

## Survey to Chief APOs

### Issue: Gagnon Hearings

#### Question (from Blair County):

In Blair County, the POs have handled all Gagnon hearings for as long as I can remember, including the recommendations and presentations in Court.

Over the last few weeks we have had our DA trying to get more involved in certain cases, especially if they don't think we are asking enough at the Gag 2.

#### My questions are:

1. Is there any County where the DA handles all Gag 1 and 2 hearings?
  - 1b. If yes, what is your procedure.
2. What role does the DA play in your county regarding violation hearings?
3. Does the DA have a right to be heard at Gag 2 hearings?
4. Does your county utilize Gagnon 2 waivers?
  - 4b. If so, what authority do we have to use the waiver?

#### Bradford County

1. Is there any County where the DA handles all Gag 1 and Gag 2 Hearings? In Bradford County the DA handles all Gag 1 and Gag 2 Hearings.
  - 1.b. If yes, what is your procedure? The DA presents all evidence at the proceedings, calls witnesses, cross examines the witnesses, and enters evidence into the records. The Supervising PO sits at the table next to the DA, however, it is more as a witness, and to prepare the DA in what questions should be asked, and what are recommendation is.
2. What role does the DA play in your County regarding violation hearings? They prosecute all violations at Gag 1 & 11 Hearings and are present if the defendant waives their right to a hearing.
3. Does the DA have the right to be heard at Gag 2 hearings? Yes, although presently the District Attorney's office and Probation Department are in agreement in the majority of the Revocation cases, that has not always been the case in the past. There was previous talk of hiring an Attorney (Solicitor) to prosecute probation/parole violations, primarily due to the fact that the Commonwealth's and the Probation Departments view on what should occur, often was conflicted. Historically, the District Attorney's office seemed to lose interest after they got the conviction in the case. Again, with the Current DA Administration this does not currently seem to be a major issue.

4. Does the County use Gagnon 2 waivers? Bradford County does use Waiver forms for both Gag 1 & 2 hearings. In fact, we do all Court Orders for violations, with the exception of Probation/Parole waivers, which require up-dates Pre-sentence Investigations and dates for re-sentencing.

5. If so, what authority do we have to use the waivers? In Bradford County, the Judge thoroughly goes over the form with the Defendant, which is generally represented by Counsel. The defendant, as well as the Defense Counsel sign off on the form, which is made part of their file in the Clerk of Courts.

### Carbon County

1. Is there any County where the DA handles all Gag 1 and 2 hearings? DA is not present at GI but are present at GII

1b. If yes, what is your procedure. DA facilitates the GII hearing, the PO sits next to the DA but is more of a witness

2. What role does the DA play in your county regarding violation hearings? See above, the recommendation is usually whatever the PO is asking

3. Does the DA have a right to be heard at Gag 2 hearings?

4. Does your county utilize Gagnon 2 waivers? Yes

4b. If so, what authority do we have to use the waiver? The defendant waives all his rights to hearing etc. The DA's office and Defense attorney (if represented) also signs off and the judge also signs.

### Chester County

1. Is there any County where the DA handles all Gag 1 and 2 hearings? Our Gagnon 1 hearings are usually heard by a Hearing Officer and there is no DA involved during these hearings. Our Gagnon 2 hearings are held in the Courtroom and are heard by a Judge; during these hearings a DA is present.

1b. If yes, what is your procedure. n/a

2. What role does the DA play in your county regarding violation hearings? During the Gagnon 2 hearings the DA usually will only read the caption of the case and then will turn it over to the Probation Officer to provide the details of the violations and recommendation.

3. Does the DA have a right to be heard at Gag 2 hearings? The DA does have a right to be heard during these proceedings; however, most of the time in our County the Probation Officer is the one providing the information to the Court.

4. Does your county utilize Gagnon 2 waivers? Yes, for technical allegations only.

4b. If so, what authority do we have to use the waiver? At our Gagnon 1 hearings, the Hearing Officer does have the authority to revoke/reinstate a client's parole/probation on technical allegations only. Attached is a copy of the waiver that is used and accompanies the hearing report sent to the Judge. Once the Judge signs the hearing report this becomes the Order of the court.

### Delaware County

1. Is there any County where the DA handles all Gag 1 and 2 hearings? G 11 not G 1

1b. If yes, what is your procedure. Ct Admin provides notice. DA introduces case, PO handles it from there

2. What role does the DA play in your county regarding violation hearings? See above

3. Does the DA have a right to be heard at Gag 2 hearings? YES

4. Does your county utilize Gagnon 2 waivers? NO

4b. If so, what authority do we have to use the waiver? n/a

### Elk County

In Elk County the Gagnon Hearing is heard by the Chief Probation Officer. A Petition to Revoke is filed by the supervising PO. The DA is then in charge of the case for prosecution and disposition.

### Erie County

1. Is there any County where the DA handles all Gag 1 and 2 hearings? Gagnon I presided over by a Department Supervisor. P.O.'s provide testimony. Gagnon II ADA runs the hearing

1b. If yes, what is your procedure. Gagnon II-All scheduling handled by P.O's. DA runs the Revocation hearing in Court

2. What role does the DA play in your county regarding violation hearings? The DA manages the Courtroom hearing with testimony and input from assigned Officer

3. Does the DA have a right to be heard at Gag 2 hearings? The DA normally consults with the assigned Officer prior to hearing for input and recommendations. The DA calls all witnesses and solicits testimony from Officers if necessary.

4. Does your county utilize Gagnon 2 waivers? No waivers for Gagnon II

4b. If so, what authority do we have to use the waiver? n/a

#### Lackawanna County

1. Is there any County where the DA handles all Gag 1 and 2 hearings? No

2. What role does the DA play in your county regarding violation hearings? Adult Probation handles the Gagnon I hearings utilizing a Probation Officer II as the Gagnon I hearing officer if a hearing is necessary. The Probation Officers who filed the petitions must attend the hearing in order to testify.

3. Does the DA have a right to be heard at Gag 2 hearings? During the Gagnon II hearing our office is represented by an Assistant District Attorney who presents the Gagnon II petition to the Court and our Probation Officers sometimes testifies with other witnesses if necessary.

