



SUBJECT: Violation Hearing Process	PAGE <u> 1 </u> OF <u> 17 </u>
	NUMBER: 105-PBD-09
RULE/CODE REFERENCE: AR 5120:1-1-17, 18, 41; ORC 2967.15, 2967.16, 2967.26, 2967.28	SUPERSEDES: 105-PBD-09 dated 12-17-18
RELATED ACA STANDARDS: 4-APPFS-2B-06 thru 2B-10; 2-1003, 2-1109, 2-1110, 2-1111, 2-1115 thr 1120, 2-1122, 2-1123	EFFECTIVE DATE: December 2, 2019
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to promote fair, consistent, and objective decision making when violation behavior by offenders under Adult Parole Authority (APA) supervision is addressed through a violation hearing. This policy describes only those policies and procedures that govern the violation hearing process. Unit level sanctioning and other events that occur prior to, or in lieu of, violation hearings are governed by ODRC Policy 100-APA-14, Sanctions for Violations of Conditions of Supervision.

III. APPLICABILITY

This policy applies to all employees of the Ohio Department of Rehabilitation and Correction (ODRC) Adult Parole Authority (APA) and all offenders under court, parole, post-release control (PRC), transitional control (TRC), and interstate compact supervision.

IV. DEFINITIONS

Available - An offender status as determined under ODRC Policy 100-APA-14, Sanctions for Violations of Conditions of Supervision.

Bodily Injury - Physical harm of a type that normally requires professional medical attention (e.g., a laceration requiring stitches). Minor physical harm (e.g., minor bruises, a sprained wrist, a black eye, or a minor cut) does not constitute bodily injury.

Business Days - The days of the week, excluding Saturday, Sunday, and any legal holiday.

Community Corrections Information System (CCIS) - A computerized information system used to track the criminal history and progress of offenders under the supervision of the APA. Access to CCIS is restricted to essential users only.

Conditions of Supervision - Those general and special rules and regulations with which offenders are expected to comply as a requirement of community supervision.

Departmental Offender Tracking System (DOTS Portal) - The web-based information platform that serves as the primary information system for information on all offenders under ODRC supervision. The system contains information regarding an offender from reception to final release under supervision. The system is updated throughout each day. Access to DOTS Portal is restricted to essential users only.

Discretionary Post-Release Control (PRC) - A form of PRC assessed at the discretion of the Parole Board pursuant to ODRC Policy 105-PBD-08, Post-Release Control Screening and Assessment.

Field Officer Tablet (FOT) - Computerized data maintained by the parole officer assigned to supervise an offender that contains the chronological details involving contact with the offender, social services agencies, law enforcement, etc. The tablets also contain all demographic information pertaining to the offender and documentation of staffing decisions.

Gagnon Criteria - Those considerations set forth by the United States Supreme Court in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), for determining when an indigent person on supervised release should be represented by counsel at a revocation hearing.

Halfway House (HWH) - A facility licensed by the ODRC pursuant to Ohio Revised Code (ORC) section 2967.14 as a suitable facility for the care and treatment of adult offenders.

Hearing Officer Review Process - An administrative hearing conducted by a representative of the Parole Board when an offender on PRC has waived his/her appearance at a violation hearing. The purpose of the review is to determine whether an offender has violated one (1) or more conditions of supervision and, if so, the specific sanction that should be imposed upon the offender.

Hold Order - The order or act of a parole officer, unit supervisor, or other APA official that causes an offender under the jurisdiction of the APA to be detained or held in custody for alleged violations. The order or act may be placed into effect by use of an APA hold order, an APA arrest order, a teletype, fax, or a verbal order.

In-Custody Hearing - A violation hearing conducted on an offender under the supervision of the APA who is being held in a jail, prison, or similar detention facility.

NOTE - A section in the CCIS to record information regarding an offender's activity while under supervision.

Ohio Interstate Compact Office - Unit of the APA responsible for administering the Interstate Compact for Adult Offender Supervision.

Out-of-Custody Hearing - A violation hearing conducted on an offender under the supervision of the APA who is not being held in a jail, prison, or similar detention facility.

Parole - The release from confinement in any state penal or reformatory institution by the APA that is created by ORC 5149.02 and under any terms and for any period of time that is prescribed by the APA in its published rules and official minutes. A parolee so released shall be supervised by the APA pursuant to ORC section 2967.16. The above applies to all persons who have committed felonies prior to July 1, 1996.

Post-Release Control (PRC) - A period of supervision for an offender by the APA following release from imprisonment that includes one (1) or more PRC sanctions imposed by the Parole Board pursuant to ORC section 2967.28.

