I. AUTHORITY

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

II. PURPOSE

The preliminary / probable cause hearing is scheduled and held for the purpose of determining whether probable cause exists to believe that an offender may have violated one or more conditions of his/her supervision.

III. APPLICABILITY

This procedure is applicable to all board employees.

IV. DEFINITIONS

All definitions are located in Procedure 3.03.01

V. POLICY

It shall be the policy of the board to hold and conduct due process hearings in accordance with established case law, regulations and timeliness constraints.

VI. PROCEDURE

A. Exceptions - A preliminary / probable cause hearing is not necessary when:

1. Prior technical parole violations have been charged, the offender has already had a preliminary / probable cause hearing and is detained on those violations or has signed a hearing waiver (PBPP-72, PBPP-72T or PBPP-72ICS), and probable cause has been established.
2. Preliminary / Probable Cause Hearing Waived by Pennsylvania Parolee Transferred through the Interstate Compact

An offender under sentence from Pennsylvania who is being supervised in another state may waive the preliminary / probable cause hearing using the receiving state’s waiver. A violation hearing shall then be scheduled upon his/her return to Pennsylvania.

3. Preliminary / Probable Cause Hearing Waived by an offender serving a sentence from another jurisdiction

An offender transferred through the interstate compact to Pennsylvania may waive his/her preliminary probable cause hearing through execution of a Waiver of Probable Cause Hearing and Admission (PBPP-72ICS) when the offender admits to one or more significant violations of the terms or conditions of supervision.

4. When a magisterial district justice has conducted a criminal preliminary hearing and concluded that there is a prima facie case against the offender or the offender has waived his/her criminal preliminary hearing.

5. When the only technical parole violation charged is Condition #4 for a conviction that is not in a court of record or punishable by imprisonment. Comply with all municipal, county, state and Federal criminal laws, as well as the provisions of the Vehicle Code (75 Pa.C.S. § 101 et seq.) and the Liquor Code (47 P.S. § 1-101 et seq.). Proceed directly to violation hearing. For additional information, reference Procedure 3.03.04.

B. Scheduling The Preliminary / Probable Cause Hearing

Offenders who have been arrested on technical parole violations and detained on a Warrant to Commit and Detain (PBPP-141) shall be given a preliminary / probable cause hearing within fourteen (14) calendar days of detention.

A hearing request for a preliminary / probable cause hearing is to be held in or near where the violation is alleged to have occurred, or at the location where the offender is being detained pending a hearing. Parole supervision staff must submit the hearing request in the Hearing Interview Program (HIP) application within two (2) business days of the offender’s arrest.

C. Where Confined Out Of State Or in a Federal Facility

When an offender is detained on a Warrant for Arrest of Paroled Prisoner (PBPP-6) outside of Pennsylvania or at a federal correctional facility and has not had a preliminary hearing or executed a hearing waiver, a preliminary hearing must be held within fourteen (14) calendar days of his/her return to the board’s jurisdiction.

D. Technical Parole Violations And New Criminal Charges
1. When the police arrest an offender and new criminal charges are filed, technical parole violations may also be charged unless they are based on the same elements of the new criminal charges.  

2. If technical parole violations have been charged and it is subsequently determined that the technical parole violations are based on the same elements as the new criminal charges, parole supervision staff may withdraw the technical violations and modify the Notice of Charges and Hearing (PBPP-257N) prior to a preliminary / probable cause hearing with the concurrence of the district director/deputy district director/designee.  

At least seventy-two (72) hours prior to the hearing date an updated PBPP-257N shall be served to the offender and he/she shall be requested to sign and date two (2) original copies. It shall be explained to the offender that his/her signature is only an acknowledgement of service and not an admission of guilt. If the offender refuses to sign the PBPP-257N, parole supervision staff will note the refusal on the Notice of Charges and Hearing (PBPP-257N) and make all parties aware of this refusal at the preliminary / probable cause hearing.

