



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

Procedure:	<b>PPD 6.4.204 YOUTH ON-SITE HEARING</b>	
Effective Date:	02/20/2018	Page 1 of 7
Revision Date(s):	05/25/2018; 08/23/2018	
Reference(s):	52-5-129, MCA; 20.9.302 ARM; 20.9.306 ARM; 20.9.308 ARM; 20.9.311 ARM; 20.9.320 ARM; Applicable ACA Standards: 2-7120, 2-7123, 2-7159, 2-7203, 2-7207, 2-7214, 2-7216, 2-7217, 2-7218, 2-7219, 2-7220, 2-7221	
Signature / Title:	/s/ Kevin Olson, Probation and Parole Division Administrator	

**I. PURPOSE:**

Probation and Parole Division staff will hold on-site hearings on parole youth regarding allegations of serious and/or habitual violations of their youth parole agreements. On-site hearings will be held to determine a preponderance of evidence that a youth has committed the alleged violations; whether the alleged violations are of such a nature that a return to the facility or program from which the youth was last released is warranted; or, whether a different plan for custody and/or supervision should be pursued.

**II. DEFINITIONS:**

**Appeal** – The opportunity for a youth to appeal the findings of the hearings officer to the Department Director or designee following the on-site hearing pursuant to §52-5-129, MCA.

**Due Process** – Procedural and substantive rights of citizens against government action that threatens denial of life, liberty, or property.

**Hearings Officer** – A Probation & Parole Officer II (POII) employed by Department of Corrections and who has not been directly involved in the case of the youth for whom the hearing is held and whom is not the direct supervisor for the parole officer who is bringing the alleged parole violations to hearing.

**On-Site Hearing** – A formal parole hearing conducted by a youth community corrections hearings officer to determine: 1) if a preponderance of evidence exists on alleged parole violations and 2) if dispositional recommendations are appropriate for returning a youth to a state youth correctional facility.

**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.

**Preponderance of Evidence** – Evidence which is of greater weight or more convincing than evidence offered in opposition; more probable than not that a violation occurred.

**Revocation** – The process by which a youth is returned to the youth correctional facility in which he/she was released due to serious and/or chronic parole violations.

**Youth Parole Agreement** – A document outlining conditions of parole and signed by a youth prior to release from a correctional facility or secure-care facility contracted with the state of Montana.

**Youth Parole Violation Report** – A report written by a parole officer and completed prior to an on-site hearing or the signing of a waiver on every youth who is recommended for return to a youth correctional facility.

### III. PROCEDURES:

#### A. ON-SITE HEARING GUIDELINES:

1. The direct supervisor for the Parole Officer (PO) who is alleging the parole violations will **not** function as a Hearings Officer in an on-site hearing.
2. The on-site hearing will be scheduled to take place within 10 days of the detention date or date the youth was served with the *PPD 6.4.203(A) Youth Parole Violation Notice*, whichever is earlier.
3. The youth may submit a written request to the hearings officer to continue the hearing for a reasonable time for good cause.
  - a. The Hearings Officer must confirm the mutually agreeable rescheduled date in writing to the youth and the youth's attorney.
  - b. Hearings may be continued to:
    - 1) prepare a defense;
    - 2) allow for illness of the youth; or
    - 3) further investigate factual matters relevant to the hearing.
4. The hearing must be at least 24 hours after *PPD 6.4.204(A) Youth Notice of Hearing* has been served on the youth.
5. The on-site hearing will occur in person at the site of the alleged violation or in the county where the youth is currently residing or is found, in a location determined by the Hearings Officer. At the discretion of the Hearings Officer, this hearing may be held by means of interactive video transmission.
6. A hearing date, time, and place are established via consultation between the Hearings Officer, PO, and the youth's attorney.
  - a. *PPD 6.4.204(A) Youth Notice of Hearing* is completed and served on the youth by the PO; and
  - b. copies are given to:
    - 1) the youth's attorney;
    - 2) parent/guardian/custodian/representative;
    - 3) PO; and
    - 4) Hearings Officer.
7. The Hearings Officer can consult with the youth's attorney to determine whether written information is sufficient in lieu of direct testimony, usually involving law enforcement officers. Teleconferencing for direct testimony may be used when appropriate.
8. On request of either party, the Hearings Officer shall issue, and the PO shall serve *PPD 6.4.204(B) Subpoena* to procure the attendance of witnesses or production of documents at the hearing. If witnesses do not honor a subpoena, the Hearings Officer may continue the hearing without them.

