



# Operating Procedure

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<b>ACA/PREA Standards</b> 4-APPFS-2B-02, 4-APPFS-2B-03, 4-APPFS-2B-04, 4-APPFS-2B-05, 4-APPFS-2B-06, 4-APPFS-2B-07, 4-APPFS-2B-08, 4-APPFS-2B-09, 4-APPFS-2B-10, 4-APPFS-2B-11, 4-APPFS-2B-12, 4-APPFS-2E-01, 4-APPFS-3B-10	
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<b>Office of Primary Responsibility</b> Probation and Parole Procedure Committee	

**Subject**  
**VIOLATION OF SUPERVISION CONDITIONS**

## I. PURPOSE

This operating procedure provides a systematic approach to responding to all violations of probation, parole, conditional pardon, and post release community supervision within the Department of Corrections.

## II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

## III. DEFINITIONS

**Absconder** - An offender, under DOC supervision in the community including Community Corrections facilities, whose whereabouts are no longer known to the supervising officer after reasonable efforts to locate

**Absconder Coordinator** - A staff member designated by the unit head to coordinate the unit's absconder management activities

**Capias** - An arrest authorization issued by a Court with appropriate jurisdiction; it is also known as a Bench Warrant.

**Conditional Pardon** - An act by the Governor to modify or end a sentence imposed by the Court; it is available only to people who are currently incarcerated. The Governor only grants a conditional pardon when there is substantial evidence of extraordinary circumstances to warrant it; such a pardon is not regarded as a substitute judgment for that of the convicting Court. COV §53.1-139 empowers the Parole Board to exercise supervision of these cases through Probation and Parole Officers.

**Curfew** - A sanction or tool of supervision in which the offender is required to remain at home during specific hours determined by the P&P Officer

**Major Violation Report** - A document completed by a P&P Officer outlining the alleged violations of supervision conditions

**Out-of-State Interstate Case** - A case whose supervision obligation originates in another state and is transferred to Virginia via the Interstate Compact for Adult Offender Supervision

**Parole Violation Warrant** - A warrant issued by the Parole Board for the arrest and detention of a delinquent parolee

**Post Release Supervision** - A judicial action which allows a period of supervision in the community, subject to certain conditions, for felony offenses committed after January 1, 1995 and for which offenders are ineligible for parole; offenders sentenced to post release supervision prior to July 1, 2000 will be supervised and reviewed in the same manner as a probation case. Offenders sentenced to post release supervision after July 1, 2000 will be supervised and reviewed in the same manner as a parole case.

**Post Release Unit** - A section within the Virginia Parole Board that processes parole and post release supervision violations and discharges

**Preliminary Parole Violation Hearing** - A due process hearing conducted by a Department of Corrections hearing officer to determine probable cause of violation of one or more of the conditions of parole

**Probation** - A judicial action in lieu of incarceration that allows an offender to be supervised in the community subject to Court-imposed conditions

**Probation Officer's Arrest Authority (PB 15)** - A document issued by a P&P Officer for the arrest and detention of a delinquent parolee, and in some cases, a delinquent probationer

**Revocation Hearing** - The offender appearance before the Court on a charge of violation of conditions of probation/post release supervision, or before the Parole Board on the charge of violation of parole

**Sanction** - A response to violation prior to or in lieu of revocation

**Show Cause** - An order from a Court to an offender indicating he is charged with violating an order of the Court, and requiring him to appear in Court to show cause why action should not be taken against him

**Violation** - An action or inaction by an offender which is contrary to the conditions of supervision; a violation is considered technical when it does not involve the commission of a new offense.

**Warrant** - A Capias or Bench Warrant is used for a probation case and a Board Warrant is used for parole and post release supervision cases

#### IV. PROCEDURE

##### A. General - Violation of Supervision Conditions

1. Community Corrections in Virginia is charged with the responsibility of affording an array of supervision services to the offender in the community while monitoring the offender's compliance with the conditions of supervision. An offender who does not comply with the conditions is in violation of the sentencing/paroling authorities' requirements and subject to sanctions.
2. All alleged violations of the supervision conditions are investigated and the results are documented in the offender's *Case Notes*. Substantiated violations are reviewed by the supervisor. (4-APPFS-2B-02)
3. All actions taken regarding a violation of probation, parole, a conditional pardon, and/or post release supervision will be documented in VACORIS.
4. Community Corrections personnel will respond to all violations of probation or parole in a manner which takes into account the severity of the violation, risk to public safety, and Court or Parole Board expectations. This will include implementing a continuum of sanctions when applicable or the appropriate violation procedures. (4-APPFS-2B-03, 4-APPFS-2E-01)
  - a. Low Level of Intervention - Verbal and written reprimands, substance abuse screens, imposition of special conditions, increased offender contacts, etc.
  - b. Moderate Level of Intervention - Impositions of curfew, community service work, treatment assessment, placement in program groups, such as cognitive restructuring or relapse prevention, outpatient treatment, etc.
  - c. High Level of Intervention - Placement into a residential treatment program, intensive supervision, electronic monitoring, request to the Court for a Show Cause Hearing for violation of probation
  - d. Severe Level of Intervention - Issuance of a PB 15, request for a Court Capias/Bench Warrant or Board Warrant, placement in a Detention Center or Diversion Center.
5. Throughout this operating procedure, offenders sentenced to post release supervision prior to July 1, 2000 will be supervised and reviewed in the same manner as a probation case. Offenders sentenced to post release supervision after July 1, 2000 will be supervised and reviewed in the same manner as a parole case.

6. Violations of the supervision conditions by a sexually violent predator on Conditional Release Supervision should be managed in accordance with Operating Procedure 735.3, *Supervision of Sex Offenders in Community Corrections*.
7. The physical arrest of offenders should be undertaken by authorized officers who have the specialized training and proper restraints, equipment, and vehicles needed to secure and transport arrestees.
8. Law enforcement officers should be provided with properly completed arrest warrants, all pertinent information about the offender, their location, and potential for resistance when summoned to make an arrest.

