



**PROBATION AND PAROLE BUREAU
STANDARD OPERATING PROCEDURES**

Procedure No.: P&P 140-2	Subject: PRELIMINARY (ON-SITE) HEARINGS
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Signature: /s/ Ron Alsbury	Revision Date: 09/24/01; 06/17/02; 01/13/03; 03/01/05; 02/15/06; 10/27/06; 02/02/07; 08/20/07
	Effective Date: 06/01/00

I. BUREAU DIRECTIVE: Probation and Parole Bureau employees will follow established procedures for conducting preliminary (on-site) hearings for parole violators.

II. AUTHORITY:

- 46-23-218, M.C.A. Authority of Board to Adopt Rules*
- 46-23-1002(3), M.C.A. Powers of the Department*
- 46-23-1023, MCA Arrest of Alleged Parole Violator*
- 46-23-1024, M.C.A. Initial Hearing After Arrest*
- 46-23-1025, MCA. Report to and Action by Board*
- 46-23-1024, M.C.A. Initial Hearing After Arrest*
- 53-30-105 (3), M.C.A. (1993) Good Time Allowance*
- ARM 20.25.801 Revocation Hearings*
- Morrissey v. Brewer*

III. DEFINITIONS:

Preliminary “On-site” Hearing means a preliminary administrative hearing conducted by the Department of Corrections on a parolee at the site of the alleged parole violation or arrest.

Hearings Officer means a Regional Administrator or PO II designated to hold a hearing to determine probable cause and appropriate sanctions.

Parolee means an offender sentenced to a prison term and released by the Board of Pardons and Parole prior to prison discharge and supervised by a Probation and Parole Officer.

IV. PROCEDURES:

On-site hearings are conducted to determine if there is probable cause to believe that a parolee violated conditions of their parole. On-site hearings are also conducted on interstate offenders who have violated the conditions of their probation/ or parole. Montana Parolees will not be allowed to waive an on-site hearing. However, if the parole offender has been convicted of new felony charges during the period of supervision, an on-site hearing is not required as the conviction clearly establishes probable cause, provides minimal due process and the final revocation hearing may be confined to mitigation. The court judgment and conviction may be used as the revocation document. Additionally, if a parolee is arrested in another state where he had no permission to be, an on-site is not necessary as the presence in another jurisdiction without permission clearly establishes probable cause. If the offender has other violations that the P&P Officer believes needs to be addressed in addition to

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the new convicted charges, an on-site hearing should be conducted to address these violations. Otherwise, these other violations will not be documented or considered in the revocation of parole. Interstate Offenders will be allowed to waive an on-site hearing.

Intermediate Sanctions will be explored in every parole revocation case. Some cases will not warrant the use of any option other than imprisonment due to the nature of the violation, the repeated failure of the parolee to take advantage of opportunities afforded them or the fact that the BOPP placed a zero tolerance or "one drink" stipulation on the parole.

Many cases warrant the use of Intermediate Sanctions. For that reason, every technical violation, new misdemeanor conviction or unprosecuted felony charge must be considered for alternative sanctions in lieu of return to prison.

If, as a result of the on-site hearing process, "probable cause" has been found to substantiate that a parolee has violated the conditions of parole, alternatives to imprisonment must be considered, and when appropriate, recommended to the Board of Pardons and Parole. Any and all alternatives to imprisonment will be considered as "intermediate sanctions". If an intermediate sanction is to be utilized as a disposition for a violation of parole, the hearings officer must consider the safety of the victim and community, as well as the rehabilitative impact the sanction will have on the parolee.

The supervising parole officer is required to make a specific dispositional recommendation at the conclusion of the on-site hearing. The officer's rationale behind the recommendation is to be clearly articulated at the hearing. See *P&P 140-1 (J) Hearing Sanction Options* for a quick reference of what options exist for sanctions through an on-site hearing.

