

<p><b>Commonwealth of Pennsylvania</b></p>  <p><b>Pennsylvania Board of Probation and Parole</b></p>	<p><b>Volume III CHAPTER 3</b></p> <p><b>Procedure 3.03.04</b></p>	<p><b>Replaces No. 10-4.1 Through 10-4.10; 3.03.04, 9/2/10; 12/28/12; 06/19/14 Bulletins: 3.03.04-01, 3/16/12, 10/26/16</b></p>
<p><b>Chapter Title CASE RECORDS, DECISIONAL PROCESSING</b></p>		<p><b>Date of Issue 6/05/14</b></p>
<p><b>Subject HEARING PROCESS VIOLATION HEARING</b></p>		<p><b>Effective Date 11/01/16 PUBLIC</b></p>

**I. AUTHORITY**

The chairman of the board is granted the authority to “[d]irect the operations, management and administration of the board” and to “[p]erform all the duties and functions of chairperson, including organizing, staffing, controlling, directing and administering the work of the staff.” 61 Pa.C.S. § 6112 (a)(1) & (a)(4).

**II. PURPOSE**

The violation hearing is scheduled and held for the purpose of determining whether an offender has committed one or more technical parole violations by failing to comply with the written conditions of parole.

The level of proof necessary to sustain a technical violation at a violation hearing is a preponderance of the evidence. Operationally, the parole supervision staff must show that it is more likely than not that the alleged violation(s) occurred.

**III. APPLICABILITY**

This procedure applies to all board staff.

**IV. DEFINITIONS**

All definitions are located in Procedure 03.03.01.

**V. POLICY**

It shall be the policy of the board to hold and conduct due process hearings in accordance with established regulations and case law.

**VI. PROCEDURE**

**A. Violation Hearing**

1. Scheduling – A violation hearing shall be scheduled after one of the following has occurred:

a. Following the parole preliminary hearing

The violation hearing date shall be entered into the hearing interview planner (HIP) application by the hearing coordinator within three (3) business days of receiving the Preliminary Hearing Report (PBPP-343). The hearing shall be scheduled to be held within forty-five (45) calendar days of receipt of the Preliminary Hearing Report (PBPP-343) when possible, but not later than 120 days.

b. Verification of a conviction that is not otherwise subject to recommitment as a CPV because the conviction is not a court of record or an offense not subject to imprisonment (related to Condition 4).

1) A signed Waiver/Request for Hearing/Counsel (PBPP-72) should be obtained when possible to indicate whether an offender is willing to waive the panel hearing. If no PBPP 72 is signed waiving the hearing then a panel hearing must be scheduled.

2) Parole supervision staff shall enter a hearing request in HIP within ten (10) business days of receiving the verification of a conviction related to condition #4. The hearing shall be scheduled to be held within 120 days of the verification of conviction.

c. Parolee has been returned to Pennsylvania from another jurisdiction in which he/she was supervised or to which he/she was apprehended. In either instance, a violation hearing will be scheduled if a first-level probable cause hearing was held in the receiving state or he/she signed a waiver admitting the violation(s) before the transport back to Pennsylvania custody. If the receiving state did not conduct a first-level hearing or execute a waiver, then the rules for scheduling and conducting a preliminary hearing will apply. For additional information, reference Procedure 3.03.02 Preliminary Probable Cause Hearing. The hearing shall be scheduled to be held within 120 days of the return to Pennsylvania.

1) District Office Cases (Apprehended absconders)

Parole supervision staff shall attempt to obtain a signed Waiver/Request for Hearing/Counsel (PBPP-72) that indicates whether an offender is waiving or requesting a panel hearing is received and that a hearing request has been entered into HIP within three (3) business days of the parolee's return to Pennsylvania.

2) Central Office Cases (Interstate Compact cases)

Interstate parole staff shall attempt to obtain a signed Waiver/Request for Hearing/Counsel (PBPP-72) that indicates whether an offender is waiving or requesting a panel hearing is received and that a hearing request has been entered into HIP within three (3) business days of the parolee's return to Pennsylvania.