#### B. Arrest Authority and Warrants

1. Warrants for the arrest and detention of offenders are only requested upon adequate evidence of: (4-APPFS-2B-04)
  - a. Serious and/or repetitive violation of the conditions; or
  - b. Commission of a new offense, or
  - c. Risk to public safety posed by the offender's continued presence in the community
2. Preparation and Use of Probation Officer's Arrest Authority (PB 15)
  - a. The PB 15 shall be used only for the arrest of those probationers, parolees, conditional pardonees, and post release supervision cases who, in the judgment of authorized Community Corrections personnel, have violated one or more of their lawful supervision requirements. It must be used with discretion. While personnel should act judiciously in exercising the statutory power of arrest, they should not hesitate to act whenever the safety of the individual or the community is imperiled.
  - b. When a P&P Officer believes that a PB 15 is appropriate, they shall promptly consult with a supervisor or the originating P&P Office if the case has been transferred in VACORIS and recommend that the PB 15 be issued.
    - i. If the supervisor concurs, a PB 15 should be prepared in VACORIS and the supervisor's approval documented in the *Case Notes*.
    - ii. The original, signed document is for the jailor and one copy is to be served on the offender.
    - iii. After the PB 15 has been issued, arrangements shall be made for the offender's arrest and detention per local P&P Office practice.
    - iv. The functions of arrest should be delegated to properly trained and equipped law enforcement personnel.
  - c. The supervisor is responsible for controlling the issuance, execution, and retrieval of the PB 15.
  - d. Some Courts prefer that a *Writ of Capias* or *Bench Warrant* be issued for a probation case instead of a PB 15. The sentencing Court's preference should be a part of any P&P Office practice and the P&P Officer should make certain that they strictly adhere to P&P Office practice when issuing the PB 15.
  - e. In probation cases, once an offender has been arrested on a PB 15, the supervising P&P Officer should:
    - i. Submit a Major Violation Report to the supervising Court within 24 hours but no later than 3 days to ensure the PB-15 is replaced with a *Writ of Capias* or *Bench Warrant* in a timely manner.
    - ii. Update the supervising Court if the PB-15 has not been replaced 10 days before the requirement for a hearing.
  - f. In some instances, when an offender is incarcerated, the P&P Officer may be required to personally serve or execute a PB 15 as a detainer. When this occurs, the P&P Officer should complete the *Arresting Officer's Return* section on the back of the warrant.
  - g. In Virginia parole/pardon cases, the PB 15 can affect the minimum expiration date of supervision.

An offender can be held on a PB 15 after his minimum expiration date until a Board Warrant has been issued in the case.

- h. Whenever a PB 15 is withdrawn, the jailor should fill out and sign the *Certificate of Jailor* section on the warrant. After being withdrawn, the PB 15 shall be maintained in the offender's case file.
3. Court issued Warrants
    - a. When an offender is believed to have violated Court ordered Conditions of Supervision, the sentencing Court may issue a *Writ of Capias (Capias)* or *Bench Warrant*
    - b. When a *Bench Warrant* or *Capias* has been issued, the P&P Officer shall withdraw any *Probation Officer's Arrest Authority* (PB 15).
    - c. The sentencing Court may also issue a *Show Cause* Order, which generally does not require that the offender be incarcerated pending the *Show Cause* hearing.
  4. Parole Board Warrants
    - a. *Board Warrants* are authorized by the Virginia Parole Board (COV §53.1-161) in response to *Major Violation Reports*.
    - b. Field personnel shall never make a photocopy of a *Board Warrant* unless directed by the Post Release Unit.
    - c. When a *Board Warrant* is issued, it automatically suspends the minimum expiration date of supervision and places the offender in a status equivalent to that of an escaped prisoner (COV §53.1-163).
    - d. Once a *Board Warrant* is executed, the offender is not entitled to release on bail. The Parole Board, upon the request of the offender or his attorney, may authorize the temporary removal of the *Board Warrant* in those cases where there is a new criminal charge pending (COV §53.1-161).
    - e. In some instances, when an offender is incarcerated, the P&P Officer may be required to personally serve or execute a *Board Warrant* as a detainer. When this occurs, the P&P Officer should complete the *Arresting Officer's Return* section on the back of the *Warrant*.
    - f. Whenever a *Board Warrant* is withdrawn, the jailor should fill out and sign the *Certificate of Jailor* section on the *Warrant*. After being withdrawn, the *Board Warrant* should be returned to the Post Release Unit.
    - g. Allowable Jail Credit (Parole and Pardon Cases)
      - i. The [Allowable Jail Credit](#) 920\_F6 is used by the P&P Officer to report information pertaining to any periods of time the parolee/pardonee was held on a PB 15 or *Board Warrant* during the entire period of supervision.
      - ii. The *Arresting Officer's Return* section on the reverse side of the PB 15 or *Board Warrant* will indicate when a warrant was executed.
      - iii. The first option on the *Allowable Jail Credit* should be checked if the parolee was never held on a PB 15 or *Board Warrant*.
      - iv. The second option on the *Allowable Jail Credit* deals with the current period of incarceration.
        - (a) The beginning date is the date the PB 15, *Board Warrant*, or Teletype message representing either of these warrants was executed.
        - (b) The ending date is determined after final action occurs to restore the offender to active parole supervision, discharge the offender from parole/pardon supervision, or revoke the offender's parole/pardon and have him serve his sentence.
      - v. The third option on the *Allowable Jail Credit* should reflect the dates a PB 15 or *Board Warrant* was executed, and later withdrawn or canceled when the case was continued under supervision.

