

STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS

Directive: 371.16

Subject: Graduated Sanctions
Effective Date: 12/30/02 **Review and Re-Issue Date:**
Supersedes: 421.03 **APA Rule Number:**
dated
3/1/02

Recommended for approval by: Richard Turner, Director/Correctional Services		Authorized By: Steven M. Gold, Commissioner	
_____ Signature	_____ Date	_____ Signature	_____ Date

1. Authority:

1.1. Title 28 V.S.A.

2. Purpose:

2.1. This directive describes a discretionary component of the Department's system to sanction offenders under its jurisdiction who violate the law and/or conditions of their release while on Pre-Approved Furlough, Supervised Community Sentence, Furlough Reintegration, or Conditional Re-Entry.

3. Applicability/Accessibility

3.1. This directive applies to offenders in the custody of the Department of Corrections in the status of Pre-Approved Furlough, Supervised Community Sentence, Furlough Reintegration, or Conditional Re-Entry. Anyone may have a copy of this directive.

4. Directive

4.1. Purpose of Graduated Sanctions

Offenders in the supervision status of Pre-Approved Furlough, Supervised Community Sentence, Furlough Reintegration, or Conditional Re-Entry who violate their conditions of release are held accountable by the Commissioner of Corrections through the designated supervising staff. The Graduated Sanctions System articulates a process whereby staff are empowered to impose sanctions on offenders as an alternative to the formal violation process described in directive 410.01 in instances in which: (1) the behavior constitutes a minor violation as described by Appendix B of this directive, (2) the offender admits the violation, and (3) the offender wants to enter into an alternative process and agrees to accept sanctions for the violation. The Graduated Sanctions Process has the following purposes:

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- 1) To enhance public safety, offender responsibility, and offender accountability, and to maximize efficient use of existing staff resources by creating a process that allows for timely resolution of minor offender rule infractions;
- 2) To maximize the opportunity for offender change by facilitating offender understanding of the nature and consequences of his/her undesired behavior and by providing opportunity for offenders to participate in restorative activity related to their behavior when appropriate;
- 3) To ensure that the sanction imposed on an offender for failing to follow conditions is commensurate with the behavior causing the violation and consistent with guidelines;
- 4) To ensure that an offender is maintained at the least restrictive level of supervision consistent with public safety;
- 5) To promote offenders' successful completion of their assigned program unless keeping them in the program conflicts with public safety.

4.2 Applicability of Graduated Sanctions

Each CCSC Superintendent shall create a written procedure outlining site specific expectations for utilization of Graduated Sanctions in concordance with this directive, inclusive of the oversight role of the Casework Supervisor.

When there are multiple violations during a single time period, each graduated sanction is assessed and applied separately; however, when incarceration is invoked, the total or cumulative incarcerative sanction may not exceed the time listed in Appendix C. This directive replaces 372.03 that dealt with furlough revocations. This directive now allows for a revocation to be imposed only after a case staffing occurs and when as an outcome of the case staffing, a revocation was indicated.

The Parole Board has authorized the Department to use this graduated sanction directive with Supervised Community Sentence cases. However, the Board needs to be informed on each and every sanction that is imposed and in cases where incarceration is used the Board will control the number of days imposed.

4.3 Graduated Sanctions Process

1. Meeting Preparation Form

The Meeting Preparation Form is a useful tool for increasing offender awareness of his/her behavior and increasing offender acceptance of responsibility. It is primarily applicable for behavior which in some way involves offender risk factors or risk control issues. In no instances is its use mandatory.

Following any eligible violation for which a Graduated Sanctions is being considered, the offender may be given the Graduated Sanctions Meeting Preparation Form for completion and return to the Department staff who is initiating the process. The staff should review the form and discuss it with the offender at the Offender Meeting.

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2. Offender Meeting

The Offender Meeting is the meeting in which the supervising staff member and the offender address the rule infraction and a sanctioning resolution. This meeting is a part of the casework process and efforts should be made to maintain a constructive, motivational approach. If the offender accepts the Graduated Sanction(s), there is no need to process a formal process.

