



POLICY
Commonwealth of Pennsylvania • Department of Corrections

Policy Subject: CASE RECORDS, DECISIONAL PROCESSING: HEARING PROCESS, COX EVIDENTIARY HEARINGS – SUPERVISION STAFF		Policy Number: 12.3.03.10
Date of Issue: September 19, 2022	Authority: Signature on File George M. Little	Effective Date: PUBLIC September 26, 2022

I. AUTHORITY

The Authority of the Secretary of Corrections to direct the operation of the Department of Corrections is established by Sections 201, 206, 506, and 901-B of the Administrative Code of 1929, 71 P.S. §§61, 66, 186, and 310-1, Act of April 9, 1929, P.L. 177, No. 175, as amended.

II. PURPOSE

A Cox Evidentiary Hearing will generally be provided for reentrants after the Parole Board's Office of Chief Counsel determines that a hearing must be held to determine whether a reentrant is entitled to credit for the time he/she spent at a group residence as a condition of parole. The purpose of the hearing is for the Parole Board to determine whether the specific characteristics of the residence presented an environment so restrictive that the reentrant should receive credit for the time spent at the residence. In these cases, the reentrant has the burden of proof and burden of persuasion. As such, it is up to the reentrant, and not supervision staff, to prove that the restrictions on the reentrant's liberty were equivalent to incarceration.

III. APPLICABILITY

This policy is applicable to all Department employees.

IV. DEFINITIONS

All definitions are located in Policy **12.3.03.01, Glossary**.

V. POLICY

It shall be the policy of the Department to hold and conduct due process hearings in accordance with established case law, regulations, and timeliness constraints.

VI. PROCEDURES

A. Introduction

1. After a reentrant files a timely petition for administrative review of a recalculation order that denies him/her credit for time spent in a group residence (Community Corrections Center [CCC], Community Contract Facility [CCF], or group home) as a condition of parole, and alleges that he/she is entitled to credit for that time, the Department will conduct a hearing on the sole issue of whether the reentrant is entitled to credit for that time spent.
2. The Parole Board's hearing division is responsible to schedule these hearings in accordance with any court orders, if applicable, or in a timely fashion following notice of a need for said hearing.

B. Supervision Staff Responsibility

1. Notification
 - a. District Director or designee within the district housing the group residence at issue shall assign supervision staff as having full responsibility for the Cox Evidentiary Hearing.
 - b. When the reentrant's petition covers more than one geographically situated group residence supervised by different Department district locations, the district with the most recent assignment will take the responsibility for preparing all required reports and arranging for all required testimony.
 - c. Supervision staff shall complete a **DC-P 257N, Notice of Charges and Hearings**, inserting the date, time, and location of the scheduled hearing as well as the name and address of the public defender in the county of the hearing location.
 - d. At least three business days prior to the hearing date, notice shall be provided to the reentrant. Supervision staff, with the assistance of other Department staff, as needed, shall serve the reentrant and obtain his/her signature as an acknowledgment of receipt. Said staff shall also provide

reentrant with **DC-P 257OR, Rights at Board Hearings**. Department staff meeting with the reentrant will verbally advise the reentrant:

- (1) Cox Evidentiary Hearing is being held as a result of reentrant's request for credit; and
- (2) there is a right to retain counsel and if unable to afford counsel, the right to representation by free counsel and the name and address of the public defender in the county of the hearing location.

2. Witnesses

- a. Supervision staff are responsible for subpoenaing and preparing any witness needed to rebut the reentrant's claim that he/she is entitled to credit. Reference Policy **12.3.03.13, Subpoenas**.
- b. Supervision staff responsible for the hearing may call other agents to provide testimony in rebuttal to the reentrant's assertion.
- c. Supervision staff providing testimony must be familiar with the characteristics of the residence in question when the reentrant resided there.
- d. If no agent familiar with the residence is available to testify, then a person employed by the residence should testify at the hearing (e.g., Facility Director), by subpoena if needed. This person must be familiar with the characteristics of the residence when the reentrant resided there.
- e. Responsible supervision staff shall be prepared to rebut the totality of the reentrant's claims if he/she raises multiple placement locales.
- f. In the event the facility in question is no longer in business, supervision staff shall take reasonable steps to gather documentary evidence by contacting the Department Bureau of Community Corrections for assistance.