### C. Sanctions

1. Appropriate graduated sanctions should be imposed based on severity of the violation, the degree of

- risk, and the preference of the Court/Parole Board (see *Graduated Sanctions*, Attachment 1). Appropriate sanctions should be exhausted before violation action is initiated.
2. Unless otherwise directed by the sentencing/paroling authority, sanctions shall be considered in all cases, including Interstate cases, in violation status prior to or in lieu of revocation and incarceration. (4-APPFS-2B-11) The administration of sanctions ranges from intervention by the P&P Officer to intervention by the sentencing/paroling authority. Sanctions to be utilized could include, but are not restricted to the following:
    - a. Informal (verbal) reprimand by the P&P Officer
    - b. Increased contact requirements
    - c. Specific instructions regarding identified areas of need (i.e., no alcohol consumption, report job search efforts, etc.)
    - d. Initiate/increase substance testing
    - e. Formal (verbal or written) reprimand
    - f. Required evaluation for specific problems
    - g. Required participation in outpatient treatment program
    - h. Restricted travel/driving privileges (i.e., employment, school, treatment, training only)
    - i. Referral to intensive supervision program
    - j. Curfew requirements
    - k. Home Electronic Monitoring
    - l. Referral to Diversion Center
    - m. Referral to Adult Residential Center
    - n. Referral to residential substance abuse or mental health treatment program
    - o. Referral to Detention Center
  3. Sanction process in probation cases should be managed in accordance with local P&P Office practice as guided by the Courts.
  4. Sanction Process in Parole, Pardon, and Interstate Cases
    - a. Sanctions for violations prior to warrant being issued should be imposed by the P&P Officer subject to a supervisor's approval if needed.
    - b. Withdrawal of warrant prior to the warrant being executed with sanctions:
      - i. If a PB 15 has been issued but not executed, with a supervisor's approval, sanctions may be imposed and the PB 15 withdrawn.
      - ii. If a Board Warrant has been issued but not executed, with a supervisor's approval, the P&P Officer may contact the Post Release Unit to recommend that sanctions be imposed and the warrant withdrawn. The Parole Board then decides if the warrant should be withdrawn. After the P&P Officer receives notice that the Board Warrant has been withdrawn, the P&P Officer should return all copies of the warrant to the Post Release Unit. The P&P Officer should also e-mail the Post Release Unit to alert them that the warrants are being returned.
      - iii. For Out-of-State Interstate cases, sanctions can be imposed prior to the issuance of a warrant by the sending state or upon notice from the sending state that they are withdrawing their warrant to continue the offender on supervision
    - c. Withdrawal of warrant by Hearing Officer with sanctions (see *Conducting the Preliminary Hearing* Section of this operating procedure).
      - i. At the time of a Preliminary Hearing, after determining probable cause to believe that an offender is in violation of a condition of supervision, the Hearing Officer may direct that the warrant be withdrawn and the offender restored to active supervision with sanctions. NOTE: This provision does not apply to Out-of-State Interstate cases when the preliminary/probable cause hearing is conducted at the request of the sending state after they issued a warrant. In



this situation, the Hearing Officer can suggest the warrant be withdrawn and the offender restored to active supervision with sanctions but the decision to do so rests with the sending state who issued the warrant

- ii. In some instances, the case may be taken under advisement by the Hearing Officer to allow the P&P Officer an opportunity to develop a sanction in lieu of additional incarceration. When a sanction has been developed, the Hearing Officer may direct that the warrant be withdrawn and the offender restored to active supervision with sanctions.
- d. After a Preliminary or Final Parole/Post Release Supervision Violation Hearing, the Parole Board may continue community supervision with sanctions (Special Conditions).

#### D. Violation Guidelines in Virginia Probation Cases

1. Violations of probation will be documented in the offender's case file and processed per P&P Office practice. Actions involving any new law violation must be approved by a supervisor and documented in the *Case Notes*. (4-APPFS-2B-02)
2. When a revocation hearing is recommended, the P&P Office shall submit to the sentencing Court
  - a. *Major Violation Report* (see sample, Attachment 2)
    - i. Describe adjustment to supervision
    - ii. List each Condition violated and the violation details
    - iii. Supervisor's review and approval shall be documented in VACORIS
  - b. Sentencing Revocation Report
  - c. Updated Probation Violation Guidelines
3. In probation cases, once an offender has been arrested on a PB 15, the PB 15 should be replaced with a *Bench Warrant* or *Capias* as soon as possible.
  - a. Submit a *Major Violation Report* to the supervising Court within 24 hours but no later than 3 days to ensure the PB-15 is replaced with a *Writ of Capias* or *Bench Warrant* in a timely manner.
  - b. Update the supervising Court if the PB-15 has not been replaced 10 days before the requirement for a hearing.
  - c. When the PB 15 is withdrawn, the jailor should fill out and sign the *Certificate of Jailor* section on the warrant and the PB-15 is to be placed in the offender's case file.
  - d. For offenders where the Court does not act within 14 days of the arrest or lodging the PB-15 as a detainer, a Hearing Officer shall hold a probable cause hearing as for a parole violation. (See *Preliminary Parole Violation Hearing*, below) (4-APPFS-2B-05)
4. Violation Procedure for Virginia Probation Case Transferred to another P&P Office
  - a. At the time of transfer, the originating unit should have notified the receiving unit of any out of the ordinary requirements of the sentencing authority.
  - b. Criminal arrests, serious traffic charges, significant non-compliance, and absconding from supervision shall be reported to the originating unit by the most expedient means available.
    - i. In response, the originating unit shall provide specific case handling instructions, including issuance of Probation Officer's Arrest Authority.
    - ii. When a revocation hearing is recommended, the supervising unit shall follow-up promptly by preparing a *Major Violation Report* in VACORIS with status of "submitted"
    - iii. The supervising P&P Office will prepare and submit the initial *Sentencing Revocation Report*, *Probation Violation Guidelines* and subsequent revisions or addendums as needed according to District procedure within 30 calendar days prior to the hearing. If the case has been transferred back to the originating P&P Office, the originating P&P Office will prepare and submit revisions or addendums as needed according to District procedure 30 days prior to the hearing.
    - iv. The Supervising P&P Office should enter a "Major Violation" investigation in VACORIS.
  - c. When in violation status, action in a case should be based on agreement of both units.