3. If a preliminary / probable cause hearing has been held and probable cause established and the offender is then arrested on new criminal charges based on the same elements as the technical parole violation, the technical parole violation may only be withdrawn with the approval of the director of field probation and parole supervision. Parole supervision staff shall prepare and submit a special field report through the chain-of-command.

4. Charging Technical Parole Violations when there is No Conviction on Criminal Charges  
When an offender is detained solely on pending criminal charges and these charges are nolle prossed, dismissed, found not guilty or disposition is not from a court-of-record, parole supervision staff shall take the following actions as soon as possible but no later than four (4) business days:
   a. Determine if there are technical parole violations with an inherent public safety risk that directly relate to the cited criminal charges through independent evidence, or evidence introduced at the criminal preliminary hearing. Parole supervision staff must review with the district director/designee to determine whether to charge technical parole violations.
   b. If technical violations are not being charged:
      1) Cancel the board warrant that detained the offender pending disposition of criminal charges;
      2) Issue the offender reporting instructions through a Parole Instruction (PBPP-348I).
   c. If technical violations are being charged,
      1) Update the disposition section of the Criminal Arrest Report (PBPP-257C);
      2) Prepare a Technical Arrest Report (PBPP-257T);

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1 The applicable case law 509 Pa. 248, 501 A.2d 1110 (1985) only says the board cannot recommit as a TPV and a CPV for the same conduct. It does not prohibit the board from recommitting as a TPV by itself before the crime is established. Thus, the restriction in this paragraph would only be a policy decision and not required by law.
3) Prepare a new Notice of Charges and Hearing (PBPP-257N) outlining the technical parole violations;
4) Update the Supervision History (PBPP-257H);
5) Schedule and hold a preliminary hearing.

5. Offender was recommitted on technical parole violations.

When a preliminary/detention hearing was already held on technical parole violations and there are new technical parole violations with an inherent public safety risk that directly relate to the cited criminal charges that were nolle prossed, dismissed, demurred, found not guilty or disposition is not from a court-of-record, parole supervision staff shall take the following actions as soon as possible but no later than four (4) business days from notification of the disposition to:

a. Only proceed if the new technical violation involves physical assault, the use/possession of a weapon, or were sexual in nature.

Decide whether or not to charge the parolee with new technical parole violations (based on independent evidence or evidence introduced at any criminal hearing).

If a Notice of Board Decision (PBPP-15) has already been issued recommitting the parolee as a technical parole violator, parole supervision staff shall issue a Warrant to Commit and Detain (PBPP-141) under the date of arrest for the new technical parole violation(s).

If a technical violation is charged after criminal charges are dismissed, the recommitment period for purposes of automatic reparole begins on the date the offender was first detained by the board for the conduct upon which the violation is based.

b. If the decision is to pursue a violation hearing based on newly cited technical violations, parole supervision staff shall advise the appropriate institutional parole staff.

c. Additional parole supervision staff responsibilities:

1) Update disposition section of the Criminal Arrest Report (PBPP-257C);
2) Prepare a Technical Arrest Report (PBPP-257T);
3) Prepare a new Notice of Charges and Hearing (PBPP-257N) outlining the technical parole violations;
4) Update the Supervision History (PBPP-257H); and
5) Schedule and hold a violation hearing on the new technical parole violation(s).

E. Review the Notice Of Charges And Hearing (PBPP-257N)
1. Parole supervision staff shall review the PBPP-257N and update to ensure that:
   
a. Any violations that were withdrawn are removed from the PBPP-257N.

b. The date, time and location of the scheduled preliminary / probable cause hearing are reflected on the PBPP-257N.

c. The technical violations charged including the precise condition(s) alleged to have been violated contains the full and fair disclosure of the evidence concerning each violation, including any parolee statements.

d. When the preliminary / probable cause hearing involves an alleged violation of Condition #4, the PBPP-257N must include:

   1) The date of the court hearing, including the justice or judge’s name and jurisdiction as shown on the sentencing order.

   2) The specific charge(s) of which the parolee is found guilty or pled nolo contendere.

