

<p>Commonwealth of Pennsylvania</p>  <p>Pennsylvania Board of Probation and Parole</p>	<p>Volume III Chapter 3</p> <p>Procedure 3.03.12</p>	<p>Date Revised: New</p>
<p>Chapter Title CASE RECORDS, DECISIONAL PROCESSING</p>		<p>Date of Issue 10/24/2011</p>
<p>Subject EVIDENTIARY HEARING- Sex Offender Treatment Program (SOTP)</p>		<p>Effective Date 11/7/2011 <b>PUBLIC</b></p>

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.” Act of 1941, P.L. 861, No. 323 § 3 as amended Oct. 9, 1986, P.L. 1424, No. 134 (**61 Pa.C.S.A. § 6112**).

II. PURPOSE

An evidentiary hearing will be held to determine whether an offender under the supervision of PBPP, who has not been convicted of a current or prior sex offense, should participate in sex offender treatment programming as recommended by the treatment evaluation and have sexual offender conditions imposed.<sup>1</sup>

III. APPLICABILITY

This procedure is applicable to all Board employees.

IV. DEFINITIONS

All definitions are located in Procedure 3.03.01.

V. POLICY

It is the policy of the Board to follow precedential judicial decisions affording eligible offenders the opportunity for a hearing.

VI. PROCEDURE

A. For circumstances in which parole supervision staff should consider referring an offender not designated as a sexual offender for a sex offender treatment evaluation see Procedure 4.01.15, Sex Offenders.

B. Special Probation and Special Parole offenders

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<sup>1</sup> Reference Renchenski v. Williams, et al, 622 F.3d 315 (3d Cir. 2010)

Follow Procedure 4.01.13 Probation and Parole Conditions, section titled Addition of Special Condition(s) placed on Special Probation and Special Parole Offenders.

C. Parole Supervision Staff Procedures

1. Before an eligible offender may be directed to participate in a sex offender treatment program, he/she has a right to a hearing.
  - a. Parole supervision staff shall explain the PBPP-72 SOTP Waiver/Hearing Request form (Appendix A) to the offender. By signature, the offender will either agree to waive the hearing or request a Sex Offender Treatment Hearing.
  - b. If the offender agrees to participate in the sex offender treatment program without a hearing,
    - 1) Offender will sign and date PBPP-72 SOTP waiver.
      - a) A signed copy of the PBPP-72 SOTP waiver witnessed by parole supervision staff is forwarded to the Hearing Division of the Office of Board Secretary for placement in the Central Office file.
    - 2) Parole supervision staff shall issue the offender a special condition mandating sex offender treatment. The PBPP-336 shall contain:
      - a) instructions to attend sexual offender treatment citing the name and full street address of the treatment program; and
      - b) the date and time of the first appointment; and
      - c) a directive indicating that failure to successfully complete the treatment as determined by treatment staff may result in sanctions for the offender.
    - 3) Parole supervision staff shall impose applicable sexual offender conditions.
    - 4) The offender shall be supervised as described in Procedure 4.01.15 Sex Offenders.
  - c. If the offender does not agree to participate in the sex offender treatment program as prescribed without a hearing,
    - 1) Offender will sign and date the PBPP-72 SOTP Hearing request form.
    - 2) Within two (2) business days of executing the Hearing Request form, parole supervision staff shall schedule a Sexual Offender Treatment Program (SOTP) Hearing through the Hearing Interview Planner (HIP).

- 3) Within five (5) business days of requesting a SOTP Hearing, parole supervision staff shall prepare a PBPP-257 SOTP, Notice of Sexual Offender Treatment Program Hearing (Appendix B), enumerating and citing the evaluation date, place and results, and the date, time and location of the scheduled SOTP hearing.
  - a) If applicable, parole supervision staff should include other credible evidence that suggest sex offender treatment to be appropriate. Other incidents include but are not limited to: offender self-disclosure, statements of others, possession of sexually deviant media, an official version indicating that an offense contained sexual elements, etc.
- 4) Sex offender treatment programming shall be suspended pending the outcome of the hearing.
- 5) Hearing Outcome
  - a) Upon receipt, the Board action will be hand delivered by parole supervision staff to the offender within 5 business days.
    - i. If preponderance is found, refer to provision C. 1.b.2)a),b),c),3),4) above.
    - ii. If preponderance is not found, no sex offender treatment will be mandated.

## 2. Notice of Change(s) in the SOTP Hearing

If copies of the Notice of Sexual Offender Treatment Program Hearing, PBPP-257 SOTP have been distributed and the scheduled hearing is no longer required or is changed for any reason, the parole supervision staff who initiated the scheduling of the hearing is responsible to notify all parties, including the offender of the changes.

