

**STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS**

Directive: 413.06

Subject: Response To Non-Compliant Behavior Of Offenders In The Community

Effective Date: August 30, 1999 **Review and Re-Issue Date:**

Supersedes: NEW **APA Rule Number:**

Recommended for approval by:		Authorized By:	
_____	_____	_____	_____
Signature	Date	Signature	Date

1. Authority:

1.1. Authority for this directive is derived from Title 28, VSA.

2. Purpose:

2.1. To give the Vermont Department of Corrections employees guidance in the wide variety of responses to offenders in the community who fail to comply with supervision expectations and conditions.

3. Applicability/Accessibility

3.1. Anyone may have a copy of this directive.

4. Directive

4.1. RESPONSIBILITIES:

4.1.1 Commissioner:

4.1.1.1 Certification of Arrest Authority - The Commissioner shall certify and decertify correctional officers arrest authority based on skill competencies demonstrated in training and compliance with the guidelines of this directive.

4.1.1.2 Decertification of Arrest Authority - The Commissioner may decertify correctional officers arrest authority based on the failure to demonstrate skill competencies in training or actual situations as indicated by lack of compliance with the guidelines of this directive.

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4.1.1.3 Training Approval - The Commissioner will approve a training curriculum for correctional officers that includes, but is not limited to, search and seizure, criminal law, authority to arrest, use of force, reporting and record-keeping and liability for actions and conduct.

4.1.2 Director of Security and Supervision:

4.1.2.1 Review of Incidents - The Director of Security and Operations is responsible to set up a system of review for unusual incidents in the community in order to assure compliance with this directive.

4.1.3 Director of Human Resource Development (HRD):

4.1.3.1 Training Design - The Director of Human Resource Developments is responsible for the design development and delivery of training for dealing with non-compliant offenders. This will include a curriculum for arrest authority that is competency-based and compliant with the statute.

4.1.3.2 Training Delivery - The Director of Human Resource Development is responsible to ensure that the training infrastructure exists to deliver and evaluate quality, competency-based training to comply with the mandates of the statute and this directive.

4.1.4 Director of Reparative Supervision:

4.1.4.1 Procedure Development - The Director of Reparative Supervision will write and supervise a local procedure concerning the use of arrest authority in the court and reparative' units throughout the state. Included in these procedures will be an arrest approval and an arrest review process.

4.1.5 Community Correctional Service Center Superintendents/Managers:

4.1.5.1 Procedure Development - The Community Correctional Service Center Superintendents/Managers will write and supervise a local procedure concerning the use of arrest authority in the Community Correctional Service Center. Included in these procedures will be an arrest approval and an arrest review process.

4.1.6 Casework Supervisor:

4.1.6.1 Performance Evaluations - Casework Supervisors will include in the annual performance review an assessment of the correctional officers compliance with this

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directive. This review should include a recommendation whether the authority to arrest should be renewed.

4.1.6.2 Review of Arrests - Casework Supervisors will review all arrests following the incident to determine if this directive and local procedures were followed.

4.1.6.3 Offender Non-Compliance - Casework Supervisors will review overall casework to determine if offender non-compliance is dealt with according to this directive and local procedure.

4.1.7 Supervising Correctional Officer:

4.1.7.1 Offender Arrest - Supervising Correctional Officers must maintain the certification in arrest authority. . Supervising correctional officers must follow this directive in dealing with non-compliant offenders in arrest situations.

4.1.7.2 Offender Non-Compliance - All casework with non-compliant behavior will comply with this directive.

4.1.7.3 Dealing with Non-Compliant Offenders

4.1.7.3.1 Staff responding to the non-compliant behavior of offenders in the community should include these options in mind:

4.1.7.3.1.1 Response should include current behavior in context of previous behavior history.

4.1.7.3.1.2 Response spectrum includes no response to immediate arrest/return to facility.

4.1.7.3.1.3 Response should be made with consideration of the safety of staff, public and the offender in that order.

4.1.7.3.1.4 Response should be made with Relapse Prevention Theory in mind.

4.1.7.3.1.5 Response should be coordinated with necessary CJS components.

4.1.7.4 Criteria For Emergency Arrest - Supervising correctional officers may arrest a non-compliant offender who is under the Vermont Department of Corrections supervision for probation, parole or Supervised Community Sentence, if all these criteria are met:

