

Type of law:
CRIMINAL LAW

Parole & Probation



A 2023 Alberta Guide to the Law

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GENERAL

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Table of Contents

INTRODUCTION	1
PAROLE (CONDITIONAL RELEASE)	1
Introduction	1
1. Day Parole	2
2. Full Parole	2
Conditions of Release	3
Decision Making Process	3
Appealing a Parole Board Decision	4
Temporary Absences	5
Statutory Release	5
PROBATION	6
What is Probation?	6
Compulsory Conditions of Probation	6
Additional Conditions Can Include	7
Factors Involved in Determining Additional Conditions	7
Varying Conditions	7
Breach of probation – What Constitutes a Breach	7
Intermittent Sentences	8
Conditional and Absolute Discharges	8
WHO CAN I CALL FOR MORE HELP OR INFORMATION?	9

INTRODUCTION

People often use the terms **parole** and **probation** interchangeably, but they are entirely different.

Parole is a form of conditional release from a correctional institution. Following a period of imprisonment, an offender can be granted parole by the Parole Board of Canada or the Alberta Parole Board.



While under Parole, the offender then continues to serve the remainder of their sentence in the community under the supervision of a parole officer or parole supervisor.

Parole does not mean that the offender is entirely free, they must still abide by the conditions of their release and regularly check in with their parole officer or parole supervisor.

Probation is a type sentence imposed by a Judge. **Usually probation is used instead of a term of imprisonment.**

Probation allows an offender to live in the community under the supervision of the Court.

The probation order requires the offender to meet certain conditions that are mostly meant to rehabilitate them and stop them from re-offending.

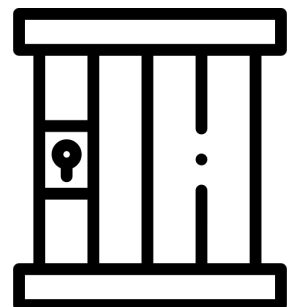
Below is a more detailed description of the Parole and Probation processes.



PAROLE (CONDITIONAL RELEASE)

Introduction

There are a few different types of releases for incarcerated individuals in Canada: day parole, full parole, temporary absences, statutory releases, and expiration of sentence. For information on temporary absences and statutory releases, see page 5 of this booklet.



Parole allows incarcerated individuals to serve part of their sentence in the community under the supervision of a parole officer or parole supervisor. While on a conditional release you must live by the conditions of the release. If the conditions are not met, the Parole Board of Canada (PBC) and the Alberta Parole Board have the authority to end the release and send you back to a penitentiary.

There are two different types of Parole:

1. Day Parole



Day parole allows inmates to be released into the community to participate in activities in preparation for full parole or statutory release. The inmates are under the supervision of a parole officer and must return to the penitentiary, halfway house or other PBC authorized location every night.

Eligibility:

- If you are serving a sentence of two years or more, you are eligible for day parole **6 months before you are eligible for full parole or after six months of incarceration**, whichever is **greater**.
- If you are serving a **life sentence**, you are **eligible for day parole 3 years before you are eligible for full parole**.

2. Full Parole

Full parole permits inmates to serve the remainder of the sentence in the community under the supervision of a parole officer. It is at the discretion of the PBC to grant your parole.



You usually would not have to return nightly to an institution but you must report regularly to a parole officer (or police, in some cases) and abide by certain conditions.

Eligibility:

Eligibility for full parole generally begins **after you have completed $\frac{1}{3}$ of the sentence or 7 years of the sentence**, whichever is less. However, there are various exceptions to this and the Court does have the ability to increase the eligibility threshold from completing $\frac{1}{3}$ of the sentence to $\frac{1}{2}$ of the sentence.

If you are serving a life sentence or indeterminate sentence for murder, or are found to be a Dangerous Offender by the Court, then the law sets Parole Eligibility for Full Parole as follows:

- 1st degree murder: 25 years must be served
- 2nd degree murder: 10-25 years must be served (Judge decides)

- o Life sentence imposed as the maximum penalty (offences other than murder): 7 years must be served
- o Dangerous Offenders: 7 years, with a review every 2 years thereafter
- o And other exceptions

Conditions of Release (Federal)

Conditions of release are the rules that you must follow while you are on parole or statutory release in the community. The conditions should take the goal of community protection into consideration.



The standard conditions listed in Section 161(1) of the *Corrections and Conditional Release Regulations* are:

- To travel directly to your residence and report to your parole supervisor immediately and thereafter as instructed
- To remain at all times in Canada within the boundaries set by your parole supervisor
- To obey the law and keep the peace
- To inform your parole supervisor immediately if you are arrested or being questioned by the police
- To carry your release certificate and the ID card given to you and to produce them upon request to any peace officer or parole supervisor
- To report to the police if you are instructed to by your parole supervisor
- To advise your parole supervisor of changes in your address, occupation, domestic or financial situation, or any other change that may reasonably be expected to affect your ability to comply with the conditions of your parole
- To not own, possess or control weapons (except with the authorization of your parole supervisor)
- If you are on DAY PAROLE: to return to the penitentiary from which you are released at the date/time that was provided to you in the release certificate.