Intermediate Sanctions:

The following intermediate sanctions are to be considered for dispositions upon the Hearing Officer's findings that probable cause exists that a parolee has violated their parole conditions.

POSSIBLE INTERMEDIATE SANCTIONS:

1. Referral to a "relapse group".
2. Assignment of a different supervising officer.
3. Increased level of supervision.
4. CD Treatment - inpatient, outpatient or intensive outpatient.
5. Addition of special supervision conditions.
6. Community Service (30 hours max).
7. Establish a specified curfew (with or without electronic monitoring).
8. House Arrest (with monitoring).
9. 24-48 hour detention in a prerelease center (at parole violators own expense if possible)
10. Admission to intensive supervision program.
Intensive Supervision Programs may be considered as a sanction for parole revocation, in lieu of prison, where appropriate and available.
11. Jail time (30 days max/at parole violators own expense if possible). The hearings officer needs to make sure to be specific on sanction start and end dates on the *Summary of On-Site Hearing*. The hearings officer also needs to make sure that copies of all hearings documents are forwarded to the facility monitoring the jail sanction.

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12. Prerelease center placement.

Prerelease placement should be considered in every appropriate parole revocation case. Some cases will not warrant further community placement, but for those cases where incarceration is not necessary, prerelease placement may be considered an effective revocation alternative.

This procedure formalizes this placement practice, and Parole Officers and Hearing Officers must be familiar with it and the above-referenced statutes. This procedure is only to be utilized when probable cause has been found to substantiate that a parolee has violated the conditions of parole and revocation is necessary. An offender may not be placed in a prerelease center on parole status. Rather, the parole must be revoked and he/she is placed as an inmate.

Basic eligibility requirements for offender placement:

1. Must be physically, mentally and psychologically capable of completing program requirements.
 2. Must be employable.
 3. Must have a reasonable likelihood of being re-paroled or discharging within six months.
 4. Must be willing to engage in and complete general program requirements as well as any special requirements as determined by center staff.
13. Employment Services.
 14. Increased Urinalysis testing at own expense. Payment goes to Supervision fee fund.
 15. Recommended forfeiture of Good Time.
 16. Any other alternatives considered appropriate by the parole officer and hearings officer may be considered.
 17. Referral to ISP Sanction Program (See P&P 140-3); *P&P 140-3 (A) ISP Sanction Program Contract* will need to be completed.
 18. Referral to the Enhanced Supervision Program (ESP) (See P&P 140-3); *P&P 140-3 (C) ESP Referral Form* will need to be completed to identify the services to be provided by the prerelease.
 19. Referral to the START Program (sanctioning) (See P&P 140-3)
 20. Referral to the Passages ASC Program (sanctioning) (See P&P 140-3)
 21. Referral to day reporting in areas where available (See P&P 140-3)
 22. Referral to CCP for placement in a sanction bed (See P&P 140-3)
 23. Referral to a prerelease center sanction bed in available areas (See P&P 140-3)
 24. Referral to the Elkhorn/Nexus Treatment Program (See P&P 140-3 & 150-1)
 25. Referral to TSCTC Sanction Program (See P&P 140-3)

If it is determined during the on-site hearing that the offender needs to be returned to a secure setting and that they are not appropriate for community corrections placement, female offenders will be placed at the Passages ASC Program and Male offenders will be placed at the START program for evaluation. If the offender is facing new felony charges or if BOPP indicates that the parole offender needs to be returned to MSP/MWP in the staffing with the P&P Officer and/or Hearings Officer, no over-ride from the CCD Administrator is required. In cases where special circumstances may warrant direct placement @ MSP (behavior, medical, etc.) the Hearings Officer will request an over-ride via an e-mail to the CCD Administrator. (See P&P 140-3). For parole offenders that are placed at START or Passages ASC, the field file will be forwarded to the Board of Pardons and Parole.

