



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

Procedure:	PPD 6.4.206 ADULT PROBATION & PAROLE FIELD HEARINGS
Effective Date:	05/29/2018 Page 1 of 14
Revision Date(s):	10/21/2019; 11/04/2020; 10/13/2021
Reference(s):	PPD 4.6.202; PPD 6.4.102; PPD 6.4.205; DOC 1.8.1; 46-18-203, MCA; 46-23-1002, MCA; 46-23-1004, MCA; 46-23-1011, MCA; 46-23-1012, MCA; 46-23-1015, MCA; 46-23-1021, MCA; 46-23-1023, MCA; 46-23-1024, MCA; 46-23-1025, MCA; 46-23-1028, MCA; 53-1-203, MCA; 20.25.202 ARM; 20.25.801 ARM; <i>Morrissey v. Brewer, 408 US 471, (1972)</i> ; <i>Wolff v. McDonnell, 418 US 539 (1974)</i> ; <i>Sandin v. Conner, 515 US472 (1995)</i>
Signature / Title:	/s/ Katie Donath, Acting Probation and Parole Division Administrator

I. PURPOSE:

When conducting hearings for adult offenders with alleged violations of supervision conditions, Probation and Parole Division staff will follow established procedures that ensure due process for offenders. Hearings will be conducted in a manner that protects victims, the public, staff, and offenders.

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.

Appropriate Good Time Credit – The amount of good time appropriate under the policy in effect at the time the offender earned the credit.

Case Management – Assessing an offender’s risks and needs, developing and reviewing a case plan, referring and linking the offender with appropriate services, monitoring offender progress and compliance, and responding with appropriate incentives and/or interventions to increase the probability of positive change and offender success, and to help in reducing offender recidivism.

Case Management Response – An informal action in response to an offender’s behavior in which a Probation & Parole Officer may apply incentives or interventions based on the behavior.

- *incentive* is a response that recognizes and/or rewards desired and targeted offender behavior.
- *intervention* is a response that addresses offender violations of conditions of supervision or rules of a PFB program/facility without a Hearings Officer involvement, unless the offender refuses to agree with the given intervention.

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

Dead Time – A period of time starting the date an administrative warrant is issued to the date a parole offender is detained on the warrant. The BOPP will be the final authority regarding issuance of dead time.

Disciplinary Hearing – A formal administrative hearing that provides applicable due process requirements to confront violations of PFB facility rules, or conditional release or furlough conditions of supervision.

Hearings Officer – A Department employee who, as an impartial person, conducts hearings for offenders on community supervision or in a PFB program/facility.

Initial “On-site” Hearing – A formal administrative hearing conducted at the site of the alleged violation or arrest to determine if there is probable cause or reasonable grounds to believe a parolee or interstate offender violated his/her conditions of supervision. §46-23-1024, MCA

Intervention Hearing – An informal administrative hearing conducted when a Probation & Parole Officer reasonably believes that an offender has violated his/her conditions of supervision. §46-23-1015, MCA

Lay Advisor/Interpreter – A staff member or other responsible adult who can assist an offender with the hearing process when the offender is illiterate, does not understand English, or where the complexity of the issue makes it unlikely that the offender will be able to collect and present evidence.

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, an initial appearance and court advisement for a new criminal offense is sufficient evidence of a violation of the conditions of supervision;
 - an interstate offender must be convicted of the new crime.
- possession of a firearm in violation of a condition of supervision;
- 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.

PFB-Programs and Facilities Bureau – The Bureau oversees the facilities providing assessments and sanctions, prerelease, and treatment services.

PPD-Probation and Parole Division – The Division oversees the Probation & Parole regional offices and interstate transfers.

Registered Victim – A person registered with an automated notification system (e.g., VINE) used by the Department and/or who is identified in OMIS as registered with the Department to receive location and custody status updates about adult offenders under Department supervision.

Secure Placement – A management decision to place an offender at a secure facility when it has been determined the offender is inappropriate for community placement for objective reasons.

Self-Surrender – Release of an incarcerated DOC commitment who 1) has a conditional release pending or 2) is approved for placement in an approved PFB facility and waiting for an available bed in the facility. The offender must meet established criteria, and remains in the custody and control of the PPD.

