

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
PHILADELPHIA MUNICIPAL COURT

Administrative Order No. 07 of 2019

*In re: Adoption of Philadelphia Criminal Rule \*708. Violation of Probation or Parole.  
Revocation Hearings.*

**ORDER**

AND NOW, this 6<sup>th</sup> day of March, 2019, it is hereby ORDERED and DECREED that Philadelphia Criminal Rule \*708. Violation of Probation or Parole. Revocation Hearings is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, and applicable in the Court of Common Pleas of Philadelphia County, Trial Division – Criminal, and in the Philadelphia Municipal Court – Criminal Division.

As required by Pa.R.J.A. 103(d), this Administrative Order and the proposed local rule were submitted to the Supreme Court of Pennsylvania Criminal Procedural Rules Committee for review and written notification has been received from the Rules Committee certifying that the proposed local rule is not inconsistent with any general rule of the Supreme Court. This Administrative Order and the attached local rule shall be filed with the Office of Judicial Records (formerly the *Prothonotary, Clerk of Courts and Clerk of Quarter Sessions*) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the attached local rule, as well as one copy of the Administrative Order and local rule shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this Administrative Order and local rule shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://courts.phila.gov>, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rules shall also be published in *The Legal Intelligencer* and will be submitted to *American Lawyer Media, Jenkins Memorial Law Library*, and the Law Library for the First Judicial District.

**BY THE COURT:**

*/s/ Idee C. Fox*

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**HONORABLE IDEE C. FOX**  
President Judge, Court of Common Pleas  
Philadelphia County

*/s/ Patrick F. Dugan*

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**HONORABLE PATRICK F. DUGAN**  
President Judge  
Philadelphia Municipal Court

*/s/ Jacqueline F. Allen*

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**HONORABLE JACQUELINE F. ALLEN**  
Administrative Judge, Trial Division  
Court of Common Pleas, Philadelphia County

## NEW LOCAL RULE

### Philadelphia Criminal Rule \*708. Violation of Probation or Parole. Revocation Hearings.

- (A) A probation officer may arrest or cause to be arrested, with or without a warrant, any person (“Defendant”) who has been placed on probation or parole for: failure to report as required by the terms of that person’s probation or parole, or for any other violation of that person’s probation or parole as provided by law, including 42 Pa.C.S. §§ 9913 and 9754.

*Explanatory Comment:* 42 Pa.C.S. § 9913 authorizes a probation officer to arrest or detain any person on probation or parole for any violation of that person’s probation or parole, imposed as provided in 42 Pa.C.S. § 9754 or otherwise.

A probation officer must exercise discretion in determining when a detainer ought to be issued, and shall reference the rule(s) and condition(s) of probation or parole allegedly violated by the Defendant.

- (B) The procedure which follows shall be utilized whenever any Defendant who has been released on county probation or parole in Philadelphia County is arrested or detained by law enforcement officers to determine whether the Defendant’s probation or parole ought to be revoked.

**(1) Gagnon I Hearing.** A hearing will be held before a Trial Commissioner or a judge as soon as practicable and within a reasonable time after the Defendant has been arrested or detained in order to determine whether there is probable cause to believe that the Defendant has committed a violation of his probation or parole. At the hearing, the Defendant shall:

- a. receive notice of the alleged violation of probation or parole;
- b. be provided the opportunity to appear in person or by two-way simultaneous audio-visual communication and to present evidence in his own behalf;
- c. be provided a conditional right to confront adverse witnesses;
- d. be provided counsel; and
- e. be provided a written hearing disposition report.

At the conclusion of the Gagnon I hearing, if the Trial Commissioner or judge determines that probable cause exists to believe that the Defendant has committed a violation of one or more condition of Defendant’s probation or parole, the Defendant may be detained pending a Gagnon II hearing.

*Explanatory Comment:* See generally *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) which require that a person arrested and detained due to an alleged violation of a condition of probation or parole be provided a “preliminary revocation hearing” (a “Gagnon I hearing”) conducted by an independent decisionmaker and a “final revocation hearing” (a “Gagnon II hearing”) to determine whether the person may be detained and the person’s probation or parole be revoked.

