



**DEPARTMENT OF CORRECTIONS
PROBATION AND PAROLE DIVISION
OPERATIONAL PROCEDURE**

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| Procedure No.: PPD 3.4.102 | Subject: REPORT OF VIOLATION OF PROBATION OR PAROLE |
| Reference: DOC 1.8.1; 46-18-203, MCA; 46-18-225, MCA; 46-23-1001, MCA; 46-23-1012, MCA; 46-23-1023, MCA; 46-23-1024, MCA; 46-23-1025, MCA; 20.25.801, ARM; 37.78.206, ARM; <i>State v. Roberts</i> | Page 1 of 7 |
| Effective Date: 10/02/17 | Revised: |
| Signature / Title: /s/ Kevin Olson, Probation and Parole Division Administrator | |

I. PURPOSE:

Probation and Parole Division employees will follow established procedures when preparing a Report of Violation to submit to the District Court for probationers or the Board of Pardons and Parole for parolees.

II. DEFINITIONS:

Absconding – When an offender deliberately makes the offender’s whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful.

Compliance Violation – A violation of the conditions of supervision that is not a non-compliance violation.

Non-Compliance Violation – A violation of the conditions of supervision that is:

- a new criminal offense:
 - as interpreted by the Department’s Legal Office and for the purposes of this procedure, being charged with a new crime is sufficient evidence of a violation of the conditions of probation;
- possession of a firearm in violation of a condition of probation;
- behavior by the offender or any person acting at the offender’s direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim’s immediate family or support network;
- absconding; or
- failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.

PPD-Probation and Parole Division – The Division oversees the Probation & Parole regional offices, interstate transfers and the facilities providing assessments and sanctions, prerelease, and treatment services.

PSI-Pre-Sentence Investigation and Report – A confidential and official court document designed to provide essential information on a defendant and assist District Court judges in determining an appropriate sentence for the defendant.

Probationer – For the purpose of this procedure, an offender ordered by the District Court to serve a period of commitment time for a suspended or deferred imposition of sentence (probation); or an adult offender committed to the authority of the Department and required to be released by the District Court to community supervision upon sentencing or disposition (DOC probation). §46-18-201, MCA

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VINE-Victim Information and Notification Everyday – An automated telephone, email, and text notification system that the Department purchases on contract from Appriss, Inc., which provides location and custody status updates about adult offenders under Department supervision.

III. PROCEDURES:

A. GENERAL GUIDELINES

1. Revocation through Courts:

- a. The judge may issue an order for a revocation hearing upon the filing of a petition for revocation supported by *PPD 3.4.102(A) Report of Violation (ROV)* showing probable cause any condition of a sentence has been violated by a probationer, or any condition of supervision after an offender’s release from incarceration imposed pursuant to §45-5-503(4), MCA; §45-5-507(5), MCA; §45-5-601(3), MCA; §45-5-602(3), MCA; §45-5-603(2)(b), MCA; or §45-5-625(4), MCA.
- b. When violation is a compliance violation, the *ROV* must describe the exhaustion and documentation in the offender’s file of appropriate and applicable violation responses as followed in the *Montana Incentives/Intervention Grid (MIIG)*.
- c. The *ROV* may only be filed with the sentencing court either before or during the period of probation or DOC probation commitment has begun, but not after the period has expired.
 - i. Prior to filing an *ROV* on an offender’s sentence before that sentence has begun, the supervising Probation & Parole (P&P) Officer will staff the offender’s case with his/her immediate supervisor or Deputy Chief (DC), and the county attorney if appropriate.
 - ii. Expiration of the sentence period after the *ROV* has been filed, does not deprive the court of jurisdiction to rule on the *ROV*; however, the Department no longer has the authority to supervise the offender once his/her sentence expires. Therefore, the supervising P&P Officer will make the following OMIS entries if an offender’s sentence period expires while an *ROV* is pending:
 - 1) Correctional Status: Released
 - 2) Change Reason: Past Sentence Expiration – Court Action Pending
 - 3) Location (end date)
 - 4) Officer (end date)
 - iii. If *ROV* is dismissed, Officer will make the following OMIS entries:
 - 1) Correctional Status: remains “Released”
 - 2) Request sent to COR Service Desk to change Status Reason to: “Sentence Expiration”
 - 3) Complete termination process
 - iv. If offender is revoked, he/she will be reassigned to Probation, Alt-Secure, or Secure as appropriate. OMIS entries are as follows:
 - 1) Correctional Status:
 - a) Revoked – Deferred Sentence
 - b) Revoked – Suspended Sentence
 - c) Revoked – Deferred and Suspended
 - 2) Assign Officer if needed
 - 3) Assign Location
 - 4) Update all applicable OMIS Profile categories for offender.

