

<p>Commonwealth of Pennsylvania</p>  <p>Pennsylvania Board of Probation and Parole</p>	<p>Volume III Chapter 4</p> <p>Procedure 4.04.03</p>	<p>Date Revised: 11/01/01 02/01/07 03/31/08</p>
<p>Chapter Title SUPERVISION, REENTRY</p>		<p>Date of Issue: 03/17/08</p>
<p>Subject PROBATION SERVICES SPECIAL PROBATION/PAROLE VIOLATIONS</p>		<p>Effective Date 08/10/16 <b>PUBLIC</b></p>

#### I. AUTHORITY

The board shall have exclusive power to supervise any person placed on probation by any judge of a court having criminal jurisdiction, when the court by special order directs supervision by the board. Prisons and Parole Code, 61 Pa. C.S. § 6133(a)

The board shall have exclusive power to supervise any person placed on parole, when sentenced to a maximum period of less than two years, by any judge of a court having criminal jurisdiction, when the court may by special order direct supervision by the board. Prisons and Parole Code, 61 Pa. C.S. § 6132(a)(2)(i), (ii)

Acceptance of a case for supervision or presentence investigation from a county which, on December 31, 1985, maintained adult probation offices and parole systems, will be at the board's discretion. 37 Pa. Code § 65.1

The board may, during the probation or parole period, in case of violation of the conditions of probation or parole, detain the special probationer or parolee in a county prison and make a recommendation to the court, which may result in the revocation of probation or parole and commitment to a penal or correctional institution to serve a sentence in the case of probation or the remainder of the sentence in the case of parole. 37 Pa. Code § 65.3.

#### II. PURPOSE

The purpose of this procedure is to set forth agency protocol regarding violations of special probation/parole.

#### III. APPLICABILITY

This procedure is applicable to all board employees who are involved with the administration and supervision of special probation/parole offenders, all courts having criminal jurisdiction, and all special probation/parole offenders.

#### IV. DEFINITIONS

**All definitions are located in Procedure 4.01.01**

## V. POLICY

- A. Probable cause hearings (Gagnon I) and revocation hearings (Gagnon II) for special probation/parole offenders are the responsibility of the court having criminal jurisdiction; however, board **institutional**/field staff **shall** make appropriate recommendations when offenders are arrested on a new criminal charge(s) or are detained for a technical violation(s).<sup>1</sup>
- B. A board warrant shall be used for the temporary detention of special probation/parole offenders, but in all cases, the board warrant shall be removed after fourteen (14) calendar days from the date the board warrant was lodged.
- C. The board shall not conduct probable cause or revocation hearings on special probation/parole.

## VI. PROCEDURE

### A. Technical Violations/Hearings and Reports

#### 1. Probable Cause Hearing (Gagnon I) - Offender Detained

If a special probation/parole offender is detained and a decision is made by the parole agent/parole supervisor to **request a probable cause hearing (Gagnon I), the parole agent shall:**<sup>2</sup>

- a. Submit to the court having criminal jurisdiction a Transmittal Letter (PBPP-331) and Arrest Report (PBPP-257AR), within five (5) calendar days of the arrest, requesting that the court having criminal jurisdiction schedule a probable cause hearing (Gagnon I).<sup>1</sup> It shall also be requested on the same PBPP 331 and PBPP-257AR that the court having criminal jurisdiction issue its court warrant within five (5) calendar days, noting that the board warrant will be removed or canceled within fourteen (14) calendar days from the date the board warrant was lodged (board policy regarding the use of board warrants for temporary detention only).<sup>3</sup> A specific date that the board warrant will be lifted shall be conveyed to the court.
- b. A copy of the PBPP-331 and PBPP-257AR shall also be submitted to the clerk of courts of the court having criminal jurisdiction, **pursuant to Pa. Rs. Crim. P. 708 (A)**, and the Bureau of Probation Services, **Division of Grants, Standards, and Court Services**.
- c. If the court having criminal jurisdiction does not respond to the request to schedule a hearing or does not issue its warrant to replace the board warrant, on the fifth (5<sup>th</sup>) calendar day following transmittal of arrest information, the parole supervisor, or the parole agent in the absence of the parole supervisor, shall contact the court to advise the court of the impending removal of the board warrant and to request the desired course of action.