4. Does your county utilize Gagnon 2 waivers? Yes

4b. If so, what authority do we have to use the waiver? Yes, our Gagnon II waivers are voluntary and we follow the rules of criminal procedure regarding these revocation proceeding hearings before our Court.

#### Luzerne County

1. Is there any County where the DA handles all Gag 1 and 2 hearings? POs present violation information at Gag I – ADA Petitions and presents violation information at Gag II.

1b. If yes, what is your procedure. POs handle Gag I Hearings, Court Admin. provides Hearing Examiner. ADA presents Gag II petition to Common Pleas Judge, PO testifies along with witness if necessary.

2. What role does the DA play in your county regarding violation hearings? ADA presents Gag II petition to Common Pleas Judge, PO testifies along with witness if necessary.

3. Does the DA have a right to be heard at Gag 2 hearings? ADA must petition and present violation information. PO testifies along with witness if necessary.

4. Does your county utilize Gagnon 2 waivers? No

4b. If so, what authority do we have to use the waiver? n/a

#### Snyder County

1. Is there any County where the DA handles all Gag 1 and 2 hearings? Probation Staff handle the Gagnon 1 hearings at the MDJ. If we request a DA they do attend. At the Revocation Hearing, the DA runs the hearing.

1b. If yes, what is your procedure. In cases where the DA is involved at the Gagnon 1 hearing, we provide all the violation information and they call us to testify.

2. What role does the DA play in your county regarding violation hearings? See above

3. Does the DA have a right to be heard at Gag 2 hearings? Personally, I would permit the DA to run the hearings due to their knowledge of the law and Court Procedure. If you are recommending something less than what the DA requests, your officers will likely be asked to testify. Our DA defers to us on our recommendations at revos, but there are times in Juvenile Court that we do not have the same recommendation.

4. Does your county utilize Gagnon 2 waivers? We only use waiver's for Gagnon 1 hearings. In situations where the parties agree, we present a stipulation order to the Court. If approved an order is signed.

4b. If so, what authority do we have to use the waiver? n/a

York County (see Appendix – 4 documents)

1. Is there any County where the DA handles all Gag 1 and 2 hearings? No

1b. If yes, what is your procedure. Probation handles the Gagnon I hearing utilizing Gagnon I Hearing Officers that are probation officers.

2. What role does the DA play in your county regarding violation hearings? Similar to Delaware County, the DA introduces the case and the PO handles the hearing from there.

3. Does the DA have a right to be heard at Gag 2 hearings? Yes

4. Does your county utilize Gagnon 2 waivers? Yes

4b. If so, what authority do we have to use the waiver? It is a voluntary process. The defendant must consent.

York County's Policy is attached. (see Appendix – 4 documents)

	<b>YORK COUNTY DEPARTMENT OF PROBATION SERVICES</b>	<b>Section:</b>	<i>Supervision</i>
		<b>Subject:</b>	<i>Violation of Probation, Parole or IPP</i>
		<b>Policy No.</b>	III-0006
		<b>Rule No.</b>	N/A
	<b>ADULT OFFICE</b>		<b>Effective Date</b>
<b>State Standard: 4-APPFS-2B-02, 4-APPFS-2B-03, 4-APPFS-2B-05, 4-APPFS-2B-06, 4-APPFS-2B-07, 4-APPFS-2B-08, 4-APPFS-2B-09, 4-APPFS-2B-10, 4-APPFS-2B-11, 4-APPFS-2B-12</b>			

## Violations of A.R. D., Probation, Parole and Intermediate Punishment

### I. PURPOSE

The revocation hearing is the final fact-finding stage of the probation and parole revocation process. It is at this stage that the Court makes the final determination whether an offender has violated Court imposed conditions and what sanction, if any will be assessed. The decision to violate an individual's term of supervision is a weighty one and should be considered carefully, especially if a probation officer is recommending a period of incarceration, thereby impacting an individual's freedom and removing them from their community. This policy is to provide guidance for when an individual's supervision should be violated and taken before the Court and to clearly define and standardize the procedures for doing so.

### II. POLICY

Violations of probation, parole and intermediate punishment may be classified as either technical or convicted violations. Technical violations involve any violation of the standard conditions of supervision or special conditions imposed by the Court, except for the commission of a new offense(s). A convicted violator is one who has been convicted of a new criminal offense. In some cases, both types of violations occur.

The decision of a Probation Officer to return a client to Court for a violation hearing is an important one. Considerable discretion is given to an officer when making this decision. Not every situation is black and white or clear cut. An officer must be thoughtful in considering all the facts of the case and potential ramifications to the individual and the community when making this decision. An officer should use their best judgment using the totality of the facts in reaching this decision. Alleged violations must be reviewed with a Supervisor.

Some of the factors that may be involved in deciding to pursue violation action are:

- The presence of danger to the community.
- Seriousness of the violation(s) of Court ordered conditions or the new offense.
- Attempts made by the offender to engage in resources to rehabilitate themselves.

- Unwillingness or inability of the individual to engage in community resources.
- Significant lack of client motivation despite multiple attempts to engage the individual.

If an individual's behavior is placing them at risk of violation action, the officer will investigate the alleged violation(s) immediately. Ongoing documentation must exist in the Offender Management System documenting the officer's attempts to gain the individual's compliance with their supervision requirements. Technical violations should be viewed in the context of the client's overall adjustment. An accumulation of violations or repetition of the same violation(s) indicates adjustment problems. In cases when the only or primary violation is absconding, consideration will be given to reinstatement where no new offenses have occurred and adjustment has otherwise been satisfactory.

When a response to violations of supervision is necessary, the following intermediate steps must be considered before proceeding with a formal Court hearing:

- A review of the conditions and supervision plan, followed by changes in the supervision plan when necessary.
- Referrals to treatment providers or community agencies designed to address the needs of the individual.
- An Administrative hearing

In the following circumstances, an officer **must** proceed with violation of supervision:

- Violent new offense that places the community at risk of injury.
- Ongoing patterns of behavior that places the community or victim at risk of danger or serious bodily injury.

