

GAGNON HEARING PROTOCOL

Introduction

Phase II Operations will begin to address outstanding matters involving alleged violations of probation and/or parole. Limitations exist due to concerns regarding operations and safety. We have attempted to overcome many of these limitations through the protocols described below which prioritize the types of cases and the methodologies to be utilized.

Judicial Assignment

Two Judges will be assigned to hear Gagnon cases during Phase II. All pending Gagnon cases will be randomly assigned to one of the two designated Judges, notwithstanding that the assigned Judge may not have originally imposed sentence. The Court recognizes that defendants have the right to appear before their designated back Judge and, hence the Court will be requesting that the defendant waive that right. Should the waiver be granted the Gagnon proceeding shall proceed before the designated Judge. The waiver shall apply only to the present violation and any future Gagnon proceeding shall be conducted before the Judge who initially imposed sentence.

Should the waiver not be granted, the defendant will not be compelled to appear before the designated Judge. The matter will be addressed at a later date, at such time as the Judge who imposed sentence is available. Those cases are not anticipated to be able to be accommodated during Phase II operations.

Priority of Scheduling

The court will prioritize the scheduling of Gagnons, as follows:

1. Case where the designated Judge is the Judge who originally imposed sentence.
2. Case where the allegations involve only technical violations. This includes case where the defendant is incarcerated at MCCF or any other facility with which our Court can establish video conference capability
3. Cases involving direct violations where the new case involves one or more unresolved misdemeanor offenses in Montgomery County.
4. Cases involving direct violations where the new case involves one or more unresolved felony offenses in Montgomery County.
5. All other direct or indirect violations.

Appearances

All matters will be held live in the Montgomery County Courthouse. However, incarcerated defendants shall appear only by video. No transport is permitted. While the Court has the authority under its Emergency Order to compel the defendant to appear by video, we will not enforce it. Should the defendant wish to appear in person, the matter will be continued to a future phase of operations when transport is permitted. Counsel are expected to appear in person. All witnesses, including a representative of the Adult Probation Department, are expected to appear by video.

Scheduling

Scheduling Orders shall be issued from the Chambers of the designated Judge. Requests for continuances should be made to the designated Judge. Rescheduling due to unavailability will be within the discretion of the designated Judge and shall be rescheduled before that judge. Rescheduling based on the Defendant asserting the right to appear before the sentencing Judge shall be held until that Judge is available in a future phase of operations.

Cases shall be scheduled at 15 minute intervals. Counsel should be cognizant of the Court's schedule and appear

promptly. Counsel representing un-incarcerated defendants shall advise their clients to appear promptly. The Court reserves the right to reschedule cases where attorneys or defendants do not appear on time. Upon receipt of the scheduling order counsel should confer. Defense counsel shall notify the Office of District Attorney and Court at least 3 business days before the scheduled date if the matter is to be contested. If it is anticipated that the matter is to be contested then the parties shall appear, as scheduled, ready to proceed - with necessary witnesses available by video.

Other

The designated Judge shall have the right to consider bail modification but only for cases that have been scheduled and where the Defendant has waived the right to appear before the Judge who imposed the original sentence.

All safety protocol related to appearances at the Courthouse shall remain in effect. Counsel should advise any un-incarcerated defendants of those requirements, which appear on the Court's website.