

Response to Non-compliance Protocol

The Division of Parole Supervision (DPS) utilizes graduated sanctions and a Violation Matrix in the determination of the appropriate response(s) to client non-compliance. This protocol discusses the use of the Violation Matrix in conjunction with the disciplinary processes.

I. Investigation and Reporting of a Violation

To achieve maximum effectiveness, responses to non-compliance must be swift, certain, proportional, corrective, appropriate and should be specific to the individual client. To achieve this, investigations shall occur promptly after the discovery of a potential violation. If there is a safety concern, the parole officer (PO) shall submit a Serious Incident Report immediately. If there is a need for immediate response, the PO shall contact the Supervisor for instructions. Otherwise, the PO will follow either the non-compliance response process or the Preliminary Hearing/Review of Parole Hearing response as dictated by the Violation Matrix.

II. There are three levels of responses to non-compliance. Each level has an assigned level of required approval authority.

- A. Low Level Non-Compliance Response: PO authority
- B. Medium Level Non-Compliance Response: PO authority
- C. High Level Non-Compliance Response/Preliminary Hearing/Review of Parole Hearing: Nebraska Board of Parole (NBOP) authority

III. Non-Compliance Responses and Hearings

A. Non-compliance responses may address the following types of parole violations:

- Technical violations such as residence, employment;
- Narcotics use;
- Driving infractions; and,
- Minor laws violations with approval from NBOP.

B. Preliminary/Review of Parole Hearings may address the following types of parole violations::

- Laws except as described in section III.A.;
- Ongoing failure to comply with parole requirement(s) following appropriate sanctions as indicated by the Violation Matrix;

- Any situation in which a warrant has been issued by the NBOP;
- When loss of good time is being requested; and,
- When custodial sanctions are being requested.

IV. Response to Violations

The use of a Violation Matrix allows for uniformity while providing opportunity for an individualized response. Prior to determining the non-compliance response, the PO shall:

- A. Assess and evaluate the client need areas by reviewing elevated areas on assessment tools and considering how they have impacted current behavior.
- B. Assess where the current violation fits in the Violation Matrix graduated response continuum (i.e. previous sanctions have been applied and the current violation should possibly move along the continuum to a higher level of sanction).
- C. Consider the client's individual factors that may make one sanction more impactful for that client than another.
- D. Weigh stabilizing and destabilizing factors and consider how they impact the current behavior. The Violation Matrix allows for stabilizing and destabilizing factors which increase or decrease the severity of the sanction. Other than the stabilizing and destabilizing items, the PO shall consult with his/her supervisor prior to any deviation from the Violation Matrix.
- E. Consider a combination of responses. Review the possible responses to the violation level to craft a combination of sanctions and corrective actions that are designed to fit the needs of the specific client and address any risk(s) to public safety.
- F. Overrides
 1. Even when destabilizing factors exist an override should only be requested if options within the level of the violation are inadequate to address the behavior.
 2. Response overrides must reflect an explanation as to why the Violation Matrix is being deviated from and shall be included in data entered into the Behavioral Management System (BMS).
 3. Destabilizing factors:
 - Shortness of time under supervision prior to violation (A violation has occurred within the first 60 days);

- Failure to demonstrate positive attitude toward supervision (the client behaves in a way that shows blatant disregard for the conditions of parole and for the safety of themselves or others);
- Special Offender Category: sex offender, domestic violence, driving under the influence and/or gang member;
- Inadequate period of successful supervision since last violation (continued non-compliance within 60 days after the last violation);
- Commission of 3 or more lower level violations (three or more lower level violations in one arrest violation report);
- Excessive low level violations over the course of 4 months (3 or more low level violations over the last 4 months); and,
- Other – Any other circumstances which make an override appropriate (should only be used when no other destabilizing circumstance applies and after consultation with the supervisor).

G. Stabilizing factors must be justified and must be considered when imposing a lower sanction response. Stabilizing factors are:

- Length of parole without violations;
- Stable residence and employment programs;
- Strong support system;
- Compliance with supervision; and,
- Other-any other circumstances which make a decrease in sanction appropriate.

H. Shaping the non-compliance response(s) to have an impact on the client

The goal of sanctioning is to respond to non-compliance behavior and to shape new behavior; therefore, imposed sanctions must be meaningful and have an impact to the specific client. Multiple sanctions have been established for each range of the response: low, medium, and high. POs should carefully consider which sanctions they elect to impose. The following are considerations:

1. Choose a sanction that the client will respond to.
2. Do not repeatedly impose the same sanction because the impact is diluted;
3. Consider a combination of sanctions as a way to vary the sanction response;

4. Consider responses from the lower range options in conjunction with those in the identified range as a means of developing the most appropriate sanction;
5. If there are several violations in one report, it is not necessary to have a sanction for every violation;
6. As a rule, the PO should identify the most serious non-compliance behavior and sanction the client for that violation. The objective is to have impact on behavior without overwhelming the client with too many things to accomplish.
7. Sanctions will be proportional to the offense

Low level violations will result in low level sanctions. Medium level violations will result in medium level sanctions and may be combined with low. High level violations will result in high level sanctions and may be combined with medium or low sanctions unless aggravating factors are involved and approved by the supervisor.

