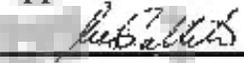


<b>State of Vermont Agency of Human Services Department of Corrections</b>	<b>Title: Furlough Violations (CR, RF, PAF, Home Detention, Home Confinement)</b>	<b>Page 1 of 21</b>
<b>Chapter Security &amp; Supervision</b>	<b>#410.02</b>	<b>Supersedes: #410.02 Violations of FR, CR, PAF, dated 09/30/03.</b>
<b>Revision History:</b> Supersedes #410.02 <i>Impact of Disciplinary Reports on Inmate Participation in Work Programs</i> , dated 09/01/99.		
<b>Attachments, Forms &amp; Companion Documents:</b> <ol style="list-style-type: none"> <li>1. Notice of Suspension Report form</li> <li>2. Notice of Hearing /Waiver of 24 Hour Notice of Hearing</li> <li>3. Furlough Violation Waiver of Appearance/Hearing/Refusal to Appear</li> <li>4. Waiver Process</li> <li>5. Confidential Informant Form</li> <li>6. Hearing Report Form</li> <li>7. Inmate Appeal Form</li> </ol>		
<b>Local Procedure(s) Required?</b> Yes – See Section 7, Hearing Record Preservation. <b>Applicability:</b> All staff, including volunteers & contractors. <b>Security Level:</b> "B" - Anyone may have access to this document.		
<b>Approved:</b> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">   <hr style="width: 100%;"/> <b>Andrew A. Pallito, Commissioner</b> </div> <div style="text-align: center;"> <u>April 6, 2012</u>  <b>Date Signed</b> </div> <div style="text-align: center;"> <u>May 1, 2012</u>  <b>Effective Date</b> </div> </div>		

**PURPOSE**

The purpose of this administrative directive is to describe the Administrative Due Process to be used to determine if an offender is in violation of one or more conditions of furlough. It does not confer any specific substantive or procedural right or entitlement upon an offender who is subjected to its provisions.

**POLICY**

It is the policy of the Department of Corrections that alleged offender violations of furlough are responded to appropriately. This includes determination of how the alleged offender behavior/violation relates to their risk, and the Department’s ability to manage the risk safely in the community. When a violation occurs which is related to risk, and the Department feels the offender’s risk cannot be currently managed in the community, the offender is lodged in a correctional facility. The Department is responsible for providing due process procedures in each case where the offender is incarcerated.

**AUTHORITY**

B. 28 V.S.A. § 101(1), 28 V.S.A. § 102(b) (2), (c) (1), (c) (5), (c) (6); 28 V.S.A. § 701(b), 28 V.S.A. § 753, 28 V.S.A. §§ 808, 808a, 808b, 808c, 855. Policy 410 *Due Process*, 1996.

**REFERENCE**

APA Rule #96-12 *Discipline*. DOC Policy #410 *Due Process*; Administrative Directives #320.01 *Grievance System for Facilities & Field*, #371.01 *Americans with Disabilities Act – Facility & Field*, #371.16 *Graduated Sanctions*, #410.01 *Facility Rules & Offender Discipline*, #430.10 *Risk Management Supervision - Field*; DOC *Violation Guidelines (2012)*.

**DEFINITIONS**

Business Day: Monday through Friday, excluding weekends and recognized State holidays.

Confidential Informant: A source of information whose identity must remain confidential for security or safety reasons.

Confidential Information: Case records unless access is provided for in *Directive 254.01*; records dealing with the detection and investigation of crime; treatment records unless access is provided for in *Directive 254.01*; records obtained from the Vermont Criminal Information Center (unless the Commissioner of Public Safety expressly approved disclosure); home or business addresses and home or business telephone numbers; names and/or identity of confidential informants referenced in a disciplinary report; information related to victims, such as their names, home or business addresses, home or business telephone numbers; whether a victim has requested notification of an offender's parole hearings or an offender's release to the community; "blue" notes; names of other offenders in treatment records when the request for access is for records of the subject of treatment, and as provided in 28 VSA ss204(d), pre-sentence reports, pre-parole reports, or supervisory history of probationers or employees prepared by an employee of the Department except that disclosure is permitted in the following circumstances: (1) a court order is issued in compliance with 28 VSA ss204 (d) removing the confidentiality of such records; or (2) criminal justice personnel and AHS employees are seeking access to supervision records for the purposes of protection of children or investigating/prosecuting offenses against children.

Continuance: Temporary suspension of a hearing for good cause shown either by the Department or the offender.

Escape: Any action by the offender, which leads Corrections' employees to believe the offender, intends to absent him/herself from State custody or supervision.

Furlough: A legal status for an offender under the custody of the Commissioner serving all or part of their incarcerative sentence in the community outside a correctional facility. This includes offenders on pre-approved furlough (PAF), conditional re-entry (CR), reintegration furlough (RF), treatment furlough (TF) and medical furlough (see administrative directive #373.02 *Medical, Treatment & Short Term Inpatient Furlough*.)

Conditional Re-entry (CR): A furlough by which a sentenced offender is released to the community under supervision at or beyond their minimum release date.