- i. Offenders will remain in the supervising P&P Office pending a Show Cause hearing
- ii. When a warrant is issued, the supervising P&P Office should transfer the case back to the originating P&P Office if the warrant has not been executed after 90 days.
- iii. If the case is transferred back to the originating P&P Office, they will prepare and submit revisions to the Addendums, Sentencing Revocation Report, and Probation Violation Guidelines as required.

E. Violation Procedures in Parole and Conditional Pardon Cases

1. Violations are either new law violations or technical violations. With the exception of new felony convictions, all other violations may be dealt with as minor violations provided the offender:
  - a. Has not absconded
  - b. Has not been incarcerated on a PB 15 or *Board Warrant*
  - c. Has not been required to serve an active sentence of 60 days or more in jail
2. Misdemeanor convictions involving driving a motor vehicle, etc., while intoxicated, and public drunkenness, may be dealt with as either violations of the law or as technical violations.
3. When submitting a *Major Violation Report* to the Post Release Unit regarding a violation in a pardon case, the *Report* should contain the words "CONDITIONAL PARDON CASE" in the *Plan of Supervision* section.

F. New Law Violations in Parole and Conditional Pardon Cases

1. When an offender is charged with a new law violation, the P&P Officer shall determine the circumstances of the alleged violation and document the information in the offender's case file. The supervisor will review the violation and ensure that the P&P Officer notifies the Post Release Unit promptly in writing if an offender is arrested for a new felony and/or if a PB 15 has been executed against him. (4-APPFS-2B-02)
2. If the new alleged offense is deemed sensational or likely to attract media attention, immediate telephone notification should be provided to the DOC Operations and Logistics Unit Operations Center (see Operating Procedure 038.5, *Operations and Logistics Unit*) and the P&P Officer should notify the Post Release Unit by noon of the next working day. An *Incident Report* shall be completed and submitted in accordance with Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*.
3. A PB 15, or a *Major Violation Report* may not be submitted prior to a Court's finding of guilty, Grand Jury indictment, or certification to a Court of Record unless the offender is in custody because the offender's presence in the community would present an unreasonable risk to public safety or individual safety. Technical violations will be pursued according to the *Technical Violations in Parole, Pardon, and Out-Of-State Interstate Case* Section of this operating procedure and the Preliminary Parole Violation Hearing must have been conducted prior to submission of the *Major Violation Report*.
4. Minor Law Violations
  - a. When an offender is convicted of a misdemeanor law violation (including traffic citations) and a PB 15 or *Board Warrant* has not been executed, a P&P Officer may recommend to a supervisor that the conviction be considered as a Minor Law Violation.
    - i. A case conference with a supervisor, documented in the *Case Notes*, may be adequate.
    - ii. The supervisor may direct the P&P Officer to complete a written summary, providing documentation of the offense and a recommendation.
    - iii. If approval is granted to treat the infraction as a Minor Law Violation, the supervisor will document review and approval in the *Case Notes*.
  - b. If the infraction is to be treated as a Minor Law Violation, a supervisor has the authority to institute intermediate sanction(s) in response to the violation.
    - i. If a sanction(s) is imposed, the offender should be provided a copy of the requirement(s) in

writing.

- ii. If the offender fails to comply with the sanction(s), he could be charged with failing to follow the P&P Officer's instructions.

#### 5. Major Law Violations

- a. If the offender has been convicted of a violation of the law, the violation may be treated as a Major Law Violation.
  - i. When revocation is to be recommended, if a *Board Warrant* has not been issued or received, with a supervisor's approval, the P&P Officer should issue a PB 15.
  - ii. The warrant should be filed as a detainer against the offender or executed on the offender as soon as possible.
  - iii. A *Board Warrant* should be requested to replace the PB 15.
- b. When a PB 15 or *Board Warrant* has been executed, if the offender is also being charged with a technical violation, a Preliminary Parole Violation Hearing must be conducted unless the offender waives the hearing per this operating procedure. When a new criminal charge is the only alleged violation, a Preliminary Parole Violation Hearing is not necessary.
- c. Within 3 work days after the P&P Office receives notification that a PB 15, *Board Warrant*, or Teletype has been executed, the P&P Officer shall verify that the person being detained is in fact the person to be charged with the violation(s). When a Preliminary Parole Violation Hearing is not required, the P&P Officer shall interview the offender and advise him why the PB 15 or Board Warrant was issued.
- d. A *Major Violation Report*, documenting violation of Condition 1 and if the offender has absconded violation of Conditions 10 and/or 11, is to be submitted to report a law violation and to request a Board Warrant. The *Report* is to be reviewed by a supervisor and submitted no later than 10 workdays after disposition of the charge(s). If a *Major Violation Report* has been previously submitted, notification of final disposition of the law violation shall be provided to the Post Release Unit within 2 workdays.
- e. Under normal circumstances, a certified copy of any criminal conviction is not necessary in parole cases.
- f. If a criminal charge is the only alleged violation and is dismissed in Court, when a PB 15 has been issued or executed, the PB 15 should be immediately withdrawn. If a Board Warrant has been issued, the Post Release Unit should be consulted for guidance from the Parole Board. When a PB 15 or Board Warrant is withdrawn, notice is to be submitted to the Post Release Unit with the Board Warrant attached, when applicable.
- g. When a PB 15 or Board Warrant has been executed, once the offender has been convicted of a law violation, the warrant cannot be withdrawn without the authority of the Parole Board or sending state. If circumstances should change after the warrant is executed, a report noting these changes and the P&P Officer's recommendation shall be submitted promptly to the Post Release Unit or to the sending state via ICOTS.
- h. Whenever a PB 15 or Board Warrant is withdrawn, the jailor is to fill out and sign the *Certificate of Jailor* section on the warrant. After being withdrawn, the PB 15 shall be maintained in the P&P Office file while the Board Warrant should be returned to the Post Release Unit and an email should be sent to the Post Release Unit to indicate the warrant is being returned.

