

<b>State of Vermont</b> <b>Agency of Human Services</b> <b>Department of Corrections</b>	<b>Title: Response to Furlough Violations</b>		<b>Page 1 of 8</b>						
<b>Chapter:</b> <b>Security and Supervision</b>	<b>#430.11</b>	<b>Supersedes: 430.11 dated</b> <b>03/01/2016</b>							
<b>Applicability:</b> All staff (including contractors and volunteers) <b>Security Level: B</b> - Anyone may have access to this document.									
<b>Approved:</b>  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center; border-bottom: 1px solid black;">SIGNED</td> <td style="width: 33%; text-align: center; border-bottom: 1px solid black;">12/30/2020</td> <td style="width: 33%; text-align: center; border-bottom: 1px solid black;">01/01/2021</td> </tr> <tr> <td style="text-align: center;"><b>James W. Baker, Commissioner</b></td> <td style="text-align: center;"><b>Date Signed</b></td> <td style="text-align: center;"><b>Date Effective</b></td> </tr> </table>				SIGNED	12/30/2020	01/01/2021	<b>James W. Baker, Commissioner</b>	<b>Date Signed</b>	<b>Date Effective</b>
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**PURPOSE**

The purpose of this administrative directive is to provide authorized Vermont Department of Corrections (DOC) staff response standards to be used when dealing with violating behavior of offenders on furlough. If a sanction is imposed, this directive delineates the levels of response that the DOC may impose upon an offender who has violated conditions of furlough.

The purposes of the graduated sanctions system include: (1) enhance public safety; (2) ensure that the offender accepts responsibility; (3) ensure that the offender is held accountable for their behavior; (4) maximize efficient use of existing staff resources by creating a process that allows for timely resolution of violations of supervision conditions; (5) maximize the opportunity for offender change; (6) ensure that an offender is maintained at the least restrictive level of supervision consistent with public safety; (7) follow best practices by first allowing offenders to address their behavior in the community instead of incarceration; and (8) ensure responses to behavior are progressive in nature or match the seriousness of the behavior.

**AUTHORITY AND REFERENCE**

28 V.S.A. §§ 2a; 102(b)(1), (2) and (15); 102(c)(1), (5), (8) and (17); 723; 724; 808.

Department Directives: #410 *Due Process*; #410.01 *Facility Rules and Inmate Discipline*; #410.02 *Furlough Violations*

**POLICY**

It is the policy of the DOC that offenders shall be held accountable for their actions, while keeping them in the least restrictive environment consistent with public safety and offense severity. There is

a continuum of responses that staff can use to address violating behavior. Graduated sanctions are designed to support positive offender change, allow the offender to take responsibility, and to repair the harm caused by their violation. At times, graduated sanctions are insufficient to address offender behavior and the furlough revocation process is necessary. Furlough revocation shall only be considered when the DOC can demonstrate that an offender's risk to reoffend can no longer be adequately controlled in the community, and no other method to control non-compliance is suitable; or the violation or pattern of violations indicate the offender poses a danger to others or to the community or poses a threat to abscond from furlough.

## **GENERAL GUIDELINES**

### **A. Responses to Furlough Violations**

1. When there is a furlough violation, two (2) options are available:
  - a. Use of the graduated sanctions process; or
  - b. Use of the furlough revocation process.
2. If a graduated sanction is issued, a Probation and Parole Officer (PPO) shall not use the furlough revocation process for the same violating behaviors.
3. When a violation occurs staff should consider the following:
  - a. Offender risk;
  - b. Offense severity (listed/non-listed);
  - c. Compliance with the case plan or supervision contract;
  - d. Time between last violating behavior, if any; and
  - e. Severity of violating behaviors.
4. Continued violating behavior will result in an increase in sanctioning up to the furlough revocation process.
5. Staff shall document all violating behaviors in the Offender Management System (OMS) in both the Incidents and Violations tabs.

