

Survey to Chief APOs

Issue: Gagnon I Hearings

Question (from Luzerne County):

Counties that currently conduct Gagnon I Hearings in house.

Court Administration here in Luzerne County historically provided a hearing examiner but is considering other options. I believe some probation offices utilize Supervisors or other management Staff to conduct their hearings. I would appreciate any available information such as laws/rules to support such practices, internal policy/procedures, and compensation provided for the service if any.

Allegheny County

In Allegheny, 3 Senior Probation Managers handle all G1 hearings. They rotate weekly as hearings are held 4 days per week. 3 of the days, hearings are conducted at the jail via video conferencing. The hearing officer goes to the jail and the PO testifies by video.

Armstrong County

Armstrong County uses Chief or Deputy Chief.

Berks County

For about 5 years, we had a senior PO dedicated to the task. She had to get thrown back into supervision so the supervisors now perform the duty. They do not conduct the hearings for offenders who are supervised by the officers they supervise if that makes any sense!

Bucks County

Since 1975, Bucks County has used Adult Probation/Parole Supervisors as Gagnon 1 Hearing Officers. In most cases, the offender is not represented by a private attorney or public defender. Via a separate email, I will ask Supervisor Maria Duprey to forward a copy of our Gagnon 1 policy as she oversees policy/procedures for the Dept. In the years that I have been here, this process has not been challenged.

Cameron County

In Cameron the District Magistrate does them. In an office of 3 where I approve warrants it would be difficult to rule for or against myself

Carbon County

A Probation Officer conducts Gagnon I's and she received an increase in pay to conduct.

Centre County

MDJ in Centre as well

Chester County

In Chester County, we have part-time hearing master (retired Deputy Chief) conduct the Gagnon I Hearings. He can handle the Gagnon II if he is moving it from the Gagnon II to revoke and reinstate. In his absence, either myself or Deputy Chief will do these hearings.

As far as special probations to the board, we treat those similar to courtesy supervision cases. They are returned to us and we either resolve the violation or follow through with the violation process.

Columbia County

Columbia County utilizes a hearing master to do any Gag I hearings.

Crawford County

In Crawford County a MDJ oversees Gagnon I Hearings

Dauphin County

Dauphin uses MDJs

Delaware County

Delco uses a supervisor who receives additional compensation.

Erie County

Erie County conducts Gagnon I hearings using Supervisors, Deputy Director or Director. No additional compensation is given. I can provide policy, procedure and details to anyone interested other than Luzerne.

Fayette County

Amazing how many different ways to do the same thing! A shame there can't be uniformity!

Franklin County

Franklin County uses Officers.

Indiana County

Gagnon I Hearings in Indiana are conducted either by a supervisor or Chief/Deputy Chief PO.

Jefferson County

Jefferson County uses Director/Deputy Chief for Gagnon hearings.

Lancaster County

Lancaster uses chief, deputy chiefs, or division directors.

Attached is the colloquy the hearing officer follows (Appendix A).

Also attached are the instructions and process we provide to our officers prior to the hearing (Appendix B).

Lawrence County

Lawrence County uses Probation Officers

Lebanon County

The MDJ located at the prison oversees the Gagnon 1 Hearings in Lebanon County.

Pike County

Pike is the same as Tioga.

Schuylkill County

In Schuylkill County the Deputy Chief Probation Officer conducts all of the Gagnon I hearings

Snyder County

MDJ's are used in Snyder County

Tioga County

Tioga used to use MDJ's but the new MDJ's don't feel they have statutory authority to do these so our Judge does these hearing now.

Warren County

Uses both probation officers and supervisors as Gagnon I and Gagnon II Hearing Officers.

Wayne County

Wayne County, chief and deputy do hearings.

York County

York County utilizes both probation officers and supervisors as Gagnon I and Gagnon II Hearing Officers.

Appendix A (Lancaster County)

GAGNON I COLLIQUY

INSTRUCTIONS

1. This form to be used only for Gagnon I hearings in the Lancaster County Court of Common Pleas.
2. The Hearing Officer will explain the purposes of a Gagnon I hearing and the possible outcomes of the hearing.

1. You, _____ (name) _____, are present on information # _____ at your attorney and/or your request for a hearing on the alleged violations of sentence.

2. If there is no counsel: You have right to counsel and to free counsel.
(If defendant requests counsel, continue the hearing)

If counsel is present: Have you had adequate time to confer with counsel? If not, time will be provided now.

3. Did you receive notice of this hearing?
(If defendant says no, you may either provide time to prepare now, or continue the hearing)
4. There are two purposes for this Gagnon I hearing.
 - a. The first purpose of a Gagnon I hearing is to determine whether reasonable grounds, or probable cause, exists to believe that a condition of sentence has been violated. Probable cause is also called reasonable belief. Basically it comes down to whether it is more likely than not that a condition has been violated.

If it is determined that there is probable cause that a condition of sentence has been violated, the case will proceed to the Court of Common Pleas. If I determine that there is not, I will have the capias dismissed and you will be released from prison.

- b. The second purpose of a Gagnon I is to determine whether or not you should remain incarcerated pending a final revocation hearing if it is determined that probable cause exists.
5. I will explain the procedure of this hearing.
 - a. It is the probation officer's burden to make the case that probable cause exists in support of revocation.
 - b. You, the defendant, do not need to present any evidence at all.

Appendix A (Lancaster County)

- c. You, the defendant, will have the opportunity, through your counsel, to cross examine the probation officer and any witnesses he or she calls. I ask that you not interrupt a witness while he/she is speaking.
- d. If you choose to present evidence after the probation officer has made his/her case I will provide you with ample time to do so. You may speak on your own behalf, call witnesses, or present letters or other documents that are relevant to your case.
- e. At the conclusion of this hearing I will make a determination as to the merits of the case presented by the probation officer and any statements or other evidence you present. You, your lawyer, and the supervising judge will receive copies of the report.