#### G. Technical Violations in Parole, Pardon, and Out-Of-State Interstate Cases

1. When an offender has committed a technical violation and the alleged violation has not already been dealt with, the case shall be reviewed to determine if intermediate sanctions may be imposed. When sanctions at the P&P Office level are not appropriate, the P&P Officer shall:
  - a. Obtain a supervisor's approval to issue a PB 15 and document in the *Case Notes*.
  - b. Provide the PB 15 to appropriate law enforcement personnel to institute the offender's arrest per P&P Office practice.



- c. If a thorough investigation reveals an offender has absconded, submit a *Major Violation Report*, or *Interstate Offender Violation Report if applicable* documenting violation of Conditions 10 and/or 11, in VACORIS or ICOTS requesting that a Board Warrant be issued. The *Major Violation Report* should document all attempts to locate the offender and appointments missed.
  - d. After the offender is apprehended on the PB 15, warrant, or Teletype; schedule a Preliminary Parole Violation Hearing at the location where the offender has been taken into custody per P&P Office practice. (4-APPFS-2B-06). Out-of-State Interstate cases require a Probable Cause/Preliminary Hearing only when requested by the sending state or if detained on a PB15.
    - i. The Preliminary Hearing must be scheduled within 14 calendar days of the offender's detention on a PB-15, Board Warrant, or Teletype. (4-APPFS-2B-05)
    - ii. When a parolee or post release supervision case is detained on a PB 15, if there are no criminal charges in the case and public safety is not deemed to be in jeopardy, they may be considered for a voluntary release opportunity with instructions.
      - (a) The supervising P&P Officer will discuss the case with a supervisor and document the discussion, including the supervisor's approval/disapproval, in the offender's *Case Notes*.
      - (b) If approved, the officer must prepare a [Voluntary Opportunity for Release Agreement 920\\_F7](#), noting all alleged violations and supervision instructions.
      - (c) The officer will have the *Agreement* approved by a supervisor and serve the *Agreement* on the offender within ten calendar days of the offender's detention on the PB 15.
      - (d) If the offender accepts the release opportunity, they will be immediately released and the Preliminary Hearing will be cancelled.
      - (e) If the offender rejects the release opportunity, a *Notice of Preliminary Parole Violation Hearing* will be served.
      - (f) . Voluntary Opportunity for Release does not apply to Out-of-State Interstate cases since they not under the Virginia Parole Board jurisdiction.
    - iii. At least 3 calendar days must pass between the serving of the *Notice of Preliminary Parole Violation Hearing* and the hearing.
  - e. Complete a Notice of Preliminary Parole Violation Hearing, making sure that all violations listed on the Major Violation Report and/or Board Warrant are documented on the Notice. In pardon cases, the Notice of Preliminary Pardon Violation Hearing should be used.
  - f. The *Notice* must be reviewed and approved by a supervisor.
    - i. The possibility of imposing sanctions should be discussed with a supervisor to determine the suitability for continued supervision with sanctions.
    - ii. If appropriate, list the sanction(s) in written form for presentation to the Hearing Officer and the offender's signature.
2. If an offender is arrested on a PB 15 or *Board Warrant* in another P&P District in Virginia, the supervising P&P Office shall prepare the *Notice*. The *Notice* will be forwarded to the P&P Office where the offender is in custody along with the following documentation when available:
    - a. Copy of the offender's signed *Conditions*
    - b. Copy of any *Major Violation Report* that may have been prepared
    - c. Specific recommendation regarding sanctions
  3. The P&P Office where the offender is in custody will serve the *Notice* on the offender after a hearing date has been established.
  4. Serving the *Notice of Preliminary Parole Violation Hearing*
    - a. The Preliminary Hearing must be scheduled within 14 calendar days of the offender's detention on a PB 15, *Board Warrant*, or Teletype. At least 3 calendar days must pass between serving the *Notice of Preliminary Parole Violation Hearing* and the hearing. (4-APPFS-2B-08)
    - b. A copy of the *Notice* must be provided to the offender to include the time and place of the hearing, and the offender's right to: (4-APPFS-2B-08)
      - i. Disclosure of evidence