Prison Sanction Time - The total number of days that an offender under PRC may be returned to prison as a sanction for violation behavior.

Sanction - Any penalty imposed upon an offender who is found guilty of a violation of one (1) or more conditions of supervision.

Supervising Officer - The parole officer responsible for supervising the offender who is subject to the violation hearing process.

Supervising Unit - That unit of the APA's field services that is responsible for supervising the offender who is subject to the violation hearing process.

Transitional Control (TRC) - A program to closely monitor a prisoner's adjustment to community supervision under which eligible prisoners may be confined in a suitable facility that is licensed pursuant to ORC section 2967.14 (C) or a department-approved residence with electronic monitoring during the final one hundred eighty days of his/her confinement, under the terms and conditions established by the department, and supervised under one or more community control sanctions.

Violator-at-Large (VAL) - An offender who absconds the supervision of the APA as set forth in ORC section 2967.15 (C)(1).

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to respond to any violation behavior committed by offenders during their period of supervision and to afford those offenders a hearing prior to revoking a parole release or imposing prison sanction time upon an offender who is on post-release control (PRC).

VI. PROCEDURES

A. Service of Violation Notice Forms

1. If the unit supervisor/designee determines that an offender will be scheduled for a violation hearing, the violation hearing packet shall be created in the electronic forms catalog. Thereafter, all the following shall occur:

- a. The unit supervisor/designee shall contact the scheduler to schedule the hearing. The unit supervisor/designee shall notify the supervising officer of the hearing's date and time.
 - b. The supervising officer shall complete the Notification of Release Violation Hearing and Request for Witness/Notice of Counsel (DRC3304/3309) by initiating the appropriate packet within electronic forms and routing it to the unit supervisor, who shall review the forms for completeness and accuracy. If complete and accurate, the unit supervisor/designee shall approve and sign the forms and route them back to the designated supervising officer. Forms shall be legible and contain all the necessary information, including the specific conditions of supervision the offender is alleged to have violated; a plain statement of the facts constituting the violations; and the date, location, and time of the scheduled hearing.
 - c. The supervising officer shall complete the Violation Hearing Grid (DRC3458) to determine if the hearing should be an in-custody hearing or an out-of-custody hearing. This form shall be staffed with the unit supervisor and, if appropriate, the regional administrator/designee.
2. The supervising officer or other APA staff member shall serve the Notification of Release Violation Hearing and Request for Witness/Notice of Counsel (DRC3304/3309) upon the offender. If the offender cannot read the notice forms, the information shall be read to the offender.
 3. At the time of service, an attempt shall be made to determine whether the offender is contesting any or all the alleged charges.
 - a. Unit staff shall refrain from unduly influencing, pressuring, or coercing the offender into making any statement against the offender's interest.
 - b. The supervising officer or other APA staff member serving the forms shall attempt to obtain all the appropriate signatures, initials, and dates on the forms at the time of service.
 - c. If an offender refuses to sign, initial, or date the forms, then a notation shall be made to that effect, such as "Refused to Sign," and the notation shall be initialed by a witness. No form of threat, promise, or duress shall be used to persuade an unwilling offender to sign, initial, or date the forms.
 - d. In all service, the offender shall review and sign the Offender Statement (DRC3086). The offender may refuse to give a statement but must acknowledge such on the form. If the offender has requested an attorney or denies the violations, he/she may refuse to provide a statement and indicate such on the Offender Statement (DRC3086).
 4. At the time of service, the offender shall be asked to identify witnesses, documents, or other materials he/she may want subpoenaed for the violation hearing; the nature of the information to be presented by any witnesses, documents, or materials; and the addresses of any witnesses. If the offender requests a witness and the unit supervisor/designee

denies the request pursuant to section VI.H of this policy, the offender shall be notified of that denial within five (5) business days of the hearing using the Notification of Denial of Request for Witness (DRC3310).

5. The offender shall be asked for the name, address, and telephone number of any private counsel that may represent the offender at the hearing. If the offender does not have private counsel and requests representation by the Ohio public defender, the offender shall indicate that request by checking the appropriate box on the Request for Representation (DRC3466).
6. At the time of service, an attempt shall be made to identify any special communication needs that the offender might have in relation to the hearing, such as interpreters or sign language specialists. An attempt also shall be made to identify any need for audio/visual equipment at the hearing. Any extraordinary needs shall be immediately communicated to the unit supervisor.
7. The offender shall be provided copies of the Notification of Release Violation Hearing and the Request for Witness/Notice of Counsel (DRC3304/3309).
8. Copies of the Notification of Release Violation Hearing and Request for Witness/Notice of Counsel (DRC3304/3309) and any offender statements shall be returned to the supervising unit, halfway house, or Ohio Interstate Compact Office, as applicable.

