

Commonwealth of Pennsylvania  <b>Pennsylvania Parole Board</b>	Volume III Chapter 3  <b>Procedure 03 03 14</b>	Date Revised: 04/30/2021
Chapter Title <b>CASE RECORDS, DECISIONAL PROCESSING</b>		Date of Issue: 04/30/2021
Subject <b>HEARING PROCESS - RESCISSION OF AUTOMATIC REPAROLE AND DIVERSION FAILURE FOR TECHNICAL PAROLE VIOLATORS</b>		Effective Date: 04/30/2021  <b>PUBLIC</b>

I. AUTHORITY

This procedure is issued by the Chairperson, pursuant to Pa. C.S. § 6112.

II. PURPOSE

The purpose of this procedure is to outline the Parole Board’s process for conducting and processing rescission of automatic reparole hearings and diversion failures.

III. APPLICABILITY

This procedure applies to all Parole Board (“Board”) staff.

IV. DEFINITIONS

Automatic Reparole – The release of an inmate on parole who was recommitted as a technical parole violator on parole without further action of the Board in accordance with the statute. This does not include discretionary parole or reparole decisions made by the Board.

Community Corrections Center or “CCC” – A residential program that is supervised and operated by the Department of Corrections.

Community Corrections Facility or “CCF” – A residential facility operated by a private contractor that houses offenders pursuant to a contract with the Department of Corrections and operates in accordance with statutory parameters.

Contracted County Jail or “CCJ” – A county correctional facility which has contracted with the department to provide correctional or other services.

Disciplinary Hearing – A due process proceeding held in a state correctional facility, a federal correctional facility or other secure facility to determine if the inmate committed a disciplinary infraction or misconduct.

Diversion – A decision by the Board to place a parolee in a CCC, CCF or other secure facility in lieu of recommitment as a technical parole violator to allow parolees the opportunity to complete

programming relevant to their violation(s) or alleged violation(s). Diversion failure occurs when the parolee fails to complete prescribed programming in the facility for any reason where the parolee is at least somewhat at fault. Diversion ineligibility occurs when a parolee who may otherwise have been suitable for diversion has pending criminal charges that prevent placement in the requisite facility. Diversion failure or ineligibility may result in reinstatement of the parole violation(s) originally charged.

Good Cause – Adequate or substantial ground or reason to take a certain action, or fail to take an action prescribed by law.

Good Standing – A parolee is in good standing, with the Board, if after being paroled or recommitted to a CCC or CCF he/she: (1) is not charged with a new technical parole violation, (2) is not charged with a new criminal offense, (3) does not abscond from the CCC or CCF, (4) does not violate a CCC or CCF rule involving: sexual misconduct, assaultive behavior, possession or control of a weapon or use or possession of a controlled substance, (5) is in compliance with general CCC or CCF rules and recommended programming and (6) does not present an identifiable threat to public safety.

Identifiable Threat to Public Safety – A parolee presents an identifiable threat to public safety if: (1) credible information indicates that the parolee intends to engage in a criminal activity or violate conditions of parole in the future and has the means to do either, (2) the parolee is a danger to him/herself or others due to psychological, psychiatric, or physical impairment, or (3) the parolee is demonstrating unmanageable behavior, which makes him/her not amenable to diversion.

State Correctional Institution or “SCI” – Any of the following owned and operated by the Commonwealth: (1) a correctional facility, (2) a prison or (3) a jail.

Other definitions are located in Procedure 03.03.01.

## V. POLICY

It shall be the policy of the Board to conduct due process hearings in accordance with established statutes, regulations and case law. All parolees/inmates with a vested liberty interest shall be afforded due process at hearings conducted by the Board unless said rights are waived. Inmates who have a statutory right to automatic reparole following recommitment as a technical parole violator shall be afforded a rescission of automatic reparole hearing before that vested liberty interest may be rescinded, unless the inmate has already been afforded due process at a disciplinary hearing in the correctional facility.

## VI. PROCEDURE

### A. Right to Automatic Reparole/Forfeiture of Right to Automatic Reparole

1. Technical parole violators recommitted to a CCC, CCF or other secure facility operated or contracted by the Department of Corrections shall be automatically reparaoled no later than six months from the date of arrest leading to the recommitment unless the offender is not in “good standing” with the Board.

2. Technical parole violators recommitted to an SCI or CCJ shall be automatically reparaoled as follows subject to the limitations in section A.3:
  - a. No later than 6 months from the date of arrest leading to the recommitment for the first recommitment to an SCI/CCJ,
  - b. No later than 9 months from the date of arrest leading to the recommitment for the second recommitment to an SCI/CCJ, and
  - c. No later than 12 months from the date of arrest leading to the recommitment for the third or subsequent recommitment to an SCI/CCJ.
3. Technical parole violators recommitted to an SCI/CCJ shall not have a right to automatic reparole if they:
  - a. Committed a disciplinary infraction involving assaultive behavior, sexual assault, a weapon or controlled substances,
  - b. Spent more than 90 days in segregated housing due to one or more disciplinary infractions; or,
  - c. Refused programming or a work assignment.
4. A technical parole violator's right to be released on reparole may be delayed upon initiation of proceedings to rescind automatic reparole until the matter is adjudicated.

