


<p>Commonwealth of Pennsylvania</p>  <p>Pennsylvania Board of Probation and Parole</p>	<p>Volume III Chapter 03</p> <p>Procedure 3.03.13</p>	<p>Date Revised: New</p>
<p>Chapter Title CASE RECORDS, DECISIONAL PROCESSING</p>		<p>Date of Issue 6/05/14</p>
<p>Subject HEARING PROCESS SUBPOENAS</p>		<p>Effective Date 6/19/14 PUBLIC</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. “ 61 Pa. C.S. § 6112 (a)(1) & (a)(4).

II. PURPOSE

The purpose of this procedure is to **describe subpoenas processes as well as payment of witness fees.**

III. APPLICABILITY

This procedure is applicable to all board employees.

IV. DEFINITIONS

All definitions are located in Procedure 03.03.01

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. Subpoenas **for the Board and for the Defense** to Command the Appearance of Witnesses at Board Hearings

The district director/deputy district director or designee is responsible for reviewing and issuing subpoenas for the board. The chief hearing officer is responsible for defense subpoena requests.

1. The **Application for Subpoena** (PBPP-3), specifying the scope, relevance and materiality of the **requested** witness shall be submitted to the district director/**deputy district director or designee**, located where the violation

occurred **or if from the defense, to the chief hearing officer for review and approval.**

The district director/**deputy district director or designee or chief hearing officer** may refuse to issue a subpoena. The denial of a subpoena may be appealed in writing to the board secretary.

2. **Securing and Serving Subpoenas:**

a. **For the Board**

Parole supervision staff is responsible for securing and serving subpoenas to compel the appearance of witnesses for the board.

b. **For the Defense**

The parolee or his/her attorney is responsible for securing and serving subpoenas to compel the appearance of witnesses for the **defense**.

3. Subpoenas will not be issued for character witnesses.

4. The request must include the mileage between the hearing site and the residence of the witness.

5. After the Subpoena (**PBPP-4**) is issued:

a. **Direct Victims – of the violation(s) charged**

- 1) When the witness is a direct victim, **parole supervision staff** shall contact the Office of Victim Advocate (OVA) by telephone or send an email to [PM, OVA information](#).
- 2) OVA staff will make the initial contact to the direct victim subpoenaed for the hearing.
- 3) After contacting the direct victim, OVA staff will advise **parole supervision staff** whether it is permissible to proceed and serve the **Subpoena (PBPP-4)**.

b. Witnesses for the Board:

- 1) **Parole supervision staff** is responsible for filling in the date, time and location of the violation hearing **on the Subpoena (PBPP-4)**.
- 2) **Parole supervision staff** is responsible for serving the **Subpoena (PBPP-4)** and completing the “return of service” on the reverse side of the subpoena, which will be submitted by **parole supervision staff** at the hearing.
- 3) If **parole supervision staff** is unable to serve the subpoena, the circumstance will be recorded on the original subpoena and that document will be admitted to the hearing examiner, who will add the document to the Hearing Report (**PBPP-344**) as an attachment.

c. Witnesses for the **Defense**:

- 1) The parolee or his/her attorney is responsible for filling in the date, time and location of the violation hearing.
- 2) The parolee or his/her attorney is responsible for serving the subpoena on the witness and complete the "return of service" on the reverse side of the subpoena, which will be submitted at the hearing.
- 3) If the parolee or his/her attorney is unable to serve the subpoena, the circumstance may be recorded on the original subpoena and that document will be admitted to the hearing examiner, who will add the document to the Hearing Report (**PBPP-344**) as an attachment.

6. **Additional Concerns**

For panel violation hearings held at an SCI, there are additional considerations:

a) **Gate Clearance**

Parole supervision staff must coordinate with **institutional** personnel to assure that a gate clearance is given for all state witnesses. **For defense witnesses, parolee's counsel must contact institutional parole staff.**

- 1) Direct victims may be accompanied to the hearing by victim services personnel.
- 2) OVA staff will be responsible for providing the appropriate names of the victim services personnel to **parole supervision staff** for the gate clearance.

b) **Transportation**

Parole supervision staff is responsible for ensuring that all state witnesses attend the proceeding, including providing transportation if necessary.

- 1) Direct victims may request to attend the hearing via video-conferencing (if available) as arranged by OVA staff.
- 2) Direct victims may also be accompanied to the video-conference site by victim services personnel.