A Parole officer will ensure that you follow these conditions. If they are not being followed, the Parole officer believes you present a risk of breaching these conditions, or believes you pose a risk to the public, you may be returned to prison.

Decision Making Process (Federal)

Decisions are usually made in the institution where you are incarcerated, either through an in-office file review (without a hearing) or a face-to-face hearing. Face-to-face hearings typically occur before a panel of 2-3 board members.

As an Indigenous person, you can also request elder assisted hearings or community assisted hearings. Elder assisted hearings will include an Indigenous Elder and are held in a circle format. Community-assisted hearings also have an Indigenous Elder present, but are usually held in the community where the offender plans to live.



You have a right to have an assistant (friend, family, etc...) or lawyer help you at the hearing. Anyone over 18 can apply to attend the hearing, this should be done at least 30 days before the hearing as a security check will be required by law before anyone is allowed into the institution to watch the hearing, or generally to visit.

A record of proceedings is usually kept for hearings. All decisions and the reasons for the decision are kept in a registry, and anyone who can show an interest in the case can apply in writing to have access to the decision.

Before the hearing you must get information from the Parole Board about how they will be making their decision. After the hearing you must get the reasons for the decision and an opportunity to appeal the decision.

In determining whether someone should be conditionally released the Parole Board takes into account whether:

1. The offender will present an undue risk to society before the end of the sentence; and
2. The release of the offender will contribute to the protection of society by enabling the offender's return to the community as a law-abiding citizen

The Parole Board considers all relevant and available information. Factors considered in the decision-making process include:

- The offender's criminal and general history, while taking into consideration any systemic factors that may have played a role in the offender's position in the criminal justice system

- The type of offence committed and the potential reasons why the offence was committed. The Parole Board may also consider the offender’s comprehension of the offence and any preceding offences
- Any advancement made by the offender through the use of community programs, behavior within the institution, or while on conditional release
- Any victim statements
- The offender’s release plan and community supports

Appealing a Parole Board Decision (Federal)

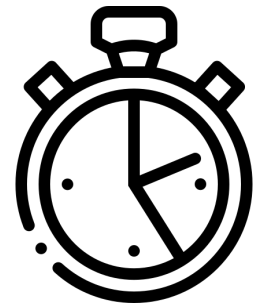
You, or someone on your behalf, may appeal a Parole Board decision within **two months** of the original decision by sending a written notice to the Board. The written notice should state the grounds for the appeal and should include any supporting documents that you may have.

The appeal is conducted through a file review. The Appeal Division will only overturn the Parole Board’s original decision where it finds that the decision-making process was unfair; it did not follow or misinterpreted the law; it breached or failed to apply a relevant policy; the decision was based on false or incomplete information; or that it acted without or beyond its jurisdiction or failed to properly exercise its jurisdiction.

Temporary Absences

There are three types of temporary absences: Escorted, unescorted, and work releases.

Temporary absences allow incarcerated offenders the opportunity to access the community for a number of different reasons, including medical, administrative, family contact, parental contact, community service, and personal reasons among others.



The Parole Board and the Correctional Service of Canada will consider issues including whether the offender poses an undue risk to society during the absence and whether the absence would fit within the offender’s correctional plan.

Statutory Release (Federal)

If you are not granted parole but have served $\frac{2}{3}$ of your determinate sentence, and a detention hearing has not determined that you must be held, you would serve the last third of your sentence in the community as if you were on full parole.

You would be under supervision and under conditions that are similar to being on full parole.



However, statutory release is not the same as parole. It is a release by law and the Parole Board is not usually involved in this process. Statutory release aims to provide a foundation and support to help improve individuals' chance of successful reintegration into the community after their sentence is completed.

Offenders serving life sentences or indeterminate sentences are not eligible.

Correctional Services Canada may suggest that an offender be denied statutory release if they are serving a sentence for certain types of offences and they believe the offender is expected to commit an offence causing death or serious harm, a sexual offence involving a child, or a serious drug offence before the expiration of their sentence.

PROBATION

What is Probation?

Probation is a correctional method under which offenders are supervised in the community. Its primary purpose is to influence the future behaviour of the offender and is not considered punitive in nature.

A probation order requires that for a specific period of time you must meet certain conditions. The conditions might include counselling and drug treatment for substance abuse, community service hours, a requirement that you check in with a probation officer regularly, and many others.

If you do not meet the conditions of the probation order, you may be charged with another offence often called "**Breach of Probation**" and you will have to go back to Court again. If you receive a period of probation, you should go to the Criminal Clerk's counter and tell them who you are and that you received a period of probation, and do whatever the Clerk directs you to do.



The probation period, which cannot be for more than three years, begins to run from the date on which the order is made or following a further term of imprisonment of no more than two years.

If the conditions or restrictions are breached or another offence is committed, the original sentence will be enforced along with any new sentence necessary in the circumstances. Also, in some circumstances, a person may be

re-sentenced for the original offence depending on the type of sentence they received. A breach of probation can result in a maximum of four years in prison.

