedings for either parole or transfer shall follow all legal requirements applicable to parole and shall be subject to any additional policies, rules, and regulations set by the board. Ark. Code Ann. § 16-93-206(b).

A portion of these rules implement Act 1239 of 2015, which amended the law concerning parole revocation hearings, including amendments specifically relating to the timeframe for a preliminary hearing.

In evaluating the board's legal authority for the emergency rule, the following questions were submitted to and responded by the agency:

(1) On page 1, concerning section 3.1, the rules state that the "Board's designees for conducting preliminary and revocation hearings is the Parole Revocation Judge (PRJ). However, the Board shall retain the right to exercise any authority delegated to the PRJ." This seems to suggest that the Board could conduct the preliminary hearings. Arkansas Code Annotated § 16-93-705(b) provides that the preliminary hearing is conducted by the parole revocation judge. The parole revocation hearing is conducted by the board or its designee. There is a specific statutory distinction that is made here. Can you reconcile this for me? **RESPONSE:** The language in the rule specifically refers to the Board retaining any authority delegated to a hearing judge. The ability to conduct a preliminary hearing is a role dictated by statute and is not subject to the Board's discretion or amendment by rule.

(2) What is a “white warrant” referenced on page 1, section 3.2? **RESPONSE:** A warrantless parole hold authorized by Ark. Code Ann. § 16-93-705(a)(4).

(3) On page 5, it states that the a parolee must be allowed to have, among other things, “counsel of choice present or, in the case of indigent parolees who request assistance to adequately present their case, have counsel appointed; however, the Board may determine that the situation does not justify the expense of a lawyer.” Arkansas Code § 16-93-705 requires that the parolee shall have the right to be represented by counsel. What does “the Board may determine that the situation does not justify the expense of a lawyer” mean? Is this in reference to the Board’s expense of having counsel appointed, and what kinds of situations would not justify the expense of a lawyer? **RESPONSE:** The Board has never had funds appropriated for the purpose of appointing counsel for indigent offenders. When those situations arise, the offender is appointed counsel from the Board of Corrections Compliance Division.

The Board will work with the BOC Compliance Division to ensure that all offenders have counsel present if needed/requested. Often times, this issue presents itself in cases where there is alleged criminal activity and the offender’s counsel in the trial will represent them in the revocation proceeding.

(4) On page 5, one of the duties of the supervising officer is to “give the parolee notice of the violation, the violation report, and hearing 72 hours prior to the hearing date unless the timeframe has been waived by the offender.” What is the “hearing 72 hours prior to the hearing date?” Do you mean, “hearing notice 72 hours prior to the hearing date?” **RESPONSE:** Yes, that will be corrected.

(5) On page 5, what are “appropriate alternatives to incarceration”? **RESPONSE:** The phrase “appropriate alternatives” refers to alternatives to incarceration available in the offender’s community that are determined by the hearing judge to be appropriate to address the parole violation, based on the offender’s history and nature of the violation.

(6) At the bottom of page 5, the rules state that “a revocation hearing may be held in lieu of a preliminary hearing.” Are you referencing only those situations under § 16-93-705(e) in which a preliminary hearing is not required? **RESPONSE:** Yes, that is correct.

(7) On pages 5-6, are you saying that both the preliminary hearing and the revocation hearing have to be within 14 days of arrest? With respect to preliminary hearings, § 16-93-705 requires the hearing to be within 14 days after arrest, excluding a weekend, holiday, or delay caused by an act of nature. With respect to parole revocation hearings, § 16-93-705 requires this hearing to be within a reasonable period of time after the parolee’s arrest. In your rules, with respect to preliminary hearings, the rules state that the hearing is to be within 14 **calendar** days of arrest, but the rules do include the exclusion language for weekends, holidays or delays. Then, the rules state that the revocation hearing must begin within “14 calendar days” of the offender being arrested, and no exclusion language is added. This would suggest that a revocation hearing could actually take place before a preliminary hearing, and I don’t think that is what you’re trying to do here. Can you explain? **RESPONSE:** The exclusionary language is included in the mark-up. I have highlighted the language below:

Hold a preliminary revocation hearing ~~as described above~~ when required by law or Board policy. A revocation hearing may be held in lieu of a preliminary hearing ~~with the exception of Interstate Compact cases.~~ When held, the preliminary revocation hearing shall begin within 14 calendar days of arrest on

the Board's warrant, excluding weekends, holidays, and delays caused by acts of nature. A revocation hearing must begin within 14 calendar days of the offender being arrested on the Board's warrant;

Act 1239 is written in such a way to create the possibility of the revocation hearing taking place before the preliminary hearing. That same exclusion is not found in the Act (page 4, line 30).

The Board conducts the vast majority of revocation proceedings within 14 calendar days. In those cases, the preliminary and revocation hearing would be combined into a single proceeding. The offender is afforded advance notice of the hearing and violations, the right to hear and controvert evidence against them, the right to offer evidence in their own defense, and the right to counsel. This practice has been accepted by the Courts and all parties involved.

(8) On page 6, the rules state that the "offender shall be furnished a copy of the hearing report within 21 calendar days of the completion of the preliminary or revocation hearing." Arkansas Code § 16-93-705(b)(8) requires the parole revocation judge to furnish the board and parolee a summary of the hearing, including the substance of the evidence and testimony considered along with the ruling of determination "within twenty-one (21) days from the date of the preliminary hearing, excluding a weekend, holiday, or delay caused by an act of nature." The law does not state "calendar days" as referenced in your rules. **RESPONSE:** That omission will be corrected.

(9) Regarding the boot camp alternative on page 6, would there be any conflicts with the ADC's boot camp program and rules and regulations? The offenders would still have to meet the eligibility requirements for the boot camp program, right? And they would be under the same program rules and regulations for other offenders placed in the boot camp program? **RESPONSE:** Yes, you are correct on all points. This language was reviewed by the ADC and revised to require the certification of the ADC Classification Administrator who will ensure that the offender meets the eligibility criteria. ADC has no opposition to the language.