8. Custodial Sanctions shall be considered the highest level of sanction short of parole revocation. A policy concerning the use of custodial sanctions will be made available when custodial sanctions are implemented.

I. Interventions and Sanctions

Interventions should target specific needs to be addressed (e.g. programming or an EPICS intervention to teach a skill); however, this should occur separately from the sanction. An intervention can occur at the same appointment, but not at the same time as the non-compliance response being imposed.

V. Non-compliance Response

- A. Non-compliance responses will be entered into the Behavior Management System (BMS) by the PO.
- B. Officers shall follow the Violation Matrix at all times when completing a non-compliance response. Any deviation requires discussion with the supervisor.
- C. Non-compliance responses will occur within 5 working days of the discovery of the violation. If the client is in the office at the time of violation discovery, an immediate non-compliance response is expected.
- D. Non-compliance responses are expected to occur whenever a violation has occurred. The only exception would be if the person discharges before the above mentioned 3 days has elapsed.

- E. When the client denies guilt the PO will need to proceed with the Preliminary Hearing /Review of Parole Hearing process rather than a sanction.
- F. The PO will discuss the violation(s) with the client utilizing Motivational Interviewing (MI). The expectation is that the PO will better able to understand the motivations of the client and therefore what response will have the greatest impact on behavior change.
- G. A PIMS Sanction Agreement will be provided to the client so he/she can refer to the expectations of the non-compliance response being applied. The document will also include an effective date for any actions that the client must take.
- H. Interstate Clients

Clients in Nebraska under the terms of conditions of the Interstate Compact shall be entitled to the same process regarding non-compliance responses as the Nebraska client. Upon completion of the non-compliance response, the PO shall submit a Progress Report with a copy of the sanction documentation to the sending state in the Interstate Compact Offender Tracking System (ICOTS) within 30 calendar days of discovery of the violation(s).

VI. Quality Assurance

- A. Reports will be available in BMS for supervisors to monitor PO use of the Violation Matrix. Supervisors will be expected to review the report and discuss each PO's use with them monthly in an effort to train and encourage adherence to non-compliance response guidelines. Supervisors may determine to lessen the oversight as a PO seems to understand the Violation Matrix and adhere to the procedures related to graduated sanctions and use of the Violation Matrix.
- B. The Lead Supervisor will monitor the same reports monthly and communicate with the assigned supervisor when irregularities from policy are observed.
- C. Subject matter that supervisors and the Lead Supervisor shall monitor will be the amount of time elapsing from the date of discovery to the date of the non-compliance response and the number and nature of overrides. Additionally, supervisors shall analyze whether responses are being applied in a meaningful way. For example, does the sanction appear to relate to the violation? Does the response appear to be one that will be impactful to the particular client?

VII. Preliminary Hearing/Review of Parole Hearing

- A. The PO shall complete an Arrest/Violation Report (AVR) upon discovery and following an investigation of a violation which requires that the NBOP address the violation. The report shall be forwarded to the supervisor who will make his/her recommendation and forward to the Hearing Officer/designee.

1. Laws Violations that are not felonies-and are not serious misdemeanors, where the client has done very well on parole up to the time of the violation, may have a recommendation by the PO to have a sanction rather than a Preliminary (PCH)/Review of Parole Hearing (ROP).
 2. The NBOP will want all Driving While Intoxicated violations to go through the PCH/ROP process; however, if the client has been stable, the PO may recommend that the client remain out of custody on Continuous Alcohol Monitoring (CAM) while waiting to see the NBOP. Prior to sending the violation to the NBOP, the Hearing Officer/designee will review for appropriateness and if he/she has any questions will discuss with the supervisor before the report is forwarded to the NBOP.
- B. AVRs with a recommendation for a PCH/ROP Hearing will be sent to the NBOP for their approval. If the Hearing Officer/designee receives the AVR and determines that the Violation Matrix has not been followed, he/she will discuss with the designee of the Director to determine the correct course of action given the individual circumstances.
- C. All violations concerning a felony charge shall be submitted to the NBOP as PCH/ROP Hearings and the client shall remain/be placed in custody.

VIII. Preliminary Hearing

For parole violations requiring that the client go before the NBOP, the client will be scheduled for a PCH. The purpose of a PCH is to determine if probable cause exists on any alleged parole violation prior to the ROP Hearing before the NBOP. The client may waive the PCH if he/she chooses.