Three formats exist for use when violating an individual's supervision. These include:

- **Administrative Format** – This format should be used for administrative or transfer cases where little is known about the individual. This format may also be used in standard supervision cases where the probation officer is simply seeking more time for an individual to complete a specific condition of supervision and no other significant violations of supervision exist.
- **Costs/Fines Only Format** - This format may be used for administrative, transfer and standard supervision cases where an individual's only violation is for costs, fines and restitution and no other significant violations exist.
- **Standard/Full Format** – This format should be used for all low-moderate, moderate, high or very high supervision cases.

Violations of the Accelerated Rehabilitation Disposition (ARD) program should use the following checklist report:

- **ARD Violation Checklist** – This checklist serves as notice to the District Attorney's Office that an individual has violated the conditions of the ARD program or has failed to pay their financial obligations in full. The Department of Probation Services cannot submit a petition to violate the ARD program. The District Attorney's Office must do so.

### **III. PROCEDURE**

#### **ARD CASES:**

Court hearing requests are appropriate when specific violations occur. Such requests should be submitted no later than thirty (30) days before the expiration date of the case.

The supervising office should complete the ARD Violation Checklist and attach any appropriate documentation. After signature by the Probation Officer, the report is submitted to the Supervisor for review. Upon the signature of the supervisor, the report is submitted the appropriate Unit Secretary for distribution to the District Attorney's Office. The District Attorney will attach a Petition and file the report with the Clerk of Courts with distribution to all of the appropriate parties.

#### **PROBATION, PAROLE AND INTERMEDIATE PUNISHMENT CASES:**

##### **WHEN THE CLIENT IS NOT INCARCERATED:**

Prepare the appropriate Violation Report using the correct format and submit to the Supervisor for review. Once reviewed and signed by the supervisor, the report is given to the unit secretary for processing as described later in this policy.

##### **WHEN THE CLIENT IS INCARCERATED:**

The Gagnon I Hearing must be scheduled within ten (10) days of incarceration. Seventy two (72) hours prior to the Gagnon I Hearing, the Probation Officer provides verbal and written notice of violation(s) cited (Notice of Violation Form) and the time of the Gagnon I or preliminary hearing to the client (the Gagnon I hearing time is obtained from a Supervisor/Hearing Officer). In the notice, cite the violations in a brief statement form, for example, "You violated Condition No. 1 by not reporting to the office on 05/01/98 and 05/07/98". Have the client sign a copy of the notice, witness and date it, and retain it in the offender's electronic file. The full hearing before the Court should not be scheduled until after the Gagnon I or preliminary hearing is held. When a summary of findings of the Gagnon I or preliminary hearing is available, it will be attached to the Court's copy of the violation report, and the supervising Probation Officer will request a hearing. A copy of the findings of the Gagnon I or preliminary hearing will be retained in the case folder.

In cases when the client is held on a seventy two (72) hour detainer and a decision is made to proceed with a violation action, a request to the Court for a permanent detainer is prepared in a Petition. The Probation Officer will give verbal and written notice (NOTICE OF VIOLATION FORM) to the client of the Gagnon I or preliminary hearing. Proceed as described in previous paragraph.

When the violations are technical only, the Court hearing on the violation should be requested within thirty (30) days of the Gagnon I hearing.

##### **GAGNON I HEARING:**

When a client is being held in custody pending resolution of technical violations, a Gagnon I hearing will be held within ten (10) working days of confinement on our warrant/detainer, by

a neutral Hearing Officer, not directly involved with the client. The Probation Officer will deliver notice of the Gagnon I hearing to the client at least three (3) days prior to the hearing. The Gagnon I hearing will be held at the county jail, with the client and supervising Probation Officer present or conducted via live video. The client may have counsel present and/or witnesses to offer testimony. The Hearing Officer will issue a verbal decision or a recommendation immediately after the hearing and provide a written decision to the client within twenty-one (21) calendar days of the hearing. The written summary will also include a request for a hearing date in cases when further Court action is indicated. Where further Court action is not indicated, the hearing officer may recommend less severe sanctions if appropriate. The hearing officer may also make recommendations for treatment or other programs such as Courage to Change or other Cognitive Based Interventions to address the individual's criminogenic needs.

When a defendant is incarcerated in another County on our detainer for technical violations, the Gagnon I Hearing will be held when the defendant is returned to this jurisdiction.

A Gagnon I hearing will not be necessary when the only alleged violation is a new offense and the preliminary hearing is held within thirty (30) days. In such cases, the Probation Officer provides written notice to the client that the preliminary hearing will be held before the District Justice. If the preliminary hearing is not held within thirty (30) days, a Gagnon I hearing must be held.

The Gagnon I hearing may be delayed or postponed for good cause. The client may also waive the right to a Gagnon I hearing by signing a waiver. The waiver must be signed in the presence of the Hearing Officer and a copy will be provided to the client.

#### **GAGNON II WAIVER HEARINGS:**

Rationale: It is understood that many violations generate from failure to pay court related debt and/or to complete special conditions of the case by the maximum supervision date. For these lesser violations, where an agreed upon recommendation of a new term on Probation, re-parole forthwith in Parole cases, a recommendation of Work Release or a jail recommendation of less than 6 months is appropriate, a Gagnon II waiver hearing may be scheduled and conducted. This process is a voluntary one on the part of the defendant and in accord with his/her counsel.

Scheduling of a Hearing: No less than sixty (60) days prior to the expiration date of the case, the supervising Officer will review the file for outstanding general requirements and special conditions. If minor infractions are present, which cannot be resolved via another method (modification of sentence, new payment agreement, etc.), a Gagnon II waiver hearing may be scheduled with your supervisor or designated Hearing Officer. This Hearing shall be held no less than forty-five (45) days prior to the case expiration. The proposed recommendation and case resolution must be discussed with your Supervisor prior to sending notification of the Hearing to the defendant.

Upon scheduling of this hearing, the Notice of Violation Hearing Waiver form should be completed and mailed to the defendant. This form will list the date and time of the hearing and will remind the defendant of his/her right to have counsel present. This form will specify

those conditions the defendant is alleged to have violated. A minimum of 72 hours advanced notice must be afforded to the defendant prior to the actual hearing. The Gagnon II waiver form should also be mailed with notice of the hearing date. This form should again contain the alleged conditions violated and the proposed sentencing recommendation.