- ii. Present evidence and favorable witnesses
  - iii. Confront adverse witnesses
  - iv. Effective assistance of counsel, appointed if indigent
  - v. Request postponement of the hearing
- c. When the offender requests a witness, the person serving the *Notice* will question the reason for the witness.
- i. If the witness' testimony is deemed irrelevant to the alleged violation(s), the Hearing Officer may deny the request.
  - ii. The offender will be told that he will be given the opportunity to make another request for a witness at the Preliminary Hearing.
  - iii. If the witness is relevant to the hearing, the P&P Officer should make every effort to notify the witness of the hearing and have them present.
  - iv. If the witness cannot be present, the P&P Officer should attempt to obtain specific information from the witness to present at the hearing.
- d. The offender has the absolute right to have an attorney retained by him at the Preliminary Hearing.
- i. If the offender indicates that he will be represented by a retained attorney, the P&P Officer should attempt to contact the attorney to notify him of the status of the case and answer any relevant questions regarding the alleged violation(s).
  - ii. The offender may have a right to have an attorney appointed for him, at no expense to him, upon the determination of the Hearing Officer.
  - iii. The Hearing Officer will determine, on a case-by-case basis, whether due process requires the indigent offender be represented by counsel (COV §53.1-165).
- e. If the offender refuses to meet with the person serving the *Notice* or refuses to sign the *Notice*, the P&P Officer should document it on the *Notice*. If possible, the P&P Officer should have someone at the jail sign the form as a witness.
5. Waiver of Preliminary Hearing
- a. Parolees, pardonees, and out of state Interstate cases charged with technical violations may waive their Preliminary Hearing if they are fully informed of their due process rights and agree to the waiver without duress or inducement under the following conditions: (4-APPFS-2B-07)
    - i. Have certified felony charge(s) or have been indicted by a Grand Jury
    - OR
    - ii. Have reached or passed the minimum expiration date of supervision
  - b. If an offender agrees to waive the hearing, the P&P Officer must make certain that Section A of the *Notice* is completed and signed by the offender.
    - i. The hearing is to be canceled.
    - ii. If not previously submitted, a *Major Violation Report* is to be completed and submitted to the Post Release Unit within 5 workdays.
    - iii. Both documents should clearly state that the "Preliminary Hearing was waived and a Violation Hearing should be scheduled".
    - iv. When a *Major Violation Report* has been submitted, the P&P Officer is to submit a copy of the *Notice* with the offender's signature of the waiver to the Post Release Unit within 5 work days.
6. Conducting the Preliminary Hearing
- a. The hearing must be held within 14 calendar days of the offender's detention on a PB 15, Board Warrant, or Teletype. At least 3 calendar days must pass between the serving of the *Notice* and the hearing. The Hearing Officer for just cause may grant deviations from the time frame or continuances. (4-APPFS-2B-07)
  - b. A designated Hearing Officer who has not been involved with the case will conduct the

Preliminary Hearing. (4-APPFS-2B-09)

- i. It is the responsibility of the Hearing Officer to determine whether probable cause exists to believe the offender has committed the alleged violation(s) and should remain detained for a final review of the case by the paroling/sentencing authority.
  - ii. Any finding by the Hearing Officer should be based solely upon the information obtained through evidence and sworn testimony at the hearing.
  - iii. The Hearing Officer shall not have access to the offender's case file material prior to the hearing.
- c. When the offender is being detained in a facility located outside the originating P&P District's area, the P&P Officer from the P&P Office where the offender is in custody may present the evidence at the hearing. The P&P Officer from the originating P&P Office may be present due to the proximity of the offender's location to the originating P&P Office. Following the hearing, the originating P&P Office and the Post Release Unit will be notified of the results.
- d. If the offender refuses to participate in the hearing, it will be conducted in their absence.
- e. A copy of the *Notice* will be provided to the Hearing Officer at the time of the hearing.
- i. The Hearing Officer will review a copy of the offender's Conditions of Supervision along with any pertinent Special Condition(s) or Intermediate Sanction(s) which may have been imposed.
  - ii. The Hearing Officer will request specific information as to whether the offender is being held on a PB 15, *Board Warrant*, or Teletype.
  - iii. The P&P Officer should be prepared to provide information regarding when the warrant was executed and when the P&P Office became aware that the warrant had been executed.
- f. The Hearing Officer shall inform the offender of his right to have retained or appointed counsel.
- i. The decision to appoint an attorney will be made on a case-by-case basis.
  - ii. The offender is entitled to have an attorney appointed if he is indigent, if he denies the allegations, and if a defense will be difficult for him to develop or present.
  - iii. If the Hearing Officer determines that an appointed attorney is not necessary, he will note the reason for the denial in specific detail.
  - iv. If the request for counsel is granted, the hearing will be continued.
- g. If the Hearing Officer determines it is necessary to appoint an attorney, he will ask the Commonwealth's Attorney in the jurisdiction where the hearing will be held to request the Circuit Court to appoint an attorney. (COV §53.1-165). Any attorney that is appointed is to be paid as directed by the Court.
- h. Under COV §53.1-165, the Hearing Officer may:
- i. Issue subpoenas requiring the attendance of witnesses and the production of records and other papers (see [Subpoena for Witness](#) 920\_F10)
  - ii. Administer oaths
- i. The Hearing Officer shall swear all witnesses, including the offender. Within reason, continuances may be granted.
- j. The offender shall be given the opportunity to appear and may speak in his own behalf.
- i. He may bring letters, documents, or individuals who can provide relevant information to the Hearing Officer.
  - ii. He can have adverse witnesses present for questioning. If the Hearing Officer determines that any adverse witness would be subject to risk or harm if their identity were disclosed, the witness need not be subjected to face-to-face questioning. In those instances, the Hearing Officer will hear the witness in private and notify the offender of the substance of the testimony consistent with security.
- k. The Hearing Officer may only determine whether or not there is probable cause to believe that the offender has violated one or more of the technical requirements of supervision. Violations of the law will be determined by District Court certification, indictment by a Grand Jury, or conviction