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PROCEDURES

RESPONSIBILITY

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|---|---------------------------------------|
| <p>1. The alleged violations are investigated to determine if there is sufficient evidence to pursue violation proceedings.</p> | <p>Probation & Parole Officer</p> |
| <p>2. Regional Administrator or PO II is contacted to explain the alleged violations and possible hearing alternatives (i.e. Intervention vs. On-site Hearing).</p> | <p>Probation & Parole Officer</p> |
| <p>3. <i>P&P 100-1 (A) Report Of Violation</i> is prepared if the investigation reveals sufficient grounds for possible revocation proceedings. (See P&P 100-1 Report of Violation on Probationers & Parolees)</p> | <p>Probation & Parole Officer</p> |
| <p>4. Prior to the on-site hearing, if the parolee appears to be a good candidate for prerelease, ISP or other alternative placement, send appropriate file materials to the appropriate program for pre-screening and assessment. If referred, the parole officer will contact Board of Pardons & Parole for tentative agreement that the alternative placement is appropriate. The officer will follow up with an e-mail to the BOPP staff documenting that the BOPP has given approval for the alternative placement. The Officer will provide this documentation to the hearings officer at the hearing, if applicable.</p> | <p>Probation & Parole Officer</p> |
| <p><u>ISP</u> - Interview parolee for screening purposes and accept or reject candidacy for Intensive Supervision Program. Notify hearings Officer and BOPP of decision.</p> | <p>Intensive Supervision Team</p> |
| <p><u>Prerelease</u> - Informal screening of the parolee. Inform parole officer of such determination.</p> | <p>Prerelease Center Director</p> |
| <p><u>CCP/Passages ADT Sanction Beds</u> - Informal screening of the parolee. Inform parole officer of such determination.</p> | <p>CCP Program Director</p> |
| <p><u>Elkhorn (females)/Nexus (males)</u> – Informal screening of the parolee. Inform parole officer of such determination. (<i>The offender’s parole will need to be revoked for placement into one of these programs.</i>)</p> | <p>Elkhorn/Nexus Director</p> |
| <p><u>TSCTC Sanction Program</u> – Informal screening of the parolee. Inform parole officer of such determination</p> | <p>TSCTC Program Manager</p> |
| <p>5. <i>P&P 140-2 (B) Notice of On-Site Hearing for Montana Parolees</i> is prepared for Montana parolees. <i>P&P 140-2 (E) Notice/Waiver of On-Site Hearing For Interstate Offenders</i> is prepared for Interstate Offenders.</p> | <p>Probation & Parole Officer</p> |

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6. The *Report of Violation* is explained to the offender at least 72 hours (3 days) prior to scheduling an On-Site Hearing. Probation & Parole Officer
7. The offender indicates on the *Notice/Waiver of Hearing* form whether he/she requests or waives On-Site Hearing. Montana parolees are not allowed to waive an On-Site hearing, only interstate offenders can waive an onsite hearing. If the parole offender has been convicted of new felony charges during the period of supervision an on-site hearing is not required as the conviction clearly establishes probable cause, provides minimal due process and the final revocation hearing may be confined to mitigation. Additionally, if a parolee is arrested in another state where he/she had no permission to be, an on-site is not necessary as the presence in another jurisdiction without permission clearly establishes probable cause. If the offender has other violations that the P&P Officer believes needs to be addressed in addition to the new convicted charges, an on-site hearing should be conducted to address these violations. Otherwise, these other violations will not be documented or considered in the revocation of parole. Offender
8. *P&P 140-2 (C) Request for (or Wavier of) Witnesses* is presented to the offender for signature. If the offender is incarcerated, reasonable attempts will be made to contact witnesses on behalf of the offender. Probation & Parole Officer
9. Hearings Officer conducts hearing, if the offender did not waive his right to a hearing, to determine if probable cause has been established that the offender has violated his/her conditions of supervision. Officer ensures the following proceedings: Regional Administrator/POII
 - a. Presents evidence of alleged violations, including physical evidence.
 - b. Presents witness to support alleged violation.
 - c. Presents documentation (i.e. Court Order, UA/BA, Rules of Parole).
 - d. If appropriate, considers intermediate sanctions as an alternative to imprisonment whenever reasonable.
10. The offender is informed of hearing decision. Regional Administrator/POII

If prerelease or CCP/Passages ADT seems appropriate, verbally inform the parolee of this decision and indicate this in the “*Summary of On Site Hearing*”.