When recommending the Work Release program, be sure to recommend a report date far enough in the future to allow time for the Court to review and sign the order.

Hearing: At the hearing, the Hearing Officer will review the Waiver going through each question with the defendant. During this inquiry, the defendant must agree to all terms and conditions in order for the Hearing to progress. Upon conclusion of the waiver form and agreement to the proposed recommendation, all parties shall sign and date page 2 of the Waiver.

Post-Hearing: After the Hearing is concluded, the Hearing Officer shall prepare the Gagnon II Waiver Order in accordance with the sentencing recommendation made during the Hearing. The prepared Order shall then be submitted to the supervising officer's unit secretary for processing. The Order will then be reviewed and authorized by the Court of the record. The signed Order is returned to the unit secretary for copy, scanning, and distribution.

The supervising Officer shall then prepare a supplemental face sheet reflecting the re-sentencing.

Other notes of interest: Offenders who do not appear for the Gagnon II waiver hearing or refuse to acknowledge the violations and sign the Gagnon II Waiver will still be subject to violation measures through the submission of a formal violation report. This report shall be submitted at least thirty (30) days prior to the case expiration date.

At this juncture, Gagnon II waiver hearings may be used where jail time of less than six months and/or the Work Release Program is an appropriate or recommended disposition. However, these recommendations must also include recommendations for restorative programs while incarcerated and recommend early release when such programs are completed.

Repeated Gagnon II waiver hearings shall not be used when the offender has failed to come into compliance from the terms and conditions agreed upon at the original Gagnon II waiver hearing. In those instances, a formal violation report should be submitted.

In the case of Gagnon II waiver hearings involving an original sentence of Intermediate Punishment, officers should first recommend the addition of a Restorative Intermediate Punishment program in lieu of violating the Intermediate Punishment Sentence. If violations were excessive or repeated the officer may recommend a new term of Intermediate Punishment or Probation.

## **DISTRIBUTION**

Upon receipt of a violation report, Support Staff will log the information into the Offender Management System (OMS) and make five copies of the report. If the officer completed the

address update form, this will be detached from the original report prior to making copies. It should then be clipped to the front of the original report. The report is then filed with the Clerk of Courts who serves all five copies to Court Administration for scheduling purposes. Court Administration schedules the hearing and sends the hearing notice attached to the copy of the violation report back to the probation office and serves to notice to all parties (District Attorney, Clerk of Courts, Defense Attorney, etc.) of the scheduled hearing. Support staff logs the hearing date and time in the OMS and gives the hearing notice to the probation officer.

#### **ENFORCEMENT OF COURT ORDERED MONETARY OBLIGATIONS:**

Court imposed financial obligations must be included in probation/parole/intermediate punishment/pretrial and A.R.D. conditions. At the outset of supervision a wage attachment or payment agreement must be established in accord with the policy. In a parole case, the payment arrangement should be noted on the parole plan whenever possible. Whenever possible, an individual's ability to pay should be assessed. If an individual is unable to pay, please see the *Indigent Policy*.

When violation proceedings for non-payment are necessary, the following should be considered:

- If an individual is assessed as unable to pay, an Administrative Hearing should be held to offer Community Service in lieu of the payment of Court costs.
- If an Administrative Hearing fails to gain compliance with payment of Court financial obligations, the case should be referred to a Collection Agency through the Clerk of Courts. (Please see the Appropriate Policy).
- If the individual continues to fail to pay, a violation report should be submitted to the Court. The client must be cited for the violation at least thirty (30) days prior to the expiration date of supervision.
- Recommendations for these types of violations should include a "purge amount" large enough to cover the amount the defendant is in arrears in order to avoid incarceration or if paid in full, the violation be withdrawn and the case closed.
- In probation or intermediate punishment cases, when there are mitigating factors, a new term of probation or intermediate punishment may be recommended. In A.R.D. cases, an A.R.D. extension form can be completed and submitted to the District Attorney's Office. The case remains open during the extended period.
- In probation, parole and intermediate punishment cases, when the client has established a satisfactory payment record and has paid all but \$1000.00 in non-DUI Cases and \$1500.00 in DUI Cases, but has not fulfilled the financial obligation by the expiration of supervision, an Application for Modification of Sentence or a wage attachment may be completed and the case can be closed. If an Application for Modification of Sentence or wage attachment cannot be secured, an agreement for continued payments must be arranged prior to case closure.

#### **IV. CONTENT AND FORMAT OF THE FULL VIOLATION REPORT**

**PETITION LANGUAGE:** The header of the violation petition must indicate what type of violation the individual is facing. Please delete those that do not apply. If an individual is

being violated on two separate types of sentences (I.e. probation and parole), please delete only those that do not apply.

## **PETITION FOR PROBATION/PAROLE/INTERMEDIATE PUNISHMENT VIOLATION**

The individual's name should be typed in all capital letters in the COMMONWEALTH OF PENNSYLVANIA VS. DEFENDANT portion of the petition. At the end of the report, add the docket numbers again to ensure the bar code appears on the report.

**CASE HISTORY:** This section of the report should include the judge's name, date of sentencing, docket number, sentence, any credit time, and the effective and maximum dates of supervision for the original sentence and every resentencing thereafter and the date the defendant was most recently released from incarceration if applicable. Also include any special conditions ordered by the Court including costs and fines and payment amount if determined by the Court. Please review the Violation Template for a detailed description.

**CONDITION(S) VIOLATED/SUPPORTIVE EVIDENCE:** This section should list every standard and special condition violated and provided detailed supportive evidence of the violation(s). Conditions should be cited separately, unless the violation covers two conditions such as a new offense where the individual was under the influence of an illicit substance.

**RISK ASSESSMENT RESULTS:** Indicate the Ohio Risk Assessment results from the most recent assessment completed on the defendant. Indicate the risk level and the scores for the criminogenic need areas. The recommendation section of the report should recommend programs to address the top three criminogenic needs.

Sexual Offender and Domestic Violence caseloads need not include this information as the ORAS does not accurately assess these offender types. Some mental health caseload clients may also be excluded if the offender has significant active psychosis or impairment and is unable to be assessed.