- d. Immediately remove or cancel the board warrant when the court having criminal jurisdiction issues its court warrant.
  - e. If the probable cause hearing (Gagnon I) is scheduled, the parole agent shall give **the offender** a Notice of Charges and Hearings – Special Probation/Parole (PBPP-257NP) at least three (3) calendar days prior to the probable cause hearing (Gagnon I).<sup>4</sup> The parole agent shall attend the probable cause hearing (Gagnon I) and be guided by the **court's** decision.
  - f. If the probable cause hearing (Gagnon I) is not scheduled or it is the decision of the court having criminal jurisdiction to continue the offender on special probation/parole supervision without further action, the parole agent shall remove the board warrant, resume special probation/parole supervision, and record these actions in the next Supervision Plan/Report (PBPP-22).
2. Probable Cause Hearing (Gagnon I) - Offender Not Detained

If a special probation/parole offender is not detained and a decision is made by the parole agent/parole supervisor to **request** a probable cause hearing (Gagnon I), the parole agent shall:<sup>2</sup>

- a. Submit to the court having criminal jurisdiction a Transmittal Letter (PBPP-331) and an Arrest Report (PBPP-257AR), within five (5) calendar days, requesting that the court having criminal jurisdiction schedule a probable cause hearing (Gagnon I).<sup>1</sup>
  - b. A copy of the PBPP-331 and PBPP-257AR shall also be submitted to the clerk of courts of the court having criminal **jurisdiction, pursuant to Pa. Rs. Crim. P. 708 (A)**, and the Bureau of Probation Services, **Division of Grants, Standards, and Court Services**.
  - c. If the probable cause hearing (Gagnon I) is scheduled, the parole agent shall give the offender a Notice of Charges and Hearings – Special Probation/Parole (PBPP-257NP) at least three (3) calendar days prior to the probable cause hearing (Gagnon I).<sup>4</sup> The parole agent shall attend the probable cause hearing (Gagnon I) and be guided by the **court's** decision.
  - d. If the probable cause hearing (Gagnon I) is not scheduled or it is the decision of the court having criminal jurisdiction to continue the offender on special probation/parole **supervision** without further action, **the parole agent shall resume** special probation/parole supervision **and record these actions** in the next Supervision Plan/Report (PBPP-22).
3. Revocation Hearing (Gagnon II)
- a. If a revocation hearing (Gagnon II) is scheduled, the parole agent shall attend the revocation hearing and be guided by the court's decision.

- b. If **the** special probation/parole is continued, the parole agent shall resume supervision of the offender and record this action in the next Supervision Plan/Report (PBPP-22).
  - c. If **the** special probation/parole is revoked, the parole agent shall prepare a final Supervision Plan/Report (PBPP-22) within thirty (30) calendar days.<sup>5</sup> Field supervision staff shall then statistically close the special probation/parole case. A Transmittal Letter (PBPP-331), the PBPP-22, and a copy of the revocation order shall be forwarded to the court having criminal jurisdiction and the Bureau of Probation Services, **Division of Grants, Standards, and Court Services**.
4. Accelerated Rehabilitative Disposition (ARD) and Probation Without Verdict (PWV) Cases

Parole supervision staff/parole agents shall not arrest and/or lodge any board warrant against any ARD/PWV offender. If violations are serious enough to warrant a **request** for revocation of ARD or PWV, the parole agent shall:

- a. **Submit to the court having criminal jurisdiction and the respective office of the district Attorney** a Transmittal Letter (PBPP-331) and a Special Field Report, within five (5) calendar days, requesting that the court schedule a revocation hearing.
- b. **A copy of the PBPP-331 and Special Field Report shall also be submitted to the clerk of courts of the court having criminal jurisdiction, pursuant to Pa. Rs. Crim. P. 708 (A), and the Bureau of Probation Services, Division of Grants, Standards, and Court Services.**
  - 1) If a revocation hearing is scheduled, the parole agent shall:
    - a) Notify the offender, both verbally and in writing, via the Notice of Charges and Hearings – Special Probation/Parole (PBPP-257NP), of the charges against him/her and the date of the revocation hearing. The PBPP-257NP shall be issued to the offender at least three (3) calendar days prior to the ARD/PWV revocation hearing.
    - b) Attend the revocation hearing and be guided by the court's decision.
      - i. If the ARD/PWV **is continued**, the parole agent shall resume special ARD/PWV supervision and record **these actions** in the next Supervision Plan/Report (PBPP-22).
      - ii. If the ARD/PWV **is revoked**, the parole agent shall prepare a final Supervision Plan/Report (PBPP-22) within thirty (30) calendar days. Field supervision staff shall then statistically close the special ARD/PWV case. A Transmittal Letter (PBPP-331), the PBPP-22, and a copy of the revocation order

shall be forwarded to the court having criminal jurisdiction and the Bureau of Probation Services, **Division of Grants, Standards, and Court Services.**

B. New Criminal Charge(s)/Hearings and Reports

1. Criminal Preliminary Hearing - Not Detained

a. The parole agent, if available, shall attend the criminal preliminary hearing.

