120 CMR 302.00: RESCISSION OF PAROLE DATE

Section

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302.01: Rescission of Parole Date: General Provisions

(1) When the Parole Board members set a parole release date, release on that date is contingent upon continued satisfactory conduct by the inmate and the absence of any new and significant adverse information not known to the parole hearing panel at the time the release decision was made. Where the Massachusetts Parole Board learns of new adverse information, Parole Board members may suspend that inmate's parole date pending investigation by the Massachusetts Parole Board.

(2) Where appropriate after investigation, the Parole Board shall afford that inmate a parole rescission hearing.

(3) Where Parole Board members rescind a parole date and refuse to grant another release date, Board members shall conduct review hearings thereafter in accordance with the provisions of 120 CMR 301.02.

302.02: Report to Parole Board Members and Possible Action of Parole Board Members

(1) The Institutional Parole Officer will promptly notify the Parole Board members of an inmate's movement to higher security, of any guilty finding of violation of institutional rules by an Institutional Disciplinary Committee, of criminal behavior or new criminal charges, or of other misconduct or adverse information at any time prior to the delivery of the parole permit. The inmate will not be released on parole until the Parole Board members notify the institution that no change was made in the order to parole.

(2) Following receipt of such adverse information, the Parole Board members may defer an inmate's parole release date and schedule a rescission hearing on the next available docket.

302.03: Notice of Rescission Hearing and Alleged Misconduct

At least 72 hours prior to a scheduled parole rescission hearing, the Massachusetts Parole Board shall deliver to the parolee a written notice of the time and place of the rescission hearing, the alleged misconduct, the applicable procedural rights under the Massachusetts Parole Board's regulations, and the possible actions which may be taken by the Parole Board members.

302.04: Postponement of Rescission Hearing

(1) The inmate may request postponement of the rescission hearing until the next available docket for any of the following reasons:

(a) in order to obtain representation;

(b) in order to secure the attendance of witnesses;

(c) in order to properly prepare for the hearing; or

(d) in order to resolve pending criminal or disciplinary charges.

(2) The rescission hearing panel may postpone the rescission hearing until the next available docket for reasons including, but not limited to:

(a) the inmate did not receive proper notice;

(b) the rescission hearing panel has insufficient information upon which to conduct a meaningful hearing;

(c) to obtain the services of an interpreter; or

(d) the inmate is absent or unavailable, or where circumstances prevent the appearance of the parole hearing panel. Unavailability includes, but is not limited to, a commitment to Bridgewater State Hospital for observation. Unavailability does not include instances where the parolee causes the absence from the hearing.

302.05: Waiver of Rescission Hearing

(1) An inmate may waive the parole rescission hearing.

(a) Such waiver shall only occur after the inmate receives, in writing, notice of the time and place of the rescission hearing, the allegations of misconduct or new criminal behavior, the due process rights afforded at such hearing, and the possible dispositions.

(b) Such waiver shall be in writing, dated, and witnessed by a parole staff member.

(2) A waiver of the parole rescission hearing shall result in a vote of parole denied, voiding the previous parole decision.

302.06: Discovery of Information and Request for Presence of Adverse Witnesses

(1) No fewer than three calendar days prior to a rescission hearing, an inmate may submit a written request to the Institutional Parole Officer for:

(a) disclosure of documents which will be used by the rescission hearing panel at the final rescission hearing; and

(b) attendance of individuals who gave information upon which rescission may be based.

(2) The Institutional Parole Officer shall then forward the request to the rescission hearing panel, and the hearing panel shall vote on whether to allow the inmate's request. The Institutional Parole Officer shall provide the decision of the hearing panel to the inmate.

(3) Evaluative and intelligence information may be withheld and summarized as provided in 120 CMR 500.06.

302.07: Evidentiary Process at Rescission Hearing

(1) Rescission hearings are conducted by the presenting member of the rescission hearing panel. The presenting member may, if good cause exists, compel the attendance of adverse witnesses, the production of exhibits, and testimony by duly issued summons as provided in M.G.L. c. 233, § 8 and 120 CMR 300.02.

(2) The strict rules of evidence do not apply to rescission hearings.

(3) The inmate may present witnesses and documentary evidence. However, the presenting member of the rescission hearing panel may limit or exclude any irrelevant or repetitious testimony or documentary evidence. Presence of witnesses at hearings conducted at state or county correctional facilities or jails is subject to the approval and the procedures of the custodial authority.