**DEFENDANT/CASE SUMMARY:** This section should begin with an opening statement that includes the defendant's age, sex and type of violation (probation/parole/ARD/IP). Indicate last known employment, family composition, and last known address. Please include the mitigating and aggravating factors and reflect the totality of the case. Indicate if this is a first, second, etc. violation of the case. Additionally, indicate the individual's prior record if relevant, patterns of behavior, previous treatment and rehabilitative efforts)? Include brief synopsis of reasons for past violations (failure to report, drug use, etc.).

This section should provide a review of all of your efforts to rehabilitate the offender such as, administrative hearings conducted, referrals to treatment and other programs such as Courage to Change or other Cognitive Based Interventions to address the individual's criminogenic needs. What attempts were made to gain compliance of this offender?

**RECOMMENDATION:** This section should include a respectful recommendation to find the defendant in violation of their sentence and recommend a new term of Intermediate Punishment, Probation or Parole. If a parole sentence, list the unserved balance in number of days, as well as reparole in number of days (i.e. it is respectfully recommended that the defendant be found in violation of his unserved balance of 342 days with reparole after serving 30 days). For all recommended sentences, indicate the effective date and any credit time toward the sentence in number of days. Indicate any special conditions, jail programs or community based programs that should be completed. Special conditions should tie back to the defendant's top three criminogenic needs.

#### V. ADMINISTRATIVE VIOLATION FORMAT

**CASE HISTORY:** This section of the report should include the judge's name, date of sentencing, docket number, sentence, any credit time, and the effective and maximum dates of supervision for the original sentence and every resentencing thereafter and the date the defendant was most recently released from incarceration if applicable. Also include any special conditions ordered by the Court including costs and fines and payment amount if determined by the Court. Please review the Violation Template for a detailed description.

**CONDITIONS VIOLATED/SUPPORTIVE EVIDENCE:** Simply check the appropriate boxes and provide details where necessary about the violations. For example, if the individuals failed to report, list the dates the individuals failed to report to appointments.

**RECOMMENDATION:** This section should include a respectful recommendation to find the defendant in violation of their sentence and recommend a new term of Intermediate Punishment, Probation and/or Parole. If a parole sentence, list the un-served balance in number of days. For all recommended sentences, indicate the effective date and any credit time toward the sentence in number of days. Indicate any special conditions- jail programs or community based programs that should be completed.

#### VI. COSTS AND FINES ONLY VIOLATION FORMAT

**CASE HISTORY:** This section of the report should include the judge's name, date of sentencing, docket number, sentence, any credit time, and the effective and maximum dates of supervision for the current sentence only and the date the defendant was most recently released from incarceration if applicable. Please review the Violation Template for a detailed description.

**CONDITIONS VIOLATED/SUPPORTIVE EVIDENCE:** The only violation should be failure to pay Court costs, fines and/or restitution. Simply check the appropriate box and fill in the required information: current balance, last payment date and amount, date payment agreement was signed and monthly amount the individuals agreed to pay. If community service was ordered in lieu of court costs and fines, indicated the date community service was ordered, the hours ordered to complete and the number of hours completed to date.

**RECOMMENDATION:** This section should include a respectful recommendation to find the defendant in violation of their sentence and recommend a new term of Intermediate Punishment, Probation and/or Parole. If a parole sentence, list the un-served balance in number of days. For all recommended sentences, indicate the effective date and any credit time toward the sentence in number of days.

Cost/fines only violations **must** include language setting a “purge amount” large enough to cover the amount the defendant is in arrears in order to avoid incarceration or if paid in full, the violation be withdrawn and the case closed.

## **VII. ARD NOTICE OF VIOLATION**

**DEFENDANT IDENTIFYING INFORMATION:** This format should only be used for violations of the ARD Program. Add the individual’s full name in capital letters, along with the docket number and offenses, probation officers name, phone extension, whether an interpreter is needed and the program completion date.

**NARRATIVE:** This section of the report should include the judge’s name, date the individual was placed on the ARD program, the term of the ARD program and the program end date.

**CONDITIONS VIOLATED/SUPPORTIVE EVIDENCE:** Simply check the appropriate boxes and provide details where necessary about the violations. For example, if the individuals failed to report, list the dates the individuals failed to report to appointments.

**RECOMMENDATION:** Simply check the appropriate box indicating you are recommending removal or an extension and the number of month’s extension you are requesting.

## **VIII. COURT COVERAGE AND AFTER COURT PROCEDURES**

**OFFENDER MANAGEMENT INFORMATION SYSTEMS INFORMATION UPDATE:** As outlined in the Court Officer Coverage Policy, violation hearings may be covered by the assigned officer or another officer when necessary. Violation hearings with particular technical issues, special circumstances or involving acts of violence should be covered in Court by the assigned officer.

Upon scheduling of the violation hearing, either the assigned officer or the Court coverage officer will receive a copy of the violation report with a blank *Supplemental Sentencing Information Sheet* attached. The Court officer is responsible for completion of the portions of this form that are in *Italic* text. Upon return from Court, The Officer who covered Court should enter the basic sentencing information in the Violation Tab of the Offender Management System (OMS). A “How To” is available on the K-drive.

### **UPDATING INTAKE INFORMATION:**

Offenders who were before the Court for a violation hearing and received a new sentence should not report to the main office for an intake after Court, unless the case is assigned to an Administrative or Transfer Caseload. In cases (other than Administrative or Transfer) where

an officer is recommending a new term of probation, intermediate punishment and/or an unserved balance with re-parole forthwith, the Officer should schedule an appointment with the offender and attach the appointment card to the violation report for the Court Officer to give to the defendant after the hearing. The assigned officer should update all of the necessary information, such as new conditions, at this appointment.

Administrative and Transfer cases should report to the main office for an updated intake.

In cases where an officer is recommending a period of incarceration, the officer should schedule an appointment and place this information on the parole plan. The updated intake information should be completed at the time of the scheduled appointment or while the individual is incarcerated.