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- 4.1.7.4.1 The offender is on probation, parole or Supervised Community Sentence and
 - 4.1.7.4.2 The offender has violated a condition of one of those legal statuses and the behavior meets the definition of a serious violation and
 - 4.1.7.4.3 The offender is a danger to self or others or
 - 4.1.7.4.4 The offender is a danger to the community or
 - 4.1.7.4.5 The offender is a threat to abscond and
 - 4.1.7.4.6 Obtaining an arrest warrant through normal means is not timely.
- 4.1.7.5 OOS Offenders** - Offenders who are supervised for states other than Vermont and who have been accepted through the procedures of the Interstate Compact may be emergency arrested if the situation complies with the criteria outlines above. Staff should be aware that the process for violation may be different and should consult with their supervisor and legal staff following arrest to ensure proper actions are taken.
- 4.1.7.5.1 In rare situations, most often with offenders with an established mental illness history, offenders who are a danger to themselves or others and have violated a condition of their legal status and are, for whatever reason, unable to receive timely mental health services in the community, may be emergency arrested.
- 4.1.7.6 Implementing an Emergency Arrest** - Whenever possible law enforcement officers from the community should be authorized to take an offender into custody. The physical restraint of an arrestee should only be done when a control advantage exists.
- 4.1.7.7 Process for making an arrest:**
- 4.1.7.7.1 Determine that criteria are met for an emergency arrest.
 - 4.1.7.7.2 Determine age and offense seriousness.
 - 4.1.7.7.2.1 If offender is under eighteen and a misdemeanor follow local procedure for the housing of misdemeanor minors.
 - 4.1.7.7.3 Notify local supervisor, if required by local procedure, about arrest decision.

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4.1.7.7.4 Authorize law enforcement to make arrest by filling out an arrest of probationer/parolee/SCS offender form or any piece of paper indicating:

4.1.7.7.4.1 the offender's name,

4.1.7.7.4.2 his/her legal status as a probationer, parolee or SCS offender in our custody,

4.1.7.7.4.3 the condition violated (in cases of OOS cases use the Vermont conditions)

4.1.7.7.4.4 the facility to which the offender should be transferred.

4.1.7.7.5 Arrange for transportation if necessary.

4.1.7.7.6 Only in Parole or SCS cases, call the Executive Director of the Vermont Parole Board and determine if bail is being considered. There is no bail on probationers until after arraignment.

4.1.7.7.7 Call receiving facility to notify them of arrival. Give pertinent supervision info

4.1.7.7.8 Review violation process while situation is fresh and people are available.

4.1.7.7.8.1 Can you testify to violation or do you need a witness?

4.1.7.7.8.2 Can this be settled at the arraignment?

4.1.7.7.8.3 What do you want for a disposition?

4.1.7.7.9 On emergency arrests of offenders who have multiple cases from different district courts it is permissible to emergency arrest on only the most local case if all criteria are met on that case. Best practice would require that the arresting correctional officer complete and file, according to your local procedure, the corresponding violations in other courts on the next working day.

4.1.7.7.10 On occasion the correctional officer with arrest authority is not present at the scene where the offender behavior has met the criteria for emergency arrest. In these situations it is permissible for the correctional officer who will authorize the arrest to telephonically authorize arrest once the emergency arrest warrant is filed out and actually in existence. This

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situation requires trust and coordination between the correctional officer and the law enforcement officer as the physical arrest warrant must immediately be brought or faxed to the person who is in physical control of the offender.

4.1.7.8 Arrest Follow Up - The follow up is driven by the hearing authority procedures and other actions taken during the arrest that may need documentation to comply with other department directives (i.e. use of force.).

4.1.7.9 Probation - In cases of probation, the court, where the docket number of the case with which the arrest was made, must be notified immediately on the next working day. Local sites will develop procedures with court officials to cut transportation orders to ensure arraignment within legally required time limits.

4.1.7.9.1 If possible, violations should be settled at arraignment:

4.1.7.9.1.1 Notify court of action taken;

4.1.7.9.1.2 Write Violation;

4.1.7.9.1.3 Preliminary disposition determination;

4.1.7.9.1.4 Coordinate with prosecution and defense and victim;

4.1.7.9.1.5 Settle at arraignment if possible;

4.1.7.9.1.6 Peer Review if necessary;

4.1.7.9.1.7 Prepare For Violation.

4.1.7.10 Parole - In parole or Supervised Community Sentence cases, the Executive Director of the Parole Board should be notified immediately upon emergency arrest to see if bail is an option for this offender. Parolees and Supervised Community Sentenced Offenders have no right to set bail. In most cases the offender on these statuses are seen within thirty days. If it is your general intention to continue the offender on the current status in the community a strategy needs to be developed so the offender can be released prior to the merits hearing, if necessary.

