

## VIOLATION OF STATE COURT PROBATION IN PENNSYLVANIA

Alleged violations of probation cause defendants and their loved ones much stress, in part because the procedures governing alleged violations are not widely known.

There are two types of violations:

(1) Technical violations. Examples include traveling outside boundaries set by the probation department, failure to attend treatment programs, failure to report to probation officers and failing drug tests. Due to the “technical” label, defendants can underestimate the possible consequences of a technical violation. Violators can be resentenced up to the statutory maximum period of incarceration for the original offense.

(2) Direct violations. These are violations for arrests on new criminal charges.

Procedure:

Whether the alleged violation is direct or technical, there will generally be two hearings subsequent to being detained for the violation:

(1) A “Gagnon I” hearing should be scheduled almost immediately after detention. A judge will determine whether the defendant can be released or must stay in jail pending the full hearing on the violation. The courts call this “lifting the detainer” or “detainer to remain.”

(2) A “Gagnon II” hearing should be held within 30 days of the Gagnon I hearing. At this hearing a defendant found in violation by the judge will be resentenced on the original underlying offense. Both the prosecutor and defense attorney will present arguments, and sometimes testimony from witnesses. The probation officer will testify and present reports.

Do you need counsel?

Retention of experienced dedicated private counsel can greatly benefit a defendant, regardless of who represented the defendant in the underlying case. Gagnon I hearings, where defendants are often released, can be delayed for reasons outside the defendant’s control. A diligent attorney will make sure the hearing is scheduled as soon as possible and prepare for both Gagnon I & II hearings by communicating with the probation officer in advance of the hearing and ensuring that family or other defense witnesses remain informed and available. Advance preparation can be the difference between no violation being found, a new period of probation or resentencing to incarceration.

**[This brochure is meant to provide general information and is NOT legal advice.]**