	<b>YORK COUNTY DEPARTMENT OF PROBATION SERVICES</b>
	<b>ADULT OFFICE: NEW OFFICER TRAINING PROGRAM</b>  <b>GAGNON I/GAGNON II</b>

Revised: February 2, 2018

### **Gagnon I Hearings**

- Hearing held after a Permanent Detainer is filed to determine if the defendant should remain incarcerated until the time of the violation hearing/Gagnon II. This is not a ‘guilt or innocence’ hearing. A Gagnon I hearing is also held after the defendant has been located and incarcerated on a Parole/Probation Absconder Warrant.
- Must be held within ten (10) business days of the defendant reaching York County Prison. The defendant must have at least three (3) business days’ notice of the hearing. (i.e.: If a hearing is scheduled for Monday, October 10<sup>th</sup>, the defendant must receive notice no later than Wednesday, October 5<sup>th</sup>.)
- To schedule and notify of a Gagnon I hearing:
  1. Go to the K: and into the Gagnon Information Folder.
  2. Go into the Gagnon I Hearing Schedule Folder.
  3. Choose a date and time and enter the required information.
  4. Once the hearing is scheduled, go to the K: (Adobe), into the Gagnon I Hearing Information Folder, and then click into the Gagnon Hearing Notices Folder. Then click on the Gagnon Hearing Notice Template.
  5. Complete this form and then save into the K: Gagnon I Hearing Information Folder, Gagnon I Hearing Notices, and then into the correct year and month folder. Save the file as “Last Name, First Name.”
  6. Print two (2) copies of this notice, sign, and place in the Gagnon Hearing Bin.
  7. Once these are signed at the jail, you will receive the original signed by the defendant in your mailbox. Note the date it was signed, and submit to your secretary for scanning.
- If the only condition being noted as violated is Failure to Obey Laws, the PO may choose to serve notice to the defendant that his scheduled preliminary hearing will serve as his Gagnon I hearing. Please use the template found in the K:. Please note, the PO must be alert as to dates of the preliminary hearing and outcome.
- At the Gagnon I Hearing, the defendant can either wave the hearing or have the hearing. Waiving the Hearing means that the case moves forward in the Violation process. A

Gagnon II or PV Hearing will follow. If the defendant has the hearing, the Gagnon I Hearing Officer will call the supervising Probation Officer. The Probation Officer must present the factual information, to include documentation, new charge affidavits, etc. to the Hearing Officer regarding what information was used to make the decision to permanently detain the defendant. The defendant, likewise, will present to the Hearing Officer why they feel they should be released pending the violation. If the hearing is held, the Gagnon Officer has twenty-one (21) days to make a decision in the case and complete a Gagnon I Hearing report. That report will indicate whether or not the defendant should be released pending the violation or remain incarcerated. The Hearing Officer will submit to report to the appropriate Judge, as well as give a copy to the Probation Officer. The PO should then file a PV, if deemed appropriate, within thirty days.

### **Gagnon II Waiver Hearings (Office)**

- **Rationale:** It is understood that many violations generate from failure to pay court related debt and/or to complete special conditions of the case by the maximum supervision date. For these lesser violations, where an agreed upon recommendation of a new term on Probation or a re-parole forthwith in Parole cases is appropriate, a Gagnon II Waiver Hearing may be scheduled and conducted. This process is a voluntary one on the part of the defendant and in accord with his/her counsel.
- **Scheduling of an Office Gagnon II Hearing:** Approximately ninety (90) days, but no less than sixty (60) days prior to the expiration date of the case, the supervising Officer will review the file for outstanding general requirements and special conditions. If minor infractions are present which cannot be resolved via another method (modification of sentence, new payment agreement, etc.), a Gagnon II waiver hearing may be scheduled with your supervisor or designated Hearing Officer. This Hearing shall be held no less than forty-five (45) days prior to the case expiration. The proposed recommendation and case resolution must be discussed with your Supervisor prior to sending notification of the Hearing to the defendant. You should discuss the Gagnon II Waiver Hearing recommendation with your client prior to scheduling the hearing, making sure they agree with the recommendation. To schedule, go to Go to the K: and into the Gagnon Information Folder. Go into the Gagnon II Hearings - **Office**. Choose a date and time and enter the required information.

Upon scheduling of this hearing, the Notice of Violation Hearing and Waiver forms should be completed, and approved by your Supervisor. Make sure that you and your Supervisor have signed the appropriate locations. The notice and form are then given to your secretary, who will in turn mail the notice to the defendant (please make sure the address is correct in UCM.) This notice will list the date and time of the hearing and will remind the defendant of his/her right to have counsel present. (Your secretary will also log the Gagnon hearing and enter the violation information into UCM.) The notice will

specify those conditions the defendant is alleged to have violated. A minimum of three (3) days advanced notice must be afforded to the defendant prior to the actual hearing.

The Gagnon II waiver form should also be mailed with notice of the hearing date. This form should again contain the alleged conditions violated and the proposed sentencing recommendation. Your secretary will give copies of the notice and waiver forms to the Gagnon II Hearing Officer.

- **Hearing:** At the hearing, the Hearing Officer will review the Waiver going through each question with the defendant. During the inquiry, the defendant must agree to all terms and conditions in order for the Hearing to progress. Upon conclusion of the waiver form and agreement to the proposed recommendation, all parties shall sign and date the Waiver. The supervising PO does not have to physically attend the hearing, but should be available by phone if needed.
- **Post-Hearing:** After the Hearing is concluded, the Hearing Officer shall prepare the Gagnon II Waiver Order in accordance with the sentencing recommendation made during the Hearing. The prepared Order shall then be submitted to the supervising officer's unit secretary for processing. The Order will then be reviewed and authorized by the Court of the record. The signed Order is returned to the unit secretary for copy, scanning and distribution.

The supervising Officer shall then prepare a supplemental face sheet reflecting the re-sentencing. When filling out the supplemental facesheet and in most cases, the effective date of the Order shall be the date the judge signs the Order; this is not necessarily the date waiver was conducted (or the date noted in AOPC.)

- **Other notes of interest:** Offenders who do not appear for the Gagnon II waiver hearing shall still be subject to violation measures through the submission of a formal violation report. This report shall be submitted at least thirty (30) days prior to the case expiration date.