Pre-approved Furlough (PAF): The legal status in which an inmate is sentenced to serve a term of imprisonment, but is placed by a court on furlough to participate in such programs administered by the Department that reduce the offender's risk to reoffend.

Reintegration Furlough (RF): A furlough prior to the minimum sentence to prepare an incarcerated inmate for re-entry into the community.

Home Detention (HD): A program of confinement and supervision that restricts a defendant to a pre-approved residence continuously, except for authorized absences, and is enforced by appropriate means of surveillance and electronic monitoring by the Department of Corrections.

Home Confinement (HC): A status of furlough determined either by the court at sentencing or the commissioner of corrections that restricts the offender to a pre-approved place of residence continuously, except for authorized absences, enforced by appropriate means of supervision, including electronic monitoring and other conditions.

Hearing Assistant: A person who assists an offender in preparing and presenting their case. It does not have to be a staff person, but cannot be an attorney.

Hearing Officer: A person designated by the Commissioner of Corrections and assigned by the Superintendent or designee to conduct administrative due process hearings.

Interviewing Officer: A staff person not involved in the violation incident, who takes the oral testimony of a confidential informant and swears to the accuracy of their report. This can be the Investigating Officer.

Investigating Officer: A staff person selected by the Superintendent/District Manager or designee to investigate the charge against an offender and compile evidence for submission to the Superintendent. This person cannot have been involved in the violation incident.

Notice of Suspension (NOS): Written notice to a furloughed offender (RF, CR, PAF, HC and HD) that their furlough privileges have been suspended pending due process. Offenders issued an NOS will be brought to a correctional facility to await due process.

Possession: An item that is 1) found on one's person or the clothing being worn by that person; or 2) found in one's personal belongings; or 3) found in an area that one exerts control over, and there is independent evidence that the offender knew it was there. Independent evidence of knowledge includes, but is not limited to: a) information exists supporting that the offender had knowledge the contraband was there; b) staff observation of the offender's behavior led to staff suspicion that the offender is hiding contraband; c) staff observed an offender with contraband; or d) other evidence indicated the contraband was placed by the offender.

Preponderance of Evidence: Something is more likely to have happened than not happened.

Presenting Officer: A staff person assigned by the Hearing Officer to present facts relevant to the alleged violation. The Presenting Officer may also have been the Investigating Officer.

Privilege: A benefit bestowed upon an individual to whom a person has no right or legal entitlement.

Reasonable Accommodation: Any change in the facility or field environment, policies or procedures, or the manner in which tasks are completed that enables a qualified individual with a disability to participate in and receive the same benefits from a program or service, or the opportunity to receive the same benefit of service, unless to do so would result in a fundamental alteration in the nature of a program or activity.

Reporting Staff: The staff member who recommends bringing a charge against an offender for an alleged furlough violation.

Responsibility: An individual's personal obligation or accountability for performance.

Threatening or Threatening Behavior: For purposes of the furlough violation process, these include any of the following:

- 1) Verbal threats when the offender has the ability and opportunity to carry out the threat; (Ability and opportunity are defined using the non-lethal use of force standard.)
- 2) Physical threats when the offender has entered another person's space in an intimidating manner - the offender's behavior may or may not include gross motor activity;
- 3) Verbal threats where the offender demonstrates knowledge of another person's personal life, such as, "Don't you live at (address)?" or "Your kid goes to (specific school), doesn't she?" This knowledge must be articulated in conjunction with threatening behavior.

## **PROCEDURAL GUIDELINES**

Individuals who are supervised in the community under furlough (CR/FR/PAF/HD/HC) and who have been returned to a correctional facility because of alleged violation(s) of conditions are entitled to a due process hearing. At times, graduated sanctions are insufficient to address offender behavior and the furlough violation process is necessary.

### **1. Furlough Violation Process**

- a. The criterion for violation of a furlough is that a preponderance of the evidence exists that the offender violated a condition or conditions of their furlough, to include, but not limited to:
  - i. The offender is charged with a new crime;
  - ii. The offender escapes as defined in *Definitions* section of this directive;
  - iii. The offender assaults or threatens to assault someone;
  - iv. The offender fails to report for Community Restitution as required by their mittimus, or fails to report as required by the terms of an agreed-upon graduated sanction;
  - v. The offender commits or threatens an act that poses an articulable risk to the community, the victim(s), a particular citizen, staff, or self;
  - vi. The offender is not meeting program standards in attendance, participation and progress.
- b. Any staff with responsibility for supervision of offenders is authorized to initiate the furlough violation process and return the accused to a correctional facility.
  - i. At the time of return, field staff will complete and present the offender with a *Notice of Suspension Report form, Attachment 1*.
  - ii. Staff will review the *Furlough Violation Waiver of Appearance, Attachment 3* with the offender. If the offender waives the hearing or appearance, the waiver shall be recorded. If the offender does not waive the hearing, staff will issue a *Notice of Hearing/Waiver of 24 Hour Notice of Hearing, Attachment 2*, and have them sign it.
- c. An administrative due process hearing (see Hearing Process) on the alleged furlough violation must be conducted, unless the offender waives the hearing. (See *Attachment 3*.) The hearing must be conducted at the receiving facility within four (4) business days. (Day one of four is the beginning of the first full business day from the time the accused is returned to a correctional facility.)