- A. A client may be held in or out of custody until the PCH occurs. Normally a client will be held in custody when he or she appears to:
- Place the community at risk;
 - Present a flight risk;
 - Is facing new felony charges; and/or,
 - Poses a threat to self.
- B. A PCH to determine probable cause regarding the alleged violation(s) will be conducted within 14 calendar days of the date the first detention order was placed, whether verbal or written, where the client is held within the State of Nebraska. In cases where a holiday occurs on a weekday the time frame may be extended by 1 additional day for each holiday. The time frame shall also apply to clients arrested in Nebraska on

a warrant issued by the NBOP with a time beginning on the date of arrest. Time will begin for clients arrested in another state on the date that the client is available to DPS.

- C. Within 1 working day of the discovery of arrest or the placement of an Apprehension Detention Request (Parole Hold), the PO shall contact the Hearing Officer/designee to request the hearing dates.

D. Interstate Clients

Clients in Nebraska under the terms of conditions of the Interstate Compact shall be subject to arrest and detainment by a PO in the same manner as the Nebraska client.

E. Petition, Notice of Preliminary Hearing

1. The PO/designee shall serve the accused client with the Petition, which will indicate the specific parole violations that are alleged and the Notice of Preliminary Hearing on the Parole Violation Advisory of Rights, Waivers & Notification form no later than three calendar days prior to the PCH. These documents are PIMS generated.
2. Each allegation on the Petition must list the condition violated, a brief quote from that condition as stated on the parole certificate, a specific date of the violation, and a brief statement of the violation that clearly communicates the charges to the client.
3. If additional violations are discovered after the Petition and Notice forms have been served to the client prior to the Preliminary Hearing, the PO/designee will follow the procedures detailed above in serving the additional allegations on an addendum Petition. The numbering sequence of the additional allegations will follow the number of the last allegation on the prior Petition.
4. The PO will serve the Petition and Notice as soon as practical after the parole hold was placed. Within 1 working day of serving the Petition and Notice of Preliminary Hearing, the PO will notify the Hearing Officer/designee of the results of said service.
5. Nebraska parole violators held in Nebraska may waive the right to a Preliminary Hearing and elect to appear directly before the NBOP for final disposition of their case by signing the appropriate waiver on the Parole Advisory of Rights, Waivers & Notification form (PIMS generated).
6. In cases where a parole violator is charged with a violation of law by a federal, state, or local jurisdiction, Nebraska clients may be allowed to postpone the preliminary hearing, pending court disposition, by signing the Request to Postpone Preliminary Hearing – Criminal Charges Pending on the Parole Violation Advisory of Rights, Waivers & Notification form provided said jurisdiction plans to actively

pursue prosecution. Postponement of the Preliminary hearing must be approved by the DPS.

Nebraska clients must have enough time left on their sentence to allow for a court disposition and a ROP Hearing before the NBOP prior to their earned discharge date.

7. A bind-over to district court subsequent to a fact finding hearing, a plea of guilty or no contest to or a finding of guilt by a court, shall be considered adequate to meet due process requirements and make the Preliminary Hearing unnecessary.
8. After the client postpones the Preliminary Hearing, it shall be the PO's responsibility to monitor the client's court status until final disposition and to provide status updates to the Hearing Officer/designee when they occur.
9. Interstate Clients
 - a. Clients in Nebraska under the terms of conditions of the Interstate Compact shall be entitled to the same process regarding Preliminary Hearings as the Nebraska client.
 - b. For interstate clients, once the Preliminary Hearing has been conducted, if cause is established and the violation has not been addressed by a custodial sanction, the PO shall submit an Offender Violation Report (OVR) in ICOTS to the sending state with a copy of the Preliminary Hearing summary compiled by the Hearing Officer/designee within 30 calendar days of discovery of the violation(s).
 - c. Interstate parole violators held/supervised by Nebraska may waive their right to a hearing by signing a Plea of Guilty and Waiver of Preliminary Hearing – Interstate Parolees on the Parole Violation Advisory of Rights, Waivers & Notification form, which indicates that the client admits guilt on the alleged violations and understands that the sending state has the option to return him/her to that state. An OVR shall be submitted by the PO in ICOTS to the sending state with a copy of the plea of guilty/waiver and any supporting documentation compiled by the Hearing Officer/designee within 30 calendar days of discovery of the violation(s).
 - d. In cases where a parole violator is charged with a violation of law by a federal, state, or local jurisdiction, interstate clients may choose to postpone the Preliminary Hearing, pending court disposition, by signing the Request to Postpone Preliminary Hearing – Criminal Charges Pending on the Parole Violation Advisory of Rights, Waivers & Notification form provided said jurisdiction plans to actively pursue prosecution. Or, the client may choose to have a Preliminary Hearing conducted or waive his/her right to a hearing by signing a Plea of Guilty and Waiver of Preliminary Hearing – Interstate Parolees on the Parole Violation Advisory of Rights, Waivers & Notification

form. Regardless of which the client chooses, because court disposition is pending, the PO shall submit a Progress Report in ICOTS to the sending state with a copy of the Preliminary Hearing documentation or summary, if hearing conducted, compiled by the Hearing Officer/designee within 30 calendar days of discovery of the violation(s). The PO shall inform the sending state that upon disposition of the charge(s) the sending state will be notified.

