

<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 03.03.14</b></p>	<p><b>NEW</b></p>
<p><b>Chapter Title CASE RECORDS, DECISIONAL PROCESSING</b></p>		<p><b>Date of Issue 6/22/15</b></p>
<p><b>Subject HEARING PROCESS</b></p> <p><b>RESCISSION OF AUTOMATIC REPAROLE FOR TECHNICAL PAROLE VIOLATORS</b></p>		<p><b>Effective Date 6/30/15</b></p> <p><b>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

To establish a process for the board to consider and potentially rescind the statutory provision of automatic reparole for technical parole violators in accordance with the Prisons and Parole Code.

#### III. APPLICABILITY

This procedure applies to all board staff.

#### IV. DEFINITIONS

Good Standing – A parolee is in good standing, with the board, if after being paroled or recommitted to a community corrections center (“CCC”) or community corrections facility (“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, or possession or control of a weapon, (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

Parole Violator Center (PVC) Program - The PVC program is operated under a secure setting. The location could be a CCC, a CCF or a contracted county prison. Offenders in need of detoxification must receive those services before being placed in a PVC. Length of stay depends upon programming requirements and will generally range from 60 to 90 days from the PVC placement date.

Other definitions are located in Procedure 3.03.01.

## V. POLICY

It shall be the policy of the board to ensure that the statutory provision of automatic reparole shall not be rescinded without due process.

## VI. PROCEDURE

### A. Automatic reparole provision

1. Technical parole violators recommitted to a PVC program **in a CCC or CCF** shall be automatically reparaoled without further action of the board no later than six months from the date of recommitment unless the offender is not in "good standing" with the board.
2. Technical parole violators recommitted to a state correctional institution ("SCI") or a contracted county jail ("CCJ") shall be automatically reparaoled without further action of the board as follows subject to the limitations in section A.3:
  - a. No later than 6 months for the first recommitment to an SCI/CCJ,
  - b. No later than 9 months for the second recommitment to an SCI/CCJ, and
  - c. No later than 12 months 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. Unsuccessful discharges of offenders detained in a PVC

Offenders may be in a PVC as technical parole violators awaiting the results of the preliminary hearing process or have been issued an administrative action “violation hearing/decision held in abeyance pending completion of recommended programming.”

If an offender is unsuccessfully discharged from a PVC, parole supervision staff shall immediately consult with their chain-of-command to determine the next steps.

1. If an offender diverted to the PVC by parole supervision staff has not yet had his/her first level hearing:

Within two (2) business days of the unsuccessful discharge parole supervision staff shall:

- a. Notify the hearing coordinator through the HIP application to update the hearing location and update the arrest report series (PBPP-257).
- b. Inform the central office hearing division of the offender’s unsuccessful discharge by scanning/emailing a memo summarizing the incident/violation at the PVC or a copy of the Resident Infraction Report (BCC-141A); to [PM, PV Center Matters](#)
- c. Update the field offender case file (FOCF) and the automated offender record; and,
- d. If applicable, notify the originating (arresting) parole supervision staff of the unsuccessful discharge and return the FOCF to the originating (arresting) parole supervision staff.

2. Offenders placed in a PVC as the result of the preliminary hearing:

Within two (2) business days of the unsuccessful discharge parole supervision staff shall:

- a. Request a 2nd level hearing through the HIP application to address the original technical parole violation charges. For additional information, reference Procedure 3.03.04 Violation Hearing.
- b. Update the FOCF and the automated offender record; and,
- c. Notify the originating (arresting) parole supervision staff of the unsuccessful discharge and return the FOCF to the originating (arresting) parole supervision staff.

3. Offenders placed as a result of the Waiver Process:

- a. Parole supervision staff shall immediately inform the central office hearing division of the offender’s unsuccessful discharge by scanning/emailing the following information to [PM, PV Center Matters](#).