9. The hearing is a public proceeding; however, upon a finding that an individual right of privacy outweighs the public's right to know, the Hearings Officer may exclude members of the public from all portions of the hearing pertaining to privacy interests. Witnesses may attend only during their testimony.
10. In the discretion of the Hearings Officer, the youth's parent/guardian/custodian/representative may be present with the youth during the entire hearing unless a disruption occurs.
11. The PO will provide the youth, the parent/guardian/custodian/representative, the youth's attorney, and the Hearings Officer with the following documents at least 24 hours prior to a scheduled hearing:
  - a. *PPD 6.4.202(A) Youth Parole Violation Report*;
  - b. *PPD 6.4.203(A) Youth Parole Violation Notice*;
  - c. *YSD 6.1.208(A) Youth Parole Agreement*;
  - d. court order;
  - e. law enforcement reports; and
  - f. other relevant reports and evidence.
12. As needed, the Hearings Officer can obtain relevant background information on the youth for placement consideration. This information may include:
  - a. relevant psychological evaluations;
  - b. chemical dependency evaluations;
  - c. provider discharge summaries;
  - d. probation officer reports to the court; and/or
  - e. case plan and case progress review reports.

## **B. ON-SITE HEARING PROCEEDINGS:**

1. If a youth released from detention, pending a hearing, fails to appear for the hearing, the PO shall issue *PPD 6.4.101(A) Certificate to Detain Youth*. The Hearings Officer shall schedule and hold a hearing within 72 hours of the youth's detention.
2. Refer to *PPD 6.4.204(C) Youth On-Site Hearing Guide* for step-by-step procedures for conducting on-site hearings.
3. At the discretion of the Hearings Officer, a request can be made that a youth be in restraints for the hearing and/or a correctional officer be present for security reasons.
4. On-site hearing proceedings will be recorded digitally.
5. The PO functions as the prosecutor for alleged parole violations:
  - a. PO reads each violation aloud; and
  - b. all supporting evidence is presented including:
    - 1) witness testimony;
    - 2) law enforcement reports;
    - 3) physical evidence;
    - 4) intervention agreements;
    - 5) UA/BA test results directly relating to each alleged violation; and
    - 6) other documents or evidence.
6. The Hearings Officer can:
  - a. allow hear-say testimony and evidence to be presented and considered;

- b. not accept any plea-bargains; and
  - c. consider any *PPD 6.3.103(A) Youth Intervention Agreement* as evidence due to these being agreed upon voluntarily by the youth and parent/guardian/custodian/ representative.
7. The Hearings Officer will request the youth enter a plea to each allegation. The Hearings Officer shall determine whether the youth's plea was made voluntarily and without duress or promise.
  8. To assure due process has been afforded to the youth, the Hearings Officer will provide the opportunity for the youth and youth's attorney to present their own evidence and testimony to each alleged parole violation.
  9. After reviewing the evidence submitted by both parties, the Hearings Officer determines whether there is a preponderance of evidence the youth has committed each parole violation as listed on *PPD 6.4.203(A) Youth Parole Violation Notice*.
    - a. The findings of fact are made and based solely on information presented in the hearing process. This includes:
      - 1) all reports;
      - 2) physical evidence;
      - 3) documents; and
      - 4) witness testimony.
    - b. The Hearings Officer makes a finding of fact for each alleged violation.
    - c. The Hearings Officer cannot find that a youth has violated his parole for any violation that is not specifically listed on the *Youth Parole Violation Notice*.
    - d. A Hearings Officer can find that a youth committed a lesser-included violation. Example: Finding that the youth committed a parole violation of Theft (M) instead of the listed violation of Theft (F).
  10. Placement recommendations are received from all involved persons:
    - a. PO;
    - b. any person requested by the PO to make a recommendation;
    - c. youth;
    - d. youth's attorney;
    - e. youth's parent/guardian/custodian/representative;
    - f. any person requested by the youth and/or the youth's attorney; and
    - g. written recommendations may also be considered.
  11. The Hearings Officer must consider the findings of fact and placement recommendations to determine the most appropriate placement for the youth.
    - a. The Hearings Officer may consider mitigating or aggravating circumstances in reaching the decision.
    - b. The Hearings Officer is empowered to decide if the youth is to be returned to a youth correctional facility or to recommend the youth be placed in a community placement.
  12. At the hearing conclusion, the Hearings Officer will make a verbal statement regarding disposition of the youth.
    - a. If the Hearings Officer needs more time to consider the evidence and recommendations, he/she may continue the hearing to conclude no later than the next working day.
    - b. If the Hearings Officer's decision is to return the youth to the youth correctional facility in which he/she was released, the Hearings Officer will inform the youth and legal counsel that

