

120 CMR: PAROLE BOARD

120 CMR 304.00: APPEAL AND RECONSIDERATION

Section

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304.01: Appeal and Reconsideration Process: General Provisions

~~For purposes of 120 CMR 304.00, parole hearing panel shall refer to a panel that has at least one Board Member sitting.~~

(1) An inmate may submit an appeal from an adverse parole release, rescission, or revocation decision to the ~~i~~Institutional ~~p~~Parole ~~o~~Officer for consideration by the hearing panel ~~that~~which rendered the ~~eat~~ decision. The appropriate bases for appeal are limited to those listed in 120 CMR 304.02(3).

(2) An inmate may submit a request for reconsideration of an adverse parole release, recession, or revocation decision to the Institutional Parole Officer for consideration by the hearing panel that rendered the decision. The appropriate basis for reconsideration are limited to those listed in petition a hearing panel to reconsider its decision for reasons listed in 120 CMR 304.03(1). ~~by submitting the request to the Institutional Parole Officer.~~

(3) An inmate who submits an appeal from an adverse decision pursuant to 120 CMR 304.02 may at the same time also petition for reconsideration pursuant to 120 CMR 304.03.

(4) An inmate may only submit one appeal and/or petition for reconsideration during the 12 months following an ~~not submit more than one initial appeal, and further appeal to the Full Board, and one petition for reconsideration during the 12 months following an~~ adverse parole release, rescission, or revocation decision by a hearing panel. However, nothing contained in 120 CMR 304. ~~et seq.~~ shall prohibit the full Parole Board or a hearing panel ~~thereof~~ from reconsidering a decision on its own initiative.

304.02: Appeal of Decision of Hearing Panel

(1) An inmate may appeal a decision of a parole hearing panel to deny, rescind or revoke parole. An inmate may also appeal the grant of parole when such release is granted on a date other than the initial parole eligibility date, and/or the imposition of special conditions of parole. Any appeal must be made in writing and within 30 days of the subject's receipt of written notice of the decision.

(a) Where the hearing panel was made up entirely of Parole Board ~~M~~members, these same ~~M~~members shall vote on the appeal unless the ~~M~~members are unavailable or disqualified. As needed, additional Board ~~M~~members will be asked to vote until at least two Board ~~M~~members agree on the appeal decision.

(b) Where the hearing panel was composed of one or more hearing examiners and reviewed by a single Board ~~M~~member, the hearing examiner(s) and the Board ~~M~~member shall vote on the appeal. If there is unanimity on the vote, that vote shall be the final decision of the appeal hearing panel. If there is no unanimity, then other Parole Board ~~M~~members shall be asked to vote in succession on the appeal. When two Board ~~M~~members agree, their vote shall determine the decision on the appeal.

(c) The appeals panel may render its decision without conducting a hearing on the appeal.

(2) If an appeal is denied by the hearing panel, the inmate may further appeal to the ~~F~~full ~~P~~arole Board within 30 days of receiving notice of the appeal decision. The further appeal is precluded if the ~~F~~full ~~P~~arole Board made the initial decision to deny the appeal.

(a) The Parole Board may vote to: deny the appeal; ~~to~~ overturn the decision of the parole hearing panel and render another decision; or ~~to~~ overturn the decision of the parole hearing panel and schedule the inmate for another parole hearing.

(b) A decision of the ~~F~~full ~~P~~arole Board is final. An inmate may not file a petition for

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reconsideration upon grounds previously reviewed as an appeal.

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(3) Appeals under 120 CMR 304.02 are based on grounds including, but not limited to, one or more of the following ~~grounds~~:

- (a) That the decision was not supported by the reasons or facts as stated.
- (b) That the decision was based on erroneous information and the actual facts justify a different decision.
- (c) That the hearing panel did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred.
- (d) There was significant relevant information in existence but not known to the parole hearing panel at the time of the hearing.
- (e) Under the circumstances, the special conditions of parole no longer further the interests of justice are unfair and cannot be obeyed under the circumstances, and should be amended by the Parole Board ~~M~~members.

(4) The inmate must submit any appeal to the Institutional Parole Officer in writing and must specifically cite one or more reasons noted in 120 CMR 304.02(3), as a basis for the appeal. Any appeal not meeting the requirements of 120 CMR 304.02(3) will be returned to the inmate with an explanation as to why the appeal was not processed. The inmate may correct any noncompliance with 120 CMR 304.02(3) and resubmit the appeal within 30 days after receiving notice that the appeal did not meet with the requirements of that subsection.

(5) The institutional parole staff notifies the inmate in writing of any appeal decision.

304.03: Reconsideration of Decision of Parole Board Members

(1) An inmate may petition a hearing panel, in writing, for reconsideration of a decision to deny, rescind, or revoke parole, or to grant parole subject to special conditions. Such petition may not be submitted ~~earlier~~ sooner than 90 days after the date the inmate receives notification of the hearing panel decision, except when such petition is submitted at the same time as an appeal pursuant to 120 CMR 304.02. The petition for reconsideration must state specific facts which justify reconsideration based on one or more of the following grounds:

- (a) There is a material change in personal or other circumstances which requires a different decision.
- (b) The tasks mandated by the parole hearing panel have been accomplished.
- (c) Especially mitigating circumstances justify a different decision.
- (d) There are compelling reasons why a more lenient decision should be rendered.

(2) The petitioner may not base a petition for reconsideration on the same grounds previously rejected by a reconsideration hearing panel, or an appeal pursuant to 120 CMR 304.02.

(3) The procedure for reconsideration of parole release decisions is the same as that for the appeal process described in 120 ~~CMR~~ M.R. 304.02(1), ~~(a) through (e)~~.

(4) The hearing panel that decided the case will decide the ~~request~~ application for reconsideration.

REGULATORY AUTHORITY

120 CMR 304.00: M.G.L. c. 27, § 5.