- 1) A memo summarizing the incident/violation at the PVC or a copy of the Resident Infraction Report (BCC-141A); and,
  - 2) The date and location of any pending disciplinary/misconduct hearing (if applicable); and,
  - 3) The findings, report and/or determination of the PVC (if applicable); and,
  - 4) If applicable, supporting documentation from the misconduct hearing.
- b. Parole supervision staff shall update the FOCF and the automated offender record.
- c. The central office hearing coordinator shall forward the goldenrod file to the chief hearing examiner. The chief hearing examiner will review and forward the documentation to the board for their signatory review and decision.
- 1) Within two (2) business days of the offender's return to a SCI/CCJ, parole supervision staff shall update the FOCF with all relevant information, update the automated offender record and return the FOCF to the originating (arresting) parole supervision staff.
  - 2) A board action reflecting the final decision will be generated.
- C. Initiating rescission of automatic reparole for technical parole violators recommitted to a SCI/CCJ or PVC
1. Institutional parole staff (IPS) shall be responsible for initiating proceedings to rescind automatic reparole for inmates recommitted to a SCI/CCJ or PVC.
  2. When IPS receives information indicating that an inmate has committed a misconduct or other behavior that may constitute a reason to rescind automatic reparole, IPS shall immediately consult with the chain-of-command to determine if the board should lodge a detainer to halt the automatic reparole.
  3. If the chain-of-command concludes that the conduct does not justify rescinding automatic reparole, then the inmate shall be released on the automatic reparole date or immediately if the automatic reparole date has already passed.
  4. If the chain-of-command agrees that the conduct justifies rescinding automatic reparole, then the chain-of-command shall contact the district director of the district where the facility/inmate is located and request a detainer to halt the automatic reparole
  5. If the SCI/CCJ or PVC has conducted a disciplinary/misconduct hearing and determined that the inmate engaged in the specified misconduct or action, IPS shall scan/email the following information to the Hearing Division resource account ([PM, PV Center Matters](#)) as soon as possible but no later than five (5) business days from the date of the Warrant to Commit and Detain (PBPP-141):

- a. A memo summarizing the violation that resulted in the inmate's recommitment to the SCI/CCJ or PVC, the inmate's established automatic reparole date and a description of the incident/violation that occurred at the SCI/CCJ or PVC.
  - b. The findings, report and/or determination of the SCI/CCJ or PVC (if applicable); and,
  - c. Any supporting documentation from the SCI/CCJ or PVC hearing (if applicable); and,
  - d. A completed Waiver of Automatic Reparole (PBPP-72A) (if applicable).
6. If there has not been a misconduct or other hearing, IPS shall scan/email the following information to the Hearing Division resource account ([PM](#), [PV Center Matters](#)) as soon as possible but no later than five (5) business days from the date of the Warrant to Commit and Detain (PBPP-141):
- a. A memo summarizing the violation that resulted in the inmate's recommitment to the SCI/CCJ or PVC, the inmate's established automatic reparole date and a description of the incident/violation that occurred at the SCI/CCJ or PVC.
  - b. The date and location of any pending disciplinary/misconduct hearing (if applicable), and
  - c. A request for a Rescission of Automatic Reparole hearing; and,
  - d. A completed Waiver of Automatic Reparole (PBPP-72A) (if applicable)
7. New criminal charge (misdemeanor or greater) is discovered for an offender recommitted under Act 122
- a. When IPS learn that criminal charges have been filed against a parolee who has been previously recommitted by the board as a technical parole violator and granted an automatic reparole date and that the new charge(s) occurred while under a period of parole supervision, IPS shall stop the release process and notify the appropriate SCI records office, contract facility coordinator and parole supervision staff.
  - b. If parole supervision staff is made aware that criminal charges have been filed against a recommitted offender and these charges violate a previous period of supervision, staff shall notify the appropriate institutional parole staff. In order to recommend that the recommit action be amended to reflect the new criminal charges, parole supervision staff shall reopen the case statistically and follow Procedure 4.03.10 Arrests and Supervision Responsibilities.

D. Scheduling the hearing to revoke automatic reparole

1. Upon receipt of information from IPS indicating that an inmate has committed an action that may justify rescinding automatic reparole, the hearing coordinator will forward that information to the chief hearing examiner or his/her designee for review as soon as possible but no later than three (3) business days.
2. The chief hearing examiner or his/her designee will review the information and make one of the following determinations within five (5) business days:
  - a. No hearing is necessary because the conduct would not justify rescission of automatic reparole.
  - b. No hearing is necessary because the inmate has already had a due process hearing or he/she is not entitled to a hearing (See section D.3 below) and rescission of automatic reparole is proper.
  - c. A hearing is necessary to determine if automatic reparole should be rescinded.
3. A hearing is not necessary to rescind automatic reparole in any of the following circumstances:
  - a. Inmate received a misconduct hearing in the SCI, CCJ, CCC or CCF.
  - b. Inmate is charged with or convicted of a new criminal offense that may be a reason to recommit as a convicted parole violator. Hearing requirements set forth in Procedure 3.03.03 Detention Hearing or Procedure 3.03.05 Revocation Hearing apply.
  - c. Inmate waived his/her right to automatic reparole in writing; or,
  - d. Inmate spent more than 90 days in segregated housing as evidenced by records from the correctional institution.
4. If it is determined that no hearing is needed and the facts do not justify rescission of automatic reparole, the inmate shall be released on his/her reparole date if it has not passed or immediately if the automatic reparole date has already expired.
5. If a hearing is necessary to determine whether automatic reparole should be rescinded, the hearing shall be held as soon as possible but no later than thirty (30) calendar days from date of the infraction leading to the discharge.
6. Hearings shall be conducted before a hearing examiner and shall be recorded.
7. The offender may waive his/her right to this hearing at any time.
8. IPS shall be responsible for completing the Notice of Charges and Hearings (PBPP-257N) and the Offender Rights at Board Hearings (PBPP-257OR). The notice shall specify the following:
  - a. The date, time and location of the hearing.
  - b. The name and address of the public defender.