Up to 90-day Intervention Referral – A probation, parole, or conditional release offender referred for placement in a PFB facility for up to 90 days by a Hearings Officer in accordance with the *Montana Incentives and Intervention Grid for Probation & Parole* and resulting from an intervention hearing. (§46-23-1015, MCA and §46-23-1024, MCA)

VINE-Victim Information and Notification Everyday – An automated telephone, email, and text notification system which provides location and custody status updates about adult offenders under Department supervision.

Victim – The person against whom a felony crime has been committed, or a family member of that person. Other individuals may be recognized as victims on a case-by-case basis.

III. GENERAL GUIDELINES:

- A. Offenders will be presented with the conditions of their probation, parole, conditional release, or furlough supervision during a sign-up and will acknowledge receipt of the conditions (see *PPD 6.3.201 Administrative and Sign-Up Procedures for Adult Community Supervision*).
- B. Procedures addressing violations of supervision conditions will be acted on promptly and carried out with respect for due process. Procedures include those in this operational procedure and:
 - *PPD 4.6.600 Furlough Program*
 - *PPD 6.1.802 Adult Interstate Commission Procedures*
 - *PPD 6.3.101 Montana Incentives/Interventions Grid for Adult Probation & Parole*
 - *PPD 6.4.102 Offender Arrests/Pick Up and Holds/Release*
 - *PPD 6.4.205 Report of Violation of Probation or Parole*
- C. Victim Notifications:
 1. Notifications to registered victims must be made and documented in OMIS when a hearing decision affects a change in the offender's location, custody status, and/or the date of discharge/release.
 2. The Department's Victim Liaisons (CORVictimLiaison@mt.gov) are also notified if the offender's current sentence is for a registerable offense under §46-23-502, MCA, or stalking or negligent homicide. A victim liaison will also contact victims.

IV. INTERVENTION HEARINGS:

A. GENERAL REQUIREMENTS:

1. Intervention hearings are an alternative to a revocation while still holding the offender accountable for violations. An intervention hearing may be held as a violation response option based on *PPD 6.3.101(A) Montana Incentives/Intervention Grid for Adult Probation & Parole (MIIG-P&P)*.
2. Pursuant to §46-23-1028, MCA, the least restrictive placement must be recommended based on risk and needs assessments. Placement decisions must be documented and must indicate any other less secure sanction options considered before utilizing a higher level of custody.

3. If the Hearings Officer determines by a preponderance of the evidence that a violation has occurred, he/she will determine the appropriate and applicable *MIIG-P&P* violation response options.

B. PROCEDURES AND RESPONSIBILITIES:

1. When it is determined an intervention hearing is necessary and/or appropriate for an offender in jail, the hearing is initiated within 72 hours.
2. If the offender is not in jail, the supervising Probation & Parole (P&P) Officer schedules the hearing with a Hearings Officer within a reasonable time.
3. P&P Officer/Hearings Officer provides the offender a completed *PPD 6.4.206(C) MIIG-P&P Intervention: Hearing Summons and/or Violation Response*, which contains the date, time, and place of hearing and the alleged violations. Officer will attempt to provide *PPD 6.4.206(C)* to the offender 48 hours prior to the hearing; however, less time is sufficient if 48 hours is not possible.
4. Forms required to be completed for the hearing will be distributed as directed on each form.
5. Hearings Officer:
 - a. Information and evidence relating to the alleged violation(s) and case problems are presented. Relevant offender background information may be reviewed through OMIS General Reports, and *PPD 6.4.206(E) Hearing/ROV Information Sheet* is completed.
 - b. Offender is given an opportunity to speak on his/her behalf and introduce relevant information to the Hearings Officer.
 - c. Offender is asked to admit or deny alleged violation(s).
 - d. At the conclusion of hearing, a decision that is based on a preponderance of the evidence is orally provided.
 - e. OMIS Chronological entry is made as soon as possible, but within 24 hours of hearing.**
6. If offender is found not in violation, only a chronological entry is made by Hearings Officer to note the finding.
7. If offender is found in violation:
 - a. Hearings Officer completes *PPD 6.4.206(C) MIIG-P&P Intervention: Hearing Summons and/or Violation Response*, which lists the responses imposed, and *PPD 4.6.300(A) Notification and Placement Warrant* is completed if warrant is necessary. *Response* is reviewed with offender and offender signs form:
 - 1) If the offender was arrested prior to the hearing, credit for time served will be given.
 - 2) If offender does not agree with the *Violation Response*, a formal hearing may be initiated (see *Section V.B. or V.C.* below).
 - 3) If the violation response is electronic monitoring or day reporting, the offender must be notified of his/her right to instead proceed with revocation proceedings.
 - 4) Jail intervention:
 - a) offender will serve, or receive credit for serving, up to 30 days;
 - b) hearings paperwork must **reflect start and end dates**; and
 - c) various arrangements can be used, such as jail on days the offender is not working, work release, or sanction beds.