   3) The sentence or penalties imposed.

e. Changes may be made in the date and time of the preliminary / probable cause hearing pursuant to Procedure 3.03.06 Continuances.

2. Notification to Offender of Hearing Rights

   The offender’s rights are listed on the Offender Rights at Board Hearings (PBPP-257OR). The offender also should be verbally advised of these rights by the staff member serving the Notice of Charges and Hearing (PBPP-257N) with the Offender Rights at Hearings (PBPP-257OR). The offender also must be advised that there is no penalty for requesting counsel.

   a. He/she has been arrested as a result of technical violation(s) and a preliminary / probable cause hearing has scheduled before a hearing examiner. The specific conditions governing parole that the offender is alleged to have violated are listed on the Notice of Charges and Hearing (PBPP-257N);

   b. That a preliminary / probable cause hearing will be held within fourteen (14) calendar days of the Board’s Warrant to Commit and Detain (PBPP-141) or within fourteen (14) calendar days of an offender’s return to the board’s jurisdiction. The PBPP-257N serves as notice of the exact date, time and location of the proceeding;

   c. That the purpose of the hearing is to determine if probable cause exists to believe that the offender committed the parole violation(s) alleged. If the hearing examiner finds probable cause, the board (or sending state) may schedule a violation hearing to determine whether you should be recommitted as a technical parole violator;

   d. That evidence related to the charges will be disclosed;
e. Of the offender’s right to speak, to have voluntary witnesses appear on their behalf, confront adverse witnesses and to present affidavits, and other evidence at the preliminary / probable cause hearing.

f. Of the right to retain counsel and if unable to afford counsel, the right to representation by free counsel and the name and address of the public defender of the county of confinement;

g. Request of a hearing continuance for good cause. The board will send notice of its determination either to the offender or if represented at the hearing, to their counsel.

2. Distribution of PBPP-257N

Parole supervision staff shall insert the date, time and location of the preliminary / probable cause hearing on the Notice of Charges and Hearing (PBPP-257N). At least seventy-two (72) hours prior to the hearing date, the PBPP-257N shall be served to the offender and he/she shall be requested to sign and date two (2) original copies. It shall be explained to the offender that his/her signature is only an acknowledgement of service and not an admission of guilt. If the offender refuses to sign the PBPP-257N, parole supervision staff will note the refusal on the Notice of Charges and Hearing (PBPP-257N) and make all parties aware of this refusal at the preliminary / probable cause hearing.

The Notice of Charges and Hearing (PBPP-257N) shall be distributed as follows:

a. An original to the offender (when he/she signs);

b. A copy to offender’s counsel or to the public defender of the county of confinement (at the time of the hearing);

c. An original is maintained in the Field Offender Case Folder (FOCF) and in some instances the court of jurisdiction may require an original copy.

F. Preparation For Preliminary / Probable Cause Hearing

1. Hearing Coordinator Responsibilities

The hearing coordinator will provide parole supervision staff with a preliminary / probable cause hearing date that occurs within fourteen (14) calendar days of the lodging of the Board Warrant to Commit and Detain (PBPP-141).

2. Parole supervision staff cannot withdraw any of the technical parole violations prior to the preliminary / probable cause hearing without the concurrence in writing of the district director/deputy district director /designee.

3. Hearing Packet

Parole supervision staff must provide a hearing packet to the hearing examiner and to the offender or to his/her counsel. The following material shall be contained in a hearing packet:
a. All Technical Arrest Reports (PBPP-257T) or, if applicable, the ICAOS offender violation report.
b. Criminal Arrest Reports (PBPP-257C).
c. Supervision History (PBPP-257H) covering the entire period of supervision.
d. Notice of Charges and Hearing (PBPP-257N).
e. All applicable Orders to Release on Parole/Reparole (PBPP-10) and Conditions Governing Parole/Reparole (PBPP-11).
f. Copies of all related board warrants.
g. Any prior Requests for Continuation of Hearing (PBPP-29).