B. Waiver

1. An offender may waive an in-custody hearing prior to the scheduled date of the hearing. Offenders scheduled for out-of-custody hearings must be present for the hearing to proceed. An offender shall be provided an opportunity to waive at the out-of-custody hearing.
2. If the hearing will be an in-custody hearing, then, along with the Notification of Release Violation Hearing and Request for Witness/Notice of Counsel (DRC3304/3309), the supervising officer also shall serve upon the offender a Waiver of Appearance at Release Violation Sanction Hearing (DRC3362), unless the offender is an offender being supervised on parole and/or the offender requests representation of counsel at the time of service. The supervising officer shall review the waiver form with the offender.
3. The supervising officer shall advise the offender of all the following in relation to waiver:
 - a. If the offender is being supervised on PRC, the amount of prison sanction time that will be available including jail time credit, up to the date of the hearing;
 - b. The supervising unit's sanction recommendation including jail time credit;
 - c. Other sanctions available to the hearing officer;
 - d. That there is a hearing officer review that will occur on or before the hearing date specified on the Notification of Release Violation Hearing (DRC3304).
4. If an offender elects to waive appearance at the hearing, the supervising officer shall request that the offender provide a statement of mitigation. The statement may be

handwritten by the offender or may be provided orally by the offender to the supervising officer, who shall transpose the oral statement. In all cases, the statement shall be captured on the Offender Statement (DRC3086). If the officer writes the offender's statement on his/her behalf, the Offender Statement (DRC3086) must be reviewed and signed by the offender.

5. No form of threat, duress, or promise shall be used to persuade an offender to waive a hearing.
6. If an offender waives appearance at the hearing, the supervising officer shall immediately advise the officer's supervisor and the hearing officer scheduler of the waiver. The scheduler shall then note on the schedule that the case is a "hearing officer review."

C. Waiver of Interstate Compact Probable Cause Hearings

A violation sanction hearing is conducted upon offenders supervised under the Interstate Compact for Adult Offender Supervision ("Compact") for the purpose of determining whether there exists probable cause to believe the offender engaged in violation behavior that might cause the sending state to retake the offender. Pursuant to Compact rules, the offender may waive the probable cause hearing by admitting to one or more significant violations on the ODRC Waiver of Probable Cause Hearing for Interstate Compact Offenders (DRC3547). Upon receiving the waiver, the scheduler shall be notified that the hearing needs to be removed from the schedule. The supervising unit shall then immediately forward the waiver and probable cause hearing packet to the Ohio Interstate Compact Office.

D. Hearing Officer Review Following Waiver

1. Following a waiver of an in-custody hearing, the supervising unit shall electronically forward the hearing officer review packet, including the violation hearing report, to the hearing officer at least two (2) business days prior to the originally scheduled hearing. The hearing officer shall conduct a review on or before the scheduled date of the hearing. During the review, the hearing officer may contact the supervising unit, the offender's counsel, or others for additional information.
2. If, during the review, the hearing officer determines the offender may not have been capable of making an informed decision to waive appearance, the hearing officer shall continue the hearing and complete the Request for Representation (DRC3466). The supervising unit shall forward the completed request, the APA Pre-Hearing Staffing for Representation (DRC3084), and the hearing packet information to the Ohio Public Defender's Office.
3. The hearing officer may determine a more restrictive sanction than that which was recommended by the unit is warranted. A more restrictive sanction includes, but is not limited to, more prison sanction time than was recommended. If the hearing officer determines a more restrictive sanction is warranted, the hearing officer shall reject the waiver, meet with the offender to explain the waiver was rejected, and schedule a hearing. The offender shall be given the option of contacting private counsel for representation, referred to the Ohio Public Defender's Office, or going forward with the hearing without

counsel. The hearing shall be scheduled as soon as feasible notwithstanding the twenty (20) business day limitation specified in paragraph VI.E of this policy.

4. If the hearing officer determines the offender should receive a less restrictive sanction than what was recommended by the supervising unit, the offender may agree to that less restrictive sanction.
5. The hearing officer shall ensure the Notification of Findings of Release Violation Hearing (DRC3326) and the Sanction Receipt (DRC3313/DRC3325) are delivered to the offender and the supervising unit within five (5) business days after the date of the scheduled hearing. Upon receiving those documents, the supervising unit shall make the necessary arrangements for imposing sanctions as ordered by the hearing officer.
6. In determining the appropriate prison sanction time to be imposed following a waiver, the hearing officer shall be guided by the prison sanction time limitations imposed under sections VI.L.4.a-d of this policy.