1) If a prima facie case is not established at the criminal preliminary hearing, and there are no technical violations, the parole agent shall complete the Arrest/Disposition Report (PBPP 257-DR) and continue the offender on special probation/parole supervision. Full details of this action shall be recorded in the next Supervision Plan/Report (PBPP-22).

2) If a prima facie case is established at the criminal preliminary hearing, the parole agent, in conjunction with the parole supervisor, district director, and/or deputy district director, shall decide if a board warrant should be lodged or supervision continued pending disposition of the new criminal charge(s).<sup>6</sup>

a) If a board warrant is not lodged, the parole agent shall:

i. Follow the new criminal charge(s) through disposition. Upon disposition of the new criminal charges, the parole agent shall submit a Transmittal Letter (PBPP-331) and Arrest/Disposition Report (PBPP-257DR) to the court having criminal jurisdiction within ten (10) calendar days of the disposition of the new criminal charges(s). The PBPP-331 and PBPP-257DR shall contain **either** a recommendation to continue the offender on special probation/parole supervision or **request** a revocation hearing (Gagnon II).

ii. **A copy of the PBPP-331 and PBPP-257DR shall also be submitted to the clerk of courts of the court having criminal jurisdiction, pursuant to Pa. Rs. Crim. P. 708 (A), and the Bureau of Probation Services, Division of Grants, Standards, and Court Services.**

b) If a board warrant is lodged, either prior to or after the criminal preliminary hearing, the parole agent shall complete the following responsibilities:

i. **Submit to the court having criminal jurisdiction** a Transmittal Letter (PBPP-331) and an Arrest Report (PBPP-257AR), within five (5) calendar days of lodging the board warrant, **requesting** a revocation hearing (Gagnon II). It shall also be requested on the same PBPP 331 and PBPP-257AR

that the court having criminal jurisdiction issue its court warrant within five (5) calendar days, noting that the board warrant will be removed or canceled within fourteen (14) calendar days from the date the board warrant was lodged (Board Policy regarding the use of board warrants for temporary detention only).<sup>3</sup> A specific date that the board warrant will be lifted shall be conveyed to the court.

- ii. A copy of the PBPP-331 and PBPP-257AR shall also be submitted to the clerk of courts of the court having criminal jurisdiction, **pursuant to Pa. Rs. Crim. P. 708 (A)**, and the Bureau of Probation Services, **Division of Grants, Standards, and Court Services**.
- iii. If the court having criminal jurisdiction does not respond to the request to schedule a hearing or does not issue its warrant to replace the board warrant, on or about the fifth (5<sup>th</sup>) calendar day following transmittal of arrest information, the parole supervisor, or the parole agent in the absence of the parole supervisor, shall contact the court to advise the court of the impending removal of the board warrant and to request the desired course of action.
- iv. Immediately remove or cancel the board warrant if the court having criminal jurisdiction issues its warrant.
- v. If the **revocation hearing (Gagnon II) is not scheduled or it is the** decision of the court having criminal jurisdiction to continue **the offender on** special probation/parole supervision **without further action**, the parole agent shall remove the board warrant, resume **special probation/parole** supervision, and record these actions in the next Supervision Plan/Report (PBPP-22).
- vi. If **the** revocation hearing (Gagnon II) is scheduled, the parole agent shall give the offender **a** Notice of Charges and Hearings – Special Probation/Parole (PBPP-257NP) at least three (3) calendar days prior to the revocation hearing (Gagnon II). The parole agent shall attend the revocation hearing (Gagnon II) and be guided by the **court's** decision.
- vii. **If the special probation/parole is revoked, the parole agent shall prepare a final Supervision Plan/Report (PBPP-22) within thirty (30) calendar days.<sup>5</sup> Field supervision staff shall then statistically close the special probation/parole case. A Transmittal Letter (PBPP-331), the PBPP-22, and a copy of the revocation order shall be forwarded to the court having criminal jurisdiction and the Bureau of Probation Services, Division of Grants, Standards, and Court Services.**