- d. ADA: Department of Corrections staff and/or contractors have several ADA-related responsibilities regarding offenders in custody or under supervision, not only upon initial admission but throughout an offender's custody or supervision. These include:
- Notifying all offenders of their rights under the ADA;
  - Screening all offenders entering the correctional system in order to determine if they are individuals with a disability;
  - Making reasonable accommodations/modifications when necessary; and
  - Following due process procedures if an offender appeals a decision about any disability accommodation or feels they have been discriminated against because of a disability.

Accommodating a disability is always evaluated in the context of it not being an undue burden on the Department, jeopardizing safety or security, or it not resulting in a fundamental alteration in the nature of a program or activity.

## 2. Waiver of Hearing/Appearance at Hearing

- a. An offender may waive their hearing or their appearance and admit to guilt with an agreed-upon sanction by checking the appropriate statement on the *Waiver of Appearance/Hearing /Refusal to Appear Form (Attachment 3.)* Only an employee who has been designated as a Hearing Officer by the Commissioner of Corrections can execute a Waiver Agreement that includes an admission of guilt.
- b. All hearing waivers that include an admission of guilt must be made on the record. (See *Attachment 4, Waiver Process*, for the script.) The offender must acknowledge on the record that they are freely and knowingly waiving their right to a due process hearing in this matter. The voice recording of the waiver process will be archived in the same manner as other due process hearings.
- c. An offender may:
- i. Waive their appearance and claim innocence by checking the appropriate statement on *Attachment 3*;
  - ii. Refuse to appear without a specific signed waiver statement.
    - In the event an offender declines to attend the due process hearing without making a statement of waiver, the DOC staff person must fill out section B of *Attachment 3*.

## 3. Investigation

Investigations will take place on all cases when the offender does not waive the hearing.

The Investigating Officer will:

- a. Interview the offender and other parties who may have information about the incident as soon as is practical;
- b. Make a record of the interviews for further review - records must include any accommodations needed;
- c. Take written statements from witnesses and, when appropriate, gather pertinent supplemental records prepared by others;
- d. Keep names and testimony of confidential informants (CI) in a separate folder and withheld from the offender. (See *Confidential Informant Form, Attachment 5*);

- e. Forward statements of confidential informants to the Hearing Officer with the violation packet;
- f. Ensure the person taking the informant's confidential testimony reports such testimony in affidavit format. The narrative portion of the affidavit must state that the reporter believes the CI to be reliable, and it must finish with the sentence, "I swear (affirm) that the above written account is a true and accurate representation of the confidential informant's statement made to me on (date) "\_\_\_\_\_, 20\_\_".
- g. Notify the offender not less than twenty-four (24) hours prior to the hearing (*Notice of Hearing form, Attachment 2*). The offender may waive the twenty-four hour notice by indicating so in writing using the *Waiver of 24 Hour Notice of Hearing* (bottom of *Notice of Hearing, Attachment 2*.) At this point the Department may hold the hearing any time within four (4) business days of the return. Day one (1) begins at the start of the first full business day after the return.
- h. Prepare a report of findings and a recommendation to be included with the violation packet. They will recommend to the Superintendent or their designee one of the following:
  - Refer for resolution of charge as reported
  - Dismiss the charge.
- i. Provide the offender with a *Notice of Hearing (Attachment 2)* and copies of all non-confidential reports, including the Investigating Officer's report. The offender will have 24 hours prior to the hearing to review the violation packet.

#### 4. Hearing Process

- a. An administrative hearing may not be held sooner than 24 hours after the *Notice of Hearing* is served upon the offender unless they waive this time period by signing the *Notice of Hearing/Waiver of 24 Hour Notice of Hearing (Attachment 2)*. The hearing will be held no later than four (4) business days from the return to the facility. Day one (1) begins at the start of the first full business day after the return.
- b. Continuances
  - *Requested by the Department:* The Hearing Officer may postpone a violation hearing for one (1) business day for good cause. The Superintendent's approval is required for continuances of greater than one (1) business day. The Hearing Officer will document the basis for such good cause on the *Hearing Report Form (Attachment 6)*. Good cause for a continuance of a violation hearing, includes, but is not necessarily limited to (1) facility emergencies and/or other unusual operational occurrences; (2) work schedules, transfers and other circumstances that limit witness availability for the specific hearing date; and (3) absence of the offender.
  - *Requested by the offender:* The offender may request a continuance for good cause (such as a witness not being available) which may be granted by the Hearing Officer for up to two (2) business days. The Hearing Officer will document the basis for such good cause on the *Hearing Report Form*.
- c. Hearing Assistant Role
  - i. An offender has the right to a hearing assistant to help them prepare their case; however, this cannot be an attorney.