## 2. Parolee Decision: Panel or Non-Panel Hearing

- a. The parolee has a right to have his/her violation hearing held before a panel of two decision-makers that consists of either:
  - 1) Two board members, or
  - 2) One board member and a hearing examiner.
- b. The parolee may waive his/her right to a panel hearing and request that the proceeding be held before a hearing examiner only.
- c. The parolee's decision is secured in one of the following ways:
  - 1) When probable cause is found at a parole preliminary hearing and the hearing examiner immediately issues a Hearing Examiner Finding (PBPP-340A), the hearing examiner will request that the parolee sign a Waiver/Request for Hearing/Counsel (PBPP-72) either requesting or waiving a panel hearing. The hearing examiner will then forward the Preliminary Hearing Report (PBPP-343) packet, including the signed PBPP-72, to the assigned hearing coordinator for scheduling.
  - 2) When there is a delay in the issuance of the Hearing Examiner Findings (PBPP-340A), before the conclusion of the parole preliminary hearing, the hearing examiner will request that the parolee sign a Waiver/Request for Hearing/Counsel (PBPP-72) either requesting or waiving a panel hearing.
  - 3) When the parolee is undecided or has refused to sign the PBPP-72, parole supervision staff shall schedule a panel hearing.

## B. Review the Notice of Charges and Hearing (PBPP-257N)

1. Parole supervision staff shall review the PBPP-257N and update to ensure that:
  - a. Any violations that were withdrawn at the preliminary hearing or dismissed because of lack of probable causes at the preliminary hearing are removed from the PBPP-257N. After a preliminary hearing has been held and probable cause established, parole supervision staff cannot withdraw any of the technical parole violations prior to the violation hearing until approval is received from the deputy executive director of field probation and parole supervision. To receive authorization for the withdraw of technical parole violations, parole supervision staff shall prepare and submit a special field report addressed to the deputy executive director through the chain-of-command.
  - b. The date, time and location of the scheduled violation hearing are reflected on the PBPP-257N.

- c. The technical violations charged including the precise condition(s) alleged to have been violated contains the full and fair disclosure of the evidence concerning each violation, including any parolee statements.
  - d. When the violation hearing involves an alleged violation of condition #4, the PBPP-257N must include:
    - 1) The date of the court hearing, including the justice or judge's name and jurisdiction as shown on the sentencing order.
    - 2) The specific charge(s) of which the parolee is found guilty or pled nolo contendere.
    - 3) The sentence or penalties imposed.
  - e. The document reflects any changes made in the date and time of the violation hearing pursuant to Procedure 3.03.06 Continuances.
2. Notification to the Offender of Hearing Rights

The parolee's rights are listed on the Offender Rights at Board Hearings (PBPP-257OR). The parolee should also be verbally advised of these rights by the staff member serving the PBPP-257N. The parolee must also be advised that there is no penalty for requesting counsel.

- a. The board has scheduled a violation hearing to determine whether the offender should be recommitted as a technical parole violator because of violation(s) charged. The specific conditions governing parole that the offender is alleged to have violated are listed on the Notice of Charges and Hearing (PBPP-257N);
- b. The PBPP-257N serves as notice of the exact date, time and location of the proceeding;
- c. Of the offender's right to be heard by a panel;
- d. That the purpose of the hearing is to determine if a preponderance of the evidence exists to believe that the offender committed the parole violation(s) alleged;
- e. That evidence related to the charges will be disclosed;
- f. Of the offender's right to speak, to have voluntary witnesses appear on their behalf, cross examine adverse witnesses and to present affidavits and other evidence at the violation hearing;
- g. Of the right to retain counsel and if unable to afford counsel, the right to representation by free counsel and the name and address of the public defender of the county of confinement;

- h. Of the right to request a hearing continuance for good cause. The board will send notice of its determination either to the offender, or if represented at the hearing, to their counsel.

### 3. Distribution of PBPP-257N

Parole supervision staff shall insert the date, time and location of the violation hearing on the Notice of Charges and Hearing (PBPP-257N). At least seventy-two (72) hours prior to the hearing date, the PBPP-257N shall be served to the offender and he/she shall be requested to sign and date two (2) original copies. It shall be explained to the offender that his/her signature is only an acknowledgement of service and not an admission of guilt. If the offender refuses to sign the PBPP-257N, parole supervision staff will note the refusal on the Notice of Charges and Hearing (PBPP-257N) and make all parties aware of this refusal at the violation hearing. When a hearing is scheduled for a Monday, effort should be made to serve the notice before the preceding Friday.

The Notice of Charges and Hearing (PBPP-257N) shall be distributed as follows:

- a. An original to the offender (when he/she signs);
- b. A copy to offender's counsel or to the public defender of the county of confinement (at the time of the hearing);
- c. An original is maintained in the field offender case file (FOCF).

## C. Preparing for the Non-Panel Violation Hearing

### 1. Scheduling

The hearing coordinator who receives the Preliminary/Detention Hearing Report (PBPP-343) will schedule the violation hearing and notify all parties through the hearing interview planner (HIP) application. The hearing coordinator shall enter the date, time and location set for the hearing in HIP.

Where practicable, the violation hearing should be scheduled before a hearing examiner other than the one who heard testimony at the preliminary hearing.

#### a. Videoconference Testimony

When possible, parole supervision staff shall obtain permission from the hearing examiner three days prior to the hearing date and advise the hearing coordinator of the decision. Videoconference testimony shall be allowed by the hearing examiner when he/she finds there is good cause.

#### b. Hearing Packet

Parole supervision staff must provide a hearing packet to the hearing examiner and to the offender or to their counsel. The following material is contained in a hearing packet:

- 1) All Technical Arrest Reports (PBPP-257T) and, if applicable, the ICAOS "Offender Violation Report."
- 2) Criminal Arrest Reports (PBPP-257C) and criminal complaints; if applicable.
- 3) Supervision History (PBPP-257H) covering the entire period of supervision.
- 4) Notice of Charges and Hearing (PBPP-257N).
- 5) A copy of the Waiver/Request for Hearing/Counsel (PBPP-72).
- 6) All applicable Orders to Release on Parole/Reparole (PBPP-10) and Conditions Governing Parole/Reparole (PBPP-11) and when applicable:
- 7) Copies of all related board warrants.
- 8) Any prior Requests for Continuation of Hearing (PBPP-29).
- 9) All subpoenas for state witnesses.
- 10) The most current confidential Integrated Case Summary Application report (ICSA) or if applicable, Institutional Parole Summary (PBPP-245A). NOTE: Neither of these reports is provided to the offender or to their counsel.

c. Evidence Preparation

Parole supervision staff (or stand-in institutional parole staff) must be prepared to provide direct testimony, direct the state witness(s) testimony, present copies of all evidence such as written documents and/or photographs to substantiate the alleged violation(s), including prior parolee statements and written statements from witness(es).

If statements of admission were made at the preliminary / probable cause hearing, the parole supervision staff who was present at the PBPP preliminary hearing must present those admissions and/or statements into evidence at the violation hearing. No witnesses other than these staff members need to be requested or subpoenaed to appear at the violation hearing.

2. Conducting the Non-Panel Violation Hearing

a. Hearing Examiner's Responsibilities

- 1) It is the responsibility of the hearing examiner to be a neutral and detached or fair and impartial hearing body. This means that the hearing examiner cannot coach parole supervision staff during the evidentiary phase, nor can he/she elicit evidence beyond that which parole supervision staff or defense present. The hearing examiner can, however, ask questions for clarification.
- 2) The hearing examiner must conduct the hearing in a clear and concise manner.

- 3) The hearing examiner is responsible for ensuring that the violation hearing is audio recorded in accordance with board procedures.
- 4) Where practicable, the violation hearing will be conducted by a hearing examiner other than the one who heard testimony at the preliminary hearing.
- 5) The hearing examiner shall enter the decision in the HIP application and uploads the audio recording of the hearing into the hearing audio files located on the PBPP intranet under "Special Applications." The recordings are maintained by the hearing division.

b. Hearing Outline

The following is a general outline of the hearing. The hearing examiner may vary the procedure somewhat, but parole supervision staff can expect that all elements noted below will occur during the hearing.

- 1) Introduction - the hearing examiner will note the following on the record:
  - a) The parolee's name and parole number.
  - b) The names of everyone present.
  - c) The date, location and type of hearing.
- 2) The hearing examiner will advise the parolee of the following:
  - a) The right to a panel hearing.
  - b) The right to counsel including:
    - i. The right to appointed counsel if he/she cannot afford counsel of their own choice.
    - ii. It is his/her responsibility to secure counsel, not the board or its representatives.
    - iii. There is no penalty for requesting counsel, though there may be a continuance if counsel is not present.
    - iv. His/her responsibilities should he/she choose to represent him/herself.
    - v. The right to not speak about the alleged violations unless he/she so wishes.
- 3) The hearing examiner will have the parolee complete or reaffirm the "Waivers of Panel Hearing" and "Representation by Counsel" (PBPP-72), as appropriate.

- a) If the parolee exercises his/her right to a panel hearing, the hearing examiner will stop the hearing and follow the procedures established for scheduling a panel violation hearing.
  - 4) If the parolee had previously waived counsel and now requests an attorney, the hearing examiner may issue a continuance in accordance with established procedure. The offender should be given the opportunity to request a continuance until counsel is present. The hearing examiner will take official notice of the parolee's current sentence, including:
    - a) The total sentence, including the minimum and maximum expiration dates.
    - b) The date of original parole and any subsequent recommitment or revocations of parole, if available.
  - 5) Each witness shall be sworn-in by the hearing examiner prior to testifying.
  - 6) Any objections of a preliminary nature, such as timeliness, may be heard during the introduction portion of the hearing, and will be ruled upon by the hearing examiner. A hearing examiner may rule on any evidentiary issue alone. A hearing examiner may only rule on a motion to dismiss in a panel hearing when the board member agrees with the decision. In a non-panel hearing, the hearing examiner may hold the ruling in abeyance and vote on the motion in the hearing report so the reviewing board member can agree or disagree upon review.
  - 7) The parolee has the right to be present at the hearing unless he/she expressly elects not to appear, refuses to appear or behaves disruptively.
    - a) If the parolee elects not to appear or refuses to attend the hearing, the person to whom he/she stated these wishes must appear and testify as to the parolee's intent. The hearing will then be conducted without the parolee being present.
    - b) If the parolee leaves the hearing, the circumstances will be noted on the record and the hearing may proceed in absentia.
    - c) If the parolee behaves disruptively, the hearing examiner may request the assistance of prison personnel to remove the parolee from the room and proceed in absentia.
- c. Presenting the State Evidence
- 1) The technical violation(s) charged, as listed in the Notice of Charges and Hearing (PBPP-257N), will be read by the hearing examiner or parole supervision staff and any parolee admission(s) will be noted.
  - 2) Parole supervision staff will present personal testimony pertinent to each violation and enter documentary evidence, including but not limited to,

Special Conditions of Parole (PBPP-336), the receiving state's supervision conditions, any special conditions imposed by the receiving state, etc.

- 3) Parole supervision staff will present and directly question any state witness.
  - 4) The defense has the right to cross-examine each witness, including parole supervision staff, but must limit the questioning to the evidence elicited during the direct testimony.
  - 5) Parole supervision staff may present any re-direct evidence, if they have requested to do so before cross-examination or release of a state witness.
  - 6) The hearing flow may be varied, as needed.
  - 7) Parole supervision staff has a right to comment about any objections raised by the defense and should be able to give a cogent reply as to why an objection should not be sustained.
- d. Presenting the Defense Evidence
- 1) The defense will present any direct testimony from the parolee or his/her witnesses.
  - 2) Parole supervision staff has the right to cross-examine any witness about any testimony elicited on direct examination. Parole supervision staff must frame their cross-examination in the form of questions, not replies to what the parolee or witness have just said.
  - 3) Parole supervision staff is responsible for raising any objections about defense testimony, including hearsay issues.
- e. Conclusion
- 1) The hearing examiner will note the conclusion of the evidentiary phase.
  - 2) The hearing will proceed with the dispositional phase (summary of adjustment and mitigating or aggravating circumstances).
  - 3) Each party may make a closing statement, with parole supervision staff going first.
  - 4) The hearing examiner will note the documents included in the hearing report, ensure any documentary evidence is noted for the record, and conclude the hearing.
- f. Preparing the Non-Panel Violation Hearing Report
- 1) The hearing examiner will complete the Hearing Report (PBPP-344) within ten (10) business days and forward it to central office for review by the board.
  - 2) The Hearing Report (PBPP-344) will include the following:

- a) The technical violations established by a preponderance of the evidence and the evidence upon which the hearing examiner relied.
  - b) The hearing examiner's recommendation and the reason(s) for the recommendation.
  - c) Any recommendation for the parolee's treatment programs while confined and special conditions for reparole.
  - d) If a violator is reparaoled, the hearing examiner shall set conditions for release.
- 3) Once the board member reviews the Hearing Report (PBPP-344), he/she must make a decision concerning recommitment. If the board member agrees with the hearing examiner's recommendation, a board action will be issued. If the board member disagrees, the report must be forwarded to a second board member for further deliberation.

#### D. The Panel Violation Hearing

##### 1. Scheduling

- a. When the Preliminary/Detention Hearing Report (PBPP-343) is forwarded to the hearing coordinator, a copy of the signed Request for Panel Hearing (PBPP-72) will be included in the hearing material.
- b. Upon receipt of the Preliminary/Detention Hearing Report (PBPP-343), the hearing coordinator shall:
  - 1) Review the board schedule and consult with the institutional parole supervisor at the SCI where the panel hearing will be held.
  - 2) In the HIP application, schedule a date, time and location for the hearing.
  - 3) Send the Preliminary/Detention Hearing Report (PBPP-343) to the institutional parole office where the panel hearing will be held.
  - 4) The hearing coordinator will then monitor the status of the hearing until it is held.
- c. When the parolee is confined in a county prison or parole violator center (PVC), parole supervision staff will complete a PBPP-257N and forward it to the institutional parole office in the SCI closest to the county prison and request that the institutional parole staff schedule the hearing in the HIP application.

##### 2. Preparing for the Panel Violation Hearing

- a. Parole supervision staff is responsible for providing two (2) sets of the same materials for a panel hearing as described in section B - Preparing for a Non-Panel Violation Hearing.

- b. The parole supervisor is responsible for preparing a panel summary report, which is included in the packet of information provided to the panel at the time of the hearing.

### 3. Panel Member Responsibilities

- a. The panel must serve as a fair and impartial hearing body.
- b. The hearing examiner will ensure that the proceeding is audio-recorded.
- c. The panel will complete a Hearing Report (PBPP-344) which will contain the signature of both parties.
- d. If the panel members agree, the hearing report is complete and will be forwarded to central office for issuance of a formal board action (PBPP-15).
- e. If the panel members disagree, the hearing report, including all evidence will be forwarded to central office for assignment to an additional board member who will serve as the tie breaking vote.
- f. The institutional parole staff is responsible for ensuring that the Hearing Report (PBPP-344) is forwarded to the office of the board secretary, division of case analysis in central office for further disposition.
- g. When practical, the hearing report will be completed at the conclusion of the hearing and submitted to central office. The completed hearing report is due within ten (10) business days. The hearing examiner is also responsible for uploading the audio recording and closing the hearing in HIP within ten (10) business days.

### 4. Panel Violation Hearings Conducted Video Conference

#### a. Prior to the Hearing

##### 1) Responsibilities of the Board Member

- a) **All panel hearings shall be scheduled for each board member to appear via video conference by default, but the choice is ultimately up to each individual board member.**
- b) **If a board member wishes to appear at a panel hearing in-person, the board member should convey that information to the administrative assistant to the board secretary prior to the monthly schedule being published.**
- c) **If the board member wishes to switch from appearing by video conference to in-person or vice versa after the schedule has been published, the board member shall advise the administrative assistant to the board secretary of this intention as soon as possible but no later than five business days before the scheduled hearing.**

## **2) Responsibilities of Parole Supervision Staff**

- a) Parole supervision staff (or institutional parole staff if they have been so designated) shall request the hearing, serve notice and prepare for the panel hearing as previously described in this procedure.**
- b) Parole supervision staff (or institutional parole staff if they have been so designated) shall provide a copy of the hearing packet to the board member no later than 8 am on the day of the hearing. If at all possible, the packet shall also be provided to the inmate (or inmate's counsel) and the hearing examiner at that time as well**
- c) If the hearing packet is being provided to the board member the day before the hearing, parole supervision staff shall provide a copy of the hearing packet to the inmate (or inmate's counsel) at that time**
- d) Parole supervision staff shall notify institutional parole staff if they are having a witness appear via video conference no later than two business days prior to hearing to allow for coordination of equipment.**

## **3) Responsibilities of the Institutional Parole Staff**

- a) Institutional parole staff shall coordinate the use of video conference equipment for the hearings with the correctional facility and ensure that it is in good working order prior to the hearing**
- b) Institutional parole staff shall provide the "bridge" connection information (number/code) to the assigned board member no later than 8 am on the day of the hearing**
- c) Institutional parole staff shall be responsible for establishing the video conference connections at the start of the hearing and shall remain at the hearing to transfer any materials to the board member as needed.**

## **4) Responsibilities of the Board Secretary's Office**

- a) The administrative assistant to the board secretary shall schedule all panel hearings with the board member appearing via video conference by default.**
- b) The administrative assistant to the board secretary shall be responsible for maintaining a schedule indicating whether each panel hearing will be conducted with the board member appearing in-person or via video conference.**

**c) If notice is received from a board member indicating that the board member wishes to switch from in-person to video conference or vice versa after the schedule has already been published, the administrative assistant to the board secretary shall make the change on the schedule and advise appropriate institutional parole staff, parole supervision staff and the assigned hearing examiner of the change within one business day.**

**b. During the Hearing**

**1) Panel hearings heard via video conference shall be conducted the same as a regular panel hearing except as provided for in this section.**

**2) At the start of the hearing, the hearing examiner shall conduct an on-the-record colloquy addressing the following:**

**a) Whether the inmate can see and hear the board member and any other persons participating by video conference;**

**b) Whether the board member can see and hear the inmate and any other persons participating by video conference;**

**c) Whether the board member has received a hearing packet with the material for the hearing;**

**d) Ensure that the inmate (or inmate's counsel) understands that he/she should immediately speak up if he/she cannot see or hear the board member or any other person participating by video conference;**

**e) Inquire as to whether parole supervision staff or the inmate (or inmate's counsel) has materials that need to be sent to the board member;**

**(i) Any materials that need to be sent shall be provided to institutional parole staff who shall immediately scan and email the materials to the board member.**

**(ii) Any materials that need to be sent shall be provided to institutional parole staff who shall immediately scan and email the materials to the board member.**

**3) Objections**

**a) If the inmate (or inmate's counsel) objects to the hearing being conducted via video conference, then the follow additional questions should be asked:**

- (i) Ask the inmate (or inmate's counsel) to fully explain the nature and grounds of the objection if not already stated;
- (ii) Ask the inmate (or inmate's counsel) how they are being harmed by the use of video conference
- (iii) Rule on the objection

#### **4) Video Conference Equipment Malfunction**

- a) If there are any equipment malfunctions that prevent anyone appearing for the hearing from being able to see and hear the other participants, the hearing shall be stopped immediately.
- b) If institutional parole staff and or corrections staff cannot correct the malfunction, then the hearing shall be continued for a later date.
- c) Any continuances granted due to equipment malfunction will be attributed to the board.

#### **5) Panel Responsibilities**

- a) The hearing examiner shall be responsible for running the hearing, including: administering the oath, taking and labeling the evidence etc. By default, the hearing examiner shall also be responsible for completing the PBPP 344 – Hearing Report.
- b) The board member appearing via video conference will not be responsible for completing or maintaining any documents during the hearing other than his/her own notes unless the board member states otherwise. The board member may assume the responsibility for completing the PBPP 344 – Hearing Report if he/she chooses to take that responsibility.

#### **c. After the Hearing**

##### **a) Hearing Examiner Responsibilities**

- (i) Fill out the remainder of the hearing report as needed,
- (ii) Vote, sign and date the hearing report as soon as possible after review and consideration of all the evidence, dispositional information and discussion with the board member,
- (iii) Provide completed and signed hearing report to institutional parole staff to send the board member who appeared via video conference (unless the board member chose to fill out the hearing report during the hearing),

- (iv) If the board member chose to fill out the hearing report during the hearing, the hearing examiner shall review, vote and sign the report received from the board member (or their designee) via email,
- (v) Provide all original hearing packet materials presented at the hearing and the completed hearing report to institutional parole staff.

**b) Board Member Responsibilities**

- (i) Review the completed hearing report received from the hearing examiner (via the institutional staff) along with all evidence and dispositional information,
- (ii) Vote, sign and date the hearing report as soon as possible,
- (iii) If the board member chose to fill in the hearing report during the hearing, the board member shall fill out the remainder of the hearing report as needed and then vote, sign and date the hearing report as soon as possible,
- (iv) Provide the completed and signed hearing report to a designee to scan and email the hearing report back to the appropriate institutional staff,
- (v) Dispose of the duplicate hearing packet in the board member's possession.

**c) Institutional Parole Staff Responsibilities**

- (i) Clear the room out to give the board member and hearing examiner time to discuss the case in private via video conference (if necessary),
- (ii) Collect the original hearing packet from the hearing examiner,
- (iii) Scan and email the original hearing report signed by the hearing examiner and any evidentiary or disposition materials that were not already provided to the board member,
- (iv) Print the scanned hearing report from the board member containing both signatures and place it with the other evidentiary materials in a folder,
- (v) If the board member chose to fill in the hearing report, provided the completed the hearing report to the hearing examiner for review and signature,
- (vi) Upload the hearing report and other original hearing packet into OnBase (if available), (*Note: If OnBase upload is not*

***available, the assigned institutional parole staff shall maintain an electronic copy of the materials for two weeks),***

- (vii) Send the completed hearing report to the board secretary's office to be recorded (unless the voting process is being completed via OnBase)**

#### E. Hearing Outcomes

##### 1. Continue on Parole No Preponderance Established

- 1) This decision requires the signature of at least two decision-makers (two board members or one board member and one hearing examiner).
- 2) The parolee must be released from confinement as soon as possible but not later than four (4) business days of the board decision. This decision initially may be communicated telephonically to the district director/deputy district director or designee. A written board action (PBPP-15) will follow.

##### 2. Continue on Parole Preponderance Established

- 1) In this case, the presenting staff member has proven at least one violation. However, the board (two board members or one board member and one hearing examiner) has elected to not recommit the parolee to prison due to extenuating circumstances, such as treatment availability, medical issues, or the nature of the violation.
- 2) Upon receipt of the board action, the district director/deputy district director or designee will ensure that the warrant is removed unless other technical or criminal matters are pending. The warrant must be removed as soon as possible but not later than four (4) business days.

##### 3. Recommit to a Parole Violator Center in a CCC/CCF – (Act 122 of 2012)

Violators who the board has decided to recommit that do not meet any of the following criteria may be recommitted to a parole violator center in a CCC/CCF rather than an SCI/CCJ:

- a. The violation was sexual in nature.
- b. The violation involved assaultive behavior.
- c. The violation involved possession or control of a weapon.
- d. The violator had absconded, and it is determined that the violator cannot be safely diverted to a parole violators center (PVC).
- e. There exists an identifiable threat to public safety if:

- 1) Credible information indicates that the parolee intends to engage in criminal activity or violate conditions of parole in the future and has the means to do either; or
  - 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 or her not amendable to diversion.
- f. The violator has incurred new criminal charges involving a revocable offense.

The decision-makers should give consideration to where parole supervision staff detained the offender upon arrest, as staff uses the same eligibility criteria to determine the offender's placement pending a hearing.

For additional information, reference Procedure 4.01.12 Special Supervision Programs.

The maximum amount of time a technical parole violator may be recommitted to a PVC is six (6) months and then they shall be automatically reparaoled without further action by the board. A technical parole violator returned under this section may become ineligible for automatic reparaole if they are found to no longer be in good standing with the board.

A parolee is no longer considered to be in good standing with the board if, after being paroled or recommitted to a CCC/CCF, he or she:

- a. is charged with a new technical parole violation;
  - b. is charged with a new criminal offense;
  - c. absconds from the CCC/CCF;
  - d. violates a CCC/CCF rule involving sexual misconduct, assaultive behavior, or possession or control of a weapon;
  - e. is not in compliance with general CCC/CCF rules and recommended programming; and
  - f. presents an identifiable threat to public safety.
4. Recommit to an SCI/CCJ (Act 122)

Only those violators who meet the criteria for selection described in section E.3.a-f above should be recommitted to an SCI/CCJ.

Hearing examiners can also recommit to an SCI/CCJ for up to the maximum sentence allowed and direct that the offender be released earlier if the offender completes prescribed programming earlier than the maximum imposed.

For offenders who have been recommitted under this section, the maximum amount of time for recommitment is as follows:

- b. First violation - up to six (6) months.
- c. Second violation - not less than six (6) months nor more than nine (9) months.
- d. Third or subsequent violation - not less than nine (9) months nor more than twelve (12) months.
- e. For a violation to count towards a second, third or subsequent recommitment, the violation must have occurred on the same sentence after January 1, 2013 and the parolee must have been previously recommitted to a SCI or CCJ. A recommitment to a CCF or CCC does not apply.
- f. These violators will be automatically reparaoled without further action of the board unless they become ineligible for reparole because they have:
  - 1) Committed a disciplinary infraction involving assaultive behavior, sexual assault, a weapon or controlled substance;
  - 2) Spent more than 90 days in segregated housing due to one or more disciplinary infractions; or
  - 3) Refused programming or a work assignment.

For additional information reference Procedure 3.02.07 Board Actions.

It is also available for a violator who has been recommitted to a CCC/CCF or paroled to a PVC to address technical parole violations and is found to no longer be in good standing with the board.

- 5. Recommit as a TPV to serve unexpired term due to the offender's request to serve his/her maximum expiration of sentence

This option should only be exercised if the offender has signed a Request to Serve the Maximum Expiration of Current Sentence (PBPP-17).

#### F. Board Actions

- 1. The board decision will be recorded on a Notice of Board Decision (PBPP-15) and mailed to the offender and to their counsel, if any. Released to print email notices are also sent to the PM, BA resource accounts at the assigned PBPP office and institutional parole office.
- 2. The PBPP-15 must include the parolee's name, identifying inmate and PBPP numbers, the date the decision was recorded and for hard copies only, the date the board's decision was mailed to the offender.

3. If the board decision is to recommit the parolee, the PBPP-15 will contain the following:
  - a. The specific violations established by a preponderance of the evidence.
  - b. The evidence relied upon to determine preponderance.
  - c. The back time imposed for the technical violations.
  - d. The reasons for recommitment.
  - e. A tentative review date for reparole, if applicable.
  - f. The longest maximum term expiration date of the sentences on which the parolee is being recommitted, if all technical and outstanding criminal matters have been resolved.
  - g. Any program requirements during service of the back time.
  - h. Any special conditions governing reparole, if applicable.

#### 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 staff 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. 37 § 71.2
- c. 37 § 71.5
- d. 61 Pa.C.S. § 6112
- e. 61 Pa.C.S. §§ 6138(c)(e)
- f. 18 P.S. § 11.103
- g. 18 P.S. § 11.201(3)
- h. 18 P.S. § 11.302

B. Board Policies

Board Meeting Minutes September 9, 1985  
Board Meeting Minutes January 27, 1986  
Board Meeting Minutes December 7, 1987  
Board Meeting Minutes September 19, 2012  
3.02.07  
3.03.06  
3.03.07  
3.03.13  
4.01.12  
4.03.03

C. American Correctional Association Standards

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D. Management Directives - None

E. Report of the Reentry Policy Council - None