4. Dispositional Information

The most current confidential Integrated Case Summary Application (ICSA) report or, if applicable, Institutional Parole Summary (PBPP-245A) should be made available to the hearing examiner for disposition purposes, if necessary.

5. Evidence Preparation

Parole supervision staff (or stand-in institutional parole staff) must be prepared to present copies of all evidence such as written documents and/or photographs to substantiate the alleged violation(s), including prior parolee statements and written statements from witness(es).

G. Waiver Requests at the Preliminary / Probable Cause Hearing

1. Counsel Waived

An offender who desires to waive counsel at a preliminary / probable cause hearing must do so by completing and signing the appropriate portion of the Waiver/Request for Hearing/Counsel (PBPP-72).

2. Offender Represented By Counsel

Counsel who represents an offender at a preliminary / probable cause hearing must enter an appearance on behalf of the offender by completing and signing the appropriate portion of the Waiver/Request for Hearing/Counsel (PBPP-72).

3. Counsel Represented But Not Present At Preliminary / Probable Cause Hearing

The hearing examiner shall document the offender's request to be represented by counsel (PBPP-72). The offender may be granted a Request for Continuance of Hearing (PBPP-29) of not more than fourteen (14) calendar days for the purpose of retaining counsel. The hearing examiner shall then reschedule the preliminary / probable cause hearing within fourteen (14) calendar days. If the request for continuance is denied, the preliminary / probable cause shall proceed.

4. Pennsylvania Parolee
If a parolee waives the preliminary hearing and requests a panel violation hearing, the hearing examiner shall find probable cause and request the hearing coordinator to schedule a panel violation hearing.

H. Conducting A Preliminary / Probable Cause Hearing

The preliminary / probable cause hearing shall be held before a hearing examiner or a designee at the facility where the offender is detained.

1. Hearing Examiner’s Responsibilities

   It is the responsibility of the hearing examiner to be a neutral and detached or fair and impartial hearing body. This means that the hearing examiner cannot coach parole supervision staff during the evidentiary phase, nor can he/she elicit evidence beyond that which parole supervision staff or defense present. The hearing examiner can, however, ask questions for clarification. The hearing examiner must conduct the hearing in a clear and concise manner.

2. The offender has the right to be present during the entire proceedings unless he/she expressly waives that right, refuses to appear, or becomes disruptive. If the offender refuses to attend the hearing, the hearing shall be conducted in absentia. If the offender does not attend the hearing or leaves the hearing, the hearing examiner shall note the circumstances of the offender's absence on the hearing report (PBPP-343) and the hearing shall continue.

3. Parole supervision staff familiar with the facts that constitute the technical parole violations charged shall be present to testify. Prior to the hearing, if the assigned parole supervision staff is unable to testify, they must contact the person presenting the hearing and have a thorough case discussion.

4. The order of the preliminary / probable cause hearing shall be as follows:

   a. Each witness shall be sworn-in by the hearing examiner prior to testifying.

   b. The hearing examiner shall advise the offender that that he/she is not required to make any statement. However, if the offender or his/her counsel wishes to make a statement concerning the allegations, he/she may do so.

   c. The technical violation(s) charged, as listed in the Notice of Charges and Hearing (PBPP-257N), will be read by parole supervision staff and any parolee statement(s) will be noted.

   d. Parole supervision staff will present personal testimony pertinent to each violation and enter documentary evidence, including but not limited to, Special Conditions of Parole (PBPP-336), the sending state’s supervision conditions, any special conditions imposed by the sending state, etc.
e. Parole supervision staff will present and directly question any state witness. Counsel will have the opportunity to cross-examine all adverse witnesses who testify at the hearing.

f. Counsel for the offender or the offender him/herself shall present his/her evidence, including witnesses. Parole supervision staff will have the opportunity to cross-examine all defense witnesses who testify at the hearing.

g. The opportunity shall be given, first to parole supervision staff and then to the offender or his/her counsel, to summarize the evidence they have presented during the hearing.

h. The Hearing Examiner’s Findings (PBPP-340A)

At the conclusion of the preliminary / probable cause hearing, the hearing examiner shall announce whether probable cause has been established with regard to each of the technical parole violations charged. A Hearing Examiner’s Findings (PBPP-340A) will be completed with copies distributed as follows:

1) The original shall be placed in the hearing folder;

2) A copy to the offender;

3) A copy to counsel for the offender;

4) A copy shall be given to the attending parole staff member.