3. Sanctioning Report

The Graduated Sanctions Sanctioning Report is part of the official automated record of the Graduated Sanctions activity and must be completed on each offender who is offered the Graduated Sanctions process and a signed printed copy maintained in the offender file. Typically it is filled out and executed during the Offender Meeting. If the offender accepts the Graduated Sanction(s), the offender will sign the form and will be provided with a copy.

A record of any graduated sanction imposed, to include even very minor ones, must be entered into the computer database.

Upon supervising staff determination that sanction(s) have been successfully completed, section F is filled out by the staff. A short narrative of circumstances of completion is included. The supervising staff indicates that the offender has been advised that the activity is considered completed.

If the offender refuses to participate in the process, or refuses to agree to the sanction(s), the supervising staff will fill out this section of the form documenting the determination of non-compliance and termination of Graduated Sanctions process. The supervising staff indicates that the offender has been advised of the non-compliance determination.

The expectation in such cases is that the staff will commence the formal process.

If the offender fails to satisfactorily complete a sanction activity, a meeting is scheduled in order to assess the reason for the failure and/or renegotiate the graduate sanction agreement. Subsequent failure to complete the activity will result in a formal hearing process.

4.4 SANCTIONS

Sanctions may be used individually or in conjunction with each other. Staff should attempt to include restorative justice principles when sanctioning offender behavior.

- Sanctions are related to the violation behavior.
- If possible, sanctions help repair the damage caused by the offender.
- Sanctions assist the offender in learning more about the consequences of the behavior.
- Sanctions help the offender learn how to avoid repeating the behavior.

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Sanction may include, but not be limited to the following:

- a) Apology (Verbal or Written)
- b) Developing or Reviewing Violation Prevention Plan
- c) Written Essay/Educational Activity/Thinking Report.
- d) Mediation.
- e) Victim/Offender Mediation (with the Approval from the Director of Victim Services)
- f) Community Service Work of up to 14 hours on each violation. (Community Restitution workcrews only available when there is a shortage of community restitution cases.)
- g) Meeting with Reparative Board to discuss violation.
- h) Loss of privileges (driving/recreation/visits/telephone, etc.)
- i) Curfew/Restriction to residence.
- j) Reprimand.
- k) Report as directed for alco-sensor/employment search/other related activity.
- l) Restitution and reimbursement commensurate with the loss suffered or damage done.
- m) Incarceration
- n) Other activities which meet the restorative justice principles listed above

NOTE: An offender who agrees to a sanction involving incarceration must understand that the signature on the Sanctioning Report Form indicates the waiver of his/her right to a furlough revocation process.

Offenders serving a sanction in a facility will not be denied return to the community for lack of housing. If this situation arises, refer to the directive 371.14, Furlough Residence Approval.

4.5 GRADUATED SANCTIONS PROCESS TIME FRAMES

From the perspective of promoting both public safety and positive offender change, it is important that staff respond to offender rule infractions in as timely a manner as practical. The Graduated Sanctions process should be initiated at the earliest possible opportunity after the supervising staff has become aware of the infraction and decided to respond with Graduated Sanctions. It is also desirable that the sanctions process be short term so as not to come to dominate overall client/offender interaction, casework and program participation.

If the Graduated Sanctions Meeting Preparation Form is being used, the supervising staff may require that the offender complete the form without delay so that the Offender Meeting can be held immediately. In some circumstances the supervising staff may determine that the offender will benefit instead from being given a period of up to 48 hours to complete the form.

The Offender Meeting must be held no later than 5 days after the Department of Corrections becomes aware of the offender behavior violation.

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Non-incarcerative sanction activities should be designed so that they can be completed within 15 days of assignment. After this period of time the supervising staff must both determine that the offender has been non-compliant and make referral for formal process, or terminate the process without further action using section F of the Sanction Report.

4.6 FORMAL PROCESS TIME FRAMES

The formal process has two tracks. The first is the use of the Offender Disciplinary System that is governed by Directive 410.01. The second is a furlough revocation process that would require the case to be reviewed by the Director of Offender Classification. This review will be done prior to the expiration of any incarcerative graduated sanction imposed. If after this review, there is a need for further review, it will be done by the case staffing team. The team is comprised of Directors from central office, staff members from the facility where the offender is held and staff members from the field site that is requesting the revocation. These meetings are held monthly and cases that require this level of review will be scheduled for the next case staffing review day.

