

<p>Commonwealth of Pennsylvania</p>  <p>Pennsylvania Board of Probation and Parole</p>	<p>Volume III Chapter 10 Procedure 10.12a</p>	<p>Replaces No.</p>
<p>Chapter Title HEARING PROCEDURES</p>		<p>Date of Issue 6/17/05</p>
<p>Subject Cox Hearings - Hearing Examiner Procedures</p>		<p>Effective Date: 6/17/2005</p>

I. Purpose

A *Cox* Hearing will generally be provided for those offenders who have been recommitted as a convicted parole violator and who assert through a timely administrative appeal/petition for administrative review that they are entitled to credit for time spent in a group residence as a condition of parole. The purpose of the hearing is to give the offender an opportunity to: (1) rebut the presumption that he was at liberty on parole during his residence, (2) meet his burden of producing sufficient evidence to prove that the specific characteristics of the residence were restrictive enough to warrant credit, and (3) persuade the Board that the specific characteristics of the residence constituted sufficient restrictions to his liberty during his attendance to warrant credit. *Cox v. Pennsylvania Board of Probation and Parole*, 493 A.2d 680 (Pa. 1985).

II. Hearing Examiner Responsibilities

A. The Hearing Examiner shall act in accordance with Pennsylvania Board of Probation and Parole Procedure 10.5(1I)(F) in presiding over the hearing.

B. The Hearing Examiner should also ensure that the hearing is audio taped in accordance with Board procedures.

C. The Hearing Examiner should also ensure that all witnesses or parties are identified and sworn in prior to testifying.

D. If the offender wishes to waive his/her right to the credit in dispute, the Hearing Examiner shall ensure that the "Waiver of Custody Credit" form is signed by the offender as witnessed by Hearing Examiner and that a copy of the same shall be placed in the Central Office file.

III. Representation by Counsel

A. When an offender appears for the hearing without counsel, the Hearing Examiner should ask the offender, on the record, if he/she would like to request a continuance to obtain counsel for the hearing.

i. If the offender says "yes", then the Hearing Examiner shall have the offender sign a request for continuance form (PBPP 29). (Note: If the offender refuses to sign the

request for continuance form (PBPP 29) but orally agrees to continue the hearing to secure counsel, then the Hearing Examiner should note that on the record and then continue the hearing.)

ii. If the offender says "no", then the Hearing Examiner should explain to the offender that:

1. If he/she does not request a continuance, the hearing is going to be held today without him/her having counsel,
2. He/she will not be penalized for requesting a continuance to secure counsel at this time.

iii. If the offender still says "no" (i.e. he/she does not want counselor does not wish to request a continuance to secure counsel), then the Hearing Examiner shall note that on the record and hold the hearing without counsel.

B. If the hearing is continued to allow the offender to secure counsel, the Hearing Examiner should inform the offender, on the record, that the matter will not be rescheduled for a hearing until the offender advises the Board in writing of one of the following:

- i. The offender has obtained counsel and is ready to proceed, or
- ii. The offender no longer wants counsel and is ready to proceed pro se.

C. Any further requests for continuances to secure counsel after the hearing is rescheduled may be granted at the Hearing Examiner's discretion depending on the circumstances of the request.

IV. Continuances

A. Continuances may be granted to either the offender or to the Agent/Supervisor, when necessary, to assure both a fair and accurate hearing. Continuances may be granted for any of the following reasons:

- i. Unavailability of offender,
- ii. Upon request of the offender, if deemed appropriate,
- iii. Upon request of the Agent/Supervisor, if deemed appropriate, and
- iv. Any event that could not be reasonably anticipated or controlled by the Board, such as, acts of nature, illness, injury, prison or civil disorders.

B. An offender's request for a continuance should be granted when any of the following occur:

- i. When the offender makes an initial request for counsel as indicated in 10.12a(III) herein; or
- ii. When the offender has already filed an appeal on the time credit issue with the Pennsylvania Commonwealth Court.

C. When a continuance has been granted for any reason, the Hearing Examiner shall ensure that all sections of the Request for Continuance of Hearing form (PBPP 29) are completed, including the signature of the offender or Agent/Supervisor requesting the continuance. The

Hearing Examiner who granted the continuance must also sign the Request for Continuance of Hearing form (PBPP 29) and is responsible for notifying all parties involved.

D. The Hearing Examiner should retain the original Request For Continuance of Hearing form (PBPP 29) in the hearing material folder. Copies should be distributed as follows:

- i. A copy is to be given to the offender, or counsel if the offender is represented.
- ii. A copy is forwarded to the applicable District Office or Institutional Parole Office.

V. Conducting the Hearing

A. Introduction

- i. The Hearing Examiner must note the following on the record:
 1. Date, location and type of hearing,
 2. The offender's name and parole number,
 3. The names of everyone present and their role in the hearing,
 4. Whether the offender is represented by counsel, and
 5. The issue of the evidentiary hearing including the names of the facilities at issue and the date(s) the offender was alleged to have been there.
- ii. The Hearing Examiner must initially advise the participants of the following:
 1. This is the only opportunity for the offender to present whatever evidence he/she has in support of the claim;
 2. The offender bears the burden of proving by a preponderance of the evidence that he/she is entitled to the requested credit;
 3. The Agent/Supervisor may, but is not required to, present rebuttal evidence after the offender has presented his case.

B. Offender evidence presentation

- i. The offender has the obligation to present whatever evidence he/she has in support of his/her claim at this stage of the proceeding including any direct testimony from the offender and/or other witnesses as well as documentary evidence.
- ii. The Agent/Supervisor has the right to cross-examine the offender or any witness about testimony elicited on direct examination.
- iii. The offender has the right to present any re-direct evidence if the offender has requested to do so before cross-examination or before release of the offender's witness.
- iv. The Hearing Examiner may not make any objections.
- v. The Hearing Examiner has the option to accept or reject any part of the evidence presented based on his/her assessment of credibility.

C. Agent/Supervisor evidence presentation

- i. The Agent/Supervisor is not obligated to present any evidence on this issue but may do so at this stage should the Agent/Supervisor so choose. The Hearing Examiner may find that the offender has not met his/her burden even if the Agent/Supervisor does not present any evidence.
- ii. Should the Agent/Supervisor choose to present rebuttal evidence, the offender has the right to cross-examine any witness about testimony elicited on direct examination.

- iii. The Agent/Supervisor has the right to present any re-direct evidence if the Agent/Supervisor has requested to do so before cross-examination or before release of the Agent/Supervisor's witness.
- iv. The Hearing Examiner may not make any objections.
- v. The Hearing Examiner has the option to accept or reject any part of the evidence presented based on his/her assessment of credibility.

D. Conclusion

- i. The Hearing Examiner will note that each party has finished presenting their evidence on this issue.
- ii. The Hearing Examiner will make sure that all documents, which have been admitted into evidence, have been marked for identification and conclude the hearing.

VI. Preparing the Cox Hearing Report

- A. The Hearing Examiner shall complete a Cox hearing report within ten working days and forward it to Central Office for the signature of at least one Board Member.
- B. The Cox hearing report shall include the following:
 - i. The Hearing Examiner's specific findings of fact and conclusions of law regarding the issues presented at the hearing; and
 - ii. The reasons for the conclusions of law including what evidence, if any, the Hearing Examiner found to be credible or incredible.