### C. Probable Cause Hearing (Gagnon I)

1. A Probable Cause Hearing (Gagnon I) is not necessary in the following situations:
  - a. A prima facie case was established at the criminal preliminary hearing or the offender waived the criminal preliminary hearing on the new criminal charge(s).
  - b. The special probation/parole offender was convicted in a court of record on the new criminal charge(s).
  - c. The special probation/parole offender was convicted in the Philadelphia Municipal Court on the new criminal charge(s).
2. If the court having criminal jurisdiction schedules a probable cause hearing (Gagnon I), the parole agent shall attend the hearing and further case action shall be determined by the court's decision at the hearing to:
  - a. Continue special probation/parole supervision pending disposition of the new criminal charge(s).
    - 1) The parole agent shall remove any board warrant and resume supervision of the offender.
    - 2) This action is to be recorded in the next Supervision Plan/Report (PBPP-22).
    - 3) The parole agent shall follow the disposition of the new criminal charge(s) and upon disposition of the new criminal charges, the parole agent shall submit a Transmittal Letter (PBPP-331) and Arrest/Disposition Report (PBPP 257-DR) to the court having criminal jurisdiction within ten (10) calendar days of the disposition of the new criminal charge(s). The report shall contain **either** a recommendation to continue the offender on special probation/parole supervision or to **request** a revocation hearing (Gagnon II).
    - 4) **A copy of the PBPP-331 and PBPP-257DR shall also be submitted to the clerk of courts of the court having criminal jurisdiction, pursuant to Pa. Rs. Crim. P. 708 (A), and the Bureau of Probation Services, Division of Grants, Standards, and Court Services.**
  - b. Detain Pending Disposition of Criminal Charges
    - 1) The parole agent shall follow the disposition of the new criminal charge(s) **and upon disposition of the new criminal charge(s)**, the parole agent shall submit a Transmittal Letter (PBPP-331) and Arrest/Disposition Report (PBPP 257-DR) to the court having criminal jurisdiction within ten (10) calendar days of the disposition of the new criminal charge(s). The report shall contain **either** a recommendation

to continue the offender on special probation/parole supervision or to **request** a revocation hearing (Gagnon II).

- 2) **A copy of the PBPP-331 and PBPP-257DR shall also be submitted to the clerk of courts of the court having criminal jurisdiction, pursuant to Pa. Rs. Crim. P. 708 (A), and the Bureau of Probation Services, Division of Grants, Standards, and Court Services.**

c. Revocation Hearing (Gagnon II)

- 1) **If a revocation hearing (Gagnon II) is scheduled, the parole agent shall attend the revocation hearing and be guided by the court's decision.**
- 2) **If the special probation/parole is continued, the parole agent shall resume supervision of the offender and record this action in the next Supervision Plan/Report (PBPP-22).**
- 3) **If the special probation/parole is revoked, the parole agent shall prepare a final Supervision Plan/Report (PBPP-22) within thirty (30) calendar days.<sup>5</sup> Field supervision staff shall then statistically close the special probation/parole case. A Transmittal Letter (PBPP-331), the PBPP-22, and a copy of the revocation order shall be forwarded to the court having criminal jurisdiction and the Bureau of Probation Services, Division of Grants, Standards, and Court Services.**

D. Technical Violation(s) in Addition to New Criminal Charge(s)

1. If, in addition to a new criminal charge(s), a technical violation(s) is charged, the parole agent and parole supervisor shall proceed according to the procedures under Chapter 4 Procedure 4.04.03 VI A, Technical Violations/Hearings and Reports of this Section.
  - a. If special probation/parole is revoked, the parole agent shall remove any board warrant, prepare a final Supervision Plan/Report (PBPP-22) in which the entire period of supervision is summarized, within thirty (30) calendar days, and statistically close the special probation/parole case. A Transmittal Letter (PBPP-331), the PBPP-22, and a copy of the revocation order shall be forwarded to the court having criminal jurisdiction and the Bureau of Probation Services, **Division of Grants, Standards, and Court Services.**
  - b. If the court having criminal jurisdiction responds and advises to remove the board warrant and continue special probation/parole supervision, the parole agent shall remove the board warrant, resume supervision of the offender, and record these actions in the next Supervision Plan/Report (PBPP-22).