## 3. Parole Supervision Staff Preparation for SOTP Hearing

- a. Parole supervision staff is responsible for collecting documents and evidence which will substantiate the offender's need for participation in sexual offender treatment programming.
- b. The parole agent shall bring the following to the hearing:
  - 1) Signed Waiver/Request for SOTP Hearing (PBPP-72 SOTP);
  - 2) Issued Notice of Sexual Offender Treatment Program Hearing (PBPP-257 SOTP) ;
  - 3) Supervision History Report (PBPP 257H);

- 4) Release Orders, including Order to Release on Parole/Reparole (PBPP-10) and Conditions Governing Parole/Reparole (PBPP-11) or comparable documents issued by other state's authority;
- 5) Copy of the professional Sex Offender evaluation with treatment provider's recommendation;
- 6) Any credible witness(es) (via subpoena process, if necessary. Refer to Procedure 3.03.04 Violation Hearing) who are able to testify in support of the participation in SOTP;
- 7) If applicable, any Request For Continuance of Hearing (PBPP-29), with the exception of the right to secure counsel.

The parole agent shall bring four (4) copies of the Notice of Sexual Offender Treatment Program Hearing (PBPP-257 SOTP), Supervision History Report (PBPP-257H), and any Request for Continuance of Hearing (PBPP-29) and are to be available for distribution to the Hearing Examiner and the offender.

#### D. Hearing Examiner Procedures

1. Hearing Examiner Responsibilities
  - a. The Hearing Examiner shall act in accordance with Pennsylvania Board of Probation and Parole procedures in presiding over the hearing.
  - b. The Hearing Examiner should also ensure that the hearing is audio recorded 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.
2. Representation by counsel is not required for this hearing.
  - a. It is the offender's responsibility to make arrangements to secure private counsel.
  - b. The Board is not required to retain counsel for the offender.
3. Continuances may be granted in accordance with current procedures regarding hearing continuances with the exception of the right to secure counsel.
4. Conducting the Hearing
  - a. Introduction
    - 1) The Hearing Examiner must note the following on the record:
      - a) Date, location and type of hearing,

- b) The offender's name and parole number,
    - c) The names of everyone present and their role in the hearing.
  - b. Agent/Supervisor evidence presentation
    - 1) Parole supervision staff is obligated to present any evidence on this issue.
    - 2) The offender has the right to cross-examine any witness about testimony elicited on direct examination.
    - 3) Parole supervision staff 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.
  - c. Offender evidence presentation
    - 1) The offender shall have the opportunity to present whatever evidence he/she has to include direct testimony from the offender or other witnesses, or both, as well as documentary evidence.
    - 2) Parole supervision staff has the right to cross-examine the offender or any witness about testimony elicited on direct examination.
    - 3) 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.
  - d. Conclusion
    - 1) The Hearing Examiner will note that each party has finished presenting their evidence on this issue.
    - 2) The Hearing Examiner will make sure that all documents, which have been admitted into evidence, have been marked for identification and conclude the hearing.
- 5. Preparing the Evidentiary Hearing Report - SOTP
  - a. The Hearing Examiner shall complete a hearing report within ten (10) business days and forward it to Central Office for generation of a Board action.
  - b. The hearing report shall include the following:
    - 1) The Hearing Examiner's specific findings of fact and conclusions regarding whether the offender should participate in sex offender treatment and have sexual offender conditions imposed; and
    - 2) The reasons for the conclusions including what evidence, if any, the Hearing Examiner found to be credible.

## VII. SUSPENSION DURING AN EMERGENCY

The Chairman may suspend the procedure in case of emergency.

## VIII. RIGHTS UNDER THIS PROCEDURE

This procedure creates no rights under law.

## IX. RELEASE OF INFORMATION AND DISTRIBUTION OF PROCEDURE

- A. This procedure does not contain information that impacts the security of Board staff or parolees and may therefore be released to the public.
- B. This procedure is to be distributed to all Board staff.

## X. CROSS REFERENCES

### A. Statutes and Cases

#### 1. Federal

U.S. Constitution amend. XIV, § 1  
*Morrissey v. Brewer*, 408 U.S. 471, 483 (1972)  
*Renchenski v. Williams, et al*, 622 F.3d 315 (3d Cir. 2010)

#### 2. State

61 Pa.C.S.A. § 6112  
61 Pa.C.S.A. § 7112

### B. PBPP Policies

4.01.15 Sex Offender Supervision  
10.7 Hearing Procedures, Continuances

### C. American Correctional Association

- 1. 4-APPFS-2A-01
- 2. 4-APPFS-2A-02
- 3. 4-APPFS-2A-06
- 4. 4-APPFS-2A-07
- 5. 4-APPFS-2A-08

6. 4-APPFS-2B-01

7. 4-APPFS-2B-09

D. Management Directives - None

E. Report of the Reentry Policy Council - None