4.1.7.10.1 Independent of the bail hearing, the arresting officer, with notification of the parole board authority may withdraw the arrest warrant and release the offender from custody. . In such cases the violation process must be continued on the same schedule as before unless arraignments are made

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with the parole authority to postpone the hearing for a specific amount of time.

4.1.7.10.1.1 Notify Parole Board of action taken.

4.1.7.10.1.2 Write violation first working day and submit to Parole Authority

4.1.7.10.1.3 Preliminary disposition determination.

4.1.7.10.1.4 Settle prior to hearing if possible.

4.1.7.10.1.5 Peer Review if necessary

4.1.7.10.1.6 Prepare For Violation.

4.1.7.11 Return to Facility - This issue refers to offenders on furlough status. There is no arrest warrant process for furloughees unless a new crime is committed, in which case it is an issue for law enforcement. In the case of escapes, the States Attorney follows protocol between the Department and his or her office. In the case of other crimes the normal law enforcement discretionary process takes place.

4.1.7.11.1 A Supervising Correctional Officer may return offenders on furlough status at any time. A furloughees return to a facility should generally reflect those offenders on probation, parole and supervised community sentence. They can be motivated by serious emergency situations or less critical technical non-compliance problems. In emergency situations furloughees are returned immediately to a facility and due process concerns are managed through there. In less critical situations the sanctions process is dealt with in the community. Disciplinary violations are not necessarily required to return to the facility. Due process issues exist in any return of a furloughee.

4.1.7.11.2 Furloughees have the least degree of liberty interest and they are technically incarcerated. Return of furloughees, by best practice, should include all the concerns of probation, parole and supervised community sentence and should also consider the short and long term goals of supervision.

4.1.7.11.3 General guidelines are outlined through the Graduated Sanction Directive (see Directive 401.01 listed below) indicating a progressive step by step process that measures the seriousness of the offense along with offender status, previous infractions and depth and quality of program involvement. Other due process concerns are covered in two other directives. These due

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process procedures are outlined in the Directive #372 (formerly #601) for furlough termination. As is the common occurrence disciplinary, infractions prompt a return to facility. In this case, compliance with the Directive on Inmate Discipline #401 and guidelines for recommended sanctions #401.01 is imperative.

4.1.7.12 Standard Violation/Arrest of Non-Compliant Offender In The Community

4.1.7.12.1 Non-compliant behavior of offenders placed on probation, parole or supervised community sentence need not require emergency arrest. The correctional officer has three basic options:

4.1.7.12.1.1 Violation - Arrest Warrant requested.

4.1.7.12.1.2 Violation - Citation issued.

4.1.7.12.1.3 Alternative non-violations actions taken.

4.1.7.12.2 Action taken for standard violation non emergency arrest situations should be based on two criteria:

4.1.7.12.2.1 Can the offenders risk be controlled in the community?

4.1.7.12.2.2 Is the violation behavior so serious that continued placement in the community demeans that opportunity?

4.1.7.13 Arrest or Not - If a decision for filing a violation is made then it should next be determined whether a request for arrest should be made.

4.1.7.13.1 If a request for an arrest is made, it should be done in the body of the violation request/report to the appropriate hearing authority.

4.1.7.13.2 It is good practice to check and see if a requested arrest has been accommodated by the hearing authority and that the arrest warrant is filed at the appropriate location. Also, that the hearing authority (states attorney in cases of probation) is willing to extradite, if necessary.

4.1.7.13.3 All offenders not arrested will be officially ordered to appear for their hearing using the method appropriate to the legal status.

4.1.7.13.4 Probation cases should be cited using the court citation form.

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4.1.7.13.5 Parole and Supervised Community Sentence cases should be given the Parole Board hearing form.

5. Training Method

5.1.

6. Quality Assurance Processes

6.1.

7. Financial Impact:

8. References

9. Responsible Director and Draft Participants

DIRECTIVE