- c. The date the inmate was to be automatically reparaoled.
  - d. The fact that the hearing is being held to determine if his/her right to automatic reparole should be revoked.
  - e. The alleged circumstances/actions justifying revocation of automatic reparole.
9. IPS shall serve the PBPP-257N and the PBPP-257OR to the inmate or his/her counsel (if applicable) no later than 72 hours prior to the hearing.

E. Conducting the Hearing to Rescind Automatic Reparole

- 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 conducted by institutional parole staff (IPS).
- 4. Hearing packet – The following information shall be included in the hearing packet to the hearing examiner and to the inmate or his/her counsel
  - a. Notice of Charges and Hearings (PBPP-257N).
  - b. Offender Rights at Board Hearings (PBPP-257OR).
  - c. Copy of the original recommitment board action granting automatic reparole.
  - d. All subpoenas for state witnesses; and,
  - e. Copy of the current Warrant to Commit and Detain (PBPP-141).
- 5. Hearing Outline – The hearing shall be conducted in general as follows but may be varied by the hearing examiner:
  - a. The hearing examiner shall record the hearing and open the hearing by noting general information, including: the date, time, the location of the hearing, the inmate's name and parole number and the names of everyone present;
  - b. The hearing examiner shall administer the oath to everyone who is there to testify;
  - c. The hearing examiner shall address any preliminary motions/objections;
  - d. Board staff will present any witnesses and/or evidence in support of the decision to revoke automatic reparole;
  - e. The inmate/inmate's counsel shall have the opportunity to cross-examine any witnesses;

- f. Inmate/inmate's counsel will present any witnesses and/or evidence in defense if he/she chooses to present a defense;
  - g. Board staff shall have the opportunity to cross-examine any witnesses ;
  - h. Each party may make a closing statement with board staff going first; and
  - i. Hearing examiner shall conclude the hearing.
6. Completing the hearing process
- a. The hearing examiner will complete the Automatic Parole Rescission Report (PBPP-345) and upload the audio recording of the hearing within ten (10) business days. The hearing report shall be forwarded to central office for review by the board immediately upon completion.
  - b. The decision will be final upon agreement of two decision makers.
  - c. The board should attempt to complete review and voting on the decision within five (5) business days of the hearing material being received from the Hearing Division.
7. Hearing Outcomes
- a. If the board does not find good cause to rescind automatic parole, then the inmate shall be released on his/her parole date or immediately if that date has already passed.
  - b. If the board finds good cause to rescind automatic parole, then the decision makers shall specify when the inmate will be reviewed for parole. The decision makers shall specify any programs/evaluations that shall be completed prior to the next parole interview.

#### F. Waivers/Admission for Rescission of Automatic Parole

- 1. An inmate may waive his/her right to a hearing on rescission of automatic parole and admit to the conduct in question in writing at any time.
- 2. Whenever possible, this waiver/admission shall be done through the execution of the Waiver of Automatic Parole (PBPP-72A) form.
- 3. Inmates shall have ten (10) business days from the date he/she signed the waiver / admission to withdraw the submission.
- 4. Upon receipt of the waiver/admission, the chief hearing examiner or his/her designee shall complete the Automatic Parole Rescission Report (PBPP-345) within five (5) business days and forward it central office in accordance with Section E.6 above.

#### G. Board Action

1. A board action shall be recorded reflecting whether the board found good cause to rescind automatic reparole and shall be provided to the inmate.
2. If good cause is established and the board rescinds automatic reparole, the board action shall include the following:
  - a. The decision of the board,
  - b. A review date (if applicable),
  - c. An appeal clause,
  - d. The date mailed,
  - e. A request for administrative relief form; and,
  - f. The names and addresses of the public defenders' offices.

#### 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. 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