5. Training Method

5.1. The Operating Directors will describe the new directive in detail to the CCSC Superintendents, Facility Superintendents, and CRSU Supervisors who will be expected to provide the same detailed description to their employees.

Policy Executives – The Director of Correctional Services will meet with the policy execs and go over the new directive in detail. The policy execs will then be expected to describe the new directive in detail to their subordinates.

6. Quality Assurance Processes

6.1. CCSC CWS's are responsible for monitoring compliance and assuring that the directive is being followed.

- 1) The office of Quality Assurance will review site offices and report on adherence to the graduated sanctions directive and assist in the development of outcome measures.
- 2) The Director and the Assistant Director of Correctional Services and CCSC Superintendents will review graduated sanctions practices biannually to assure adherence to the graduated sanctions directive.
- 3) Examples of Measures:
 - a. Appropriate Documentation
 - b. Time Frames
 - c. Frequency of Sanctions by Offender / by Program
 - d. Violations by Type
 - e. Sanctions for Violations by Type
 - f. Is Sanction Restorative? / Are Victim – Community Needs Addressed when Appropriate?

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4) An electronic database will be used to record the process.

5) Field Superintendents will be expected to review management reports to ensure compliance.

7. Financial Impact:

7.1. The only financial impact associated with this directive is if the sanction of incarceration is imposed..

8. References

8.1 VSA, Title 28, Chapter 3, section 102 b (1) and (2), and section 102 c (1), (5), (8) and (17).

9. Responsible Director and Draft Participants

9.1 Jackie Kotkin, Assistant Director of Correctional Services
Raymond Flum, Director of Offender Classification

A. GRADUATED SANCTIONS MEETING PREPARATION FORM

Name: _____

Violation:

Today's Date: _____

Planned Meeting Date:

Introduction: You have violated a condition of your supervision. You may be offered a Graduated Sanction instead of a Parole Board Hearing, Furlough Revocation Process or Disciplinary Report Hearing. If you voluntarily agree to participate in the Graduated Sanction process, you understand that DOC staff will determine the consequences for your behavior within certain limits described in directive 421.03. You will be responsible for, and agree to carry out these sanctions cooperatively, fully, as directed, and on time.

You will meet with DOC staff to discuss the violation and sanctions. You are not required to complete this form (unless specifically directed to do so) but the more thought and effort you put into preparing for the meeting, the more successful this experience may be.

A. What did you do to violate your conditions of supervision?

B. Why did you decide to do this?

C. What were you thinking:

1. Before you did it?

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2. While you were doing it?

3. After you did it?

D. Name all the people who were hurt by your behavior and tell how each was affected?

E. Was this similar to behavior that has led to legal or disciplinary trouble for you before?

F. In the future, how do you think you can stop this behavior before it starts?

Your Signature: _____

Date: _____

Received By Staff (sign and date): _____

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Appendix B

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1. Use/abuse of illegal substances
2. Possession and/or use of prescription drugs without a valid prescription for self
3. Misuse/abuse of legally prescribed medication
4. Possessing or passing contraband (risk related)
5. Alco-sensor reading in excess of .08 for non-risk related cases, any number for a risk related case
6. Gambling
7. Failure to participate in and/or complete Community Service
8. Failure to pay fines, fees, restitution
9. Refusing to work
10. Unexcused absence from work
11. Failure to report change of residence or employment
12. Loss of residence (except through no fault of the offender – e.g. Fire)
13. Unsafe residence (Except through no fault of the offender)
14. Failure to maintain proper hygiene
15. Destruction or damage of State property or the property of another
16. Engaging in minor disruptive behavior
17. Lying or providing false statements or information
18. Using abusive, obscene, disrespectful behavior or language
19. Derogatory comments based on race, gender, ethnicity or sexual orientation
20. Refusing order of staff person
21. Being in unauthorized area
22. Failure to report when required/directed
23. Out of place—(Risk Related)
24. Violation of curfew—(Risk Related)
25. Unauthorized visitor—(Risk Related)
26. Unauthorized contact with victim (minor, unplanned or incidental)
27. Refusing alcohol test, drug test, search, identification, access to residence, work site or other location
28. Tampering with monitoring equipment/devices
29. Failure to participate in programming as directed
30. Driving without prior approval of DOC or in violation of DOC restrictions
31. Failure to comply with any agreement or rule governing furlough, community supervision program, residence, employment etc.
32. Non-violent misdemeanor citation or conviction – no incarceration
33. Non-violent misdemeanor citation or conviction DLS