- d) Email *PPD 6.4.206(E) Hearing/ROV Information Sheet* to [COR Jail Sanctions](#).
- 5) Combination of jail and up to 90-day:
 - a) Jail time may not exceed 30 days and does not count toward the 90-day placement; and
 - b) jail time must be specifically ordered in the hearing by the Hearings Officer and should be worded, "Sanction to community corrections facility or program (be specific) for up to 90 days. Offender is additionally sanctioned to a jail placement for not more than 30 days while waiting screening and transport to the facility/program."
 - c) Cost of jail time is the Department's responsibility.
 - d) When offender is moved to a PPD hold bed to wait for program placement, the time counts towards the 90 days.
 - e) When offender is not ordered to wait in jail pending program placement, offender remains on community supervision until bed date.
 - f) The P&P Officer or Hearings Officer will coordinate with the facility and PFB to expedite screening and transport.
- b. If parole offender is found in violation and signs the *Violation Response*, the *Response* is submitted to the BOPP requesting an additional special condition stating, "Offender will comply with all interventions resulting from an intervention hearing."
 - 1) Any other modifications to parolee's special conditions deemed necessary by Hearings Officer will also be addressed on the *Response*.
 - 2) Placement in a PFB program must be approved by BOPP.
- c. The Hearings Officer will follow the procedures of *PPD 6.3.401 Case Management for Adult Offenders* when he/she believes a probation or conditional release offender's special conditions of supervision need to be amended or modified:
 - 1) *PPD 6.3.401(F) Request to Amend Conditions of Probation Supervision* for probationers; or
 - 2) *PPD 6.3.401(G) Request to Amend Conditions for Conditional Release* is completed and submitted to [COR Conditional Release](#) for conditional release offender.

8. All forms associated with the hearing are uploaded as one OMIS Hearing document into offender's record.

V. ON-SITE AND DISCIPLINARY HEARINGS:

A. GENERAL REQUIREMENTS:

1. If a supervising P&P Officer reasonably believes an offender on parole, conditional release, interstate, or furlough has violated a condition(s) of his/her supervision, the Officer may arrest the offender or may authorize the arrest of the offender following the procedures given in *PPD 6.4.102 Offender Arrest/Pick Up and Hold/Release*.
2. An Initial "On-Site" or Disciplinary hearing may be held as a violation response option based on *PPD 6.3.101(A) Montana Incentives/Intervention Grid for Adult Probation & Parole (MIIG-P&P)*.
3. Pursuant to §46-23-1028, MCA, the least restrictive placement must be recommended by the P&P Officer or Hearings Officer based on risk and needs assessments. Placement decisions must be documented and must indicate any other less secure sanction options considered before utilizing a higher level of custody.