E. Violation Hearing Timeframe

1. A violation hearing shall be conducted no later than twenty (20) business days from the date the offender becomes available, unless the offender thereafter becomes unavailable as described in section VI.F.5 of this policy or a continuance is granted by the hearing officer. In the case of a violator at large who has left the state, the violation hearing shall be conducted no later than twenty (20) business days from the date of the offender's arrival in the state of Ohio.
2. A violation hearing shall be conducted no earlier than ten (10) business days from the date on which the offender is served with notice of the hearing and its date.
3. Out-of-custody hearings shall adhere to timeframes like those specified above.

F. Continuances

1. The supervising unit or the offender's counsel may request a violation hearing be continued. A request for continuance shall be made in writing and shall state, specifically, the reasons for the request and, if appropriate, the date to which the requester would like the hearing rescheduled. The request shall be provided to the hearing officer in the most expedient manner possible. The hearing officer shall immediately respond to the request in writing. The hearing officer shall provide a copy of the request to the unit supervisor and the offender's counsel.
2. If an offender fails to appear for a hearing, the supervising unit may request the hearing officer issue a continuance.
3. A hearing officer may continue, reschedule, or cancel a violation hearing without a request from any party. The hearing officer shall provide notice of any such change to all parties.

4. A violation hearing shall be rescheduled for no more than ten (10) business days from the previously scheduled hearing date.
5. If after the offender is served with notice of the hearing the offender becomes unavailable, the hearing shall be continued until the offender once again becomes available. Immediately upon receiving notification of the offender's change in status from available to unavailable, the supervising unit shall contact the hearing officer to request the continuance. Once the offender again becomes available, the hearing shall be set for a date that is no more than ten (10) business days from the date on which the offender became available, provided that the hearing shall be conducted no earlier than five (5) business days from the date on which the offender is served with notice of the hearing and its date.
6. If an offender fails to appear for an out-of-custody hearing and subsequently picks up new violations, the unit shall serve the to-be-determined continuance, as well as any new violation within ten (10) business days of availability.
7. All other continuances shall be served upon the offender no later than the expiration of three (3) business days from the date the continuance is issued or by the originally scheduled hearing date, whichever occurs first.

G. Requests for Counsel and Notifications to Counsel

1. Ohio public defender representation is not available for any TRC to parole offender or offender being supervised under the Interstate Compact for Adult Offender Supervision. Those offenders shall be advised of that fact.
2. Offenders who are on parole shall be referred for Ohio public defender representation. Offenders on PRC supervision may be eligible for Ohio public defender representation. Those offenders shall be advised that a decision on Ohio public defender representation will be made after the matter is staffed between the supervising unit and the hearing officer.
3. The supervising unit shall staff the APA Pre-Hearing Staffing for Representation (DRC3084) with a hearing officer within three (3) business days after serving the Notification of Release Violation Hearing form (DRC3304).
4. If the hearing officer determines the offender is not eligible for Ohio public defender representation, the unit shall serve the offender with the Notice of Denial located at the bottom of the APA Pre-Hearing Staffing for Representation (DRC3084) immediately after the staffing and no later than five (5) business days prior to the scheduled hearing date. The form shall be included in the hearing officer packet.
5. If an offender qualifies for Ohio public defender representation or retains private counsel, all the following apply:
 - a. The offender's attorney shall be contacted and advised of the offender's location; all information in the Notification of Release Violation Hearing (DRC3304); and the

probable witnesses and relevant testimony to be offered by the supervising unit and offender.

- b. Documents or materials that will be presented at the hearing by the supervising unit shall be provided to the offender's attorney at least two (2) business days prior to the originally scheduled hearing date. No later than two (2) business days prior to the originally scheduled hearing, both the supervising unit and the offender's attorney shall have disclosed to one another and the hearing officer every witness and the relevant testimony to be offered at the violation hearing.
 - c. The supervising officer or unit supervisor shall answer any procedural questions the offender's attorney has about the hearing.
 - d. The offender's attorney shall be provided with a copy of the Notification of Release Violation Hearing (DRC3304) and, if applicable, the Notification of Denial of Request for Witnesses (DRC3310) on the same day as service, if practicable. In no case shall copies of those forms be provided later than the next business day following service.
 - e. If the Ohio public defender is providing representation, the supervising unit shall provide the public defender with copies of the hearing officer packet, including the violation report as provided in section VI.G.6 of this policy. The unit shall likewise provide privately retained counsel with a copy of the hearing officer packet, including the violation report.
 - f. In those cases where offender representation is required under the *Gagnon* criteria, if a conflict arises between the offender and the offender's privately retained counsel, the Ohio public defender shall determine whether it will provide substitute counsel at the APA's request.
 - g. The staff of the supervising unit shall not engage in any form of negotiation with the offender's attorney unless the agreement is completely disclosed on the record and is approved by the hearing officer.
6. If an offender satisfies the criteria for Ohio public defender representation, all the following apply:
- a. Unit staff shall complete the Request for Representation (DRC3466) and then submit it to the Ohio Public Defender's Office along with copies of the hearing officer packet, including the violation report. The unit supervisor shall attach confirmation of the sent Request for Representation (DRC3466) and packet information, documenting the date and time the information was sent to the public defender.
 - b. Within two (2) business days after receiving the information described in section VI.G.6.a of this policy, the Ohio Public Defender's Office shall respond with documentation of its decision on representation.