the youth's parole eligibility date will be determined by the youth correctional facility after the youth returns to the facility.

- c. The Hearings Officer may choose to not inform the youth at the hearing if there is concern over an aggressive response. In this case, the Hearings Officer will verbally notify the PO, youth, and the youth's attorney of the dispositional decision within 24 hours of the conclusion of the hearing.
  - d. The youth and his/her attorney will be notified of their right to appeal the decision of the Hearings Officer to the DOC Director within five (5) days of the hearing.
13. If the decision is to not return the youth to the youth correctional facility, the Hearings Officer, PO, youth, and youth's attorney will complete *PPD 6.4.203(C) Youth On-Site Agreement* to list specific conditions for the youth to follow in lieu of revocation.
  14. The youth will be placed with consideration given to the Hearings Officer's recommendations and *PPD 6.2.101 Youth Placements*.

### C. REVOCATION:

1. When the decision is to return a youth to the youth correctional facility from which he/she was previously released, *PPD 6.4.203(D) Youth Order of Revocation* is completed.
  - a. Only the specific violations the Hearings Officer has found to have occurred by a preponderance of the evidence are listed.
  - b. Primarily, the specific violations, dates, and MCA codes [with the designation of felony (F), misdemeanor (M), or technical (T)] are listed. ***Example: "#9, Laws and Conduct: January 29, 2013, Theft (F), 45-6-301 MCA, by obtaining or exerting unauthorized control over property (a Nissan Altima) valued at \$2,000."***
  - c. The violations listed on this form ***only*** are used to determine the length of stay at the youth correctional facility.
2. When the PO is notified of the Hearings Officer's decision to return the youth to a YCF, the PO will contact a transportation officer to arrange for the youth's return:
  - a. travel plans will be made as soon as possible following the Hearings Officer's decision;
  - b. verbal notification to a youth correctional facility will be made prior to transporting the youth; and
  - c. for female youth returning to the 5 County Youth Treatment and Rehabilitation Center (5Cs), collaboration must occur with the Youth Case Plan System Specialist to ensure the facility is prepared to receive the youth.
3. After signing *PPD 6.4.203(D) Youth Order of Revocation*, the Hearings Officer scans/emails or faxes *Order* to the PO and the following persons:
  - a. For female youth returning to secure care at 5Cs;
    - 1) Youth Case Plan System Specialist at the DOC Central Office;
    - 2) YCC Transportation Officer; and
    - 3) YCC Program Manager.
  - b. For male youth returning to Pine Hills Youth Correctional Facility, scan/email to [CORPHCFYouthRev@mt.gov](mailto:CORPHCFYouthRev@mt.gov).
4. The Hearings Officer uploads *PPD 6.4.203(D) Youth Order of Revocation* into the Youth Management System (YMS).