B. Diversion Placement/Failure or Ineligibility

1. Parolees may be in a CCC, CCF or other secure facility for technical parole violation(s) pending a violation hearing or a final decision on the technical parole violations. This placement will be based on an administrative board action stating, "violation hearing/decision held in abeyance pending completion of recommended programming."
2. If a parolee fails diversion or is ineligible due to pending criminal charges, the parolee may be subject to recommitment via processing the waiver/admission to the technical parole violation(s) executed before placement or scheduling a violation hearing.
3. Requests for the Board to act on a failed or ineligible diversion where the parolee has already waived the violation hearing and admitted to the technical parole violation(s) shall be submitted to the [REDACTED] resource account and all relevant materials related to the diversion failure or ineligibility must be uploaded to OnBase. Once the OnBase workflow is built for this hearing type, the pertinent workflow shall be used for this process.
4. Matters submitted to the [REDACTED] resource account shall be processed by the Board's Hearing Division.

5. If the parolee was diverted based on a preliminary hearing or waiver of the preliminary hearing only (i.e. no violation hearing held or waived), then institutional staff and/or parole supervision staff may request that the Board act on the diversion failure or ineligibility requesting a violation hearing through the Board's Hearing Interview Planner ("HIP") system or its equivalent system. The parole supervision staff/institutional staff presenting the violation hearing may introduce any relevant materials regarding the diversion failure/ineligibility at the violation hearing as dispositional information or as evidence in a combined violation and rescission of automatic reparole hearing. No request to the [REDACTED] resource account is needed in this situation.

#### C. Initiating Rescission of Automatic Reparole

1. Automatic reparole cannot be revoked unless the offender has been recommitted as a technical parole violator or is in the process of being recommitted as a technical parole violator. A rescission of automatic reparole hearing may be combined with a violation hearing if circumstances support that action.
2. If the offender has been recommitted as a technical parole violator AND has already had a disciplinary hearing establishing the disciplinary infractions at issue, then institutional staff and/or parole supervision staff may request that the Board rescind automatic reparole by submitting a request to the [REDACTED] resource account and uploading all relevant materials related to the disciplinary infraction(s) to OnBase. Once the OnBase workflow is built for this hearing type, the pertinent workflow shall be used for this process.
3. If the offender has been recommitted as a technical parole violator BUT is not going to receive a disciplinary hearing, then institutional staff and/or parole supervision staff may request that the Board rescind automatic reparole by submitting a request for a rescission of automatic reparole hearing in HIP. No request to the [REDACTED] resource account is needed in this situation.

#### D. Scheduling the Rescission of Automatic Reparole Hearing

1. All requests to schedule a rescission of automatic reparole hearing shall be submitted through HIP or its equivalent system.
2. Upon receipt of the request in HIP, the Hearing Division will schedule the rescission of automatic reparole hearing.
3. Notice of the scheduled date and time for the rescission of automatic reparole hearing shall be communicated back to the institutional staff and/or parole supervision staff via the HIP system.
4. Institutional staff and/or parole supervision staff shall be responsible for serving the offender with notice and any other required paperwork.
5. Rescission of automatic reparole hearings are not required to rescind automatic reparole in any of the following circumstances:

- a. Inmate received a disciplinary hearing in the SCI, CCJ, CCC, CCF or other correctional facility;
  - b. Inmate waives his/her right to automatic reparole in writing or,
  - c. Inmate spent more than 90 days in segregated housing as evidenced by records from the correctional institution.
- E. Conducting the Rescission of Automatic Reparole Hearing
1. The Board bears the burden of proving that automatic reparole should be rescinded.
  2. The burden of proof for this proceeding shall be good cause with evidentiary disputes determined by a preponderance of the evidence.
  3. The hearing shall be presided over by a hearing examiner or other employee designated by the Board.
  4. The hearing examiner shall conduct and conclude the rescission of automatic reparole hearing in accordance with established law, regulation and/or policy.
  5. The hearing shall be recorded.
  6. There is no right to a panel rescission of automatic reparole hearing.
  7. The hearing may be conducted with all parties live, by video conference or a mixture thereof as long as all parties can see and hear each other simultaneously.
  8. The hearing examiner (or designee) shall be responsible for uploading the hearing packet into OnBase.
  9. Hearing packet – The following information shall be included in the hearing packet provided to the hearing examiner and to the inmate or his/her counsel:
    - a. Notice of Charges and Hearings (PB 257N),
    - b. Offender Rights at Board Hearings (PB 257OR),
    - c. Waiver/Request for Counsel (PB 72),
    - d. Supervision History (PB 257H) if applicable,
    - e. Warrant to Commit and Detain (PB 141) if applicable,
    - f. Board action recommitting the offender as a technical parole violator (PB 15),
    - g. Any relevant Release Orders (PB 10) if applicable,

- h. Any relevant Conditions of Parole/Reparole (PB 11) if applicable,
- i. Any prior continuances (PB 29) if applicable and
- j. Any relevant evidence.