- c. If the Ohio public defender indicates it will not represent the offender, then at least five (5) business days prior to the scheduled hearing, the supervising officer or other APA staff member shall serve the offender with notice of the Ohio public defender's denial of representation, which is included on the Request for Representation (DRC3466). The offender shall then be afforded the opportunity to retain private counsel for the hearing.

H. Hearing Preparation

1. If the supervising unit intends to recommend the offender be placed in a HWH or other facility, the unit shall refer the offender to that facility prior to the hearing so the offender's placement can be processed, and the unit advised of the placement's status on or before the date of the hearing. If the supervising unit intends to recommend a Community Based Correctional Facility (CBCF) placement, the unit shall staff the CBCF referral with the hearing officer at or around the same time the offender is served with the Notification of Hearing paperwork.
2. The supervising unit shall complete, issue, and serve subpoenas for any witnesses, documents, or other materials needed for the hearing.
3. Subpoenas for APA witnesses, documents, or other materials shall be approved by the unit supervisor and served by the APA between 5-7 business days prior to the hearing.
4. Subpoena requests from the offender for witnesses, documents, or other materials shall be made between 5-7 business days prior to the hearing and shall be approved by the unit supervisor. The offender's requests should be granted unless the unit supervisor deems the witnesses, documents, or other materials to be irrelevant, immaterial, cumulative, privileged, or beyond the subpoena power of the ODRC. An offender's request may also be denied for good cause, which includes, but is not limited to, risk of harm to a witness or confidential informant.
5. If an offender's request for witnesses, documents or other materials is denied in whole or in part, the unit supervisor shall document the basis for such denial on the Notice of Denial of Request for Witness (DRC3310), which shall be provided to the hearing officer and which shall become part of the violation hearing record.
6. Offenders may subpoena a limited number of witnesses to speak on their behalf. The unit supervisor shall determine the number and identities of those witnesses who will be permitted to speak based on the type of mitigation that will be offered by each witness.
7. The supervising unit shall be responsible for ensuring the necessary materials for the hearing are submitted through electronic forms to the hearing officer at least two (2) business days prior to the original hearing, unless the hearing officer gives written approval for the materials to be submitted on the day of the hearing.
8. The supervising unit shall provide to the hearing officer documentation of the offender's date of availability in the form of a journal entry, jail sheet or other appropriate document.

I. Violation Hearing: Location and Attendees

1. Violation hearings shall be conducted at or near the site of the alleged violation or violations. Appropriate sites include the local county jail, a secure APA office, an ODRC institution, or other locations designated by the unit supervisor. If an emergency or other circumstance occurs that is beyond the APA's control, the hearing officer may reschedule the hearing.
2. The supervising unit shall verify the availability of the violation hearing site. At least two (2) business days prior to the hearing, the unit shall contact the appropriate official at the jail, institution or other facility where the hearing is to be held to verify the hearing location will be available and that adequate security will be on hand. If the hearing is to be held at a local county jail and the jail is unable to provide adequate security, after considering the offender's background, the nature of the alleged violations, and the physical plant of the jail, the regional supervisor or designee may assign to one (1) or more APA parole officers or unit supervisors the responsibility of providing security at the hearing.
3. Violation hearings are not open to the public. Only the following individuals are authorized to attend a violation hearing:
 - a. APA staff necessary to conduct the hearing;
 - b. The offender, unless excused by the hearing officer prior to the hearing or removed by the hearing officer during the hearing;
 - c. The offender's attorney;
 - d. Jail facility staff or institution correctional officers providing security;
 - e. Witnesses subpoenaed on behalf of the APA or the offender;
 - f. Miscellaneous persons necessary for the orderly presentation of the evidence, including, but not limited to, interpreters and audio-visual facilitators;
 - g. ODRC employees who are attending the hearing for purposes of training or evaluation and who received prior approval to attend from the unit supervisor or the hearing officer;
 - h. Approved advocates by the Office of Victim Services (OVS);
 - i. Any other person whose attendance is approved by the chief of the APA or the Parole Board chair.
4. Whenever feasible, witnesses shall be separated from one another.