If placed on Intensive Supervision, verbally inform parolee of

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the decision and of the fact that he/she will have a formal hearing before the Board of Pardons & Parole. If the parole violation included the commission of a felony offense, the individual must appear before the BOPP for a formal revocation hearing.

11. The parolee may be continued on parole or placed in an alternative program (as noted above) pending the approval of the Board of Pardons and Parole. The parolee may also be returned to prison for a Revocation Hearing before the full Board of Pardons and Parole. The hearings officer completes *P&P 140-1 (B) Warrant*. Any direct community placements from the field will require the offender to complete the *BOPP Waiver of Appearance at Revocation Hearing*. If the offender is placed at START or PASSAGES ASC, the respective IPPO's will complete this paperwork.
- Reg. Administrator/BOPP

PRERELEASE

Contacts the Board of Pardons and Parole staff and Community Corrections Division Administrator to determine if either objects to prerelease placement. Contacts Prerelease Center Director and requests a formal screening.

Hearings Officer

Prerelease Center conducts screening and informs hearings officer of decision. Hearings Officer notifies BOPP and Prison Records of date and time of placement if approved.

Prerelease Center
Hearings Officer

Arrange for or approve appropriate transportation of offender to Prerelease Center.

Probation & Parole Officer

Offenders will waive their appearance before the BOPP by completing the *BOPP Waiver of Appearance at Revocation Hearing*. If the offender chooses not to waive their appearance, they will be returned to prison for a formal hearing before the board.

ISP

In cases in which the Board requires a formal hearing, the offender will appear before the Board at its next scheduled meeting. Intensive Supervision Officers may testify.

Offenders need not be jailed pending a formal BOPP hearing, but must participate in the ISP program in the interim period.

Offenders will waive their appearance before the BOPP by completing the *BOPP Waiver of Appearance at Revocation Hearing*. If the offender chooses not to waive their appearance,

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they will be returned to prison for a formal hearing before the board.

CCP (males)/Passages ADT (females)

Contacts the Board of Pardons and Parole staff and Community Corrections Division Administrator to determine if either objects to CCP/Passages ADT placement. Contacts CCP/Passages ADT Director and requests a formal screening.

Hearings Officer

CCP/Passages ADT conducts screening and informs hearings officer of decision. Hearings Officer notifies BOPP and Prison Records of date and time of placement if approved.

CCP/Passages ADT
Hearings Officer

Arrange for or approve appropriate transportation of offender to CCP/Passages ADT.

Probation &Parole Officer

Offenders will waive their appearance before the BOPP by completing the *BOPP Waiver of Appearance at Revocation Hearing*. If the offender chooses not to waive their appearance, they will be returned to prison for a formal hearing before the board.

Elkhorn (females)/Nexus (males)

Contacts the Board of Pardons and Parole staff and Community Corrections Division Administrator to determine if either objects to Elkhorn/Nexus placement. The offender’s parole will have to be revoked by the parole board in order to be placed into one of these programs. Contacts Elkhorn/Nexus Director and requests a formal screening.

Hearings Officer

Elkhorn/Nexus conducts screening and informs hearings officer of decision. Hearings Officer notifies BOPP and Prison Records of date and time of placement if approved.

Elkhorn/Nexus
Hearings Officer

Arrange for or approve appropriate transportation of offender to Elkhorn/Nexus.

Probation &Parole Officer

Offenders will waive their appearance before the BOPP by completing the *BOPP Waiver of Appearance at Revocation Hearing*. If the offender chooses not to waive their appearance, they will be returned to prison for a formal hearing before the board.