### **B. Graduated Sanctions**

1. The purpose of graduated sanctions is to provide a variety of non-incarcerative options that address risk, public and victim safety, and offense severity, while allowing the offender to continue working towards the completion of their sentence in the community.
2. When considering a graduated sanction, staff shall review:
  - a. The seriousness of the violation and the offender's overall behavior, including, but not limited to, the risk the new behavior presents to the community, the victim, and the offender;
  - b. The ability of the proposed intervention to promote compliance with supervision requirements and foster offender understanding of the impact of the violating behavior; and
  - c. The offender's supervision history.
3. To complete the graduated sanctions process:
  - a. Offender Meeting. Staff shall meet with the offender to address the violating behavior and 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 agrees with the graduated sanction(s), this will act as an effective waiver of a furlough violation

hearing.

- b. Sanctioning Report. The graduated sanctions report is an agreement generated from OMS that documents the behavior and the sanctions. Staff shall document all graduated sanction components into the Violations tab of the OMS prior to issuing the sanction.
- c. Graduated Sanctions Process Time Frames. The graduated sanctions process and the offender meeting shall be initiated no later than three (3) business days after the PPO becomes aware of the offender's violating behavior.

#### 4. Technical Violations and Sanction Levels

- a. Staff shall respond to violations of conditions of supervision in which the offender engaged in non-compliant behavior that can be corrected or mitigated in the community with a technical level sanction.
- b. Technical level sanctions are divided into four categories. Technical violations should be addressed at the lowest possible level to address conduct and encourage positive behavior in the future. It is acceptable practice to administer multiple lower-level sanctions without increasing levels. The levels are:
  - i. Level 1 – This is the lowest level sanction and should be used as a first step in most cases. Sanctions at this level are designed to communicate that the offender engaged in minor violating behavior and this is our first step in addressing it.
  - ii. Level 2 – This is a moderate level sanction and should be used when violating behavior is more significant, or behavior has not changed following the use of Level 1 sanction(s). Sanctions at this level place stronger supervision requirements on the offender or require the offender to complete a higher level of tasks to address the behavior.
  - iii. Level 3 – This is a higher-level sanction and should be used for more significant violating behavior or repeated lower-level behavior. Sanctions at this level place even stronger supervision enhancements and/or punitive activities on the offender.
  - iv. Level 4 – This is the highest level of sanction available and should only be used when other attempts to address violating behavior have failed to produce change. Sanctions at this level place significant restrictions on the offender and are designed as a last resort before incarceration.

<b>Violation and Response Guide</b>	
<b>Level 1 Violating Behavior (Low)</b>	<b>Level 1 Response (low)</b>
<ul style="list-style-type: none"> <li>• Failure to report as instructed</li> <li>• Out of Place</li> <li>• Missed Treatment/Programming Group</li> <li>• Unemployment or Failure to Seek Employment to PPO satisfaction within 45 days</li> <li>• Failure to Fulfill Financial Obligations</li> <li>• Failure to Follow Case Plan or supervision contract</li> <li>• Non-compliance with Special Conditions</li> <li>• Suspension or Placed on Probation in Treatment/Programming Group</li> <li>• Corrective action plan for intervention services</li> </ul>	<ul style="list-style-type: none"> <li>• Apology (Verbal or Written)</li> <li>• Verbal Warning</li> <li>• Effective use of disapproval</li> <li>• Structured Skill building activities</li> <li>• Use of Cost Benefit Analysis</li> <li>• Use of Cognitive Restructuring</li> <li>• Use of Problem Solving</li> <li>• Develop an Intervention Plan</li> </ul>
<b>Level 2 Violating Behavior (moderate)</b>	<b>Level 2 Response (moderate)</b>
<ul style="list-style-type: none"> <li>• Failure to Comply with previous Sanctions</li> <li>• Contact with Restricted Persons (Non-Sex Offender or Domestic Violence Related)</li> <li>• Misdemeanor arrest/non-violent</li> <li>• Positive Drug/Alcohol Test</li> <li>• Repeated and multiple Level 1 violations without behavior change</li> </ul>	<ul style="list-style-type: none"> <li>• Written Essay/Educational Activities</li> <li>• Increase Contacts for specified period of time</li> <li>• Increase Curfew Restrictions<sup>^</sup></li> <li>• Use of Schedules for up to thirty days<sup>^</sup></li> <li>• Increased Reporting as directed for Alcosensor, drug testing, employment search, or other related activity</li> <li>• Referral for Treatment Assessment or a higher level of care</li> <li>• Use of Electronic Monitoring Equipment for up to thirty days<sup>^</sup></li> <li>• Referral to a Restorative Justice Process</li> <li>• Any Level 1 response</li> </ul>
<b>Level 3 Violating Behavior (High)</b>	<b>Level 3 Response (high)<sup>^</sup></b>
<ul style="list-style-type: none"> <li>• Repeated and multiple Level 2 violations without behavior change</li> <li>• Serious violating behavior that does not involve risk</li> </ul>	<ul style="list-style-type: none"> <li>• Community Service or Work crew for up to 40 hours</li> <li>• Activities to Address Risk Behaviors</li> <li>• Use of Schedules for up to sixty days</li> <li>• Use of Electronic Monitoring Equipment for up to sixty days</li> <li>• Any Level 1 or 2 Response</li> </ul>
<b>Level 4 Violating Behavior (Highest)</b>	<b>Level 4 Response (Highest)<sup>^</sup></b>
<ul style="list-style-type: none"> <li>• Significant and multiple lower-level violation without behavior change</li> <li>• Significant behavior that does not reach the threshold for an emergent return</li> </ul>	<ul style="list-style-type: none"> <li>• House Arrest*</li> <li>• Any response from Level 1-3</li> </ul>