J. Violation Hearing Process: Preliminary Matters

Prior to the hearing, the hearing officer shall do all the following:

1. Ensure there is adequate security to conduct the hearing;
2. Verify all available days in custody on an active hold order, up to and including the date of the violation hearing, have been credited in DOTS Portal, using the JLS screen;
3. Ensure all applicable timeframes have been adhered to;
4. Ensure the notice and service are in order, the proper forms were used, and that proper procedures have been followed, including the Ohio public defender referral process.

K. Violation Hearing Process: Guilt/Innocence Phase

1. During the hearing, the hearing officer shall do all the following:
 - a. Maintain an official record of the hearing;
 - b. Describe the hearing procedures and process to everyone in attendance;
 - c. Read into the record an application of the *Gagnon* criteria;
 - d. Facilitate a proper identification of the offender;
 - e. Read the alleged violations;
 - f. Determine to which of the alleged violations the offender admits and which of the alleged violations the offender denies;
 - g. Hear and resolve all questions related to the denial of witnesses, documents, or other materials;
 - h. Permit the APA or the offender to proffer the testimony of absent witnesses;
 - i. If the hearing needs to be rescheduled for good cause, hear the testimony of any witnesses present prior to rescheduling;
 - j. Separate witnesses, excuse witnesses, and approve witness fees;
 - k. Hear testimony from witnesses, including hearsay evidence, and place documents, statements, affidavits, reports, and other materials into the record;
 - l. Maintain order during the hearing, including, but not limited to, ordering the removal of any individual who is disruptive to the proceedings, including the offender, with chief hearing officer approval;
 - m. Review the supervising unit's violation report and any other relevant information pertaining to the offender or the offender's background;
 - n. Permit the offender to confront and, through counsel, if present, cross-examine witnesses and to present testimony, documents, or other materials;
 - o. Permit the offender to examine documents, reports, and other materials presented at the hearing;
 - p. Ensure the offender's right to remain silent is safeguarded;
 - q. Make a finding of guilt or innocence on each of the alleged violations based upon a "preponderance of the evidence considering the record as a whole" for all offenders other than offenders being supervised under the Interstate Compact for Adult Offender Supervision with respect to whom a finding of probable cause is sufficient. In the case of an offender who has been sentenced in criminal proceedings involving the same conduct that is the subject of the violation hearing, all the following apply:
 - i. If the offender has been found "guilty" in those court proceedings, sufficient evidence of that conviction is conclusive proof of identical violation behavior. "Sufficient evidence of that conviction" includes a certified copy of the court journal entry from a court of competent jurisdiction or other reliable sources such as photocopied or faxed copies of the journal entry or the offender's own admission of the authenticity of the conviction.
 - ii. If the offender is found guilty at the violation hearing solely based on a certified journal entry, no immediate effect shall be given to the existence of pending appellate or post-conviction proceedings. If a court of competent jurisdiction subsequently voids, nullifies, remands or amends the underlying criminal

conviction on other than purely procedural grounds, the offender may petition the Parole Board chair for a rehearing of the underlying substantive charges. Any action taken by the APA in response to such a petition shall be taken on a case-by-case basis and is not subject to appeal.

- iii. An acquittal or dismissal of criminal charges shall not bar further revocation proceedings.
 - r. Order the offender continued under supervision if the violation or violations are not proven.
2. When rescheduling a hearing for good cause, if the offender's placement in a HWH is anticipated, the hearing officer shall reschedule the hearing to allow sufficient time for the supervising unit to refer the offender to residential placement if such referral has not previously been initiated.

L. Violation Hearing Process: Procedures Following the Guilt or Innocence Determination

- 1. If one (1) or more violations are proven, the hearing officer shall hear the offender's mitigation evidence, the supervising authority's rebuttal, and the supervising authority's recommended sanction. Following that, the hearing officer shall impose an appropriate sanction.
- 2. If a violation hearing is conducted, in addition to the standard sanctions available to the unit at the unit level, the hearing officer has the following sanctions available:
 - a. If the offender is under PRC, an increase in the term of the supervision;
 - b. Electronic monitoring;
 - c. Revocation of release;
 - d. If the offender is under PRC, a prison term sanction;
 - e. If the offender is under PRC, monitored time if all available prison sanction time has been exhausted;
 - f. Placement in a halfway house if the offender's assessed risk is moderate, high or very high;
 - g. Placement in a CBCF;
 - h. A no contact order;
 - i. Continuing the offender under supervision.
- 3. If an offender is found guilty of engaging in one (1) or more of the following, it is presumed that a prison sanction or revocation of release is necessary in order to punish the offender and to adequately protect the public:
 - a. Any unprivileged sexual conduct or contact;
 - b. Any sexual misconduct involving a minor;
 - c. Possession, use or control of a firearm;
 - d. Brandishing a weapon;
 - e. Assaultive misconduct resulting in bodily injury;

- f. Psychological trauma or threats of death to an individual;
 - g. Financial loss of \$10,000 or more attributable to the offender's misconduct;
 - h. Felonious conduct of the first, second, or third degree;
 - i. Continued involvement in organized crime, a security threat group, or sophisticated criminal behaviors;
 - j. Being involved in, operating, or overseeing the bulk distribution of illegal drugs.
4. Prison term sanctions imposed by hearing officers in response to PRC violations shall be commensurate to the seriousness of the violation behavior and the threat posed to public safety by that behavior, as follows:
- a. If the most serious violation for which the offender has been found guilty involves any of the following, the prison term sanction shall not exceed forty-five (45) days.
 - i. Substance abuse/illegal drug use violations;
 - ii. WUVL;
 - iii. Unsuccessful termination from programming (non-sex);
 - iv. All other technical violations.
 - b. If the most serious violation for which the offender has been found guilty involves any of the following, the prison term sanction shall not exceed sixty (60) days.
 - i. Violation of all other Parole Board Special Conditions;
 - ii. Failure to appear for a Parole Board Summons;
 - iii. Unsuccessful termination from a halfway house;
 - iv. Declared VAL;
 - v. Violation of two (2) or more unit level sanctions;
 - vi. Unsuccessful termination of two (2) or more outpatient programs;
 - vii. All other non-violent misdemeanor convictions/behavior;
 - viii. Unsuccessful termination from SOP.
 - c. If the most serious violation for which the offender has been found guilty involves any of the following, the prison term sanction shall not exceed ninety (90) days.
 - i. All non-violent felony behavior;
 - ii. DUI;
 - iii. Failed to appear for an Out-of-Custody hearing;
 - iv. Violation of a Hearing Officer Sanction;
 - v. Violation of Parole Board conditions regarding contact with minors/Internet/Social Media restrictions;
 - vi. Out-of-State/Not VAL or PVIC;
 - vii. EM/GPS Violation (being untraceable for 4 hours or more).
 - d. If the most serious violation for which the offender has been found guilty involves any behavior not specifically identified in sections VI.L.4.a-c of this policy, the prison term sanction may be for any duration of time not to exceed 270 days, provided that any prison term sanction that exceeds 180 days requires the approval of a chief hearing officer unless imposed in accordance with section VI.L.4.f of this policy.

- e. Any prison term sanction other than one approved by a chief hearing officer pursuant to section VI.4.d of this policy or imposed in accordance with section VI.L.4.f of this policy that exceeds the applicable limit specified in section VI.L.4 of this policy requires approval of the Parole Board chair/designee.
 - f. A hearing officer may impose up to ten (10) additional days of prison term sanction beyond the applicable limit specified in sections VI.L.4.a-c of this policy or beyond the applicable 180 day limit specified in section VI.4.d of this policy if the offender would, after serving the maximum sanction specified in those sections, have ten (10) or fewer days of prison sanction time remaining with which to address future violation behaviors.
5. After determining the appropriate sanction, the hearing officer shall state, on the record, the reasons for imposing the sanction; shall complete the Notice of Findings of Release Violation Hearing (DRC3326); the Sanction Receipt (DRC3313/DRC3325); the Revocation Order (DRC3314), if applicable; and shall provide copies of those forms to the supervising authority and the offender. A Hearing Summary Report (DRC3234) shall also be completed at the conclusion of the hearing. The hearing officer shall forward the hearing packet electronically to the Parole Board, which shall forward the hearing packet to the Bureau of Records Management (BORM) Document Imaging Group. The supervising officer shall document the date of the hearing and provide a summary of the sanction. If a community sanction is imposed, the sanction's start date and projected completion date shall be documented in the field officer tablet (FOT). The unit supervisor shall document the sanction in NOTEC.
 6. If the hearing officer's sanction includes a no contact order, the supervising unit shall forward the sanction receipt to the institution managing officer/designee.
 7. If the sanction imposed at the violation hearing is a revocation of release or imposition of a prison term, then all the following apply:
 - a. For in-custody hearings, the hearing officer shall issue an order revoking the release or imposing the prison term and shall provide the revocation order or sanction receipt to the appropriate supervising authority. The hearing officer shall email the sanction receipt to the Bureau of Sentence Computation (BOSC) at drc.bosc@odrc.state.oh.us. Copies of the revocation order or sanction receipt shall be provided to the ODRC Record Office by the hearing officer when the hearing is conducted in an ODRC institution.
 - i. If imposing a prison term on an offender under PRC, the hearing officer shall indicate on the sanction receipt the sanction/s that will be in effect upon expiration of the prison term.
 - ii. If revoking parole, after the hearing officer's recommendation has been approved or modified by the Parole Board, the hearing officer or designated Operation Support Center (OSC) Parole Board staff shall provide a copy of the sanction receipt to the supervising authority and ensure a copy is provided to the offender.

- b. If the hearing officer exhausts the remaining prison sanction time available on an offender who is subject to discretionary PRC, the hearing officer shall terminate PRC supervision effective on the date that the sanction expires. The hearing officer shall indicate on the sanction receipt that the termination is unfavorable.
 - c. If parole is revoked or a prison sanction ordered, the APA shall return the offender to the appropriate ODRC institution as soon as feasible. Barring an emergency, APA staff or jail staff shall not transport the offender until the Revocation Order (DRC3314) or sanction receipt is forwarded to OSC for processing. The transportation officer shall provide the revocation order or sanction receipt to the reception center when transporting the offender. The offender's supervising officer shall email a copy of the sanction receipt to the email account of the reception center's records office.
 - d. The hearing officer shall complete the Hearing Summary Report (DRC3234) within twenty (**20**) business days after the hearing. The hearing officer shall then forward it electronically to the Parole Board. Additionally, the hearing officer will forward a hard copy to the BORM Document Imaging Group. The Hearing Summary Report (DRC3234), which is a Parole Board document, shall, at a minimum, contain the following:
 - i. Information about the hearing, including the offender's name; the offender's institution number; the offender's supervision type; the offender's arrest date; the offender's availability date; the service of notice date; the hold order date; the hearing date; the hearing type; the hearing officer's name; the supervising unit or representative; counsel's name, where applicable; and any additional information deemed necessary by the Parole Board;
 - ii. The hearing officer's summary of the offender's criminal history, including the offender's prior adjustments to supervision;
 - iii. The hearing officer's recommendation;
 - iv. Any additional materials or documents that supplement or clarify the report.
 - e. If the hearing results in a parole revocation, the Parole Board shall process the official minutes of the action after receiving the hearing packet and shall forward it to the BORM Document Imaging Group. The BOSC Earned Credit Section shall schedule a subsequent release consideration hearing, if applicable, upon receipt of the official minutes.
8. When determining the appropriate amount of prison sanction time to impose upon an offender, hearing officers may consider the total amount of prison sanction time that is available for the offender relative to the amount of time the offender has remaining on supervision.

9. If the sanction imposed includes an order to reimburse the State of Ohio for cost of extradition, the supervising unit shall forward the revocation order or sanction receipt to the Fugitive section.

M. Violation Hearing Process: Review and Modification

1. All violation hearing results shall be reviewed by a chief hearing officer and are subject to modification by the Parole Board chair/designee.
2. If the hearing officer who conducts the hearing discovers that, during the hearing process, the supervising unit committed procedural errors, failed to provide critical documentation, or failed to provide necessary supporting information, the hearing officer shall complete a Violation Hearing Review (DRC3541), which shall note any issues and shall make a recommendation to address them. The Violation Hearing Review (DRC3541) shall be sent to the regional administrator and the chief hearing officer. A Violation Hearing Review (DRC3541) may also be completed by a hearing officer for the purpose of noting observations of a positive nature.

Related Department Forms:

APA Pre-Hearing Staffing for Representation	DRC3084
Offender Statement	DRC3086
Hearing Summary Report	DRC3234
Notification of Release Violation Hearing	DRC3304
Request for Witness/Notice of Counsel	DRC3309
Notification of Denial of Request for Witness	DRC3310
Sanction Receipt (TC/Parole/Compact)	DRC3313
Revocation Order	DRC3314
Sanction Receipt and Prison Term Order (PRC)	DRC3325
Notice of Findings of Release Violation Sanction Hearing	DRC3326
Waiver of Appearance at Release Violation Sanction Hearing Form	DRC3362
Violation Hearing Grid	DRC3458
Request for Representation	DRC3466
Violation Hearing Review	DRC3541
Waiver of Probable Cause Hearing for Interstate Compact Offenders	DRC3547