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5. Within 24 hours after the hearing, the Hearings Officer has the following documents served on the youth using *PPD 6.4.204(F) Certificate of Service*:
  - a. *PPD 6.4.204(D) Summary of Youth On-Site Hearing*;
  - b. *PPD 6.4.203(D) Youth Order of Revocation*; and
  - c. *PPD 6.4.204(E) Youth Notice of Appeal*.
6. The PO, Pine Hills Youth Correctional Facility staff, or 5Cs staff serves the forms in #5 to the youth.
  - a. the youth and staff sign/date this form.
  - b. the signed/dated *Certificate of Service* is sent to the Hearings Officer.
7. The Hearings Officer sends the following documents to the youth's attorney and parent/guardian/custodian/representative:
  - a. *PPD 6.4.204(D) Summary of Youth On-Site Hearing*;
  - b. *PPD 6.4.203(D) Youth Order of Revocation*; and
  - c. *PPD 6.4.204(E) Youth Notice of Appeal*.
8. The Hearings Officer will upload the following documents into YMS entitled "Revocation Packet" under "Revocation Documents" within three (3) working days after the *Order of Revocation* has been signed:
  - a. *PPD 6.4.203(A) Youth Parole Violation Notice*;
  - b. *PPD 6.4.202(A) Youth Parole Violation Report*;
  - c. law enforcement reports;
  - d. other relevant reports and evidence;
  - e. any treatment-related correspondence, reports, or discharge summaries;
  - f. *PPD 6.4.204(A) Youth Notice of Hearing*;
  - g. *PPD 6.4.204(B) Subpoena*;
  - h. *PPD 6.4.204(D) Summary of Youth On-Site Hearing*;
  - i. *PPD 6.4.204(E) Youth Notice of Appeal*; and
  - j. *PPD 6.4.204(F) Certificate of Service*.
9. The Hearings Officer enters *PPD 6.4.203(D) Youth Order of Revocation* information in the hearings screen in YMS within three (3) working days in accordance with *YSD 1.5.501 Youth Management System (YMS)*.
10. The Hearings Officer stores the digital recording of the hearing until the youth's discharge from the department. In the event of an appeal, this can be digitally transcribed.

#### **D. APPEALS PROCESS:**

1. The youth and/or attorney may appeal the decision of the Hearings Officer to the DOC Director.
  - a. The youth and/or attorney must submit *PPD 6.4.204(E) Youth Notice of Appeal* and any additional information directly to the DOC address listed on the form.
  - b. The *Youth Notice of Appeal* must be mailed within five (5) days of the hearing.
  - c. Upon request of the youth to the department, the youth may receive a copy of the recording of the hearing.
2. As soon as possible following receipt of request for a copy of the recording of the hearing, the Hearings Officer shall provide copies of the recording to be made and submitted to the youth (if requested) and to the Director.

3. Youth will await the outcome of the appeal at the youth correctional facility.
4. The Director or designee shall review the record and grant or deny the appeal within five (5) days of receipt of the *Youth Notice of Appeal*.
  - a. Director shall review the decision of the Hearings Officer and determine whether the decision is supported by a preponderance of the evidence.
  - b. Director shall either affirm the decision or vacate the decision.
  - c. The statement shall contain notice to the youth of the youth's right to appeal within 10 days, the Director's decision to the district court in the county where the parole revocation hearing was held, and the youth's right to have a written transcript of the hearing if the youth appeals the decision to district court.
5. The Director's response is sent to the:
  - a. youth;
  - b. youth's attorney;
  - c. Hearings Officer;
  - d. parent/guardian/custodian/representative;
  - e. PO; and
  - f. youth correctional facility.
6. If the Director denies the appeal, the youth may appeal to the district court pursuant to §52-5-129, MCA, within 10 days of receiving the Director's decision.
7. Within a reasonable time of notice of the youth's appeal to district court, the DOC will furnish a transcript of the revocation hearing to the youth's attorney.

#### IV. CLOSING:

Questions concerning this procedure should be directed to the immediate supervisor.

#### V. FORMS:

- PPD 6.4.204 (A) Youth Notice of Hearing
- PPD 6.4.204 (B) Subpoena
- PPD 6.4.204 (C) Youth On-Site Hearing Guide
- PPD 6.4.204 (D) Summary of Youth On-Site Hearing
- PPD 6.4.204 (E) Youth Notice of Appeal
- PPD 6.4.204 (F) Certificate of Service