7. Enforcement of Subpoenas

- a. If the subpoena is properly served and the witness fails to appear as directed by the subpoena, a **Request for Enforcement of Subpoena (PBPP-5)** may be requested.
- b. This matter will be placed on the record at the hearing and a continuance **may be requested by parole supervision staff to proceed with enforcement of the subpoena.**

- c. **If the hearing examiner grants a continuance, parole supervision staff must complete and submit** a Request for Enforcement of Subpoena (PBPP-5) to the Office of Chief Counsel, 1101 South Front Street, Suite 5100, Harrisburg, PA 17104-2517. **Parole supervision staff** must get approval through their chain-of-command up to and including the district director/**deputy district director or designee** to enforce subpoenas.
- d. **Parole supervision staff** must also submit the following documents with the PBPP-5 to the Office of Chief Counsel:
 - 1) **The most current confidential ICSA report and applicable arrest reports (PBPP-257C & T),**
 - 2) Notice of Charges and Hearing (**PBPP-257N**),
 - 3) Request(s) for Continuation of Hearing (**PBPP-29**),
 - 4) Subpoena (**PBPP-4**),
 - 5) Completed return of service of subpoena (**PBPP-4**) with a notation of the witness' failure to appear, and
 - 6) A reason/recommendation for why it is essential for the subject witness to be present at the hearing in order for **parole supervision staff** to prove the **alleged violations**.
- e. Upon receipt of the **Request for Enforcement of Subpoena (PBPP-5)** and documents listed above, the Office of Chief Counsel will make the determination whether to seek subpoena enforcement and request the same from Commonwealth Court.
- f. The court's order regarding a subpoena enforcement hearing will be forwarded to **parole supervision staff** to personally serve the subpoenaed witness. Date of personal service must be promptly forwarded to the Office of Chief Counsel.
- g. **Parole supervision staff** will be required to appear and testify at the hearing held before the Commonwealth Court in Harrisburg.
- h. After the hearing, the court will issue an order rescheduling the violation hearing. This order will be forwarded to **parole supervision staff** to be personally served on the witness. Date of personal service must be promptly forwarded to the Office of Chief Counsel.
- i. The rescheduled violation hearing will be convened. If the subpoenaed witness fails to appear at the rescheduled hearing, a continuance should be requested so that the Office of Chief Counsel may seek further subpoena enforcement measures through contempt proceedings in Commonwealth Court.
- j. The court's order regarding a contempt hearing will be forwarded to **parole supervision staff** to personally serve the subpoenaed witness.

Date of personal service must be promptly forwarded to the Office of Chief Counsel.

- k. **Parole supervision staff** will be required to appear and testify at the contempt hearing held before the Commonwealth Court in Harrisburg.
 - l. If the witness fails to appear at this contempt hearing, the court will fashion a remedy.
8. Payment of Witness Fees
- a. The parolee is responsible for payment of fees for witnesses for the **defense**.
 - b. For witnesses for the board, **parole supervision staff** shall complete, (but not submit) Section #1 of the PBPP Subpoenaed Witness Fee **Request Form (PBPP-4A)** prior to the violation hearing. At the hearing the subpoenaed witness shall be given the **PBPP-4A** to complete Section #2 and return it immediately to **parole supervision staff**.
 - c. **Parole supervision staff** shall be responsible for:
 - 1) Ensuring that the information on the form is complete/accurate; and
 - 2) Signing, dating, and returning the form to the district director/**deputy district director or** designee **for approval. District clerical staff enters the witness payment in the automated offender record and submits** the request for **payment** to the **Budget** Division.
 - d. Checks for subpoenaed witness fees are mailed directly to the witnesses by the **Budget** Division. Checks are not **forwarded** to the **PBPP** field office for distribution.
 - e. If no check is being requested for a subpoenaed witness, regardless of the circumstances, **parole supervision staff** must complete Section #2 of the form on behalf of the witness to the extent that the information requested is known, complete Section #3 including the explanation **section** and place the form in the **field offender case file (FOCF)**.

VII. SUSPENSION DURING AN EMERGENCY

This procedure may be suspended during an emergency at the sole discretion of the chairman.

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 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

Pennsylvania State Constitution

B. PBPP Policies

3.03.02

3.03.03

3.03.04

3.03.05

3.03.08

C. American Correctional Association – None.

D. Management Directives – None.

E. Report of the Reentry Policy Council – None.