Compulsory Conditions of Probation

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Court or your Probation Officer in advance of any change of your name or address, and promptly notify your Probation Officer of any change of your employment or occupation

Additional Conditions Can Include

- Abstain from drugs/alcohol and be subject to drug testing
- Drug/alcohol treatment
- Abstain from owning, possessing, or carrying a weapon
- Not communicate with certain parties;
- Not visit/travel to certain locations.
- Report to probation officer
- Psychiatric/psychological treatment
- Maintain employment
- Anger management
- Perform community service



Factors Involved in Determining Additional Conditions

The Judge will consider information about the offender, the nature of the offence and the circumstances surrounding its commission when determining what conditions to impose on a probation order.

Varying Conditions

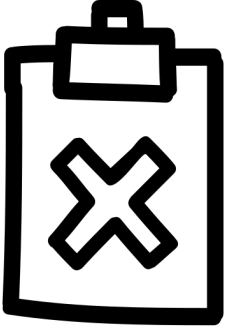
Convicted parties can apply to vary their probation conditions, as can probation officers and the Crown.

If you wish to vary probation conditions, you will likely need to fill out a probation variation application form. Typically, this form is filed at the courthouse where you were initially sentenced. Adjusting probation



conditions can be complicated, so you may wish to contact a lawyer for further information and advice. There are resources at the back of this booklet with various legal resources that may be able to assist.

Breach of probation – What Constitutes a Breach



If you intentionally breach any of the conditions, your probation may be revoked, and you could be sentenced for the original crime committed, depending on the type of sentence that was first imposed. Additionally, you can be charged with the separate offence of failure to comply with probation order. Probation officers do have discretion for what they can “breach” you for. There is an onus on the Crown to prove that you not only intended to do the act that breached the probation order but also that you intended to breach the order. It should be noted that intent includes recklessness.

Failure to comply with a probation order can result in up to 4 years imprisonment.

Intermittent Sentences

If you are sentenced to **90 days or less imprisonment**, you may be eligible for an **intermittent sentence**. In other words, you may serve your sentence in prison on designated days, such as weekends, while remaining on probation for the remainder of the time.

For example, those sentenced to an intermittent sentence in Edmonton will often report to the Fort Saskatchewan Correctional Centre in a clean and sober state at certain times. When you are not imprisoned you must still obey the conditions of your probation order. Intermittent sentences are useful because they allow offenders to work during the week.

Conditional and Absolute Discharges

Sometimes in sentencing a Judge will sentence the person to a discharge. There are two types of discharges: absolute, and conditional.

If you receive an Absolute Discharge, the criminal record for the offence will be removed after 1 year.

A **Conditional Discharge** is like a probation order. It is based on certain conditions which must be met. If you meet these conditions for the time period set by the Judge, your discharge will become absolute. If you do not meet the conditions, you may have to go back to Court for sentencing. If you are not re-sentenced, the criminal record is removed after 3 years.

WHO CAN I CALL FOR MORE HELP OR INFORMATION?

Correctional Service of Canada	Web: www.csc-scc.gc.ca Ph: 613-992-5891
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Correctional Service of Canada delivers programs for inmates of penitentiaries, prepares cases, and makes recommendations for inmates when they go before the Parole Board for parole consideration.

Parole Board of Canada Canada Place 3720, 9700 Jasper Ave NW Edmonton, AB T5J 4C3	Web: https://www.canada.ca/en/parole-board.html Ph: 780-495-3404
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The Parole Board of Canada makes decisions on inmates' parole and imposes conditions for offenders' subject to long term supervision orders. Responsible for the pardons program.

Office of the Correctional Investigator	Web: www.oci-bec.gc.ca Ph: 1-877-885-8848
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The Office of the Correctional Investigator investigates complaints against Correctional Service of Canada.

Edmonton Central Intake Community Corrections Office 10242 105 St NW #800, Edmonton, AB T5J 3L5 8am-4:30pm Monday - Friday	Ph: 780-427-4712 Fax: 780-421-2611
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Offenders who are placed on probation can contact the Central Intake Community Corrections Office to speak to their probation officer or a duty officer about their conditions.

Student Legal Services – Criminal Law Project #100, 9924 106 Street NW Edmonton, AB T5K 1C7	Ph: 780-425-3356 Admin: 780-492-2226
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The Criminal Law Project looks to assist adults who have been charged with an offence but are unable to afford a lawyer or qualify for Legal Aid Alberta. A law student will volunteer their time to provide free legal assistance where they can act as an agent for you while acting under the supervision of advising lawyers.

Provincial Court Clerks – Criminal	Edmonton: 780-427-7868
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The Provincial Court Criminal Clerks are able to assist in providing information for Provincial Court Criminal matters regarding judicial procedures, Court appearances, trial dates,

adjournments, outstanding warrants, summonses, subpoenas, witness fees, and payment of fines. It is not their role to provide you with legal advice.

Legal Aid Society of Alberta Revillon Building Suite 600 – 10320 102 Avenue Edmonton, AB T5J 4A1	Toll Free Ph: 1-866-845-3425
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The Legal Aid Society of Alberta functions to assist low-income Albertans with certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet.