

<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 3.03.09</b></p>	<p><b>Date Revised: Replaces 10-10/1 05/09/98 10.10 10/03/01</b></p>
<p><b>Chapter Title CASE RECORDS AND DECISIONAL PROCESSING</b></p>		<p><b>Date Issued: 5/31/2012</b></p>
<p><b>Subject HEARING PROCESS ADMINISTRATIVE REMEDIES</b></p>		<p><b>Effective Date: 6/14/2012 <b>PUBLIC</b></b></p>

I. AUTHORITY

The Chairman of the Board is granted the authority to “direct the operations of the Board and fulfill the functions established by the act... including organizing, staffing, controlling, directing, and administering the work of the staff.” 61 Pa. C.S. § 6112 (a)(1) & (a)(4).

II. PURPOSE

The purpose of this procedure is to establish a uniform system of administrative relief remedies for parole violators who disagree with a revocation decision, a recalculation decision, a rescission hearing decision (after the offender is released on parole), other evidentiary hearing decisions (i.e. Cox, Pierce, and SOTP), or a combination thereof.

III. APPLICABILITY

This procedure is applicable to all Board staff.

The policy and procedures outlined in this document are intended to supplement existing regulations. Nothing in this policy and procedure shall affect regulatory requirements.

This document establishes the framework within which the Board will exercise its administrative discretion in the future. The Board reserves the right to deviate from this procedure if circumstances warrant.

IV. DEFINITIONS

Administrative Appeal-an administrative remedy limited to challenges of a Board Revocation Decision; Evidentiary Decision on Confinement Credit (i.e. Cox decision), Evidentiary Decision on Bail Issues (i.e. Pierce decision); Sex Offender Treatment Program (SOTP) decision; and Rescission Hearings (after the offender has been released on parole).

Administrative Remedies-an administrative appeal or petition for administrative review.

Appeal Panel-three Board members appointed by the Chairperson, or the chairperson's designee, and to the extent practicable, at least two of the Board members reviewing the decision should not have been on the panel whose decision is being appealed.

Chairman's Designee-an employee(s) of the Board designated by the Chairperson who shall provide the Board's final response to the petition for administrative review.

Cox Decision-a Board decision, after an evidentiary hearing, that determines whether the offender was "at liberty on parole" or "confined" during the specific period claimed, and therefore, entitled to sentence credit.

Final Decision-for purposes of administrative remedies is when the Board panel or Chairman's designee mails a time and date stamped response to the administrative appeal or petition for administrative review.

Petition for Administrative Review-an administrative remedy limited to disagreements with the Board's credit allocation concerning a recalculation decision, as it directly affects the parole violation maximum sentence, the order of service of sentences, or the re-parole review dates.

Pierce Decision- a Board decision, after an evidentiary hearing, that determines whether the offender posted bail during the specific period claimed, and therefore, is entitled to sentence credit from the Board.

Recalculation Decision-a decision that due to the Board's recommitment of the offender, changes the maximum sentence date, the order of service of sentences, or the re-parole review date.

Rescission Decision- a decision rescinding a grant of conditional parole. If the decision is made before the offender has signed the conditions of his parole (PBPP-11) and release order (PBPP-10), an evidentiary hearing is not necessary. In all other situations an evidentiary hearing is necessary as part of the parole rescission.

Revocation Decision-a decision to recommit a parolee to prison after a revocation or violation hearing.

SOTP Decision-a Board decision, after an evidentiary hearing, that determines whether the offender needs to comply with a sex offender treatment program as a condition of their parole or re-parole.

Other definitions are located in Procedure 1.01.02.

## V. POLICY

It is the policy of the Board to provide an administrative remedy process for parole violators who disagree with revocation decisions, recalculation decisions,

rescission hearing decisions (after the offender is released on parole), and other evidentiary hearing decisions (i.e. Cox, Pierce, and SOTP) or a combination thereof.

## VI. PROCEDURE

- A. General Rules-In order for the Board to accept a request for administrative relief, the following characteristics must be met:
1. The request must be received at the Board's Central Office, Office of Chief Counsel, 1101 South Front Street, Suite 5100, Harrisburg, PA, 17104-2517, within 30 days of the mailing date on the Board decision.
  2. The Board will accept receipt via:
    - a. U.S. Postal Service
    - b. Overnight Delivery Service
    - c. Facsimile to (717) 705-1774, and
    - d. Personal delivery at the Board's Central Office as noted in paragraph 1.
  3. The request may be submitted on the *Administrative Remedies Form* (PBPP-40) or any legible paper source including substantially the same information.
  4. The request may only be submitted by the offender or the offender's attorney;
  5. The request must present factual and/or legal claims the offender seeks the Board to consider with accuracy, brevity, clearness and specificity (including any supporting documentation);
- B. Scope of Review-for requests for administrative relief submitted to the Board is limited to the following:
1. Whether the decision is supported by substantial evidence;
  2. Whether an error of law has been committed; and
  3. Whether there has been a violation of constitutional law.
- C. Response Procedure
1. Administrative Appeals
    - a. Upon receipt, shall be forwarded to the Office of Chief Counsel for review.

- b. The assigned attorney may review and respond to an administrative appeal on procedural issues related to the General Rules listed in VI. Procedure, A. General Rules without review of the panel.
  - c. The assigned attorney shall recommend a course of action on substantive issues.
  - d. The appeal shall then be forwarded to the assigned Board panel for a decision.
  - e. The panel's decision is final upon receipt of two agreeing votes.
  - f. The decision shall then be processed in accordance with the panel's determination, and then mailed out under the Board Secretary's signature.
2. Petitions for Administrative Review
- a. Upon receipt, shall be forwarded to the Office of Chief Counsel, Chairman's Designee for review.
  - b. The Chairman's Designee, in consultation with the Office of Board Secretary if necessary, shall decide the merits of the petition in accordance with law.
  - c. The decision shall then be processed and mailed out under the signature of the Chairman's Designee.
3. Combination Administrative Appeal and Petition for Administrative Review
- a. Upon receipt, shall be forwarded to the Office of Chief Counsel for review.
  - b. The attorney assigned shall recommend a course of action.
  - c. The appeal shall then be forwarded to the assigned Board panel for a decision.
  - d. The panel's decision is final upon receipt of two agreeing votes.
  - e. The decision shall then be processed in accordance with the panel's determination, and then mailed out under the Board Secretary's signature.

4. All valid requests for administrative relief, absent unforeseeable circumstances, should be responded to within:
  - a. 90 days of receipt of the request; and
  - b. receipt the Office of Board Secretary file to the Office of Chief Counsel.
  
5. Any non-valid request for administrative relief shall be forwarded to the Office of Board Secretary, Inmate Inquiry Unit for a response pursuant to the Board's Release of Information Policy. Examples of non-valid requests for administrative relief include, but are not limited to:
  - a. Rescinds a parole decision where the offender was never released on parole;
  - b. Rescinds a re-parole date;
  - c. Modifies a parole requirement;
  - d. Refuses parole;
  - e. Grants parole;
  - f. Challenges the computation of a sentence date not determined or changed by the Board (i.e. Department of Corrections, Federal Bureau of Prisons, County Court).
  - g. Challenges a Board detainer.

#### VII. SUSPENSION DURING AN EMERGENCY

This procedure may be suspended during an emergency at the sole discretion of the Chairman, or in the Chairman's absence, the Chief Counsel.

#### VIII. RIGHTS UNDER THIS PROCEDURE

This procedure creates no rights under law.

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

- 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

2. State

a. Prisons and Parole Code, 61 Pa.C.S. § 6113 (d).

b. The Pennsylvania Code, 37 Pa. Code § 73.1

B. Board Policies

None.

C. American Correctional Association Standards

None.

D. Management Directives

None.

E. Report of the Reentry Policy Council

None.