

AUTHORITY

28 V.S.A. §§ 2a; 102(b)(1), (2) and (15); 102(c)(1), (5), (8) and (17); 721; 723; 724; 808.

DEFINITION

Technical Violation: a violation of conditions of supervision that does not constitute a new crime.

POLICY

The DOC's policy is to integrate evidence-based and gender-responsive best practices to provide effective case planning and support. It is further the policy of the DOC that supervised individuals 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. Responses are designed to support positive change in supervised individuals, allow them to take responsibility, and to repair the harm caused by their violation.

In recognition of the statutory requirement that DOC will "render treatment to offenders with the goal of achieving their successful return and participation as citizens of the State and community," behavioral interventions shall be used in conjunction with the formal graduated sanctions process. Behavioral interventions target high and moderate criminogenic needs of supervised individuals. They are part of core correctional practices and have been shown to reduce recidivism when used at the appropriate time and with fidelity to the practice. Behavioral interventions are not intended to be punitive, but rather a response to the behavior to support supervised individual change in cognitive thinking. Effective intervention addresses the feelings, thoughts, attitudes and beliefs that drive the external behaviors of the supervised individual. These response mechanisms shall be communicated as responses to the supervised individual.

At times, due to public safety concerns, the furlough revocation process is necessary. Staff shall only consider furlough revocation when the DOC can

demonstrate that: a supervised individual's risk to reoffend can no longer be adequately mitigated in the community and no other lower level behavioral interventions or graduated sanctions can adequately mitigate non-compliant behavior; or the violation, or pattern of violations, poses a danger to others.

GENERAL PROCEDURES

A. Responses to Furlough Violations

1. Staff have three options when there is a furlough violation:
 - a. Behavioral interventions;
 - b. Graduated sanctions; or
 - c. Furlough revocation.
2. If a behavioral intervention or graduated sanction is used, the Probation and Parole Officer (PPO) shall not use the furlough revocation process to address the same violating behavior(s).
3. When a violation occurs, staff should consider:
 - a. The supervised individual's risk scores, designations, and offense history;
 - b. Offense severity (listed/non-listed);
 - c. The supervised individual's compliance with the case plan or supervision contract;
 - d. Time between last violating behavior, if any; and
 - e. Severity of violating behaviors.
4. Staff shall initiate a formal response to violating behavior(s) as soon as practicable after becoming aware of the violation.
5. Continued violating behavior will result in an elevated response.
6. Staff shall document all violating behaviors in the Offender Management System (OMS).

B. Responses to Technical Violations

Technical violations should be addressed at the lowest possible level to address conduct and encourage positive behavior in the future. This may result in administering repeated responses without increasing levels. Before increasing the level of the response to multiple violating behaviors, staff shall assess public safety risk based on the supervised individual's offense history. When responding to violations of conditions of supervision in which the

supervised individual engaged in non-compliant behavior that can be corrected or mitigated in the community, staff shall use a:

1. Behavioral intervention:

- a. Behavioral intervention (Low-Level) responses are designed to communicate that the supervised individual engaged in minor violating behavior.
- b. When considering the use of behavioral intervention, staff shall review:
 - i. Previous behavioral interventions utilized on the supervised individual;
 - ii. The core attitude, value, or belief that is driving the antisocial thinking;
 - iii. Identified moderate, medium and high-risk criminogenic need areas as identified by a validated risk assessment;
 - iv. The seriousness of the violation and the supervised individual's overall behavior, including the risk the new behavior presents to the community, the victim, and the individual;
 - v. The ability of the proposed intervention to promote compliance with supervision requirements and foster understanding of the impact of the violating behavior; and
 - vi. The supervised individual's supervision history.
- c. When using a behavioral intervention:
 - i. Staff shall meet with the supervised individual to address the violating behavior and discuss the response. This meeting is a part of the casework process, and efforts should be made to maintain a constructive, motivational approach; and
 - ii. Staff shall document all behavioral interventions in OMS;

2. Graduated sanction:

- a. These are moderate level responses. The purpose of graduated sanctions is to provide a variety of non-carceral options that address risk, public and victim safety, and offense severity, while allowing the supervised individual to continue working towards the completion of their sentence in the community.
- b. When considering a graduated sanction, staff shall review:
 - i. The seriousness of the violation and the supervised individual's overall behavior, including the risk the new behavior presents to the community, the victim, and the individual;

- ii. The ability of the proposed intervention to promote compliance with supervision requirements and foster understanding of the impact of the violating behavior; and
 - iii. The supervised individual's supervision history.
 - c. When issuing a graduated sanction:
 - i. Staff shall meet with the supervised individual 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;
 - a) If the supervised individual signs the graduated sanction(s), it is an admission of the violating behavior.
 - b) Staff shall use effective disapproval when issuing a sanction.
 - ii. Staff shall document all graduated sanctions in the Violations tab of OMS prior to issuing the sanction; and
 - iii. Staff may use a behavioral intervention and a graduated sanction in response to violating behaviors; or
- 3. Level three response:
 - a. This is the highest level response available and should only be used when other attempts to address violating behavior have failed to mitigate risk-related behavior.
 - b. Staff shall respond to the following with a level three response:
 - i. A violation of a condition of supervision in which the supervised individual engaged in non-compliant behavior that is a risk to the public; or
 - ii. Multiple attempts to correct repetitive non-compliant behavior have not deterred continued non-compliant behavior.
 - c. Level three violating behavior shall be addressed using the furlough revocation process.