- e. A violation(s) of terms of conditions of supervision that are addressed by a custodial sanction shall be reported by the PO to the sending state by submitting a Progress Report in ICOTS with supporting documentation within 30 calendar days of discovery of the violation(s).
- f. For cases in which there is court disposition pending, it shall be the PO's responsibility to monitor the client's court status until final disposition and to provide status updates to the Hearing Officer/designee, Deputy Compact Administrator (DCA)/designee and sending state when they occur. Once there is disposition on the pending charge(s), if the client is convicted an Offender Violation Report (OVR) shall be submitted by the PO to the sending state in ICOTS as soon as possible with a copy of the sentencing documentation. If dismissed, the PO shall submit a Progress Report to the sending state in ICOTS with a copy of the court disposition. In interstate cases if the court does not reach a disposition prior to the interstate client's discharge date, the interstate client will discharge as scheduled unless the sending state has issued a warrant or is able to extend the discharge date.

F. Guidelines for the Preliminary Hearing

1. The burden of proof for submitting sufficient evidence at the Preliminary Hearing to establish probable cause on an alleged violation is the responsibility of the PO. This may include :
 - Presenting evidence;
 - Presenting documents;
 - Presenting other evidence;
 - Making statements, and/or
 - Questioning and cross examining the client/witness at the hearing.

Some guidelines to assist the PO include:

2. The client and their attorneys are not entitled to pre-hearing discovery.

3. Generally, a firsthand eyewitness account of the incident(s) submitted in document form or by testimony is required to establish probable cause.
4. When adverse state witnesses are requested by the client, the PO is required to notify and arrange for the appearance of those witnesses who can give a firsthand eyewitness account of the alleged violation.
5. The preliminary hearing is not open to the public. If the client wants a specific witness, they are responsible for contacting them. The witness must be able to provide first hand eyewitness testimony.
6. In a case where there are multiple witnesses to an incident, only the minimum number needed to establish probable cause on a violation need to appear at the hearing.
7. In cases where adverse state witnesses are unavailable due to residing long distances from the hearing location, due to medical reasons or any other adequate reasons as determined by the Hearing Officer, with approval from the Director (determinations at a ROP Hearing will be made by the NBOP), sworn statements may be submitted as evidence in lieu of in-person testimony. Such sworn statements will be in the form of an affidavit, deposition, or written statement under oath with a notarized signature.
8. The PO may request and may be granted a continuance of the Preliminary Hearing, provided the rescheduled date does not exceed the time limit and the request is for good cause.
9. A client may make a written request to the Hearing Officer for a continuance of up to 15 days for just reasons.
10. Preliminary Hearings may be held sooner than three days after the client is served the Petition and Notice of Preliminary Hearing form provided the client is willing and he/she signs the Parole Violation Advisory of Rights Notification form.
11. At the conclusion of a preliminary hearing wherein no probable cause was established, the NBOP shall authorize the client's release from custody if the client has been placed in custody for the alleged violation which constituted the basis of the hearing.
12. Interstate Clients
 - a. All requests for preliminary hearings received from sending states shall be honored.
 - b. At the conclusion of a preliminary hearing wherein no probable cause was established, the NBOP shall authorize the client's release from custody if the

client has been placed in custody for the alleged violation which constituted the basis of the hearing.

VIII. Review of Parole Hearing (ROP)

- A. The PO or his/her designee shall serve the client with a Notice of Review of Parole Hearing form, no later than five calendar days prior to said hearing. If a client voluntarily elects to receive less notice in cases of unusual circumstances, this may be accomplished by having the client sign a Parole Violation Advisory of Rights Notification form. The client may waive his/her appearance by signing the Waiver of Final Revocation Hearing.
- B. The ROP Hearing will be held within 30 days after the NBOP's receipt of the PO's violation report or when the client is returned to the Nebraska Department of Correctional Services in cases where the client is in the custody of another jurisdiction.
- C. The requirements for a burden of proof and witnesses are the same for ROP Hearings as they are for Preliminary Hearings.
- D. ROP are public hearings and the client may invite people to the hearing to testify.

EFFECTIVE DATE: April 1, 2017

APPROVED:



 Julie Micek, Director
 Division of Parole Supervision

3/28/2017

 Date