- c. If the court having criminal jurisdiction advises that no final action shall be taken on a technical violation(s) until disposition of the new criminal charge(s), the parole agent shall monitor the new criminal charge(s). Upon disposition of the new criminal charge(s), the parole agent shall prepare and submit a Transmittal Letter (PBPP-331) and Arrest/Disposition Report (PBPP-257 DR) to the court having criminal jurisdiction requesting that the court schedule a revocation hearing (Gagnon II) to address the technical violation(s) and criminal conviction(s) or continue the offender on special parole/probation supervision.
  - d. **A copy of the PBPP-331 and PBPP-257DR shall also be submitted to the clerk of courts of the court having criminal jurisdiction, pursuant to Pa. Rs. Crim. P. 708 (A), and the Bureau of Probation Services, Division of Grants, Standards, and Court Services.**
- E. Accelerated Rehabilitative Disposition (ARD) and Probation Without Verdict (PWV) Cases – New Criminal Charges
- 1. Parole supervision staff/parole agents shall not arrest or lodge any board warrant against any ARD/PWV offender.
  - 2. The Parole agent is encouraged to attend the criminal preliminary hearing.
    - a. If a prima facie case is not established at the criminal preliminary hearing, and there are no technical violations, the parole agent shall complete the Arrest/Disposition Report (PBPP 257-DR) and continue the offender on special probation/parole supervision. Full details of this action shall be recorded in the next Supervision Plan/Report (PBPP-22).
    - b. If a prima facie case is established at the criminal preliminary hearing, the parole agent shall **submit to the court having criminal jurisdiction** a Transmittal Letter (PBPP-331) and an Arrest Report (PBPP-257AR), within five (5) calendar days of the decision, requesting a revocation hearing or that the offender be continued on special ARD/PWV supervision pending disposition of the new criminal charges. A copy of the **PBPP-331 and PBPP-257DR** shall be sent to the **clerk of courts of the court having criminal jurisdiction, pursuant to Pa. Rs. Crim. P. 708 (A), the Bureau of Probation Services, Division of Grants, Standards, and Court Services, and the** respective **office of the district attorney.**
      - 1) If a revocation hearing (Gagnon II) is scheduled, the parole agent shall give the offender a Notice of Charges and Hearings – Special Probation/Parole (PBPP-257NP) at least three (3) calendar days prior to the revocation hearing (Gagnon II). The parole agent shall attend the revocation hearing (Gagnon II) and be guided by the **court's** decision.
      - 2) If a revocation hearing is not scheduled, the parole agent shall resume supervision of the offender on special ARD/PWV

supervision and follow the disposition of the new criminal charge(s).

3. If the offender is convicted of the new criminal charge(s), the parole agent shall prepare and submit a Transmittal Letter (PBPP-331) and Arrest/Disposition Report (PBPP-257DR) to the court having criminal jurisdiction, and the respective **office of the** district attorney, within ten (10) calendar days of the disposition of new criminal charges, recommending that the court schedule a revocation hearing or continue the offender on special supervision. **A copy of the PBPP-331 and PBPP-257DR shall also be submitted to the clerk of courts of the court having criminal jurisdiction, pursuant to Pa. Rs. Crim. P. 708 (A), and the Bureau of Probation Services, Division of Grants, Standards, and Court Services.**
  - a. If a revocation hearing is scheduled, the parole agent shall attend the hearing and be guided by the court's decision.
    - 1) If **the** ARD/PWV is continued, the parole agent shall resume supervision of the offender and record this action in the next Supervision Plan/Report (PBPP-22).
    - 2) If **the** ARD/PWV is revoked, the parole agent shall prepare a final Supervision Plan/Report (PBPP-22), in which the entire period of supervision is summarized, within thirty (30) calendar days and statistically close the special ARD/PWV case. A Transmittal Letter (PBPP-331), the PBPP-22, and a copy of the revocation order shall be forwarded to the court having criminal jurisdiction and the Bureau of Probation Services, **Division of Grants, Standards, and Court Services.**
  - b. If a revocation hearing is not scheduled, the parole agent shall resume special ARD/PWV supervision of the offender, and record this action in the next Supervision Plan/Report (PBPP-22).

## 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 therefore be released to the public.
- B. This procedure is to be distributed to the following: all board staff; President Judge of each Court of Common Pleas Judicial District; Chief Probation officers/directors; board of county commissioners/county chief executive officer.

## X. CROSS REFERENCES

### A. Statutes

#### 1. Federal

None

#### 2. State

- a. **Prisons and Parole Code, 61 Pa. C.S. § 6132(a)(2)(i), (ii)**
- b. **Prisons and Parole Code, 61 Pa. C.S. § 6133(a)**
- c. 37 Pa. Code § 65.1, **65.3**
- d. **Pa. Rs. Crim. P. 708 (A)**

### B. PBPP Policies

None

### C. American Correctional Association Standards

- 1. **4-APPFS-2B-03 (Ref. 3-3156, 3-3158, 3-3159)**
- 2. **4-APPFS-2B-02 (Ref. 3-3157)**
- 3. **4-APPFS-2B-05 (Ref. 3-3160)**
- 4. **4-APPFS-2B-08 (Ref. 3-3165)**
- 5. **4-APPFS-2A-13 (Ref. 3-3144)**
- 6. **4-APPFS-2B-04 (Ref. 3-3174, 3-3173)**

### D. Management Directives

None

### E. Report of the Reentry Policy Council

None