At this juncture, Gagnon II waiver office hearings shall not be used where jail time is an appropriate or recommended disposition. Likewise, repeated Gagnon II waiver hearings shall not be used when the offender has failed to come into compliance from the terms and conditions agreed upon at the original Gagnon II waiver hearing. In those instances, a formal violation report should be submitted.

Gagnon II waiver hearings involving an original sentence of Intermediate Punishment should be recommended for a new term of Probation.

### **Gagnon II Hearing for Incarcerated Defendants**

- At the time of your Gagnon I hearing, if your client waives his Hearing he may be eligible for a Gagnon II. The following are not eligible for a Gagnon II waiver:

- Sex offender and DV cases where the violation relates to further perpetration
- Max out of any length
- Recommendations for more than 180 days of incarceration
- If the Offender does NOT waive their Gagnon I
- If the recommendation includes completion of the Freedom Program
- Additionally, the Gagnon I Officer will refer your client to any jail program you will be recommending.
- Your client then has 10 days to put in an inmate request slip to the jail Gagnon II Officer, volunteering/requesting the Gagnon II hearing. The jail Gagnon II Officer will process the inmate requests slips and will email the assigned PO that his/her client has requested a Gagnon II hearing and advise them to proceed with the process. If they do not email you within ten days of your Gagnon I hearing, submit the violation report to the Court for a hearing within thirty days of the Gagnon I hearing date. However, should the defendant have pending charges, the Gagnon II cannot be scheduled until after the preliminary hearing is held for the new charges. Therefore, if new charges are pending, allow the client 10 days after their preliminary hearing to request the Gagnon II hearing.
- To schedule, go to the K: and into the Gagnon Information Folder. Go into the Gagnon II Hearings - **Jail**. Choose a date and time and enter the required information.
- For appropriate waiver cases and after discussing the case with your supervisor, please complete the Gagnon II cover letter/summary of allegations and the waiver, found in the templates. Submit said paperwork to your supervisor for approval and signature. Remember to sign the report yourself as well. Give the signed copy to your secretary. Your secretary will log the Gagnon II, enter the information into UCM, and make copies for the Jail Runner. The Jail Runner then takes two copies of the Gagnon II report to York County Prison. The client is given one copy. The defendant signs a copy as being received. This signed notice and the copy of the waiver with all signatures are then given to the jail Gagnon II hearing officer for the actual hearing date. The Hearing Officer will return the signed notice of allegations (with hearing date and location) to the PO, for the PO to have scanned into the client's file.
- Post-Hearing: After the Hearing is concluded, the Hearing Officer shall prepare the Gagnon II waiver Order in accordance with the sentencing recommendation made during the Hearing. The prepared Order shall then be submitted to the supervising officer's unit secretary for processing. The Order will then be reviewed and authorized by the Court of the record. The signed Order is returned to the unit secretary for copy, scanning and distribution.
- The supervising Officer shall then prepare a supplemental face sheet reflecting the re-sentencing. When filling out the supplemental facesheet and in most cases, the effective date of the Order shall be the date the judge signs the Order; this is not necessarily the date waiver was conducted (or the date noted in AOPC.)
- "Something new has come up": If at the Gagnon II hearing the client changes his mind and decides he wants to see the Judge, the PO will then have thirty days to submit the violation report to the court for a hearing.



9. Possession/Control of Weapons

10. Assaultive/Threatening Behavior

11. Failure to Complete Special Conditions:

- Failure to Complete Community Service
- Failure to Obtain Drug/Alcohol Evaluation
- Failure to Complete Counseling/Treatment
- 

Attached you will find a Waiver of Violation Hearing, also known as a Gagnon II waiver hearing. If you review this form and agree with the recommendation listed, please appear at the date and time as listed below. You may have your attorney present if you so desire.

At this hearing, all parties will sign off on the agreed recommendation. This will cancel the violation hearing scheduled with the judge in your case. If you do not agree with the violation recommendation, please notify your probation officer and your hearing will be held with the sentencing judge.

You are now advised that a Waiver Hearing regarding the above charge(s) will be held at the York County Adult Probation Office on \_\_\_\_\_, **Click here to enter a date** at \_\_\_\_\_. You are directed to be present at that time. ***Please sign in for the Gagnon II Officer at the front left window upon your arrival. Do not sign in for your probation officer.***

Sincerely,

Adult Probation/Parole Officer

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I, the above-named defendant, acknowledge receipt of this notification.

Defendant's Signature: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Date/Time: \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA

Case #:

Offense(s):

VS.

Supervision Max Date

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**WAIVER OF GAGNON I/II VIOLATION HEARING  
PROBATION / PAROLE / INTERMEDIATE PUNISHMENT VIOLATIONS**

You have the right to be represented by an attorney, and if you cannot afford an attorney, one will be appointed for you, free of charge, upon your request. Do you understand? Yes  No

Do you have an attorney? Yes  No  If not, do you want an attorney? Yes  No

**Please Note: If the answer to either of these questions is “yes” than attorney MUST sign this form**

If you have no attorney, do you wish to proceed without one? Yes  No

At the Gagnon I / II Violation Hearing the Commonwealth would be required to convince the Court that there is probable cause or reasonable grounds to believe that you violated the terms and conditions of your probation / parole as set forth in the violation petition.

Do you understand that? Yes  No

At the Gagnon I/ II Violation hearing, you or your attorney would have the right to cross examine any witnesses called by the Commonwealth, to challenge any other evidence presented by the Commonwealth and to call witnesses and present evidence on your behalf.

Do you understand that? Yes  No

Do you understand that you are entitled to have the Gagnon I/ II Violation Hearing held?

Yes  No

By waiving this Hearing, you are admitting that you have violated the terms and conditions of your Probation / Parole/ or Intermediate Punishment. Do you understand? Yes  No

Have any promises been made to you to get you to waive this hearing? Yes  No

Has any force or threats been used against you to get you to do so? Yes  No

With all of the above statements in mind, do you wish to waive the Gagnon I/ II Violation Hearing? Yes  No

Are you waiving the Gagnon I/ II Violation Hearing voluntarily and of your own free will?

