

Montana Code Annotated 2017

TITLE 46. CRIMINAL PROCEDURE

CHAPTER 23. PROBATION, PAROLE, AND CLEMENCY

Part 10. Supervision of Probationers and Parolees

Initial Hearing After Arrest

46-23-1024. Initial hearing after arrest. (1) After the arrest of the parolee, an initial hearing must be held unless:

- (a) the hearing is waived by the parolee;
- (b) the parolee has been charged in any court with a violation of the law; or
- (c) the probation and parole officer authorizes release or initiates an intervention hearing under subsection (4).

(2) The initial hearing is an onsite hearing but may be conducted via interactive videoconference and must be held to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, shall preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and within **5 7 business** days after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in the parolee's own behalf and introduce relevant information to the hearings officer.

(3) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to the hearings officer, the hearings officer shall determine whether there is probable cause and then determine whether to initiate an informal violation intervention hearing or to hold the parolee for the final decision of the board of pardons and parole as provided in **46-23-1025**.

(4) (a) In lieu of an initial hearing, a probation and parole officer who reasonably believes that a parolee has violated a condition of parole:

(i) shall consult the department's incentives and interventions grid to determine an appropriate response; and

(ii) may initiate an informal violation intervention hearing to gain the parolee's compliance with the conditions of parole without a formal revocation hearing.

(b) A hearings officer designated by the department in conjunction with the board shall conduct the intervention hearing. The hearing may be conducted by interactive videoconference.

(c) If the hearings officer determines by a preponderance of the evidence that a parolee has violated a condition of parole, the hearings officer shall consult the department's incentives and interventions grid and determine an appropriate response, including whether to:

- (i) order the parolee to serve or receive credit for serving up to 30 days of detention;
- (ii) recommend electronic monitoring or day reporting for up to a 90-day period;

(iii) recommend placement in a community corrections facility or program for up to a 90-day period, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program; or

(iv) direct the probation and parole officer to initiate a petition for revocation under **46-23-1025** if the violation is not a compliance violation or if it is a compliance violation and the appropriate responses under the department's incentives and interventions grid have been exhausted.

(5) If the hearings officer recommends a response under subsection (4)(c)(ii), the officer shall notify the parolee of the recommendation and of the parolee's right to instead have the matter referred for a revocation hearing under **46-23-1025**.

(6) The provisions of Title 46, chapter 9, regarding release on bail of a person charged with a crime are not applicable to a parolee ordered to be held in a county detention center or other facility under this section.

(7) All sanction and placement decisions must be documented in the offender's file.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(2); amd. Sec. 234, Ch. 546, L. 1995; amd. Sec. 6, Ch. 505, L. 1999; amd. Sec. 15, Ch. 392, L. 2017.