Subject: ADULT PROBATION & PAROLE FIELD HEARINGS

4. A parolee's initial "on-site" hearing must be conducted at or reasonably near the place of the alleged violation or arrest; however, formal administrative hearings may also be conducted via interactive videoconferencing.
5. Confidential information will be restricted throughout the hearings process in accordance with *DOC 1.5.5 Offender Records Management, Access and Release* and *PPD 1.5.500 Offender Records Access and Release*.
6. Generally, if the hearing has not been waived, the persons present at a hearing are limited to the Hearings Officer, the reporting P&P Officer or facility staff, the offender, and the offender's counsel who is only allowed to observe the hearing and may not participate. The offender may be removed from the hearing or not attend if the Hearings Officer determines the offender's presence will be disruptive or presents a clear and convincing danger to those in attendance.
 - a. The Hearings Officer may also hear testimony from other witnesses;
 - b. The offender may call witnesses on his/her behalf when such witnesses are reasonably available, have relevant information regarding the violation(s) as determined by the Hearings Officer, can meet the requirements of entering the facility, and their presence is not deemed to place others at risk of harm; and
 - c. If a witness will not be present at the hearing, his/her written or recorded testimony may be received and considered for inclusion at the hearing.
7. Hearings will be recorded and maintained for a minimum of five (5) years; therefore, all persons must speak audibly throughout the hearing.
 - a. Recording will not be stopped unless the Hearings Officer, upon hearing all the evidence, needs more time to make a decision: he/she can stop the hearing for a few minutes, excuse the persons in the hearing, and stop the recording. Recording will be restarted for the announcement of the final decision.
 - b. Recording will be made available to the Probation & Parole Bureau Chief or designee if offender indicates he/she will be appealing the Disciplinary hearing decision.
8. An offender may be found in violation based on information provided at the hearing by a confidential source. Such information may be presented in writing subject to the following conditions.
 - a. The details of any information will be disclosed to the offender at the hearing if this does not create a substantial risk to the safety of the confidential source;
 - b. When information is considered from a confidential source, the name of the source and all details of such information will be given to the Hearings Officer out of the presence of the offender; and
 - c. A confidential record will be maintained containing the details of information from an anonymous source and, if possible, the identity of the source and the degree of staff familiarity with the source's reliability. Such records will be available only to the Hearings Officer, Deputy Chief (DC), and Probation & Parole Bureau Chief.
9. Hearings Officer may continue the hearing for a reasonable time and good cause, e.g., investigation of related factual matters, offender illness or unacceptable behavior during the hearing process, or to consider the evidence for decision. **All reasons for the delay will be documented in OMIS within 24 hours.**

B. INITIAL “ON-SITE” HEARING FOR PAROLE AND INTERSTATE OFFENDERS – PROCEDURES AND RESPONSIBILITIES:

1. After an offender’s arrest, an on-site hearing is not required in the following circumstances:
 - a. the offender waives the on-site hearing;
 - b. the offender has had an initial appearance and court advisement for a new criminal offense;
 - c. the P&P Officer releases offender;
 - d. an intervention hearing is initiated; or
 - e. a Montana parolee is arrested out-of-state and did not have permission to be out-of-state.
2. If the hearing was not required based on #1a, #1b, or #1e above and revocation is determined necessary, supervising P&P Officer will:
 - a. complete *PPD 6.4.205(A) Report of Violation* for a parolee within 10 days of the action that confirms a, b, or e; or
 - b. follow the procedures for revocation of an interstate offender pursuant to *PPD 6.1.802 Adult Interstate Commission Procedures*.
3. Otherwise, P&P Officer will carefully review and discuss alleged violations and possible hearing alternatives with supervisor.
 - a. A parolee may be held in a state prison pending on-site hearing.
 - b. If offender is arrested, within 72 hours of the arrest:
 - 1) offender is released;
 - 2) intervention hearing is initiated; or
 - 3) on-site hearing is initiated for revocation process.
 - c. If an intervention hearing is determined to be appropriate, follow procedures of *Section IV. Intervention Hearings* above.
 - d. Pursuant to §46-23-1024, MCA, if the investigation reveals sufficient grounds for possible revocation proceedings, an on-site hearing must take place within five (5) calendar days after offender’s arrest:
 - 1) Do not count the date of arrest but do count the next five (5) consecutive days, including weekends and legal holidays. If the 5th day falls on a Saturday, Sunday, or legal holiday, the on-site hearing must be completed on the next day that is not a Saturday, Sunday, or legal holiday.
 - 2) *For Parolee:* Complete *PPD 6.4.206(G) Notice/Waiver of On-Site Hearing for Montana Parolee* which provides notice of on-site to offender and his/her rights, and, if an ROV has not been completed within the five (5) days, *PPD 6.4.206(F) On-Site Affidavit of Probable Cause* which provides information on the violations and the responses used under the *MIIG*. Because the Officer is attesting to his/her knowledge of circumstances, the DOC Legal Unit requires the *Affidavit* be notarized.
 - 3) *For Interstate Offender:* Complete *Interstate Offender Violation Report* and *PPD 6.4.206(H) Notice/Waiver of On-Site Hearing for Interstate Offender* following the procedures of *PPD 6.1.802 Adult Interstate Commission Procedures*.
4. Forms required to be completed for the hearing will be distributed as directed on each form.
5. Montana Parolee: At least 24 hours prior to an on-site hearing for Montana parolee, P&P Officer will:

- a. review *PPD 6.4.206(G) Notice/Waiver of On-Site Hearing for Montana Parolee* and *PPD 6.4.206(F) On-Site Affidavit of Probable Cause* with offender. Offender and witness must sign and date *Notice/Waiver*. Inform offender of his/her right to:
 - 1) have a written copy of the charges placed against them at least 24 hours prior to appearing before the on-site hearing;
 - 2) waive the 24-hour notice;
 - 3) speak on his/her own behalf or remain silent; and
 - 4) present relevant information relating to the charges.
 - b. provide *PPD 6.4.206(J) Request for (or Waiver of) Witnesses* to offender for completion as soon as possible prior to hearing.
 - 1) If offender is incarcerated and P&P Officer has the needed information, Officer will notify witnesses and provide the time and place of the hearing. Officer will document notification attempts.
 - 2) Call and question witnesses (if to do so would not place the witness or others present at the hearing at risk of harm).
 - c. If it is not possible to give 24-hour notice and still meet the five (5) day requirement, the parolee may waive the notice and the hearing can be held the next day (i.e., day 6). **This must be documented in the parolee's OMIS record within 24 hours and clearly indicate the delay was at the parolee's request.**
6. At least 48 hours prior to an on-site hearing for *interstate* offender, P&P Officer will:
 - a. Review *Offender Violation Report* and *PPD 6.4.206(H) Notice/Waiver of On-Site Hearing for Interstate Offender* with offender. Offender and witness must sign and date *Notice/Waiver*. Inform offender of his/her right to:
 - 1) have a written copy of the charges placed against them at least 48 hours prior to appearing before an on-site hearing;
 - 2) waive the 48-hour notice;
 - 3) speak on his/her own behalf or remain silent;
 - 4) call and question witnesses (if to do so would not place the witness or others present at the hearing at risk of harm); and
 - 5) present evidence pertinent to the allegation.
 - b. If offender refuses to initial and/or sign the form, P&P Officer will write "Offender refuses to sign form" across the *Notice/Waiver*, sign it and have all persons witnessing the refusal also sign the form.
 - c. Provide *PPD 6.4.206(J) Request for (or Waiver of) Witnesses* to offender for completion as soon as possible prior to hearing. If offender is incarcerated and P&P Officer has the needed information, Officer will notify witnesses and provide the time and place of the hearing. Officer will document notification attempts.
 7. If deemed necessary by the Hearings Officer, a lay advisor/interpreter may be appointed if requested by the offender or for any other reason. Assistance is assigned only to help offenders understand the charges against them, the hearings process, the process for presenting their version of the charges, and the process to appeal.
 8. P&P Officer ensures the following are available for Hearings Officer's review prior to, or during the hearing:

- a. evidence of alleged violations, including physical evidence (i.e., UA, BA);
 - b. documentation (i.e., Court Order, Conditions of Supervision);
 - c. specific dispositional recommendation from the *MIIG-P&P*, articulating the rationale behind the recommendation.
9. If offender is eligible for appropriate good time credits, forfeiture of credits may be recommended by the P&P Officer or Hearings Officer. See *DOC Policy 1.5.1, Adult Offender Good Time Credits* for eligibility and *PPD 6.4.206(L) Request to Forfeit Offender Good Time/Impose Dead Time*
10. If the parole offender has absconded supervision, a recommendation regarding dead time may be made **during the hearing** and documented in the *Summary*. *PPD 6.4.206(L) Request to Forfeit Offender Good Time/Impose Dead Time* is completed and forwarded to BOPP, who will forward the paperwork to appropriate parties once a decision on the recommendation has been made.
11. At the hearing, the Hearings Officer:
- a. speaks to offender about all steps of hearing process and due process rights;
 - b. informs offender of possible violation responses;
 - c. reminds offender that he/she must respond audibly; and
 - d. gives both the supervising P&P Officer and the offender an opportunity to present evidence and make a dispositional recommendation.
12. Hearings Officer makes a determination based on information obtained during the hearing.
- a. To find the offender in violation, Hearings Officer must find probable cause.
 - b. Offender is orally advised of decision and reasons for it.
 - c. **OMIS Chronological entry is made as soon as possible, but within 24 hours of hearing.**
13. When offender is found not in violation, Hearings Officer completes *PPD 6.4.206(I) Summary of On-Site Hearing* within 7 business days:
- a. *Summary* should not contain any confidential information (i.e. from a confidential informant or that could pose a threat to safety and security). If such issues are present, they should be presented on a separate statement and attached to the *Summary*, but not provided to the offender.
 - b. *Summary* will be provided to the offender within 10 business days of the hearing.
14. If the Hearings Officer determines that a violation has occurred, he/she will determine the appropriate and applicable *MIIG-P&P* violation response options.
- a. When offender is found in violation, but revocation is not recommended, Hearings Officer will complete the hearing as an intervention hearing following the procedures of *Section IV.B.6*.
 - b. If offender is found in violation and programming exceeding 90 days is recommended, contact and staff with BOPP. *PPD 6.4.206(I) Summary of On-Site Hearing* is completed within seven (7) business days as outlined in 14.c.
 - c. If offender is found in violation and revocation is recommended, *PPD 6.4.206(I) Summary of On-Site Hearing* is completed within seven (7) business days, and *PPD 4.6.300(A) Notification and Placement Warrant* if warrant is necessary:
 - 1) *Summary* should not contain any confidential information (i.e. from a confidential informant or that could pose a threat to safety and security). If such issues are present,