2. Revocation through Board of Pardons and Parole (BOPP):

- a. If upon completion of an intervention or on-site hearing, a P&P Officer is directed to initiate the revocation process for a parolee, the Officer will immediately notify the BOPP.

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- b. *PPD 3.4.102(A) Report of Violation* is completed by the Officer showing in what manner the conditions of supervision were violated. When violation is a compliance violation, the *ROV* must describe the exhaustion and documentation in the offender’s file of appropriate and applicable violation responses as followed in the *MIIG*.
- c. The offender will be brought before a BOPP hearing panel on the violation charged in the *ROV*.

3. Interstate Offender: When received for an offender being supervised in another state, the Montana adult Interstate Compact Section will forward an *Interstate Offender Violation Report* to the court or BOPP (see *PPD 4.6.203 Interstate Commission Procedures*).

4. Victim Notifications:

- a. Notification to persons registered in VINE must be made and documented when a hearings decision affects:
 - i. a change in the offender’s location and/or custody status;
 - ii. date of discharge/release;
 - iii. the community in which the offender will reside; and/or
 - iv. conditions of supervision.
- b. Victim will be given an opportunity to respond with written or oral input.
- c. When or if an offender convicted of any of the following absconds, the supervising P&P Officer will notify the Department’s Victims Program Manager or designee who will also contact the victim:
 - i. a sex offense;
 - ii. negligent or deliberate homicide;
 - iii. felony partner member assault;
 - iv. stalking;
 - v. kidnapping; or
 - vi. assault with a weapon.

B. PROCEDURES AND RESPONSIBILITIES

- 1. If there is reason to believe an alleged violation(s) of conditions has occurred, hearings procedures will be followed. If revocation is deemed necessary, *PPD 3.4.102(A) Report of Violation (ROV)* should be completed on white paper:
 - a. If a probationer is detained and bond is set, the *ROV* must be filed with the court within 10 days of the offender’s arrest. P&P Officer/POII/DC
 - b. If offender is on a traditional Intensive Supervision Program (ISP), the supervising ISP Officer is responsible for completing the *ROV*. ISP Officer
 - c. If offender is on ISP as a sanction, the original supervising P&P Officer will complete the *ROV*. Supervising P&P Officer
 - d. If an offender fails to report to the supervising Officer when discharged from prison to a suspended sentence or on parole, the supervising Officer is responsible for completing the *ROV*. Supervising P&P Officer
- 2. Supervisor, Deputy Chief (DC), or Field Training Officer will review *ROV* completed by probationary employees, or permanent employees new to the position, prior to distribution. POII, DC or FTO
- 3. The jurisdiction where the *ROV* was initiated will be responsible to complete all paperwork associated with the revocation procedures. P&P Officer

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4. Because most law enforcement records are confidential criminal justice information (i.e. police reports), do not attach these reports to the *ROV* being submitted to the court, instead, quote from the reports. The *ROV* should be completed as follows:

