

Detention/Gagnon Hearing Officer Program

- The purpose of the DHO Program is to 1) provide an expedited detention hearing for any individual detained by the Court (post-sentence), to ensure that a defendant is provided due process where detention, or continued detention, is a possible outcome, and 2) provide an expedited Gagnon hearing process.
- A defendant shall not be detained on an Adult Probation (APO) detainer unless no available condition or combination of conditions of release can ensure the safety of the community, including the safety of the victim, and the protection of the defendant from immediate risk of substantial self-harm, or ensure the appearance of the defendant at any future hearings.
- The Detention Hearing Officers will conduct the following hearings:
 - Detention Hearings (if the defendant is detained by APO)
 - Gagnon I Hearings (for all defendants)
 - Uncontested Gagnon II Hearings (for all defendants)
 - 42 Pa.C.S.A. §9771.1 Hearings (when/if established)

The Detention Hearing Officers will not conduct pre-trial bail review hearings, bench warrant revocation hearings for failure to appear or detention of witness hearings.

- Detention/Gagnon hearings will be held 5 days per week – Monday thru Friday – starting at 9 a.m. Hearings are open to the public.
- Detention/Gagnon hearings will be conducted in-person and/or virtually at the MCCF courtroom, in the Community Corrections building, Eagleville.
- The defendant shall be represented at any detention/Gagnon hearing. The DHO, District Attorney, Public Defender/Defense Attorney and Adult Probation staff will be present in the courtroom, unless authorized to appear remotely.
- Digital recording equipment will be utilized to create a record of all hearings. The DHO shall provide a recorded or written contemporaneous statement of reasons for any recommendation to the Court.

- The DHO is authorized to make recommendations to the Court involving detention, conditions of release or the disposition of certain Gagnon matters. Said recommendations will be submitted electronically to the appropriate Common Pleas Judge for timely review and approval.
- References herein to the “Sentencing Judge” include Judges assigned on rotation to handle the current, pending matter.

Detention Hearings

- Detention hearings for defendants who are detained by APO (with new charges and/or technical violations – including APO bench warrants lodged as detainees upon arrest) will be scheduled to be held before the DHO within 5 business days of detention at MCCF, or the lodging of the detainer at MCCF, unless detained pursuant to the Interstate Compact on Adult Offender Supervision.¹
- Defendants are to be provided with a Gagnon I Notice of Violation as soon as practicable following detention and in any event before the Detention hearing – preferably within 3 business days of detention – even though the Gagnon I matter will not be handled at that time.
- The detention hearing before the DHO is solely to determine whether the defendant can be released on any available conditions prior to the scheduled Gagnon I hearing.
- When making a recommendation regarding release, the DHO shall consider the ongoing risk to the public’s safety, the ongoing risk to the defendant’s safety, and the ongoing risk of non-appearance at the violation hearing.
- At the detention hearing, in addition to the Notice of Violation, the DHO shall be provided with a copy of the affidavit of probable cause for any new charges, the bail decision on any new charges, the Pretrial Services

¹ Pursuant to the Interstate Compact on Adult Offender Supervision, Defendants shall be detained upon the sending state’s (state of conviction) discretionary or mandatory request pending retaking of the offender by the sending state. See Interstate Compact Rules 5.101, *et seq.* Detention hearings for offenders being returned to Montgomery County under the Interstate Compact will be held as soon as practicable and in any event within 5 business days of being returned to MCCF.

Risk Assessment report regarding any new charges, and the Probation Officer's recommendation, if available.

- If the Sentencing Judge previously imposed a special condition at sentencing directing detention upon a stated violation, said directive is binding on APO in terms of detention (*see APO Detainer Policy*), but is not binding on the DHO in terms of a recommendation following a detention hearing.
- DHO recommendations on cases involving a previously imposed special condition of sentencing directing detention for a state violation will be submitted electronically to the Sentencing Judge for timely (within one business day) review and entry of an appropriate order. If the Sentencing Judge is not available within one business day, the matter will be forwarded to the Criminal Misc. Judge for timely (within one business day) review and entry of an appropriate order.
- DHO recommendations on all other cases will be submitted electronically to the Criminal Misc. Judge for timely (within one business day) review and entry of an appropriate order.
- The DHO's recommendation will be memorialized on a form authorized by the Court. Supporting documentation will be included with any recommendation – including the affidavit of probable cause for any new charges, a copy of the bail decision on any new charges, the Pretrial Services Risk Assessment report regarding any new charges, and the Probation Officer's recommendation, if available.
- Objections to the DHO's recommendation, if any, shall be noted on the recommendation form.
- If either party disagrees with the Judge's decision upon review of the DHO recommendation, their recourse is to file a motion for reconsideration or to file an otherwise appropriate motion. Any such motion would be forwarded to the Criminal Misc. Judge for review.

Gagnon I Hearings

- Gagnon I hearings for ALL defendants will be held before the DHO.
- The first Gagnon I hearing will be listed as an "Uncontested" Gagnon I hearing (no witnesses will be required to attend) if the violation includes

an allegation of new charges. Gagnon I hearings for technical violations only (no new charges involved) will be listed as “Contested” Gagnon I hearings.