they should be presented on a separate statement and attached to the *Summary*, but not provided to the offender.

- 2) *Summary* will be distributed by the Hearings Officer or P&P Officer as follows:
 - a) *For Parolee: PPD 6.4.206(I) Summary* and *PPD 6.4.205(A) Report of Violation* are submitted **electronically** to the BOPP and MSP or MWP Records within 10 business days. If secure placement is deemed necessary, the procedures of *PPD 4.6.202 Secure Placements* will be followed. Offender's field file is forwarded to BOPP.
 - b) *For Interstate Offender: Offender Violation Report and PPD 6.4.206(H) Notice/Waiver* with admission and/or *PPD 6.4.206(I) Summary* are submitted electronically to the Interstate Compact Section. Offender's field file remains in P&P office pursuant to *PPD 1.5.501 Case Records Organization, Management, and Retention Summary* (without confidential information) must be provided to the offender within 10 business days of the hearing.

15. All forms associated with the hearing are uploaded as one OMIS Hearing document into offender's record.

C. DISCIPLINARY HEARING FOR CONDITIONAL RELEASE, SELF-SURRENDER, AND FURLOUGH OFFENDERS – PROCEDURES AND RESPONSIBILITIES

1. **Hearings Officers will follow the procedures of *PFB 6.2.424 Disciplinary Processes in Contract Facilities* when presiding over disciplinary hearings of offenders who are in PFB contract facilities.**
2. Supervising P&P Officer will carefully review and discuss alleged violation(s) and possible hearing alternatives with supervisor.
 - a. If intervention hearing is appropriate, follow procedures of *Section IV. INTERVENTION HEARINGS* above.
 - b. If investigation reveals reasonable grounds for a disciplinary hearing, it is held within five (5) business days. If compelling reasons exist to delay the hearing, or if alleged violation(s) has resulted in new felony or misdemeanor charges, the hearing may be delayed with DC approval and if there is no public safety concern.
3. Forms required to be completed for the hearing are distributed as directed on each form.
4. P&P Officer completes *PPD 6.4.206(K) Statement of Charges/Notice of Disciplinary Hearing/Rights* and serves on offender at least 48 hours prior to the hearing. Reviews *Statement/Notice/Rights* with offender to inform him/her of their right to:
 - a. have a written copy of the charges placed against them at least 48 hours prior to appearing before a disciplinary hearing;
 - b. waive the 48-hour notice;
 - c. speak on his/her own behalf or remain silent;
 - d. call and question witnesses (if to do so would not place the witness or others present at the hearing at risk of harm);
 - e. present relevant information relating to the charges; and
 - f. appeal the decision if he/she was not afforded due process rights.