I. A Violation Hearing shall be conducted immediately if:

1. The offender waives both the preliminary hearing and the panel hearing and wishes to admit to all the technical parole violation charges; or

2. If a panel hearing has not been requested and if both parties are ready to proceed.

J. Hearing Outcomes

1. Probable Cause Established, Schedule Violation Hearing

At the conclusion of the preliminary / probable cause hearing, the hearing examiner shall determine whether or not the offender wants the violation hearing heard before a panel and whether or not the offender wants to be represented by counsel. The signed PBPP-72 shall be included in the hearing record (PBPP-343).

   If the offender refuses to indicate panel preference, a panel hearing shall be scheduled.

2. Probable Cause Established, Hold Violation Hearing in Abeyance pending completion of the Parole Violator Center (PVC) Program
A hearing examiner may recommend that an offender be detained and that the violation hearing be held in abeyance pending completion of the PVC program. In this case, the offender will remain in or be moved to a PVC. The offender is given the opportunity to continue the violation hearing and complete the PVC program. The board’s warrant will remain lodged until the program is successfully completed, at which time parole supervision staff shall lift the warrant, dismiss the prior technical parole violations, release the offender from the PVC and continue supervision within four (4) business days following program completion.

The hearing examiner should not divert offenders to a PVC if it is determined that:

a. The violation was sexual in nature.

b. The violation involved assaultive behavior.

c. The violation involved possession or control of a weapon.

d. The violator had absconded, and it is determined that the violator cannot be safely diverted to a PVC.

e. There exists an identifiable threat to public safety if:

   1) Credible information indicates that the parolee intends to engage in criminal activity or violate conditions of parole in the future and has the means to do either; or

   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 or her not amendable to diversion.

f. The violator has incurred new criminal charges involving a revocable offense.

Hearing examiners should give consideration to where parole supervision staff detained the offender upon arrest, as staff uses the same eligibility criteria to determine the offender’s placement pending a hearing.

3. Probable Cause Established, Continue on Supervision

An offender who is charged only with technical parole violations on which probable cause has been established may be released from custody and continued on supervision. District directors may provide a written recommendation as to whether continuing the offender on supervision is appropriate prior to the date of the hearing. The hearing examiner shall document whether the district director/designee provided a recommendation and what the recommendation was in the Preliminary Detention Hearing Report (PBPP 343). No board signature is required if the hearing examiner agrees with the district director’s recommendation or no recommendation was provided.
If the hearing examiner does not agree with the district director’s recommendation, the hearing examiner will submit a Preliminary/Detention Hearing Report (PBPP-343) to the board with the recommendation to continue on parole giving the specific mitigating circumstances and/or reasons, and any appropriate special conditions. The parolee shall remain in custody pending the Notice of Board Decision (PBPP-15) based on the hearing examiner’s Preliminary / Detention Hearing Report (PBPP 343).

a. If a board member concurs, no violation hearing is required and the parolee is released within four (4) business days of the preliminary / probable cause hearing. Parole supervision staff will receive a Notice of Board Decision (PBPP-15).

b. If the board member does not concur, parole supervision staff receives a Notice of Board Decision (PBPP-15) and a violation hearing will be scheduled.

4. Hearing is Continued

The preliminary / probable cause hearing may be postponed for good cause at the hearing in front of the hearing examiner or prior to the hearing date if requested in writing by the offender’s counsel. The offender may waive the hearing if informed of due process rights pertaining to the hearing and the consequences of the waiver (PBPP-72).