- ii. The Hearing Officer will ensure that the accused offender and hearing assistant have had sufficient time - at least three (3) hours if requested - to confer and review the violation packet prior to the hearing.
  - iii. Both the hearing assistant and accused will be present in the hearing room unless the offender or the hearing assistant refuses to attend.
  - iv. If the conduct of the offender or hearing assistant is repeatedly disrespectful, unruly or presents a hazard to institutional security or safety of the individuals, the hearing may continue without them.
  - v. A hearing assistant will attend the hearing on the offender's behalf if the offender does not attend for any reason.
- d. Presenting Officer Role
- i. The Hearing Officer shall designate a staff member to be the Presenting Officer. It is the Presenting Officer's duty to present facts relevant to the incident up for violation consideration.
  - ii. The Hearing Officer may only assign as Presenting Officer an employee who was not involved in the violation incident. The Investigating Officer may be used as the Presenting Officer.
- e. Hearing Officer Role
- The Hearing Officer should start the hearing no sooner than 24 hours after written notice was served upon the offender by the *Notice of Hearing (Attachment 2)*, unless the offender waives the 24-hour period by signing the *Waiver of 24 Hour Notice of Hearing* at the bottom of this attachment.
- i. The Hearing Officer will conduct the hearing in a professional and fair manner. They will record the hearing by digital, audio or audiovisual equipment.
  - ii. During the hearing, the Hearing Officer will explain to the offender the nature of the violation(s) and the offender's rights and opportunities as outlined on the *Notice of Hearing*.
  - iii. Plea - The Hearing Officer will permit the offender to enter a plea of *guilty* or *not guilty*. If the offender refuses to make a plea, the Hearing Officer will enter a plea of *not guilty* on the record.
  - iv. The Hearing Officer may terminate or restrict any questioning or testimony if it is done in a repeatedly disrespectful or disorderly manner, is repetitive, or is clearly irrelevant. If this occurs, the Hearing Officer will indicate why in the *Hearing Report Form (Attachment 6)* and on the hearing recording.
  - v. If the offender does not attend for any reason, the Hearing Officer will indicate that in the *Hearing Report Form*, record the offender's absence on the recording of the hearing, as well as the reason(s) and ensure a hearing assistant is assigned and attends the hearing on the offender's behalf.

## 5. Findings

In order to determine if the offender is guilty of the charged violations, the Hearing Officer will consider all evidence presented at the hearing. No offender may be found to be in violation of a condition or conditions of furlough unless it is supported by a preponderance of the evidence presented.

- a. The Hearing Officer must review the statements of confidential informants and ensure that the *Hearing Report Form (Attachment 6)* and the hearing recording show that the Hearing Officer believes (1) the informant(s) are reliable, (2) the statements are reliable, and (3) the informant(s) had first hand knowledge of the facts alleged.
- b. Questions above will be determined by completing a *Confidential Informant Form, (Attachment 5)* for each CI statement used as evidence. The accused offender will receive a copy of the *CI Form* should a finding of guilt be made, since there is no information in it that will jeopardize facility security or endanger any offenders or community persons who have cooperated as a confidential informant. Confidential information itself is never provided to an offender or Hearing Assistant.
- c. If any requested witness(es) (including the Reporting Officer) did not testify or did not appear at the hearing for any reason, the Hearing Officer will state the reasons why on the hearing recording and in the written report, (*Attachment 6*), noting in the report the forms of alternative testimony used. Witnesses may provide testimony using alternate forms of communication when they cannot be present at the hearing (e.g., Interactive TV, telephone, written report, written statement.)
- d. The Hearing Officer will find the offender:
  - Guilty of the charged violation, or
  - Not guilty of the charged violation.
- e. If the Hearing Officer determines that the offender *is not* guilty of any violation, the offender will receive a copy of the Hearing Officer's report noting the determination of 'not guilty' (*Attachment 6*.) The violation paperwork related to the hearing where the offender was found not guilty, will not be placed in the offender's file. If the hearing is held during normal business hours, the offender will be released immediately. The Hearing Officer will inform the facility Shift Supervisor of the release, and contact the filed office who supervises the offender, to inform them of their release, while getting reporting instructions for the offender.
- f. If the Hearing Officer determines that the offender *is* guilty of a violation, the Hearing Officer:
  - i. Will inform the offender and give to them the outcome and the facts that the Hearing Officer relied on to support the finding of guilt, on the *Hearing Report Form*;
  - ii. Will permit the offender to enter a statement, if they wish, orally or in writing, regarding their agreement or disagreement with their guilt, and enter it on the *Hearing Report Form*;
  - iii. Will refer the case for case staffing. (See *Section 11*.)