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Appendix C

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	May Use incarceration For the following:	For up to the Number days listed:
Listed Offense 24 and Above on LSI	1-5, 23-33	up to 15 days
List Offense 23 and below on LSI	1-5, 23-33	up to 10 days
Non Listed Offense Felony	1-5, 26-28	up to 15 days
Non Listed Offense Misdemeanor	1-5, 26-28	up to 72 hours
<ul style="list-style-type: none"> • In cases where there is a need to remain incarcerated for longer periods than the graduated sanctions allow for, the field site may write a rationale and request to staff the case. The Director of Offender Classification/Designee will review these cases. If after this review a staffing is needed, it will be scheduled for the next staffing day. 		
<ul style="list-style-type: none"> • Directive 410 allows for offenders to be sanctioned using the disciplinary process. If offenders receive a sanction that requires them to serve some disciplinary segregation time, they will be transferred to the facility to serve their time and then released upon completion of their time. 		

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APPENDIX D

NOTICE OF SUSPENSION/VIOLATION HEARING

Offender Name: _____ Offender's Max Date: _____
(Print Name)

Date: _____ From: _____
Staff Member – (print Name)

Effective immediately, your status on furlough, PAF, SCS, or Conditional Re-entry is suspended. You will be returned to a correctional facility pending a graduated sanction meeting, a disciplinary hearing, a Parole Board hearing, or a revocation hearing.

If you are being lodged pending a graduated sanction meeting, one will be scheduled as soon as possible and it will be scheduled prior to the expiration of any applicable incarcerative sanction that could be imposed.

If you are being lodged pending a disciplinary hearing, the hearing will be held in accordance with Directive 410.01.01.

If you are being lodged pending a Parole Board hearing, the hearing will be held in accordance with the rules governing the Parole Board.

If you are being lodged pending a revocation hearing, your hearing will be held after 24 hours but no later than 72 hours from the receipt of this notice. (See directive 410.01.01)

You have been charged with violating condition _____ on your conditional reentry agreement.

To whitt you

At the revocation hearing you will have the following opportunities:

1. The accused will be provided with copies of the non-confidential evidence in support of the revocation action not less than three hours prior to the hearing unless the accused consents that less time is required.
2. The accused is entitled to the assistance of a hearing assistant in cases where the hearing officer has determined that the accused can not adequately understand the charges against him/her or understand his/her rights. Reasons for allowing a hearing assistant may include the following, developmentally delayed person, mental illness, inability to move around the facility freely (during approved times), or difficulty communicating, etc.
3. The accused may be present and heard subject to rules of reasonable conduct as determined by the Hearing Officer. In all cases where the accused's conduct is appropriate, the accused will be in the same room with the Hearing Officer.

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4. The accused is entitled to present documentary evidence and call reasonably available witnesses subject to relevance, necessity or hazards to institutional security or safety of individuals.
5. The accused has the opportunity to question witnesses and review documentary evidence subject to reasonable rules of necessity and conduct provided such is not hazardous to institutional security or safety of individuals, e.g., confidential informant statements, or deals with confidential information under Department of Corrections Procedure 410.01.02 Offender Discipline.
6. If the offender does not attend the hearing for any reason, the Hearing Officer will document that fact in the report of the hearing.
7. The hearing will be tape recorded.
8. The Hearing Officer will ensure the offender understands his/her entitlements and opportunities.
9. The Hearing Officer shall hear the evidence, weigh it and make findings of fact. The recommendation to revoke the offender's status on conditional reentry/furlough/PAF must be supported by the findings of fact set out in the report of the hearing.
10. The accused will receive the hearing officer's finding of fact within 1 work day of the Hearing.

Offender Signature _____ Date _____

TO BE COMPLETED BY CORRECTIONAL STAFF

Offender is being returned to the Correctional Facility on _____, at _____ hours.

Revocation hearing to be held no later than: _____.

Staff signature _____ Date _____

Cc: Offender
Correctional Facility
File