A preliminary / probable cause hearing should not be postponed indefinitely or until disposition of pending criminal charges but may be postponed for a reasonable amount of time, with a future date for rescheduling to address pending legal matters. For additional information, reference Procedure 3.03.06 Continuances.

5. Probable Cause is Not Established

Reference below section on preparation of the Preliminary Hearing Report (PBPP-343).

K. Preparation Of The Preliminary Hearing Report (PBPP-343)

Within ten (10) business days of the conclusion of the preliminary / probable cause hearing, the hearing examiner shall prepare a Preliminary/Detention Hearing Report (PBPP-343). The report shall include a summary of both the state and defense evidence; a finding; the evidence relied upon; a dispositional recommendation and the reasons for that recommendation.

1. Probable Cause Established

Where probable cause was established at the preliminary / probable cause hearing, a copy of the Preliminary/Detention Hearing Report (PBPP-343) and any related material must be submitted by the hearing examiner through the hearing coordinator to the hearing examiner who will be conducting the violation hearing. In those cases where a panel violation hearing has been requested, said materials will be forwarded to the hearing coordinator who consults with the parole supervisor at the state correctional institution where the panel hearing is to be held.
For other states’ offenders, the hearing coordinator shall immediately forward the Preliminary/Detention Hearing Report (PBPP-343) to the Interstate Probation Services Division who shall upload the report to ICOTS for submission to the sending state.

2. Probable Cause Not Established

Where probable cause was not established at the preliminary / probable cause hearing on any of the technical parole violations charged, for PA parolees the Preliminary/Detention Hearing Report (PBPP-343) and any related materials shall be submitted to the Office of the Board Secretary, Division of Case Management. For other states’ offenders, the PBPP-343 is submitted to the Interstate Probation Services Division.

When the hearing examiner determines that none of the allegations have been supported by probable cause, he/she shall direct the parole agent to affect the offender’s release. Within one (1) business day the hearing examiner shall notify the district director/designee of this decision by email with a copy to the chief hearing examiner. The offender must be released as soon as possible but no later than four (4) business days of the preliminary / probable cause hearing.

3. No Immediate Action

In those cases where the hearing examiner is unable to make an immediate decision as to whether probable cause has been established, a decision on probable must be made by the next business day following the preliminary / probable cause hearing. The Hearing Examiner’s Finding (PBPP 340-A), must be completed and copies sent to:

a. The original shall be placed in the hearing folder;

b. A copy to the offender;

c. A copy to the offender’s attorney if any;

d. A copy to the attending parole staff member.

Regardless of the hearing examiner’s decision, parolee is afforded the opportunity to waive counsel representation at the violation hearing and waive his/her right to a panel violation hearing. A signed Waiver/Request for Hearing/Counsel (PBPP-72) must be included with the Preliminary Hearing Report (PBPP-343) materials.

4. Record Hearing Outcome in HIP

In addition to the preparation of the Preliminary/Detention Hearing Report (PBPP-343) within ten (10) business days of the conclusion of the preliminary / probable cause hearing, the hearing examiner shall also record the hearing outcome in the Hearing Interview Planner (HIP) application.

II. SUSPENSION DURING AN EMERGENCY
This procedure may be suspended during an emergency at the sole discretion of the chairman.

III. 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 offenders and therefore may 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
   c. 37 § 71.2
   d. 37 § 71.5
   e. 61 Pa.C.S. § 6112
   f. 61 Pa.C.S. §§ 6138(c)(e)
   g. 18 Pa.C.S. § 11.103
   h. 18 Pa.C.S. § 11.201(3)
   i. 18 Pa.C.S. § 11.302

B. Board Policies

   Board Meeting Minutes October 15, 2014
   Board Meeting Minutes September 9, 1985
   Board Meeting Minutes January 27, 1986
   Board Meeting Minutes December 7, 1987
C. American Correctional Association Standards

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

D. Management Directives - none

E. Report of the Reentry Policy Council - none