(4) The rescission hearing panel may take into account any reliable and relevant information available in establishing misconduct, criminal activity, or new and adverse circumstances. If the inmate remains silent, the decision of the rescission hearing panel will be based on the available information.

(a) The rescission hearing panel makes an independent inquiry into all alleged misconduct notwithstanding any previous action by any agency or judicial body.

(b) In the case of allegations of new criminal conduct, the rescission hearing panel may consider documentary evidence, written testimony, or both presented by the inmate, arresting authorities, or other persons.

(5) Adverse witnesses who are present will be available for questioning and cross-examination in the presence of the inmate, unless there is good cause for disallowing cross-examination.

(6) At the hearing, the rescission hearing panel shall disclose to the inmate evidence upon which it may base a rescission except as follows:

(a) The rescission hearing panel may disclose documentary evidence by permitting the inmate to examine the document during the hearing or, where appropriate, by reading or summarizing the document in the presence of the inmate.

(b) The rescission hearing panel shall not disclose confidential documentation and information to the inmate, but the rescission hearing panel shall notify the inmate that there is confidential information and that such confidential information will be disclosed in a summary manner. The rescission hearing panel shall not utilize in making its decision information that is not disclosed in some manner to the inmate.

(7) An inmate may be represented at a rescission hearing by an attorney or by a law student in a clinical program under the supervision of an attorney.

302.08: Procedure at Rescission Hearing

(1) The Parole Board shall audio record all rescission hearings. At any time during the hearing, the rescission hearing panel may request that the inmate or representative leave the hearing room so that the panel may convene privately to discuss any point of law or fact. Likewise, the inmate and representative may request a recess in the hearing for conference.

(2) Rescission hearings are conducted according to the following procedures:

(a) The presenting member of the rescission hearing panel shall ascertain the identity of the inmate and whether written notice of charges was received.

(b) If the inmate is represented, the presenting member of the rescission hearing panel shall ascertain the name, address, and telephone number of the representative.

(c) The presenting member of the rescission hearing panel shall read or summarize from the written notice each charge asking that the inmate either "admit" or "deny" the charge.

(d) The presenting member shall ask the inmate for factual information regarding each charge including information in mitigation of the charges. Members of the rescission hearing panel may question the inmate regarding such information. The focus of the colloquy will be on the behavior of the inmate and on relevant information contained in, but not limited to, the inmate's institutional file, police reports, drug analysis reports, and confidential documentation or information.

(e) The inmate may present voluntary witnesses. The inmate may not compel the appearance of any witnesses. The presenting member may question any voluntary witnesses and, when concluded, permit other members of the rescission hearing panel to question such witnesses.

(f) The rescission hearing panel shall examine any adverse witnesses and shall permit the inmate or representative to cross examine the adverse witnesses, unless there is good cause for not allowing confrontation.

(g) The presenting member shall ascertain whether the other members of the rescission hearing panel wish to question further the inmate and shall allow such questioning.

(h) At the conclusion of the hearing, the inmate and representative shall leave the hearing room.

(i) The rescission hearing panel shall make its decision in private. The decision making process shall not be recorded.

(j) At the conclusion of the hearing, the presenting member shall prepare a vote sheet which contains the vote of each member of the rescission hearing panel and the reasons for the decision of the hearing panel.

(k) After a decision is made, the rescission hearing panel shall call the inmate and representative back into the hearing room, at which time the presenting member will inform the parolee of the decision as to each rescission charge, and whether or not a new parole date is appropriate.

(l) The presenting member shall advise the inmate of the right to seek an administrative appeal or reconsideration as provided by 120 CMR 304, *et seq*.

302.09: Rescission Decisions and Review Hearings

(1) When the rescission hearing panel finds good cause to rescind, the panel may take any of the following actions:

(a) Restore the previously suspended parole release decision;

(b) Rescind the parole release decision; or

(c) Modify the conditions of release.

(2) When parole release is rescinded, the hearing panel will decide whether release to the community is still appropriate and, if so, when such release should occur. Where there are criminal charges pending against the inmate there is a strong presumption against release to the community. Where release is denied a review hearing will occur as provided in 120 CMR 301, *et seq*.

(3) When the rescission hearing panel does not find good cause to rescind the parole release date, the decision will be executed forthwith. In addition, the panel may, where appropriate, issue a warning and/or modify the conditions of release.

302.10: Notice of Decision to Parolee After Rescission Hearing

The Parole Board shall provide the inmate written notice of the decision within 21 calendar days after a decision has been rendered.

REGULATORY AUTHORITY

120 CMR 302.00: M.G.L. c. 27, § 5.