Appendix B (Lancaster County)

MEMORANDUM

TO: Probation Officers
FROM: JTH
SUBJECT: Gagnon I Hearings
DATE: 4/22/15 (Originally issued 10/24/03)

The purpose of this memo is to provide advice for meeting the burden of proof (probable cause or reasonable belief) at a Gagnon I hearing. We will begin with some general principles and then proceed to the outlining of the minimum which must specifically be established for the probation officer to meet the legal burden.

Probable cause means only that the probation officer need prove that there is slightly more evidence for the proposition that the defendant committed a violation than not. The actual violation of a condition need not be proven. The probation officer need only demonstrate that it is more likely than not that the defendant committed the violation in order to get past the Gagnon I stage. It must be demonstrated that the defendant is “at least somewhat at fault” for the violation. (See Com. v. Hudak)

The capias should be well written with the allegations of violation clearly stated. It is important for the defendant and the court to be informed of exactly what conduct occurred to give rise to the capias.

As important as the well drafted capias is, it does not, by itself, provide a reasonable person with enough information to believe a violation has been committed. A capias in the P.V. process is akin to the criminal complaint filed by the police in a criminal prosecution. It provides notice and some allegations, but little more.

A police officer is obliged to provide an affidavit in support of probable cause when a complaint is filed before a magisterial district judge. A probation officer must go through the same intellectual process to support a capias at a Gagnon I. What you must do is establish specifically how you know that the defendant is in violation so that a neutral and detached decision-maker will understand why we are alleging it.

The following is a list of facts which should be established at a Gagnon I. You are by no

Appendix B (Lancaster County)

means limited to these. Imagination and creativity can lead you to additional methods for presenting evidence to make your case.

- 1.) Establish your identity as a probation officer, that you supervise the case of the defendant and that you have the official records. Provide the hearing officer and defense counsel with copies of the capias.
- 2.) Identify the defendant.
- 3.) Identify the sentence of the court which provides you with the authority to supervise the case and which you allege the defendant has violated. To do this, make copies of the pertinent sentencing order for use at the hearing.
- 4.) Establish that in Lancaster County probation and parole supervision requires the offender to adhere to certain rules. Establish what the rules are by specifying the rule which has been violated. Read the language of the rule and provide copies of the rules when appropriate.
- 5.) Establish how the defendant was put on notice of the specific rule that was violated. Provide the copy of the rules and regulations with the defendant's signature and/or testify from your field notes as to the facts which will establish that the defendant knew he should refrain from certain conduct or that he should accomplish certain specific tasks.
- 6.) Specifically address the conduct of the defendant which constitutes a violation. Go into detail. Use his statements against him by all means. Establish the details of: who, what, where and when of the events in question and how these events support your contention that a violation has occurred. Hearsay is admissible at a Gagnon I hearing.
- 7.) Hearsay is not admissible at a Gagnon II. If you need witnesses to make your case, be sure they're going to be available and willing to testify at the Gagnon II.
- 8.) Testify that facts have been established which would lead a reasonable person to conclude that probable cause exists to believe the defendant committed a violation, and that a capias was issued as a result.
- 9.) Optional: In order to eliminate any subsequent troublesome dialogue about a walk-in you may testify that:
 - a. public safety will be jeopardized by the defendant's release and/or,
 - b. there is history of violence by the defendant and/or,

Appendix B (Lancaster County)

- c. that the defendant is likely to abscond if released and/or,
- d. the defendant uses illegal drugs and alcohol and/or,
- e. anything else which is relevant.

10.) At the conclusion of your presentation, rest your case.

Things to Keep in Mind

- 1.) A Gagnon I hearing must be held before a neutral and detached decision-maker. He or she is not your friend or ally for purposes of presenting your case or cleaning up a problem. It is unreasonable to expect him/her to clean things up or fix problems in your case.
 - 2.) The defendant may wish to mitigate his conduct and may think that certain testimony he will provide will accomplish this. If the testimony is not relevant, object to it.
 - 3.) Don't simply read your capias.
 - 4.) You have the right to question the defendant or any of his witnesses. If you choose to, keep it relevant and civilized. Do not argue with the witness.
 - 5.) A Gagnon I hearing is more complicated and requires more preparation than a Gagnon II.
 - 6.) You are the prosecutor and you carry the entire burden without the help of an ADA or judge to guide you through the hearing.
 - 7.) The Pa Rules of Criminal Procedure do not specifically address the issue of timing of the Gagnon I hearing. However, Rule 708 addresses the timing of a Gagnon II as follows:

(A)Whenever a defendant has been placed on probation or parole, the judge shall not revoke such probation or parole as allowed by law unless there has been a hearing held as speedily as possible at which the defendant is present and represented by counsel.
- The as speedily as possible rule should be adopted for Gagnon I hearings. Remember, you are the prosecutor. It is your job to bring the defendant to court as speedily as possible. Any unnecessary delay in affording the offender a hearing/waiver might appear to be manipulative. Do not put yourself or the rest of us in that position.
- 8.) When an inmate requests a Gagnon I hearing (no Gagnon I is required in the case where the defendant is not in custody or where a prima facie case has been established at a preliminary hearing on a new charge before a magisterial district judge) please notify the institutional PO. It may be that the inmate does not know what he is requesting and is only doing so

Appendix B (Lancaster County)

out of fear or some other unknown reason. The IPO will speak with the inmate to explain the process. Often the inmate will waive at that time.