3. Documentation required and available at the hearing

- a. Supervision staff shall assemble:
 - (1) **DC-P 257N;**
 - (2) **DC-P 257OR;**
 - (3) **PB-72, Preliminary/Detention/Counsel/Panel Waiver or Request;**
 - (4) **DC-P 257H, Supervision History;**

- (5) **PB-10** and **PB-11, Release Order and Conditions**;
 - (6) **PB-29, Prior Requests for Continuation of Hearing**, if any;
 - (7) **PB-4, Subpoena(s)**, if applicable;
 - (8) **PB-15, Board Action Recalculating Max Date**;
 - (9) court order to have hearing, if applicable;
 - (10) appeal/petition requesting credit from the Board; and
 - (11) response to appeal/petition, if applicable.
- b. If held in person, supervision staff shall provide sufficient copies of any exhibits they intend to introduce. Additionally, copies of the hearing materials must be provided to presiding decision makers as well as the reentrant's attorney or public defender, if represented.
 - c. When the hearing is conducted in a virtual environment or via videoconference, staff shall ensure that hearing materials are provided to all participating parties in advance of the hearing.
 - d. In turn, the reentrant is responsible to provide Department staff copies of any exhibits used to substantiate his/her contention for credit.
 - e. Following the hearing, staff presenting the hearing shall make appropriate notes into the electronic reentrant record (ERR).

4. Continuances

- a. In the event supervision staff or witnesses are unavailable for the scheduled hearing date, staff shall fill out, sign the **PB-29**, and provide the **PB-29** to the hearing coordinator. If a continuance is granted, supervision staff are required to notify all interested parties to include witnesses, reentrant, and his/her attorney, if represented, as to the change. The Board employee granting the continuance shall also sign the form.
- b. Supervision staff at the hearing should object to a reentrant's request for continuance on the basis of wasting resources in that staff and witnesses will again have to appear.

C. Cox Evidentiary Hearing for Supervision Staff¹

1. In a Cox hearing, the reentrant bears the burden of proving that the subject residence he/she resided at was so restrictive that it was equivalent to being incarcerated. Because of this, the reentrant must first present his/her evidence to the hearing examiner regarding the specific characteristics of the subject residence.
2. Supervision staff will also object to any reference to a "blackout period," as it is the Department's position that such testimony is not relevant. A blackout period refers to the adjustment period. A reentrant may have additional restrictions when leaving the residence without an escort.
3. Supervision staff have the right to cross-examine the reentrant or any of the reentrant's witnesses after they provide their testimony. Supervision staff, however, should only ask a question on cross-examination if the agent can predict with confidence how the question will be answered or has documentary evidence that contradicts the testimony of the reentrant or reentrant's witnesses. As such a scenario is usually rare, it is generally unwise to ask any questions of the reentrant's witness on cross-examination.
4. It should be noted that the reentrant has the right to present redirect evidence if the agent cross-examines the reentrant's witnesses. The agent, however, should object to any question asked on redirect as outside the scope, that does not specifically address the questions raised on cross-examination.
5. After the reentrant presents his/her evidence, staff then have the opportunity to present evidence in order to rebut the evidence presented by the reentrant.
6. In presenting evidence to rebut the reentrant, an effort should be made by the agent to elicit testimony from the witnesses that will show the actual amount of restriction, or lack thereof, that the reentrant had during his/her time at the residence.
7. In doing so, supervision staff should ask the witness about the following with regard to the subject's residence:

NOTE: Staff are not limited to this list, but should employ the below at a minimum.