## 6. Appeal Process

- a. If an inmate wishes to appeal the Hearing Officer's decision, they must file a written appeal with the District Manager within seven (7) business days of receipt of the Hearing Officer's decision. (See *Inmate Appeal Form, Attachment 7*.) If it is not filed within the seven (7) business days, it may be denied solely on the basis that it is out of time. Any inmate who needs assistance in completing the *Appeal Form* should contact their Caseworker and/or the Prisoners' Rights Office.
- b. The staff person receiving the *Appeal Form* will fill in the appropriate signature, date, and time blocks on the form, forward it to the Shift Supervisor who will scan the *Appeal Form* to the District Manager, with a copy to the Director of Community Corrections, Re-entry, & Classification. The staff person receiving the *Appeal Form* will give the inmate the receipt portion of the *Form*.
- c. The District Manager may, upon their review of the appeal, 1) deny the appeal as untimely; 2) support the Hearing Officer's finding; 3) order a new hearing or further findings; or 4) reverse the decision.
  - i. In their response (on *Attachment 7*), the District Manager will specifically address all appeal issues raised by the inmate in the appeal.
  - ii. The District Manager should respond to the appeal within thirty (30) calendar days from the date the appeal was delivered by the inmate to a staff member at the facility.
  - iii. Failure to respond to the appeal within thirty (30) calendar days will not result in the automatic reversal of the Hearing Officer's decision.
- d. Appeals to the District Manager will delay the final case staffing decision for the instant issue until the appeal process is completed, or thirty (30) calendar days from the date of the Hearing Officer's decision, whichever is sooner.
- e. Appeal issues not responded to by the District Manager within the required thirty (30) calendar days will be specifically addressed in the case staffing.
- f. Any appeal in process during a facility-to-facility instate transfer must be completed by the *sending* facility and the decision delivered to the inmate within the thirty (30) calendar day time frame.
- g. Appeal of the case staffing decision may be made by utilizing the offender grievance system through an Appeal to the Department's Classification Executive, *Grievance Form #5*. The Executive's decision may be appealed to the Commissioner, *Grievance Form #7*.

**NOTE:** *In instances where the inmate has been transferred to another site, the determination will be faxed to the receiving site as soon as practical.*

## 7. Hearing Record Preservation

- a. Record of findings: A record will be maintained of the hearing on the *Hearing Report Form (Attachment 6)*. This record will be placed in the offender's file.
- b. The recording of a formal violation hearing will be retained for three (3) years after the date of the hearing.
- c. Any confidential information used in a hearing where the offender was found guilty will be kept with the hearing recordings. Superintendents will develop local procedures ensuring the safekeeping of confidential informant statements and hearing recordings.

## 8. Role of District Manager

The District Manager of the P&P office where the offender with the alleged violation(s) is being supervised is responsible to do the following:

- a. Ensure that the offender is provided with notice of the specific violations that they are being accused of;
- b. Assign an Investigating Officer from their work site who must be available in person or by telephone for the due process hearing;
- c. Ensure that the necessary paperwork, to include the Investigating Officer's report, is delivered to the receiving facility with the offender, or as soon as possible thereafter.

## 9. Role of Superintendent

The Facility Superintendent is responsible to do the following:

- a. Be aware of those individuals who have been lodged in their correctional facility pending the holding of a furlough violation hearing;
- b. Ensure that all furlough violation hearings take place within the mandated time frame (by the end of the 4<sup>th</sup> business day after the offender's return from furlough to the facility);
- c. Be aware of any continuances of the hearing that have been granted and subsequent time frames;
- d. If discovered that a hearing has not been held in a timely manner, consult with the Director of Community Corrections, Re-entry, & Classification or the Director of Policy Development & Offender Due Process. If unable to reach either one, ensure that the hearing process is begun immediately by issuing the *Notice of Hearing (Attachment 2)* to the offender. The offender should have an opportunity at the hearing to articulate how holding the hearing late has adversely impacted their defense. The Hearing Officer can then make a decision.

## 10. Return of Offender Sentenced to Community Restitution Program

The following process will be utilized in responding to offenders sentenced to the Community Restitution Program who have a "work crew" failure and have been returned to a correctional facility.

- a. Within four (4) business days of their return to jail (day one being the beginning of the first full business day after the return), the offender will be provided with an administrative due process hearing per this directive.
- b. At any point *prior to* the hearing a returned offender may be offered a graduated sanction in the following manner:
  - o 1<sup>st</sup> return - up to 5 days to serve (credit for time served mandatory)
  - o 2<sup>nd</sup> return - up to 10 days to serve (credit for time served mandatory)(If the offender rejects a graduated sanction, there will be a due process hearing.)
- c. A 3<sup>rd</sup> return will result in a due process hearing without the offer of a graduated sanction. In the case of a finding of guilt, a local case staffing will determine whether to revoke furlough.
- d. In all cases, a finding of *not guilty* through a due process hearing will result in the release of the offender. The Hearing Officer will direct the offender to report to the Probation & Parole Office on the next business day.

- e. If the offender maxes out their work service sentence before four (4) business days, there is no need for the administrative due process hearing to be held.
- f. If the offender is returned to the community before four (4) business days, there is no need for the administrative due process hearing to be held.

### **11. Case Staffing Process**

- a. The Case Staffing will:
  - i. Determine the length of incarceration required to control or reduce the risk for re-offense;
  - ii. Determine the requirements for the offender to complete prior to release to conditional re-entry/furlough, in order to demonstrate the risk is reduced; or
  - iii. Make a determination that the offender must serve their maximum sentence to control the risk to the community, themselves or others.
- b. Case Staffing Appeal: An offender may initiate a grievance if dissatisfied with the case staffing decision by filing a grievance to the Commissioner. (See administrative directive #320.01 *Offender Grievance System for Field & Facilities.*)

### **TRAINING**

1. The Director of Human Resources Development has the responsibility and authority to develop and deliver Administrative Due Process training for Hearing Officer Candidates.
2. The Director of Facility Operations and the Director of Community Corrections, Re-entry, & Classification will work with both the Department's Director of Human Resources Development and Director of Policy Development & Offender Due Process to ensure that all appropriate personnel are trained in the provisions of this directive.