5. Offender signs the *Statement/Notice*:
 - a. If offender indicates he/she is refusing to attend the hearing, he/she will initial that section of the *Statement/Notice*.
 - b. If offender refuses to initial and/or sign the form, P&P Officer will write "Offender refuses to attend hearing and refused to sign form" across the *Statement/Notice*, sign it and have all persons witnessing the refusal also sign the form.
6. P&P Officer provides *PPD 6.4.206(J) Request for (or Waiver of) Witnesses* to offender for completion prior to the hearing. If offender is incarcerated and P&P Officer has the needed information, Officer will notify witnesses and provide the time and place of the hearing. Officer will document notification attempts.
7. If deemed necessary by the Hearings Officer, a lay advisor/interpreter may be appointed if requested by the offender or for any other reason. Assistance is assigned only to help offenders understand the charges against them, the hearings process, the process for presenting their version of the charges, and the process to appeal.
8. P&P Officer ensures the following is available for Hearings Officer's review prior to, or during the hearing:
 - a. evidence of alleged violations, including physical evidence (i.e., UA, BA);
 - b. documentation (i.e., Court Order, Conditions of Supervision); and
 - c. specific dispositional recommendation from the *MIIG-P&P*, articulating the rationale behind the recommendation.
9. At the hearing, the Hearings Officer:
 - a. speaks to offender about all steps of hearing process and due process rights;
 - b. informs offender of possible violation responses;
 - c. reminds offender that he/she must respond audibly; and
 - d. gives the offender and supervising P&P Officer the opportunity to present evidence and make a dispositional recommendation.
10. After the hearing, the Hearings Officer reviews information obtained during hearing, the violation(s), offender's plea, and weighs the evidence presented.
 - a. To find the offender in violation, Hearings Officer must find the charges are reasonably true.
 - b. Offender is orally advised of decision and reasons for it.
 - c. **OMIS Chronological entry is made as soon as possible, but within 24 hours of hearing.**
11. When offender is found not in violation, Hearings Officer completes OMIS Hearings entry and *PPD 6.4.206(M) Summary of Disciplinary Hearing* in OMIS within seven (7) business days:
 - a. *Summary* should not contain any confidential information (i.e. from a confidential informant or that could pose a threat to safety and security). If such issues are present, they should be presented on a separate statement and attached to the *Summary*, but not provided to the offender.
 - b. *Summary* must be provided to the offender within 10 business days of the hearing.
12. If offender is found in violation:
 - a. the Hearings Officer will review the following to determine the appropriate and applicable *MIIG-P&P* violation response options:

- 1) criminal history background;
 - 2) treatment history;
 - 3) conditions of sentence;
 - 4) previous behavior in facility;
 - 5) previous programming;
 - 6) length of time offender has been in the program; and
 - 7) time until discharge or parole.
- b. If the violation response is electronic monitoring or day reporting, the offender must be notified of his/her right to instead proceed with revocation proceedings.
 - c. If response is an up to 90-days intervention referral, Hearings Officer should identify 1-2 areas in which the offender should focus while in the facility.
 - d. If response is an up to 90-days intervention referral or a jail intervention as determined by the *MIIG-P&P*:
 - 1) offender may be ordered to pay costs; and
 - 2) if the offender was arrested prior to the hearing, credit for time served will be given.
 - 3) Jail intervention:
 - a) offender will serve, or receive credit for serving, up to 30 days;
 - b) hearings paperwork must **reflect start and end dates**;
 - c) various arrangements can be used, such as jail on the days the offender is not working, work release, or sanction beds;
 - d) Email *PPD 6.4.206(E) Hearing/ROV Information Sheet* to [COR Jail Sanctions](#) for jail intervention.
 - e. Combination of jail and up to 90-day:
 - 1) Jail time may not exceed 30 days and does not count toward the 90-day placement; and
 - 2) jail time must be specifically ordered in the hearing by the Hearing Officer and should be worded, "Sanction to community corrections facility or program (be specific) for up to 90 days. Offender is additionally sanctioned to a jail placement for not more than 30 days while waiting screening and transport to the facility/program."
 - 3) Cost of jail time is the Department's responsibility.
 - 4) When offender is moved to a PPD hold bed to wait for program placement, the time counts towards the 90 days.
 - 5) When offender is not ordered to wait in jail pending program placement, offender remains on community supervision until bed date.
 - 6) The P&P Officer or Hearings Officer will coordinate with the facility and PFB to expedite screening and transport.
 - f. If secure placement is deemed necessary, the procedures of *PPD 4.6.202 Secure Placements* will be followed.
13. When offender is found in violation Hearings Officer will:
- a. advise offender of appeal process whereby *PPD 6.4.206(N) Disciplinary Hearing Offender Appeal* must be submitted to the Probation & Parole (P&P) Bureau Chief or designee within 15 calendar days of the hearing and must include appropriate documentation. Have offender sign *Offender Appeal*; and
 - b. complete Hearings entry and *PPD 6.4.206(M) Summary of Disciplinary Hearing* in OMIS within seven (7) business days, and *PPD 4.6.300(A) Notification and Placement Warrant* if warrant is necessary:

- 1) If substance use or possession is indicated as one of the violations, make sure the specific substance is identified in the *Summary*.
 - 2) *Summary* should not contain any confidential information (i.e. from a confidential informant or that could pose a threat to safety and security). If such issues are present, they should be presented on a separate statement and attached to the *Summary*, but not provided to the offender.
 - 3) *Summary* must be provided to the offender within 10 business days of the hearing.
- c. All forms associated with the hearing are uploaded as one OMIS Hearing document into offender's record.**
- d. If the Hearings Officer believes the offender's special conditions of supervision need to be amended or modified, *PPD 6.3.401 (G) Request to Amend Conditions for Conditional Release* is completed by the Hearings Officer or P&P Officer and submitted to [COR Conditional Release](#) pursuant to *PPD 6.3.401 Case Management for Adult Offenders*.

14. Hearing Appeal Request:

- a. Only Disciplinary Hearings may be appealed by the offender.
- b. Written documentation which supports the offender's argument must be submitted to the P&P Bureau Chief or designee within 15 calendar days of the hearing. The P&P Bureau Chief or designee has 30 calendar days to make a ruling on the appeal and reserves the right not to consider the appeal if the written documentation is not received within the 15 days or there is inadequate documentation.
- c. An appeal must be requested in writing at the time of the hearing using *PPD 6.4.206(N) Disciplinary Hearing Offender Appeal* and must designate on which of the following grounds the appeal is based:
 - 1) there was not sufficient evidence to support the charges;
 - 2) there was not substantial compliance with applicable discipline and hearing procedures;
 - 3) the offender offered relevant evidence that was improperly exclude by the Hearings Officer; and/or
 - 4) the intervention imposed was not proportionate to the rule violation.
- d. Upon an appeal request, the P&P Bureau Chief or designee will review:
 - 1) whether there was evidence presented that was sufficient to support the charges;
 - 2) the decision to determine if the appropriate procedure was followed;
 - 3) if appropriate findings of fact were made; and
 - 4) whether the intervention imposed was proportionate to the violation(s).
- e. The P&P Bureau Chief or designee may:
 - 1) Affirm: Agree with the actions of the Hearings Officer and affirm the recommendation.
 - 2) Dismiss: Disagree with the actions of the Hearings Officer and dismiss the intervention.
 - 3) Modify: Reduce or suspend the intervention.
 - 4) Return the case to the Hearings Officer for re-hearing based on new evidence or procedural errors.
- f. The decision of the P&P Bureau Chief or designee is final and cannot be appealed by the offender.

VI. CLOSING:

Questions regarding this procedure will be directed to the POII, Deputy Chief, or Probation & Parole Bureau Chief.

VII. FORMS:

PPD 6.4.206 (A)	Hearings Guidelines
PPD 6.4.206 (B)	ISP/P&P DOC Inmate Rule Violation Codes
PPD 6.4.206 (C)	MIIG-P&P Intervention: Hearing Summons and/or Violation Response
PPD 6.4.206 (E)	Hearing/ROV Information Sheet
PPD 6.4.206 (F)	On-Site Affidavit of Probable Cause
PPD 6.4.206 (G)	Notice/Waiver of On-Site Hearing for Montana Parolee
PPD 6.4.206 (H)	Notice/Waiver of On-Site Hearing for Interstate Offender
PPD 6.4.206 (I)	Summary of On-Site Hearing
PPD 6.4.206 (J)	Request for (or Waiver of) Witnesses
PPD 6.4.206 (K)	Statement of Charges/Notice of Disciplinary Hearing and Rights
PPD 6.4.206 (L)	Request to Forfeit Offender Good Time/Impose Dead Time
PPD 6.4.206 (M)	Summary of Disciplinary Hearing
PPD 6.4.206 (N)	Disciplinary Hearing Offender Appeal
PPD 4.6.202 (A)	Request for Secure Placement
PPD 4.6.300 (A)	Notification and Placement Warrant
PPD 6.3.101 (A)	Montana Incentives/Intervention Grid for Adult Probation & Parole (MIIG-P&P)
PPD 6.4.205 (A)	Report of Violation
DOC 1.5.1 (Attachment)	Application for Restoration of Forfeited Good Time