- by a Court of competent jurisdiction.
- i. The Hearing Officer shall address each alleged violation separately.
  - ii. When two or more of the violations are closely related, they may be merged.
- l. After hearing the evidence, the Hearing Officer will make a declaration as to whether or not probable cause was found regarding each alleged violation.
    - i. If the Hearing Officer were to find no probable cause regarding the alleged technical violation(s) and there is no probable cause regarding a new law violation, the Hearing Officer will direct that the warrant be withdrawn.
    - ii. A Board Warrant is to be returned to the Post Release Unit while a PB 15 is to be marked "Retrieved" and retained in the offender's case file.
  - m. If probable cause is determined regarding any alleged violation, the Hearing Officer shall determine if the offender can be safely restored to supervision with the imposition of a sanction.
    - i. A case should only be referred to the paroling/sentencing authority when there are no appropriate sanctions available or the clear interest of the public requires incarceration. (4-APPFS-2B-03)
    - ii. The P&P Officer should be prepared to discuss the case and to provide a recommendation as to whether the offender should be restored to supervision or referred to the paroling/sentencing authority.
    - iii. When applicable, the P&P Officer may offer a recommendation regarding possible sanctions.
  - n. If the Hearing Officer determines that a sanction is appropriate, the sanction should be discussed with the offender.
    - i. If the offender agrees to comply with the sanction, final arrangements will be made for his release.
    - ii. If the sanction can be invoked immediately, the Hearing Officer shall direct the P&P Officer to withdraw the warrant.
    - iii. The Board Warrant is returned to the Post Release Unit, while the PB-15 is to be marked "Retrieved" and retained in the offender's case file.
    - iv. The offender shall sign a written statement acknowledging receipt of the sanction.
  - o. If a sanction is deemed appropriate by the Hearing Officer but has not been fully developed or cannot be invoked immediately, the Hearing Officer shall take the case under advisement to allow the P&P Officer an opportunity to investigate/develop a sanction.
  - p. Cases should not remain under advisement for more than 60 days.
    - i. While a case is under advisement, at any time, the Hearing Officer may accept or impose a sanction(s) and direct that the offender be restored to active supervision.
    - ii. The P&P Officer shall submit a status report to the Hearing Officer and Post Release Unit after 30 days.
    - iii. When a sanction has not been imposed, a final report must be submitted within 60 days. At that time, the Hearing Officer will issue a disposition.
  - q. After the hearing, the Hearing Officer will complete the *Results of Preliminary Parole Violation Hearing* in VACORIS including a complete digest of the evidence presented at the hearing, statements made by the alleged violator, findings of the Hearing Officer, and information regarding the sanction imposed/attempted. (4-APPFS-2B-10)
    - i. The findings will be specific, based upon the evidence, and will not include editorial statements about the decision; the P&P Officer's handling of the case, or the personal opinions of the Hearing Officer.
    - ii. In pardon cases, the Results of Preliminary Pardon Violation Hearing will be used.
  - r. The *Results* shall be submitted to the Post Release Unit within 5 workdays after the hearing. A signed and dated paper copy of the *Results* will be provided to the P&P Officer handling the case in time for distribution to the offender within 21 days of the hearing. *Results* for Interstate Compact cases being supervised in Virginia must be provided to the P&P Officer handling the

case in time for submission in *ICOTS* as an attachment to an Addendum to the Existing *Violation Report* within 10 business days of the hearing.

- s. In Virginia parole cases, if no sanction can be invoked, the Hearing Officer shall refer the case to the Parole Board. At that time, if a *Major Violation Report* has not already been submitted, the report, and a *Notice of Preliminary Parole Violation Hearing* are attached to the *Parole Casework Review and Recommendation* and submitted to the Post Release Unit within 5 work days.
- t. In a Parole or Conditional Pardon case, if circumstances change after the case has been referred to the paroling/ sentencing authority, the P&P Office may submit a written recommendation that the offender be restored to active supervision in the community. The changes that have occurred in the case and the reasons for making the recommendation should be included in the report.

#### H. Waiver of Final Parole Violation Hearing

1. When a Virginia Parolee has been convicted of felony law violation while on parole and has been sentenced to one year or more or a combination of misdemeanor convictions equaling twelve months or more, he has a right to waive the Final Revocation Hearing. Such a violation constitutes sufficient evidence and reason to revoke parole, even if other charges are pending.
2. After learning that a parolee has been convicted and sentenced as outlined above, P&P Office personnel, representative of the Virginia Parole Board or Chief Jailer may offer the offender the opportunity to sign the [Waiver of Final Parole Violation Hearing](#) 920\_F18. Parolees may also initiate the waiver process verbally or in writing.
3. The person executing the *Waiver* shall ensure that:
  - a. The parolee's rights have been explained.
  - b. The information about the offense and sentence is documented fully and clearly on the *Waiver*.
  - c. The parolee understands what he is pleading guilty to and that the waiver is signed based on informed consent.
4. No person shall pressure or coerce any parolee to sign a [Waiver of Final Parole Violation Hearing](#) 920\_F18.
5. When the *Waiver* has been completed, a copy shall be provided to the parolee. The original document shall be forwarded to the Post Release Unit.

#### I. Serving the *Notice of Parole Violation Hearing*

1. The Post Release Unit is responsible for preparing the *Notice of Parole Violation Hearing* and the *Statement of Alleged Parole Violations*.
2. When the forms arrive at a P&P Office, assigned personnel are to make an additional copy of the forms and review them with the offender as soon as possible (within 5 business days), completing the information where appropriate. Copies of the forms are to be presented to the offender.
3. If the offender refuses to sign the *Notice*, that fact shall be stated and witnessed on the form. The completed *Notice* is to be returned promptly to the Post Release Unit attached to an email or by FAX (804-674-3523).

#### J. Voluntary Return without Violations - If a Virginia parolee or pardon case asks to return to a correctional facility to serve the remainder of the sentence, the P&P Officer will:

1. Prepare and execute a [Request to be Removed from Parole for Re-imprisonment](#) 920\_F9 having the offender sign the form in the presence of a witness.)
2. Prepare a PB 15, eliminating the phrase "in my judgment violated one or more conditions under which he was released" and inserting "requested to be removed from parole and be imprisoned."
3. Provide a copy of the *Request to be Removed from Parole for Re-imprisonment* and PB 15 to the local jail upon the offender's commitment.



4. Promptly submit the original of the *Request to be Removed from Parole for Re-imprisonment* and a status report noting the offender's location to the Post Release Unit.