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Yes  No

Defendant is incarcerated and has waived the Gagnon I hearing before the Hearing Officer.

Defendant Name:

File Number:

Condition(s):

- Condition #1: Failure to Report
- Condition #2: Possession/Consumption of Illegal Drugs.
- Condition #3: Possession/Consumption of Alcohol (Excessive Use or Zero Tolerance)
- Condition #4: Moving Without Permission/Failure to Report Address/Leaving the County without Permission
- Condition #5: Failure to Maintain Employment
- Condition #6: Failure to Pay Court Costs, Fines and/or Restitution
- Condition #7: Failure to Obey Laws
- Condition #8: Furnishing False Statements
- Condition #9: Possession/Control of Weapons
- Condition #10: Assaultive Threatening Behavior
- Condition #11: Special Condition

Disposition: It is respectfully recommended that the defendant be found in violation of their Choose an item. in case CP-67-CR-000 - and be sentenced to the following: (Please check all that apply and fill in the appropriate amounts of time and delete options not used)

- The defendant is sentenced to time served to , to be paroled forthwith.
- The defendant is sentenced to the unserved balance of days to be paroled forthwith.
- The defendant is sentenced to a new term of months of probation.
- The defendant should continue on their current term of five (5) years intermediate punishment with modifications listed below.
- It is recommended that the defendant complete the following programs:
  - Obtain a drug and alcohol evaluation and complete any recommended treatment.
  - Enter and successfully complete Courage to Change.
  - Enter and successfully complete Thinking for a Change.
  - Enter and successfully complete DUI Education Classes.
  - Enter and successfully complete RASE Project.
  - Enter and successfully complete months of drug testing through Averhealth.
  - Successfully complete hours of community service.
  - Successfully complete community service in lieu of Court costs and fines.
  - Enter and successfully complete days of drug testing through Averhealth.
  - The defendant will have no contact with the victim in this case.

5/11/2018

- Obtain a mental health evaluation and comply with any recommended treatment.
  - Enter and successfully complete the Moving On program.
  - Enter and successfully complete a batterer's intervention program.
  - Enter and successfully complete employment training.
  - Enter and successfully complete sexual offender treatment.
  - Other:
- It is further ordered that the defendant remit monthly payments towards court ordered financial obligations and any future payments should be applied to any outstanding restitution before court costs and fines.

Upon successful completion of all Court ordered special conditions, including payment in full of any applicable restitution and when the defendant's remaining financial obligations have fallen below an acceptable threshold, the case(s) may be closed.

All the terms and conditions of the original sentence remain in effect.

Date			
		Probation Officer Signature	Supervisor Signature
		Probation Officer Name Printed	Supervisor Name Printed
Date			
		Hearing Officer Signature	
		Hearing Officer Name Printed	

**Defendant Certification**

I certify that I understand this document. I am voluntarily giving up my right to a violation hearing before the Court. I admit that I violated the conditions stated above and that I agree to the disposition stated above as a final Order of the Court.

Date		
		Signature of Defendant
		Printed Name of Defendant

**Defense Attorney Certification**

I certify that I have advised my client of the meaning of this document; that it is my belief that he/she understands the full meaning. The Defendant is knowingly, voluntarily and intelligently waiving the Gagnon I/II hearing and agreeing to the entry of the agreed upon dispositions as a final Order of the Court.

Date		
		Signature Attorney for the Defendant
		Printed Name Attorney for the Defendant

**GAGNON II WAIVER GUIDELINES**  
**TECHNICAL VIOLATIONS MATRIX**

**No Drug/Alcohol Issues**

<p><b>First Technical Violation</b>   <b>No Drug/Alcohol Issues</b></p>	<p><b>Mitigated:</b> Extend probation, unserved balance reparole forthwith, add RIP portions to an IP sentence: Continue any court ordered conditions or implement new programs such as community service, employment programs, etc</p> <p><b>Standard:</b> Above, with stepped up supervision and additional programs such as community service, employment programs, etc.</p> <p><b>Aggravated:</b> Above with up to 30 days incarceration but not to exceed 180 days incarceration, work release or house arrest with electronic monitoring with stepped up supervision and additional programs such as community services, employment programs, life skills, Thinking for a Change etc.</p>
<p><b>Second Technical Violators</b>   <b>No Drug/Alcohol Issues</b></p>	<p><b>Mitigated:</b> Extend probation, unserved balance reparole forthwith, additional RIP portions to an IPP sentence with increased level of supervision and implementation of appropriate programs</p> <p><b>Standard:</b> All of the above with the addition of up to 30 days but not more than 180 days incarceration, work release or house arrest with electronic monitoring.</p> <p><b>Aggravated:</b> Same as above</p>

**Drug/Alcohol Issues**

<p><b>First Time Technical Violators With Drug/Alcohol Issues</b></p>	<p><b>Mitigated:</b> Extend Probation/, unserved balance reparole forthwith with appropriate level of treatment, or up to 6 months in the DRC for those that are IPP eligible or additional RIP portions to an IPP sentence and additional programs such as community service, recovery house, 12 Step programs, employment programs, Life Skills, Thinking for a Change etc.</p> <p><b>Standard:</b> All of the above with the addition of up to 30days incarceration but not to exceed 90 days incarceration, work release, house arrest with electronic monitoring or up to 6 months in the DRC.</p> <p><b>Aggravated:</b> All of the above with up to 90 days incarceration, work release, Freedom Program, or up to 6 months in the DRC for those that are IPP eligible</p>
<p><b>Second Technical Violators with Drug/Alcohol Issues</b></p>	<p><b>Standard:</b> Up to 90 days incarceration but not to exceed 180 days incarceration, work release, house arrest with electronic monitoring or up to 6 months at the DRC for those that are IPP eligible or additional RIP portions to an IPP sentence with appropriate level of treatment and additional programs such as recovery house, Treatment Court Referral, 12 Step programs, employment programs, Life Skills, Thinking for a Change, etc</p> <p><b>Aggravated:</b> All of the above with up to 180 days incarceration, work release, house arrest with electronic monitoring, appropriate jail program such as Thinking for a Change or Freedom Program or up to 6 months in the DRC for those that are IPP eligible.</p>