Violation and Response Guide

Level 1 Violating Behaviors	Behavioral Interventions
<ul style="list-style-type: none"> • Failure to report in-person as directed • Non-compliance with treatment/programming that has not resulted in suspension or termination • Failure to engage in behavioral intervention • Drug/Alcohol use • Non-compliance with community supervision conditions without direct risk to public safety 	<ul style="list-style-type: none"> • Effective use of authority • Effective disapproval • Structured skill building activities • Use of cost benefit analysis • Use of cognitive restructuring • Use of problem solving • Develop an intervention plan • Written essay/educational activities • Increase contacts with the PPO for specified period of time • Referral for treatment assessment or higher level of care (must be directly related to recent destabilizing substance use)
Level 2 Violating Behaviors	Graduated Sanctions
<ul style="list-style-type: none"> • Failure to comply with previous behavioral intervention • Contact with restricted persons (not including sexual or violence risk) • Placed on probationary status in treatment/programming • Continuation of violating behaviors without improved compliance • Suspension from treatment/programming • Failure to comply with electronic monitoring • Misdemeanor charge without an identifiable victim 	<ul style="list-style-type: none"> • Curfew restrictions[^] • Increased reporting as directed for alcohol or drug screening, employment search, or other related activity • Community service for up to 16 hours • Use of electronic monitoring equipment for up to 60 days[^] • Referral to a restorative justice process • Update intervention plan to a higher intensity • Confinement to residence by approved schedule^{^*} • Any lower-level response

	<ul style="list-style-type: none"> • A combination of a behavioral intervention and a graduated sanction
Level 3 Violating Behaviors	Level 3 Response
<ul style="list-style-type: none"> • Any significant violation of community supervision • Tampering or removal of electronic monitoring device • Non-compliance with special conditions for sex offences or intimate partner violence • Non-compliance with special condition prohibiting contact with victim • Risk-related contact with minors • Violent or threatening behavior • Supervised individual charged with new felony, listed offense, or misdemeanor in which there was (an) identifiable victim(s) • Behavior that poses a direct risk to public safety • Treatment/program termination • Refusal of the graduated sanction process • Absconding/warrant process initiated • Loss of approved residence • A pattern of violating behavior for which sanctions at a lower level of intervention have not resulted in improved compliance 	<ul style="list-style-type: none"> • Emergent or Notice of Suspension (NOS) furlough return to correctional facility

^Requires supervisor approval

*Confinement to residence to a pre-approved schedule is the highest level of sanction available for community supervision and staff shall only use it when all other attempts to mitigate the supervised individual’s risk-related behavior

has failed. The supervised individual is ordered to remain at their approved residence unless given specific permission to leave to attend religious services or address risk-related programming, employment, medical, or supervision requirements. When using residence confinement, staff should allow minimal exceptions to permit an individual to leave the residence. This sanction should be used as a short-term response. Unless the local site manager determines otherwise, GPS monitoring equipment shall be used for supervised individuals on residence confinement. Staff shall locally case staff all supervised individuals on residence confinement status, no more than 30 days from the imposition of the sanction and every 30 days thereafter if continued use is warranted.

C. Emergent Return to a Correctional Facility, Notice of Suspension (NOS), and Furlough Revocation Criteria

1. Prior to returning a supervised individual to a correctional facility, staff shall seek and receive approval from the District Manager (DM), or designee.
2. The DM, or designee, shall approve the return when:
 - a. There is an immediate need for short term-containment because the supervised individual:
 - i. Presents a danger to others or themselves; or
 - ii. Presents a danger to the community;
 - b. The supervised individual engaged in Level 3 violating behavior; or
 - c. The supervised individual's behavior meets any of the following criteria for a significant violation:
 - i. The supervised individual was arrested or cited for a new felony, listed offense, or misdemeanor in which there was (an) identifiable victim(s);
 - ii. The supervised individual's behavior directly threatens or harms an identifiable person/individual;
 - iii. There is evidence of behavior(s) that pose(s) a direct risk to public safety;
 - iv. The supervised individual is returned from absconding from furlough;
 - v. There is a pattern of risk-related behavior where previous interventions have failed to mitigate the risk; or
 - vi. There is a pattern or history of behavior that continues after the

exhaustion of lower-level graduated sanctions have failed to gain the supervised individual's compliance.