### **QUALITY ASSURANCE**

1. All District Managers are responsible for compliance with policy, directive and procedures regarding the supervision of offenders in the community.
2. All appropriate staff will use practices in compliance with policy, directive and procedures regarding the supervision of offenders in the community.
3. Pending database supports to assess for compliance and outcomes with this directive, intermediate review options shall be explored.

## NOTICE OF SUSPENSION REPORT FORM

Click on Image below to go to current version of this document.

State of Vermont Department of Corrections Notice of Suspension Report	
<i>Part I - Completed by Reporting Staff</i>	
Field Office: <input type="text"/>	Docket number: <input type="text"/>
Offender name: <input type="text"/>	D.O.B. <input type="text"/> PID # <input type="text"/>
Location of incident: <input type="text"/>	Date/Time of Incident: <input type="text"/>
You are being accused of violating the following condition(s):	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
Explain other:	Your status on the following is suspended:
<input type="text"/>	<input type="text"/>
You are being lodged pending a Furlough Violation hearing.	
Your hearing will be held after 24 hours but no later than 4 business days from receipt of this notice. (Day one begins at the start of the first full business day after the return).	
<i>Part II - Completed by Correctional Staff</i>	
Offender is being returned to the Correctional Facility on <input type="text"/> at <input type="text"/> hours.	
Furlough Violation hearing to be held no later than <input type="text"/> at <input type="text"/> hours.	
Signature of Reporting Staff: _____	
<i>Part III - Completed by Investigating Officer</i>	
Did you interview confidential informants? <input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, see <i>Confidential Informant Form</i> for guidance.
Did you interview relevant witnesses? <input type="checkbox"/> Yes <input type="checkbox"/> No	Did you interview the offender? <input type="checkbox"/> Yes <input type="checkbox"/> No
Briefly explain:	Briefly explain:
<input type="text"/>	<input type="text"/>
Did you compile available documentary evidence and statements of witnesses? <input type="checkbox"/> Yes <input type="checkbox"/> No	Investigating Officer's recommendation:
Briefly explain:	<input type="checkbox"/> Refer for resolution <input type="checkbox"/> Do not refer for resolution
<input type="text"/>	<input type="checkbox"/> Modify violation to: <input type="text"/>
	Investigating Officer's signature: <input type="text"/>

# NOTICE OF HEARING /WAIVER OF 24 HOUR NOTICE OF HEARING

Click on Image below to go to current version of this document.



To (offender name): \_\_\_\_\_ Docket number: \_\_\_\_\_  Original  
 Continuance

PID # \_\_\_\_\_ From (staff name): \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

This is to inform you that you will appear before the Hearing Officer on \_\_\_\_\_ (M/D/Y) at \_\_\_\_\_ hours for the charged violation of \_\_\_\_\_

### OFFENDER'S RIGHTS AND OPPORTUNITIES

You will have the following rights and opportunities: (Check off each one as you read it)

- To be present and to be heard, provided your conduct is orderly.
- To present your case.
- To present documentary evidence and call the Reporting Officer and/or other reasonably available witnesses, who have relevant information, provided the witnesses are not unduly hazardous to facility security, order or discipline.
- To question or cross-examine witnesses at the hearing and to review factual evidence, if not hazardous to institutional security.
- To submit a written statement to the Hearing Officer.
- To request the assistance of a Hearing Assistant.
- To seek a continuance of the hearing for good cause shown.

I  Do  Do Not wish to be assisted by a Hearing Assistant - Name: \_\_\_\_\_

I  Do  Do Not wish to have the Reporting Officer present - Name: \_\_\_\_\_

Names of witnesses you wish to call should be listed below. Briefly state what each proposed witness would be able to testify to.

Name: \_\_\_\_\_, can testify to: \_\_\_\_\_

Name: \_\_\_\_\_, can testify to: \_\_\_\_\_

I  Do  Do Not request a continuance because: \_\_\_\_\_

I  Do  Do Not waive my 24 hour notice.

Offender Signature: \_\_\_\_\_ DOB: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

### WAIVER OF 24 HOUR NOTICE OF HEARING

I have been advised that I have the right to have a written copy of the evidence being used against me at least twenty-four (24) hours prior to appearing before the Hearing Officer. I wish to waive this right and proceed with the hearing at this time.

Offender Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Staff Witness: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

## FURLOUGH VIOLATION WAIVER OF APPEARANCE/HEARING/REFUSAL TO APPEAR

Click on Image below to go to current version of this document.



Docket number: \_\_\_\_\_ PID # \_\_\_\_\_

### A. Waiver of Appearance at Hearing

I, \_\_\_\_\_ (DOB: \_\_\_\_\_) have been advised of my right to appear at my Furlough Violation hearing regarding:

The hearing has been scheduled for \_\_\_\_\_ hours on \_\_\_\_\_.

Check one box:

I do **not** wish to appear at this hearing, and I hereby waive that right. I realize that by waiving my right to appear or have a hearing on this matter I am admitting that a preponderance of the evidence supports being found guilty of alleged violation(s).

I do not wish to appear, and I state that I am not guilty.