^Requires supervisor approval

\*House Arrest is the highest level of sanction available for community supervision and shall only be used when all other attempts to change offender behavior have failed. The offender is ordered to remain at their approved residence unless given specific permission to leave to address risk related, employment, medical, and supervision requirements. Minimal exceptions, if any, should be given. This sanction should be used as a short-term response. Unless the local site manager determines otherwise, GPS monitoring equipment shall be for offenders on house arrest. All offenders on house arrest status will be locally case staffed no more than 30 days from the imposition of the sanction and every thirty days thereafter if continued use is warranted.

5. Risk Level Violations and Sanctions

- a. Staff shall respond to a violation of a condition of supervision in which the offender engaged in non-compliant behavior that is risk-related or attempts to correct less serious repetitive non-compliant behavior have not been successful with a risk level sanction.
- b. Risk level conditions often include those conditions where an offender has been instructed not to do something or has been restricted from doing something. Depending on the severity of the violating behavior, a risk level violation may be addressed using the graduated sanctions process or the furlough revocation process.
- c. Risk level sanctions can be a mix of community-based sanctions that address violating behavior or the furlough revocation/case staffing process to determine the appropriate incarcerative sanction.
- d. Use of restrictive sanctions requires approval from a District Manager or designee.

<b>Violation and Response Guide</b>	
<b>Risk Level Violating Behavior</b>	<b>Restrictive Sanctions</b>
<ul style="list-style-type: none"><li>• Any significant violation of community supervision</li><li>• Non-compliance with Special Conditions for Sex Offenders and Domestic Violence offenders</li><li>• Non-threatening Contact with Victim</li><li>• Risk-related contact with Minors (Sex Offender)</li><li>• Violent or Threatening Behavior</li><li>• Offender Charged with new significant criminal offense (listed/felony)</li><li>• Offender Risk to Public</li><li>• Treatment/Program Failure</li><li>• Risk-related or Violent Misdemeanor charge/behavior</li><li>• Contact with Victim (Unwanted/Threatening)</li></ul>	<ul style="list-style-type: none"><li>• Use of Electronic Monitoring Equipment for an extended period of time required to mitigate the presented risk</li><li>• Technical Level Graduated Sanctions (as appropriate)</li><li>• Referral to Programming</li><li>• Emergent Return</li></ul>

<ul style="list-style-type: none"> <li>• Refusal of the Graduated Sanction Process</li> <li>• Absconding/Warrant process initiated</li> <li>• Loss of Residence – No fault of the offender</li> <li>• Loss of Residence – Based on Negative Offender conduct</li> </ul>	
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**C. Emergent Return to a Correctional Facility**