TSCTC Sanction Program

Contacts the Board of Pardons and Parole staff and Community Corrections Division Administrator to determine if either

Hearings Officer

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objects to TSCTC placement. Contacts TSCTC Program Manager and requests a formal screening.

TSCTC conducts screening and informs hearings officer of decision. Hearings Officer notifies BOPP and Prison Records of date and time of placement if approved. TSCTC/ Hearings Officer

Arrange for or approve appropriate transportation of offender to TSCTC. Probation & Parole Officer

12. Within five (5) working days *P&P 140-2 (A) Summary of On-Site Hearing* is completed and distributed to the Board of Pardons and Parole, Probation and Parole Bureau Chief, Montana State Prison or Montana Women’s Prison Records and the field file. A copy of the summary must also be provided to the offender within 20 calendar days of the hearing. The hearings officer should be cognizant that there is no confidential information included in the summary from a confidential informant or that could pose a threat to safety and security. If issues of such nature are present, they can be presented on a separate statement that is attached to the hearings summary that is not provided to the offender. The summary should include intermediate sanctions that were considered by the hearings officer. Reg. Administrator/POII

The Hearings Officer will complete *P&P 140-1 (G) Request to Forfeit Offender Good Time* if it is determined that one of the sanctions will be recommendation for loss of good time. Good time applicable offenders are those whose crime was committed prior to 01/31/97. The hearings officer may wish to consult with the parole board relative to loss of good time. Additionally, the Hearings Officer will have the Offender sign *P&P 140-2 (D) On-Site hearing – Appeal of Good Time Forfeiture*.

Hearings Officer

The Hearings Officer must recommend a specific amount of good time to be forfeited. The amount of good time available can be obtained from Prison Records or other resource. This form will be forwarded to the Community Corrections Division Administrator for concurrence. The Community Corrections Division (CCD) Administrator will forward to the Director for review and approval. The director will review the *Request to Forfeit Offender Good Time* and render a decision. If applicable, the director will forward paperwork to necessary parties to have good time

Hearings Officer/
CCD Administrator/Director

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rescinded and the offender's discharge date recalculated.

Offender

An offender who has a recommendation for the loss of good time as a sanction may appeal this decision through the CCD Administrator & Director using form *P&P 140-2 (D) On-Site Hearing - Appeal of Good Time Forfeiture*. This appeal has to be done 7 days from the date of the hearing/waiver. The CCD Administrator will review and forward to the Director for final review and decision.

Hearings Officer

The hearings officer will e-mail a copy of the On-Site Hearings summary and the *Report of Violation* to the Board of Pardons & Parole (Craig Thomas & Jeff Walter).

13. Responds to offender's appeal, if applicable.

CCD Administrator/Director

14. Approve/Deny revocation and subsequent placement at monthly meeting.

BOPP

V. CLOSING: Questions concerning this procedure shall be directed to the Probation and Parole Bureau Chief.

Forms

P&P 100-1 (A)	Report of Violation
P&P 140-1 (B)	Warrant
P&P 140-1 (G)	Request to Forfeit Offender Good Time
P&P 140-1 (J)	Hearing Sanction Options
P&P 140-2 (A)	Summary of On-Site Hearing
P&P 140-2 (B)	Notice of On-Site Hearing for Montana Parolees
P&P 140-2 (C)	Request for (or Waiver of) Witnesses
P&P 140-2 (D)	On-Site Hearing – Appeal of Good Time Forfeiture
P&P 140-2 (E)	Notice/Waiver of On-Site Hearing For Interstate Offender
P&P 140-3 (A)	ISP Sanction Program Contract
P&P 140-3 (C)	ESP Referral Form
BOPP	BOPP Notice of Rights-Waiver of Appearance at Revocation Hearing
Community Corrections	Community Corrections Program Referral (<i>This form to be filled out on NCR paper</i>)
Prerelease	Prerelease Application