Offender Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Staff Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Superintendent Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

### B. Refusal to Appear at Hearing

I saw \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ hours and advised the offender of the right to appear before the Hearing Officer on \_\_\_\_\_.

The offender declined to appear at the hearing but refused to sign *A Waiver of Appearance*.

Staff Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

## VT DEPARTMENT OF CORRECTIONS

### WAIVER PROCESS

- Only a DOC employee who has been designated by the Commissioner as a Hearing Officer can represent the Superintendent/District Manager in the waiver process.
- The act of waiving the due process hearing must be digitally recorded.
- The Hearing Officer will identify themselves on the record by stating their name, the time & date, as well as stating who the waiver process is being initiated for.
- The Hearing Officer will have the offender identify themselves for the record by having them clearly state and spell their full name.
- The Hearing Officer will then read the following into the record:
  - “Do you (*state offender’s full name*) understand that you are waiving your right to a hearing in the matter of your\_\_\_\_\_?”  
(*Alleged Furlough Violation*)  
OFFENDER states “YES” on the record.
  - Are you under the influence of drugs or alcohol?”  
(If the offender answers “YES”, stop the waiver process.)
  - “Do you understand that by waiving your right to have a hearing on this matter you are admitting your guilt and that your furlough may be revoked?”  
OFFENDER states “YES” on the record.
  - “Do you understand that by waiving your right to a hearing in this matter that you are giving up your right to present evidence on your own behalf and that you are giving up your right to confront evidence presented against you?”  
OFFENDER states “YES” on the record.
- The Hearing Officer then presents the offender with a completed (except for the Superintendent’s signature) *Waiver of Appearance Form (Attachment #2)*, asks him/her to sign the form and then witnesses the offender’s signature.

Sample #4

- The Hearing Officer notes on the record the signed waiver form; e.g., “I have your signed waiver form.”
  - “Is this your signature on the waiver form?”

OFFENDER states “YES” on the record.
  - “Have there been any threats or promises made to you to get you to sign this waiver form?”

OFFENDER states “NO” on the record.
  - “Did you sign the waiver form freely and voluntarily?”

OFFENDER states “YES” on the record.
- At this point, the Hearing Officer records the time and goes off the record.
- Hearing waivers are archived as follows:

The recording name should have an “FW” first, indicating the type of hearing (furlough) and the fact that the recording documents a waiving of that hearing, *underscore*, followed by the Year (YYYY), *underscore*, the Month (MM), *underscore*, the Day (DD), *underscore*, and the time of the waiver, (using the 24-hour clock), finishing with the offender’s last name. Example:  
FW\_2011\_08\_22\_1628Smith.

See IT Manuals for further archiving instructions.

## CONFIDENTIAL INFORMANT FORM

Click on Image below to go to current version of this document.



Work Site:

(To be completed by the Hearing Officer before the findings of fact and outcome)

In considering statements of confidential informants I will:

- A. Only consider Confidential Information when it is accompanied by a report by a staff member of the statements made by the Confidential Informant (CI).
- B. Examine the statement(s) of each Confidential Informant before reaching a decision on the charge.
- C. Never disclose to the accused the identity of a Confidential Informant or the contents of his/her statement. I will only provide this form to the accused if it will not disclose the identity of the CI.
- D. Fill out one form for each Confidential Informant statement. If more than one exists, each will be labeled CI1, CI2, CI3, etc.
- E. Attach the completed *Hearing Report Form*.

Why is the testimony of the witness confidential?	<input type="checkbox"/> to protect the witness from harm
	<input type="checkbox"/> to protect facility security
If neither, then disclose the statement to the accused. Identify the name of the Interviewing Officer (IO) who took the CI's statement.	

1. Does the CI have first-hand knowledge of the alleged charge?	<input type="checkbox"/> Yes
	<input type="checkbox"/> No
If the answer to #1 is " <b>No</b> ", do not use the CI. If the answer is " <b>Yes</b> ", describe the facts as related by the informant that deal with the alleged charge. Omit if disclosure will reveal the identity of the CI.	
<input type="text"/>	
2. Does the CI have a motive to lie?	<input type="checkbox"/> Yes
	<input type="checkbox"/> No
If the answer to #2 is " <b>Yes</b> ", do not use the CI.	
3. Does the Interviewing Officer's report indicate the CI is reliable?	<input type="checkbox"/> Yes
	<input type="checkbox"/> No
If "No," do not use the CI. If " <b>Yes</b> ", the IO established reliability by indicating that:	
A) CI has provided accurate information in the past?	<input type="checkbox"/> Yes
	<input type="checkbox"/> No
B) There is corroborating evidence?	<input type="checkbox"/> Yes
	<input type="checkbox"/> No