As noted above, the Gagnon I hearing need not be conducted by a judge, and may be conducted utilizing two-way simultaneous audio visual communications. See Comment to Pa.R.Crim.P. 119. Supervisory Probation staff have been designated in some counties to conduct Gagnon I hearings.

The Gagnon I hearing must be held within a reasonable period after the person is arrested and detained. See *Commonwealth v. Ferguson*, 2000 Pa.Super 312, 761 A.2d 613, 619 (2000). Requiring that a Gagnon I hearing be held within a mandatory or inflexible number of days, without regards to the individualized factors present in each case, may result in delay in the scheduling and holding some or all Gagnon I hearings.

Whether bail has been ordered and posted in connection with the new charge(s) is not dispositive in determining whether a person who is on probation or parole shall be released or will continue to be detained for violating the condition(s) of probation or parole. The sole consideration before the fact finder in the Gagnon I hearing is whether probable cause exists to believe that the person has violated any condition of the person's probation or parole.

When a detainer is issued due to conduct which resulted in an arrest, the person on probation or parole may only be detained if after the Gagnon I hearing, evidence of some facts in addition to the facts of arrest is necessary to determine that the person on probation or parole violated any applicable conditions. *See Commonwealth v. Davis*, 234 Pa. Super 31, 38, 336 A.2d 616 (1975).

A Gagnon I hearing is not necessary when a probable cause determination is made, after the preliminary hearing where the Defendant is held for trial or upon the conviction of an offense committed while the Defendant had been released on probation or parole, that the Defendant has violated a condition of probation or parole. *See Commonwealth v. Davis*, 234 Pa. Super 31, 336 A.2d 616 (1975) for the specific scenarios held not to require a Gagnon I hearing in Philadelphia County.

**(2) Gagnon II Hearing.** If at the conclusion of the Gagnon I hearing, it was determined that probable cause existed to believe that the Defendant violated one or more condition of Defendant's probation or parole, a hearing must be held to determine whether the facts warrant revocation of the Defendant's probation or parole and whether probation or parole is still an effective vehicle to accomplish the rehabilitation and a sufficient deterrent against future antisocial conduct, as follows:

- a. a written request for revocation shall be filed as required by Pa.R.Crim.P. 708(A);
- b. a hearing will be held before the sentencing judge or a judge generally assigned to hear violations of probation or parole;
- c. a hearing will be scheduled as requested by the sentencing judge or judge generally assigned to hear violations of probation or parole
  - i. within a reasonable period after the filing of the written request for revocation required by Pa.R.Crim.P. 708(A); or
  - ii. within a reasonable period after a verdict is rendered in connection with the new charges which had resulted in Defendant's arrest;
- d. the Defendant shall be provided counsel and the opportunity to be heard in person and to present witnesses and documentary evidence;
- e. the defendant shall be provided the right to confront and cross-examine adverse witnesses; and
- f. the hearing shall proceed as provided in Pa.R.Crim. P. 708.

***Explanatory Comment:*** The judge may not revoke probation or parole on arrest alone, but only upon a finding of a violation thereof after a hearing, as provided in Pa.R.Crim.P. 708. However, the judge need not wait for disposition of new criminal charges to hold such hearing. *See Commonwealth v. Kates*, 452 Pa. 102, 305 A.2d 701 (1973).

The purpose of the Gagnon II Hearing is not to determine whether the person who is on probation or parole has committed a new offense, which the Commonwealth must establish by proving all of the requisite elements of the new offense beyond a reasonable doubt, but rather it is to establish the violation of a condition of probation or parole, which must be proved by a preponderance of the evidence, *see Commonwealth v. Allshouse*, 2009 Pa.Super 47, 969 A.2d 1236, 1240 (2009) and cases cited therein, and further to determine "whether the conduct of the probationer indicates that the probation has proven to be an effective vehicle to accomplish rehabilitation and a sufficient deterrent against antisocial behavior." *Commonwealth v. Kates*, supra, 452 Pa. at 115 (1973).