P&P Officer/ICS Agent

- a. LEGAL AND PLACEMENT HISTORY:
 - i. Include background information on current conviction(s), such as date of sentencing, sentencing judge, judicial district, county and city, length of sentence, (include deferred/suspended/DOC/MSP/MWP).
 - ii. Include synopsis of placement history giving location, dates, if completed.
 - iii. Include short narrative of history or information that is relevant or significant to the current conviction(s).
 - iv. If parolee, include date of parole and conditions given by the BOPP.
 - v. Include the date offender signed the conditions of supervision; if not signed, please note.
- b. ALLEGED VIOLATION(S):
 - i. State the number and rule/condition violated and note if violation is a “compliance” or “non-compliance” violation.
- c. SUPPORTING EVIDENCE: Describe each violation giving date, time, and nature of violation. Show how offender’s behavior violated specific wording in the court, BOPP, or DOC-ordered condition.
- d. ADJUSTMENT OF SUPERVISION:
 - i. If offender has absconded, provide the date(s) attempts were made to contact offender.
 - ii. Note offender’s behavior, including both strengths and weaknesses, while under supervision and progress and performance on the job, at home and in the community.
 - iii. Note adherence to court, DOC, and/or BOPP-ordered conditions specifically, and victim restitution payments.
- e. CASE MANAGEMENT RESPONSES UTILIZED:
 - i. Non-compliance violations do not require case management responses; if listed violations include non-compliance violations, this box will be checked.
 - ii. Compliance violations: Note all interventions and incentives from the *Montana Incentives and Intervention Grid (MIIG)* that were imposed on or agreed upon with the offender to try to gain compliance, including intervention hearings and case management responses.
 - iii. Brief Summary: Briefly discuss the desired outcomes of the case management responses and if outcome was accomplished. If it is believed offender will not be responsive to further interventions and incentives from the *MIIG*, include a statement that the offender’s conduct indicates the offender will not be responsive to further efforts under the *MIIG* and the reasons why.

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- f. RECOMMENDATIONS:
 - i. Be specific in stating recommendations to the court or BOPP.
 - ii. If credit for street time is recommended, include the amount of time to credit.
 - iii. Include all possible alternatives to incarceration.
 - iv. If offender absconds, request bench warrant from District Court judge or an administrative warrant from the Interstate Compact Section.
 - g. WITNESSES: List appropriate P&P Officer(s) and other witnesses with occupation and addresses.
 - h. CLOSING: Respectfully submitted; name; title (State Probation & Parole Officer); address; and signature.
5. Prepare *PPD 3.4.102(B) Affidavit in Support of Petition for Revocation* for probationers and attach to *ROV*. P&P Officer/ICS Agent
 6. Distribution of *ROV* is as follows: P&P Officer/ICS Agent
 - a. Probationer:
 - i. upload *ROV* and *Affidavit in Support* into offender's OMIS record as revocation documents
 - ii. District Court Judge filed with Clerk of Court, original (following the court's filing preferences, and must include the *Affidavit in Support*)
 - iii. County Attorney
 - iv. Defense Attorney
 - b. Parolee if revocation by BOPP is pursued (must include the *Summary of On-Site Hearing*):
 - i. Upload into offender's OMIS record as revocation document
 - ii. BOPP, original (notification by email)
 - iii. Interstate Compact Section, if administrative warrant is requested (notification by email); field file must then be sent to Interstate
 - iv. Hearings Officer (notification by email)
 7. If a pre-sentence investigation and report (PSI) is ordered in a jurisdiction other than where the defendant resides or is on current supervision, the defendant's supervising P&P Officer will be responsible for completing the PSI. However, if the defendant is incarcerated in another county and cannot bond out, the P&P office where offender is detained is responsible for completing the PSI. P&P Officer/DC
 8. If the offender commits new violations after the initial *ROV* has been submitted, complete an addendum, upload into OMIS record, and forward to the sentencing court or BOPP. P&P Officer
 9. When a revocation is pending in the supervising jurisdiction that is not the sentencing jurisdiction, the supervising P&P Officer maintains the offender's field file until a final disposition is determined unless Supervising P&P Officer

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other arrangements are made between the DCs of the jurisdictions involved:

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| <ul style="list-style-type: none"> a. If there are circumstances that warrant a transfer of the offender, the P&P Officers involved will staff the case with the respective supervisors. The supervisors will review the case and render a decision on whether the offender will be allowed to transfer. b. If offender is incarcerated while revocation is pending, his/her field file will be forwarded to the sentencing jurisdiction unless circumstances give the supervising Officer reason to keep the file. | P&P Officer and POII |
| <ul style="list-style-type: none"> 10. If the offender has absconded, the revocation paperwork is completed and forwarded to the sentencing jurisdiction to be filed with the court or BOPP: <ul style="list-style-type: none"> a. A probation offender's field file will also be sent to the sentencing jurisdiction for maintenance unless circumstances give the supervising Officer reason to keep the file. b. A parole offender's field file will be forwarded to Interstate for maintenance if Interstate is issuing a nationwide warrant. | Supervising P&P Officer/ ICS Agent |
| <ul style="list-style-type: none"> 11. When a revocation is pending in a jurisdiction other than the supervising jurisdiction, the supervising jurisdiction will continue to supervise the offender until sentencing. | Supervising P&P Officer |
| <ul style="list-style-type: none"> 12. If the court or BOPP continues the offender's sentence or parole with modified conditions, the supervising P&P Officer will sign the offender to new conditions of supervision. | Supervising P&P Officer |
| <ul style="list-style-type: none"> 13. If found by the court or BOPP that there has been a violation and offender is to be placed in a PPD facility, procedures of <i>PPD 4.1.100 Screenings of Adult Offender Placement</i> are followed. | Supervising P&P Officer |
| <ul style="list-style-type: none"> 14. If found by the court or BOPP that there has been a violation, but appropriate violation responses under the <i>MIIG</i> have not been exhausted and documented, the offender is referred to the Hearings Officer for an intervention hearing. | Hearings Officer |
| <ul style="list-style-type: none"> 15. If the court sentences the offender to the Department, the procedures of <i>PPD 4.6.300 DOC Commitments and Conditional Releases</i> are followed. If the DOC sentence is for a term of more than five (5) years, the DC or POII will provide a recommendation to the PPD Administrator as to the appropriate placement of the offender. A return to a secure facility is not automatic; however, if this is the recommendation, the procedures of <i>PPD 4.6.202 Secure Placements</i> is followed. | Supervising P&P Officer/ DC or POII |
| <ul style="list-style-type: none"> 16. If the offender is serving for a drug offense and is receiving public assistance or food stamps, and is revoked by the court or BOPP, the Officer will secure a copy of the <i>Request and Verification to Remove Disqualification for Benefits</i> form from the field file and fill out the relevant part, notifying DPHHS of the offender's non-compliance | P&P Officer |

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with the conditions of supervision and mail the form to DPHHS, c/o TANF Participation Specialist, HCSD-PAB, P.O. Box 202952, Helena, MT 59620-2952.

17. Field Files:

- a. When an offender is returned to prison as a parole violator, the field file is sent to the BOPP. The BOPP maintains the file until the offender is paroled or discharged, then forwards it to the assigned supervising P&P Officer. P&P Officer/ICS Agent
- b. The files of a parole violator placed in a PPD program will be sent to the BOPP.
- c. The files of a probation violator sentenced to DOC and placed in a PPD program will be sent to the appropriate location pursuant to *PPD 4.6.300(F) Where Files Go*.
- d. A parole offender's field file will be forwarded to Interstate for maintenance if Interstate is issuing a nationwide warrant.

IV. CLOSING:

Questions regarding this procedure should be directed to the POII, Deputy Chief, P&P Bureau Chief, or Deputy Compact Administrator.

V. FORMS:

- PPD 3.4.102 (A) Report of Violation
- PPD 3.4.102 (B) Affidavit in Support of Petition for Revocation
- DPHHS Request and Verification to Remove Disqualification for Benefits *(this form is to be pulled from the field file and completed)*