1. When field staff are considering returning an offender from the community to a correctional facility, they shall evaluate the urgency and necessity before returning an offender to a correctional facility.
2. An emergent return to a correctional facility can be performed only when the behavior meets the criteria for a significant violation (see subsection D.1. below) or there is an immediate need for short term-containment for any of the following:
  - a. Presents a danger to others or self;
  - b. Presents a danger to the community; or
  - c. Demonstrates a threat to abscond.
3. If it is determined that the offender should be returned to a correctional facility, the PPO or designee shall proceed with the furlough revocation process.
4. The PPO or designee shall return the offender to a correctional facility.
5. The PPO or designee shall complete a Notice of Suspension (NOS) and document the violation in the offender’s record pursuant to the NOS Process.
6. District Managers or designees shall review all returns within two (2) business days to determine if the DOC should continue with the furlough revocation process or release the offender on a graduated sanction.
7. If the District Manager or designee determines to proceed with the furlough revocation process, staff shall follow the procedures set out in DOC Administrative Directive #410.02 *Furlough Violations*. Upon the outcome of a furlough violation hearing, the offender will either be released, or the case will go through the Case Staffing Determination Process.

**D. Notice of Suspension (NOS) and Furlough Revocation Criteria**

1. All staff must receive approval from the District Manager or designee prior to starting the furlough process for an offender. In order for staff to proceed with the furlough revocation process, the District Manager or designee must determine that the offender committed a significant violation using the following criteria:
  - a. An arrest or citation for a new felony or listed offense;
  - b. Offender’s behavior directly threatens or harms an identifiable person/individual;
  - c. Evidence of behavior(s) that pose a direct risk to public safety;
  - d. When an offender is arrested on a Commissioner Warrant for absconding;
  - e. A pattern of risk-related behavior where previous interventions have failed to mitigate the risk; or
  - f. A pattern or history of behavior that continues after the exhaustion of lower-level

- technical sanctions have failed to gain offender compliance.
2. If the District Manager or designee determines there is no significant violation, the offender shall be released at the earliest possible time.
  3. Furlough revocation should only be considered when the DOC can demonstrate that:
    - a. an offender’s risk can no longer be adequately controlled in the community and no other method to control non-compliance is suitable; or
    - b. the violation or pattern of violations indicate the offender poses a danger to others or to the community or poses a threat to abscond or escape from furlough.
  4. The furlough revocation process must comply with DOC Administrative Directive #410.02 *Furlough Violations*. If the furlough revocation process has been initiated and it is determined that offender behavior can be controlled in the community, then the furlough revocation process may be suspended, and the offender is released to engage in the graduated sanctions process.

**F. Case Staffing Determination Process**

1. Central Office Case Staffing Determination Committee Sanctions
  - a. The Central Office Case Staffing Determination Committee will use the sanctions grid to guide its final determinations for cases related to significant violations of furlough (and parole after the Parole Board makes a decision to revoke).

	Risk Score		
Violation #	Low Risk	Moderate Risk	High Risk
1 <sup>st</sup> Significant	90 days	180 days	1 Year
2 <sup>nd</sup> Significant	180 days	1 Year	2 Years*
3 <sup>rd</sup> + Significant	1 Year	2 Years*	4 Years*

\*Denotes a decision that requires central office case staffing for release approval once the interrupt period is complete.

- b. Any interruption or revocation of community supervision furlough<sup>1</sup> for a technical violation<sup>2</sup> that is 90 days or longer must be supported by evidence that:
  - i. The offender’s risk to reoffend can no longer be adequately controlled in the community, and no other method to control non-compliance is suitable; or
  - ii. The violation or pattern of violations indicate the offender poses a danger to others or to the community or poses a threat to abscond or escape from furlough.
- c. The Central Office Case Staffing Determination Committee may consider any aggravating or mitigating factors that could change the sanction selected.
- d. Any subsequent finding of a significant violation within one year of a previous significant violation will be considered at the next violation level.

<sup>1</sup> Only applies to community supervision furlough. Does not apply to other furlough statuses.

<sup>2</sup> For purposes of this section, technical violation is defined in 28 V.S.A. § 724(d)(1) as “a violation of conditions of furlough that does not constitute a new crime.” This can include both technical violations and risk level violations described in subsections B.4. and B.5. above, and significant violations described in sections C. and D. above.

- e. An offender who completes one year of compliant behavior will be reset to violation level #1.

## 2. Notification to the Defender General

- a. Any interruption or revocation of an offender's community supervision furlough<sup>3</sup> of 90 days or longer will trigger a notification to the Office of the Defender General.
- b. The Central Office Case Staffing Determination Committee will ensure the notification is sent in a timely manner.

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<sup>3</sup> Only applies to community supervision furlough. Does not apply to other furlough statuses.