3. If it is determined that the supervised individual should be returned to a correctional facility, the PPO or designee shall proceed with the furlough revocation process.
4. The PPO, or designee, shall complete an NOS and document the violation in the supervised individual's record pursuant to the NOS process, except if the individual who was returned is in federal custody. In such cases, staff shall wait until the supervised individual is returned to Vermont custody to complete the NOS and document the violation.
5. DMs, or designees, shall review all returns within five business days following the completion of the furlough revocation hearing.
6. If the furlough revocation hearing determination is guilty, the DM, or designee, shall conduct a local staffing and document their decision regarding the following:
 - a. Criteria for a significant violation is not met: Staff shall complete and document a lower-level carceral sanction of no more than 89 days under the Violations and Response Guide;
 - b. Criteria for a significant violation is not met, however the supervised individual is not eligible for release to Community Supervision Furlough due to pending charge(s) or loss of residence: Staff shall release the individual once they have met the criteria for release; or
 - c. Criteria for a significant violation has been met: Staff shall proceed with a central case staffing for a furlough interrupt determination.

D. Case Staffing Determination Process

1. The Central Office Case Staffing Determination Committee shall 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).

ORAS Sanctions Grid

Violation #	Low Risk	Moderate Risk	High Risk
1 st Significant	90 days	180 days	1 Year
2 nd Significant	180 days	1 Year	2 Years*
3 rd + 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.

WRNA Sanctions Grid

Violation #	Low or Moderate Risk	Medium Risk	High Risk
1 st Significant	90 days	180 days	1 Year
2 nd Significant	180 days	1 Year	2 Years*
3 rd + 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.

2. Any interruption or revocation of community supervision furlough for a technical violation that is 90 days or longer must be supported by evidence that:
 - a. The supervised individual's risk to reoffend can no longer be adequately controlled in the community, and no other method to control non-compliance is suitable;
 - b. The violation or pattern of violations indicate the supervised individual poses a danger to others; or
 - c. The supervised individual's violation is absconding from community supervision furlough and meets any of the following:
 - i. The supervised individual has not met supervision requirements, cannot be located within reasonable efforts, and has not made contact with DOC staff within:
 - a) Three days if convicted of a listed crime as defined in 13 V.S.A. § 5301 (7); or
 - b) Seven days if not convicted of a listed crime.
 - ii. The supervised individual flees from Department staff or law enforcement; or

- iii. The supervised individual left the State without DOC authorization.
3. The Central Office Case Staffing Determination Committee may consider any aggravating or mitigating factors that could change the sanction selected. Aggravating and mitigating factors may be based on information in the Department's records related to an individual. If an aggravating or mitigating factor is based on information in an individual's case file outside of the evidence submitted in the individual's furlough revocation hearing, the committee will indicate the source of that information in its explanation of decision, and the source of that information will be considered part of the administrative record of the case staffing decision.
- a. When considering aggravating or mitigating factors, the committee evaluates whether the risk the individual may pose to public safety can be effectively managed in the community and the severity of the danger the individual may pose to others. The presence of an aggravating or mitigating factor does not necessarily indicate the committee should impose an interrupt other than the interrupt duration recommended by the appropriate sanctions grid above.
 - b. When an aggravating factor is present, the committee may impose an interrupt which is up to twice as long as the interrupt recommended by the appropriate sanctions grid above. Aggravating factors may include:
 - i. Engaging in multiple crimes impacting public safety;
 - ii. Use of a weapon;
 - iii. Behavior causing injury that resulted in medical services;
 - iv. Behavior with a victim/survivor who is a vulnerable person;
 - v. Behavior likely to have severe or prolonged negative impact on a victim/survivor or the general public's safety or health (e.g., potential impact to a large number of victims);
 - vi. Behavior in which the details support a longer return to a correctional facility in the interest of victim or public safety; or
 - vii. Behavior that demonstrates a failure to manage individual risk factors related to sexual offending.
 - c. When a mitigating factor is present, the committee may impose an interrupt which is shorter than the interrupt recommended by the appropriate sanctions grid above. Mitigating factors may include:

- i. Circumstances in which behavior is predominantly motivated by substance use, and there was no significant impact on public safety;
 - ii. Circumstances in which the individual had diminished cognitive capacity (e.g., disability, dementia, developmentally young);
 - iii. There is limited or no evidence of a pattern of violating behavior; and/or
 - iv. There is evidence that the supervised individual's behavior was under duress, coercion, threat, or compulsion.
4. Staff shall consider any subsequent finding of a significant violation within one year of a previous significant violation at the next violation level.
5. Staff shall reset a supervised individual to violation level #1, Significant, for the purposes of determining the sanction when the individual completes one continuous year of community supervision without a significant violation.

E. Notification to the Defender General

1. Any interruption or revocation of a supervised individual's community supervision furlough of 90 days or longer will trigger a notification to the Office of the Defender General.
2. The Central Office Case Staffing Determination Committee shall ensure the notification is sent in a timely manner.