#### 10. Rescission of Automatic Reparole Hearing Report/Decision

- a. Hearing examiners shall complete the Rescission of Automatic Reparole Hearing Report (PB 345) or the equivalent report created in the OnBase workflow) in accordance with prescribed timeframes set by the Parole Board and/or the Hearing Division based on a completed hearing or waiver packet;
- b. Hearing examiners shall close the matter in HIP upon completion of the PB 345 (or the equivalent OnBase report);
- c. Completed Rescission of Automatic Reparole Hearing Reports (PB 345) or the equivalent OnBase report shall be forwarded for an additional vote(s) in accordance with prescribed processes/directives from the Parole Board, the Hearing Division and/or the Office of Board Secretary and
- d. The Rescission of Automatic Reparole Hearing Report (PB 345) or the equivalent OnBase report is not final until two decision makers agree at which point the Office of Board Secretary shall record the decision.

#### 11. Hearing Outcomes

- a. If the Board does NOT find good cause to rescind automatic reparole, then the inmate shall be released on his/her automatic reparole date or as soon as possible if that date has already passed.
- b. If the Board finds good cause to rescind automatic reparole, then the decision makers shall specify when the inmate will be reviewed for reparole. The decision makers shall specify any programs/evaluations that shall be completed prior to the next parole interview as needed.
- c. Board decisions finding good cause to rescind automatic reparole shall be subject to the Board's administrative appeal process.

#### F. Waiver/Admission for Rescission of Automatic Reparole

- 1. An inmate may waive their right to a rescission of automatic reparole hearing and admit that there is good cause to rescind automatic reparole at any time via the Waiver of Rescission Hearing for Automatic Reparole and Counsel/Admission Form (PB 399) or an equivalent writing.
- 2. Inmates shall have ten (10) calendar days from the date the inmate signed the waiver/admission to withdraw the submission.

3. Waiver packet – The following information shall be included in the waiver packet for Rescission of Automatic Reparole Hearings:
  - a. Waiver/Admission for Rescission of Automatic Reparole Hearing (PB 399),
  - b. Notice of Charges and Hearings (PB 257N),
  - c. Offender Rights at Board Hearings (PB 257OR),
  - d. Supervision History (PB 257H) if applicable,
  - e. Warrant to Commit and Detain (PB 141) if applicable,
  - f. Board action recommitting the offender as a technical parole violator (PB 15),
  - g. Any relevant Release Orders (PB 10) if applicable,
  - h. Any relevant Conditions of Parole/Reparole (PB 11) if applicable and
  - i. Any relevant evidence.
4. Waiver packets shall be submitted as follows:
  - a. Prior to the creation of the OnBase workflow for this hearing type, the waiver and relevant materials shall be submitted to the [REDACTED] resource account;
  - b. After the OnBase workflow for this hearing type is created, the waiver and relevant materials shall be submitted through the relevant workflow.

#### VII. SUSPENSION DURING AN EMERGENCY

This procedure may be suspended during an emergency at the sole discretion of the Chairman.

#### VIII. RIGHTS UNDER THIS PROCEDURE

This procedure creates no rights under law.

#### IX. RELEASE OF INFORMATION AND DISTRIBUTION PROCEDURES

- A. This procedure does not contain information that impacts the security of Board or parolees and may therefore be released to the public.
- B. This procedure is to be distributed to all Board staff.

#### X. CROSS REFERENCES

- A. Statutes

1. Federal

United States Constitution  
411 U.S. 778, 93S.Ct.1756. 36 L. Ed. 2d 656 (1973)  
408 U.S. 471, 92S.Ct.2593, 33 L. Ed.2d 484 (1972)

2. State

- a. Pennsylvania State Constitution
- b. 61 Pa.C.S. § 6112
- c. 61 Pa.C.S. §§ 6138(c),(d),(e)

B. Board Policies

Board Meeting Minutes September 18, 2012  
Board Meeting Minutes March 20, 2013  
3.03.04  
3.03.07  
4.01.12  
4.03.10

C. American Correctional Association Standards

4-APPFS-2B-03

D. Management Directives - None

E. Report of the Reentry Policy Council - None