C) Other. Explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="text"/>	
4. Did the Interviewing Officer:	
A) Swear or affirm in writing that the CI's statement is accurately reported and that s/he believes the CI is reliable?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the answer to #4(A) is "No", do not use the CI.	
B) Testify at the hearing as to the reliability of the CI?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No", explain:	
<input type="text"/>	
C) If "Yes," did you find the Interviewing Officer credible?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the answer to 4(A), 4(B) and 4(C) are "Yes" then the CI is reliable. Proceed to #6. If the answer to 4(A) and 4(C) are "Yes" and 4(B) is "No", then continue with #5.	
5. I established the CI is reliable because:	
A) I interviewed the CI.	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No," go to 5(B)	
B) If "Yes," was the CI found reliable?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes", then explain. If "No" do not use the CI and go to #6.	
<input type="text"/>	
C) I have personal knowledge that the CI has provided truthful and accurate information in the past?	<input type="checkbox"/> Yes <input type="checkbox"/> No
D) There is corroborating evidence supporting the CI?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes", identify the corroborating evidence.	
<input type="text"/>	
If either 5(A) (both parts), 5(C) OR 5(D) is "Yes", then the CI is reliable. If the answer to 5(A), 5(C) AND 5(D) are "No", then the CI is not reliable and may not be used. Go to #6.	
6. I <input type="checkbox"/> did <input type="checkbox"/> did not find the statements of the Confidential Informant reliable. I <input type="checkbox"/> did <input type="checkbox"/> did not use the statements of Confidential Informants as evidence in the hearing.	

Hearing Officer's Signature:

## HEARING REPORT FORM

Click on Image below to go to current version of this document.

State of Vermont Department of Corrections Hearing Report Form		
<i>Completed by the Hearing Officer</i>		
Docket number:	<input type="text"/>	Hearing Officer: <input type="text"/>
Offender name:	<input type="text"/>	Presenter: <input type="text"/>
Reason(s) for hearing: <input type="text"/>		
Date of Alleged Violation: <input type="text"/>	Date of Notice of Hearing: <input type="text"/>	
Date of Hearing: <input type="text"/>	Time of Hearing: <input type="text"/>	
Did the offender waive the 24 hour notice? <input type="checkbox"/> Yes <input type="checkbox"/> No	Did the offender request a Hearing Assistant? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Did the offender attend the hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	Did a Hearing Assistant represent the offender? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If No, explain: <input type="text"/>	If No, explain: <input type="text"/>	
Did the offender have an opportunity to meet with the Hearing Assistant before the hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If No, explain: <input type="text"/>		
Offender: <input type="checkbox"/> <b>Pleads Guilty</b>	<input type="checkbox"/> <b>Agrees Evidence Supports Ad-Seg</b>	
<input type="checkbox"/> <b>Pleads Not Guilty</b>	<input type="checkbox"/> <b>Disagrees Evidence Supports Ad-Seg</b>	
Witness(es): <i>Name and reason called</i> <input type="text"/>		
What alternative forms of testimony were used for witnesses who were not reasonably available? (e.g., reporting officer) <input type="text"/>		
Description of evidence presented by the Department: <input type="text"/>	Description of evidence presented by the offender: <input type="text"/>	
Was the offender's presentation or participation in the hearing limited due to misconduct or other reasons? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, explain: <input type="text"/>		
Was the Hearing Assistant's participation limited due to misconduct or other reasons? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, explain: <input type="text"/>		
Was any evidence used in the finding of fact confidential? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, complete <i>Confidential Informant Form</i> and attach to this report.		
Was a continuance requested from either the offender or the Department? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, explain: <input type="text"/>		
Was a continuance granted? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, explain: <input type="text"/>		

**Determination**

Based upon a preponderance of the evidence:

- I find you **guilty**.       I support Ad-Seg
- I find you **not guilty**.       I do not support Ad-Seg
- I find you **not guilty** of the charged violation but **guilty** of a lesser or equal violation.

Findings of fact:

Hearing Officer's Signature:

**Disciplinary Only**

Recommended sanction:

**Disciplinary Committee Sign Off**

- Evidence meets the preponderance standard?  Yes  No
- Sufficient compliance with applicable disciplinary policies and directives?  Yes  No
- Sanction proportionate to the violation?  Yes  No

Committee Chair Signature:

- Evidence meets the preponderance standard?  Yes  No
- Sufficient compliance with applicable disciplinary policies and directives?  Yes  No
- Sanction proportionate to the violation?  Yes  No

Committee Chair Signature:

- Evidence meets the preponderance standard?  Yes  No
- Sufficient compliance with applicable disciplinary policies and directives?  Yes  No
- Sanction proportionate to the violation?  Yes  No

Committee Chair Signature:

**Superintendent's Decision**

- Determination upheld       Determination reversed       New hearing ordered       Sanction modified

Modified sanction:

Superintendent's Signature:

Offender received final decision on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ hours.

Printed name and signature of staff: \_\_\_\_\_

Date and time: \_\_\_\_\_

**INMATE APPEAL FORM**

*If you wish to appeal a furlough violation conviction, you must fill out and file this appeal form within seven (7) business days of receiving the final decision. Failure on your part to file an appeal within seven (7) business days may result in your appeal being denied solely on the basis that it was not filed in a timely manner.*

Inmate Name: \_\_\_\_\_

DOB: \_\_\_\_\_

Facility: \_\_\_\_\_

Reason(s) for your appeal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Attach additional sheets if needed.)*

*Inmate signature*

*Date*

Staff member who received this appeal:

*Staff Signature*

*Date & Time*

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**DISTRICT MANAGER'S RESPONSE TO ALL SPECIFIC APPEAL ISSUES**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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