K. Absconders from Supervision (4-APPFS-3B-10)

1. When a reasonable effort has been made to locate an offender and their whereabouts are unknown, they should be considered as an absconder from supervision.
  - a. Reasonable effort includes follow-up inquiry at the approved residence and employment, as well as, local jails and hospitals, and the questioning of family members and close friends.
  - b. The P&P Officer should quickly follow-up on any suspected absconder but reserve formal action pending results of the efforts to locate the offender and an assessment of the circumstances.
  - c. All efforts expended to locate any suspected absconder shall be documented in the offender's *Case Notes*.
  - d. The P&P Officer shall notify the Operations and Logistics Unit (see Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*) and the Extradition and Fugitive Unit (see Operating Procedure 435.4, *Extradition and Fugitive Services Unit*) immediately upon the issuance of a PB-15, Board Warrant, or Court Warrant for any absconder who has one or more:
    - i. Violent offenses including murder, voluntary manslaughter, kidnapping, mob related felonies, criminal sexual assault, arson, or conspiracy or attempts to commit any of the above.
    - ii. Sexual Offenses which require registration
    - iii. Other high profile cases
    - iv. Removes/disables GPS device or absconds from GPS supervision
2. At the discretion of the applicable Court or Parole Board, absconders who have committed no new crimes and who do not pose an undue public safety risk, may be continued under supervision in the community. (4-APPFS-2B-12)
3. Absconders in Probation Cases
  - a. After reasonable efforts have been made to locate the offender and the whereabouts are unknown, the sentencing Court should be notified per P&P Office practice with a warrant being recommended for their arrest.
    - i. Once a warrant has been approved by the Court, local law enforcement personnel are responsible for listing probation absconders with the National Criminal Information Center (NCIC) and/or the Virginia Criminal Information Network (VCIN).
    - ii. The warrant should be listed as *Full Extradition*
  - b. When information is received that an absconder has been apprehended, the P&P Officer should verify that the sentencing Court has been made aware of the arrest.
    - i. The extradition of probationers is processed by the sentencing jurisdiction's Commonwealth's Attorney's Office.
    - ii. If the offender cannot be extradited because the entry in NCIC/VCIN is listed as *Limited* or *No Extradition*, the Chief P&P Officer or designee should contact the local Commonwealth Attorney's office requesting that the extradition listing be reentered to include the state where the offender is currently located.
4. Absconders in Parole, Pardon, and Out-of-State Interstate Cases
  - a. After reasonable efforts have been made to locate the offender and the whereabouts are unknown, an *Arrest Authority* (PB 15) should be issued (see *Arrest Authority and Warrants* Section of this operating procedure). A *Major Violation Report* or *Interstate Offender Violation Report* if applicable minimally citing violation of conditions 10 and/or 11 shall be promptly submitted to the Post Release Unit or ICOTS if applicable requesting that a Board Warrant be issued.
  - b. If a PB 15 was issued, once notice is received that a Board Warrant or sending state warrant has been issued, the PB 15 is to be withdrawn and destroyed with a notation being made in *Case Notes*.



- c. When information is received and confirmed that the absconder has been apprehended, the Post Release Unit is to be notified immediately and arrangements made for a Preliminary Parole Violation Hearing (see *Technical Violations in Parole, Pardon, and Out-Of-State Cases* Section of this operating procedure).
5. The Extradition and Fugitive Unit will maintain a “Most Wanted Fugitive List.” This will include biographical data on the offender and the most recent photograph that can be obtained of the offender.
- a. Offenders shown as “Most Wanted” must meet one or more of the following criteria for placement on the “Most Wanted Fugitive List”:
    - Violent/Assaultive Offense(s)
    - Firearms and or other weapons related offenses
    - Robbery
    - Kidnapping and/or abduction
    - Sex Crimes/Sexual Predator
    - Sentence of ten or more years
    - Extensive Criminal History
    - Drug Distributors
    - Other factors if applicableThis may include offenders listed on local “Top Ten Fugitive Lists”. See below.
  - b. Per office practice, each P&P Office may create a “Top Ten Wanted Fugitive List” in VACORIS, which they may disseminate within their respective area of responsibility.
  - c. The creation and maintenance of any “Top Ten Most Wanted” list created in a P&P office is the sole responsibility of the Unit head or designee.
    - i. From the time that a P&P Officer has determined that arrest is an appropriate action for an offender the P&P Officer will gather all available file information that may shed light on the offender’s whereabouts. This includes material that may contain residence data, employment information, family members, etc. The P&P Officer should also strive to obtain a recent photograph of the offender.
    - ii. All absconders should be assigned to Level A per Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*.
    - iii. The P&P Officer will notify the Absconder Coordinator that the offender has absconded.

#### L. Failure to Report for Supervision

1. An offender may be considered in violation of the terms of his supervision if he fails to initially report for supervision as directed by the sentencing or paroling authority.
2. Failure to report for supervision in probation and post release supervision cases should be managed in accordance with local P&P Office and Court practice.
3. Failure to Report for Supervision in Parole and Pardon Cases
  - a. Normally, when an offender does not report as instructed on the conditions of his release he should be charged with a violation of Condition #4.
  - b. However, if the offender was released on conditions prepared before October, 1995, and never reported for supervision, Condition #4 would not be applicable. In that instance, when the offender is apprehended, he should be charged with “Technical, Failure to Follow Reporting Instructions”.

#### V. REFERENCES

Operating Procedure 036.2, *Extradition and Fugitive Services Unit*  
Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*  
Operating Procedure 038.5, *Operations and Logistics Unit*

Operating Procedure 735.3, *Supervision of Sex Offenders in Community Corrections*  
Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*  
*Virginia Parole Board Policy Manual*

VI. FORM CITATIONS

[Allowable Jail Credit](#) 920\_F6

[Voluntary Opportunity for Release Agreement](#) 920\_F7

[Request to be Removed from Parole for Re-imprisonment](#) 920\_F9

[Subpoena for Witness](#) 920\_F10

[Waiver of Final Parole Violation Hearing](#) 920\_F18

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

*The office of primary responsibility reviewed this operating procedure in March 2017 and necessary changes have been made.*

*Signature Copy on File*

*2/19/16*

A. David Robinson, Chief of Corrections Operations

Date