- Gagnon I hearings for defendants who continue to be detained (on an APO detainer) following a detention hearing shall be scheduled to be held within 10 calendar days after the detention hearing.
- Gagnon I hearings for defendants who are not detained or are no longer detained on an APO detainer, but who are otherwise detained on new charges (failed to make bail) shall be scheduled to be held within 30 calendar days of the filing of the alleged violation.
- Gagnon I hearings for defendants who were either never detained or were released following a detention hearing shall be scheduled to be held within 30 calendar days of the filing of the alleged violation or detention hearing, respectively.
- Upon request by the defendant, defendants may postpone their Gagnon I hearings.
- If the defendant is not detained (on the street) and fails to appear for the scheduled Gagnon I hearing, the DHO shall recommend the issuance of a bench warrant for failure to appear. That recommendation shall be forwarded to the Criminal Misc. Judge for signing.
- Defendants who are detained are to be provided with a Gagnon I Notice of Violation before the Gagnon I hearing – preferably within 3 business days of detention. Defendants who are not detained are to be provided with a Gagnon I Notice of Violation within 10 calendar days of the filing of the alleged violation. If the Notice of Violation was provided to the defendant before a previously scheduled detention hearing, that service shall satisfy this requirement.
- The Gagnon I hearing before the DHO is to determine whether probable cause exists to believe that a violation has been committed, and if so, if the defendant can be released on any available conditions prior to a Gagnon II hearing before a Common Pleas Judge or Detention Hearing Officer.
- If a preliminary hearing is held on the new charges prior to the Gagnon I hearing, and a charge or charges are held for Common Pleas Court, the

DHO must still consider the issue of release from detainer on available conditions, or any further disposition of the matter (by agreement).

- When making a recommendation regarding release at the Gagnon I hearing stage, if appropriate, the DHO shall conduct a similar analysis as outlined under the Detention Hearing section – including the ongoing risk to the public’s safety, the ongoing risk to the defendant’s safety, and the ongoing risk of non-appearance at the revocation hearing.
- Again, if the Sentencing Judge previously imposed a special condition at sentencing directing detention upon a stated violation, said directive is binding on APO in terms of detention (see APO Detainer Policy), but is not binding on the DHO in terms of a recommendation following a Gagnon I hearing.
- In addition to the Notice of Violation, the DHO shall be provided with a copy of the affidavit of probable cause for any new charges, the bail decision on any new charges, the Pretrial Services Risk Assessment report regarding any new charges, and the Probation Officer’s recommendation.
- Recommendations to the Court (determining whether probable cause exists and/or if the defendant can be released on any available conditions) will be submitted electronically to the Criminal Misc. Judge for timely (within one business day) review and entry of an appropriate Order.
- The recommendation will be memorialized on a form authorized by the Court. All supporting documentation will be included with any recommendation.
- Objections to the DHO’s recommendation, if any, shall be noted on the recommendation form.
- If either party disagrees with the Judge’s decision upon review of the DHO recommendation, their recourse is to file a motion for reconsideration, or to file an otherwise appropriate motion. Any such motion would be forwarded to the Judge for review.
- Gagnon I hearings can also be waived by the defendant. A Waiver Colloquy shall be completed. Waivers will be forwarded to the Sentencing Judge for the scheduling of a Gagnon II hearing within 30

days of the request for the hearing. The parties can also agree to have an Uncontested Gagnon II hearing before a Detention Hearing Officer.

- **Administrative Dispositions** can also be handled by the DHO at this early stage, or at any subsequent stage, in consultation with the defendant, counsel and APO. Said dispositions will be forwarded to the Sentencing Judge for signing. Any administrative disposition proffered to the Court must be accompanied by a fully-executed written colloquy; signed terms and conditions of supervision; an Adult Probation Contact Information Sheet; and a written consent signed by the Commonwealth and Defense that a Judge other than the original sentencing Judge may sign Disposition, if such agreement is reached.

Uncontested Gagnon II Hearings

- Upon agreement of the parties, **uncontested Gagnon II hearings** can be scheduled to be held before the DHO within 30 calendar days of the request for hearing.
- **Contested Gagnon II hearings** will be scheduled to be held before the Sentencing Judge within 30 calendar days of the request for the hearing.
- The DHO on uncontested Gagnon II matters can recommend any legal sentence.
- The DHO's recommendation on uncontested Gagnon II matters cannot address or resolve new criminal charges.
- If the Sentencing Judge does not accept the recommendation of the DHO on an uncontested Gagnon matter, the Sentencing Judge shall schedule the matter for a contested Gagnon II hearing to be held within 30 calendar days of the recommendation date.

(NOTE – An **Administrative Disposition** involves an agreement of the parties as to the violation and proposed disposition – a joint recommendation. An **Uncontested Gagnon II hearing** involves an agreement as to the violation only (stipulating as to the conduct), but not as to the proposed disposition.

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