- a. whether the doors were locked in the subject residence. If so, whether they were locked in a manner that prevented intruders or they were locked in a manner that prevented residents from leaving;

¹ 4-APPFS-2B-08

- b. was there a door at the residence, such as a door with a panic bar or other device, from which the reentrant could have exited the residence at will;
 - c. was there a fence around the residence;
 - d. did the staff do anything to prevent a reentrant from leaving the subject residence (i.e., physical restraints);
 - e. has any reentrant who has been absent without authorization from the subject residence ever been charged with escape;
 - f. did the reentrant leave the residence for authorized work or leisure activities; and
 - g. was the reentrant permitted to walk unescorted on the grounds of the residence?
8. If supervision staff have evidence the reentrant was not at the subject residence during the time(s) the reentrant alleges, staff must put this evidence on the record through either witness testimony or properly authenticated records from the subject's residence.
9. During supervision staff's presentation of evidence, they must also make sure to put on the record that the reentrant resided at the residence as a condition of his/her parole and thus was not at the residence as a pre-release inmate, reprieve inmate, not held on a Department detainer, and was not held on an **Act 122** board action and held in official detention. In doing this, staff will present the hearing examiner with a copy of the reentrant's **PB-10/11** as proof of the fact that the reentrant was at the residence as a condition of his/her parole. If the reentrant was residing at the group residence following release from a Parole Violator Center (PVC) subsequent to a held in abeyance board action, the agent should provide testimony and documentation which details the reentrant's last release from a secure facility and acceptance to the unsecured group residence. Supporting documentation might include conditions/instructions issued to the reentrant when he/she left the PVC which directed him/her to report and reside at the group residence or conditions/instructions issued to him/her when he/she reported to the group residence for intake.
10. The reentrant or attorney (if any) has the right to cross-examine any witness(es) that testify on behalf of the Department. If, however, the reentrant or attorney (if any) asks the witness a question that is outside the scope of what the witness testified, staff should object on the grounds that the question is beyond the scope of the direct testimony. The reentrant or attorney (if any) should not be permitted to adduce new evidence in support of the reentrant's claim through the cross-examination of the witness(es).

11. Supervision staff should also object to any questions that the reentrant or attorney (if any) asks on cross-examination of the Department witness(es) that refers to the "blackout period" when the reentrant was subjected to or any period of time that the reentrant was not allowed to leave the residence without an escort (Object to relevancy).
12. If the hearing examiner allows the reentrant's attorney to ask Department witness(es) about the times when a reentrant was not allowed to leave the residence without an escort on cross-examination, staff should then ask his/her witness on redirect the following questions:
 - a. what is the purpose of requiring a reentrant to have an escort during that initial period of time (i.e., is the escort's purpose to insure the reentrant does not obtain alcohol or drugs);
 - b. is the escort an employee of the residence; and
 - c. is the escort authorized to use force to return the reentrant if he/she appears unwilling to return to the residence?
13. Supervision staff may ask questions on redirect in order to clarify a witness's testimony after witness is questioned on cross-examination. Redirect testimony, however, is limited to clarifying the answers to questions that were given on cross-examination.
14. At the close of Department staff testimony, both the reentrant or his/her attorney and supervision staff have the opportunity to present a closing statement with the reentrant/attorney going first.

VII. SUSPENSION DURING AN EMERGENCY

The Secretary of the Department of Corrections may suspend this policy in case of an emergency.

VIII. RIGHTS UNDER THIS POLICY

This policy creates no rights under law.

IX. RELEASE OF INFORMATION AND DISTRIBUTION OF POLICY

- A.** This policy does not contain information that impacts the security of Department staff or reentrants and, therefore, may be released to the public.
- B.** This policy is to be distributed to all Department staff.

X. CROSS REFERENCES

A. Superseded

This policy replaces the previous versions listed below:

10.12b: 6/17/2005

B. Statutes

1. Federal – United States Constitution
2. State – Pennsylvania Constitution

C. Department Policies

12.3.03.01
12.3.03.13

D. American Correctional Association Standards

4-APPFS-2B-08

E. Management Directives – None

F. Report of the Reentry Policy Council – None