

<p align="center">State of Vermont Agency of Human Services Department of Corrections</p>	<p>Title: Preliminary Probable Cause Hearings for offenders supervised by ICAOS</p>		<p align="right">Page 1 of 5</p>						
<p>Chapter: Security and Supervision</p>	<p align="center"># 410.04</p>	<p align="right">Supersedes #410.04 dated 9/30/03.</p>							
<p>Attachments, Forms & Companion Documents:</p> <ol style="list-style-type: none"> 1. Notice of Hearing for Preliminary Probable Cause Hearing 2. Waiver of Appearance and/or Hearing/Refusal to Appear 									
<p>Local Procedure(s) Required: No Applicability: All staff (including contractors and volunteers) Security Level: “B” – Anyone may have access to this document.</p>									
<p>Approved:</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 33%; border-top: 1px solid black; text-align: center;"> <p>_____</p> </td> <td style="width: 33%; text-align: center;"> <p><u>April 11, 2012</u></p> </td> <td style="width: 33%; text-align: center;"> <p><u>May 1, 2012</u></p> </td> </tr> <tr> <td style="text-align: center;"> <p>Andrew A. Pallito, Commissioner</p> </td> <td style="text-align: center;"> <p>Date Signed</p> </td> <td style="text-align: center;"> <p>Date Effective</p> </td> </tr> </table>				<p>_____</p>	<p><u>April 11, 2012</u></p>	<p><u>May 1, 2012</u></p>	<p>Andrew A. Pallito, Commissioner</p>	<p>Date Signed</p>	<p>Date Effective</p>
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PURPOSE

The purpose of this administrative directive is to provide guidance for Vermont Department of Corrections staff holding a preliminary probable cause (PPC) hearing for those cases where a violation(s) of parole or probation by an offender supervised by the Department of Corrections in Vermont under the Interstate Commission for Adult Offender Supervision (ICAOS) has been alleged.

POLICY

The U.S. Supreme Court has determined that a preliminary due process hearing must be held to determine if there is probable cause to believe that a parolee or probationer who is supervised in Vermont under the Interstate Commission for Adult Offender Supervision has violated parole or probation conditions. This Preliminary Probable Cause (PPC) Hearing must be assigned to an employee who has been designated by the Commissioner as a Hearing Officer and who will schedule, hold and render a written decision according to the Rules established by ICAOS.

AUTHORITY

28 V.S.A. §§ 101 (5), 102 (b) (2), (c) (1), (5), 202, 403, 601 (2), 855.

REFERENCE

Rules for the Interstate Commission for Adult Offender Supervision (ICAOS).

DEFINITIONS

Compact Administrator: The DOC individual appointed under the terms of the Compact who is responsible for the administration and management of the State’s supervision and transfer of offenders subject to the terms and rules adopted by the Interstate Commission for Adult Offender Supervision.

Deputy Compact Administrator (DCA): The individual appointed by the Compact Administrator to handle the day-to-day operations of the Compact.

Hearing Assistant: A person who assists an offender in preparing and presenting their case. It does not have to be a staff person.

Hearing Officer: A person who has been designated by the Commissioner of Corrections to conduct administrative due process hearings.

Interstate Commission for Adult Offender Supervision (ICAOS): The body charged with overseeing the day-to-day operations of the Interstate Compact for Adult Offender Supervision, a formal agreement between member states that seeks to promote public safety by systematically controlling the interstate movement of certain adult offenders.

PROCEDURAL GUIDELINES

1. If a probationer or parolee being supervised by the Vermont Department of Corrections (DOC) under ICAOS has allegedly violated conditions of their probation or parole, they may be arrested and held without bail.
2. ADA Department of Corrections staff and/or contractors have several ADA-related responsibilities regarding offenders in custody or under supervision, not only upon initial admission but throughout an offender's custody or supervision. These include:
 - Notifying all offenders of their rights under the ADA;
 - Screening all offenders entering the correctional system in order to determine if they are individuals with a disability;
 - Making reasonable accommodations/modifications when necessary; and
 - Following due process procedures if an offender appeals a decision about any disability accommodation or feels they have been discriminated against because of a disability.

Accommodating a disability is always evaluated in the context of it not being an undue burden on the Department, jeopardizing safety or security, or it not resulting in a fundamental alteration in the nature of a program or activity.

3. DOC staff will then hold a Preliminary Probable Cause (PPC) Hearing. Preliminary Probable Cause Hearings are primarily held by the Department's Deputy Compact Administrator (DCA). The DCA may, however, assign another employee who has been designated as a Hearing Officer by the Commissioner of Corrections to hold the Preliminary Probable Cause Hearing.
4. The Hearing Officer must act in a reasonably prompt manner to schedule and hold a Preliminary Probable Cause (PPC) Hearing near the place of the alleged violation(s) or arrest to determine if there are reasonable grounds to believe that the arrested person has violated a parole or probation condition.
 - a. The accused may waive their right to a PPC Hearing; however, the parolee or probationer who wishes to waive their PPC Hearing is required to sign a form, which acknowledges the violation of Parole or Probation (*Waiver of Appearance and/or Hearing, Attachment 2.*)
 - b. Once signed, this waiver of a PPC Hearing made by the parolee/probationer is not revocable.

5. The Hearing Officer will provide written notice of the time, location and date of the PPC Hearing, as well as the alleged violation(s), at least 24 hours prior to the scheduled hearing (*Notice of Hearing for PPC, Attachment 1*). The accused will also be provided with sufficient time prior to the hearing (3 hours minimum if requested) to become familiar with the evidence that will be used.
6. At the PPC Hearing, the parolee/probationer has the right to be heard in person and to present witnesses and documentary evidence. They have the right to confront and cross-examine adverse witnesses (unless the Hearing Officer specifically finds good cause for not allowing confrontation.)
7. The Hearing Officer will complete a written report as to the evidence relied on and reasons for finding that a preponderance of the evidence exists to support the allegation of violation(s).

8. Hearing Records Preservation

This record will be kept indefinitely in the offender case file and will contain the following:

- a. The date and time of the hearing;
- b. A list of all witnesses and a summary of their testimony;
- c. The Hearing Officer's decision regarding the existence of a preponderance of evidence in support of the alleged violation(s);
- d. A summary of evidence on which the decision was based;
- e. Signature of the Hearing Officer.

The recording of the Preliminary Probable Cause Hearing will be retained for three (3) years after the date of the hearing.

TRAINING

The Deputy Compact Administrator has the responsibility and authority to develop and deliver training regarding ICAOS.

QUALITY ASSURANCE

The Compact Administrator oversees Quality Assurance of this administrative directive.

NOTICE OF HEARING FOR PRELIMINARY PROBABLE CAUSE HEARING

(VT DOC LETTER HEAD)

Date:

Offender's name

Address First line

Address Second Line

City/Town, State, Zip Code

Re: Preliminary Probable Cause Hearing

Dear *Mr. /Mrs. /Ms. Last Name:*

This letter is to inform you that an administrative due process hearing will be conducted at the (*Default*) Correctional facility at the above address on (*Date of Hearing*) at (*Time of Hearing*) o'clock.

The purpose of this hearing is to determine whether there is probable cause to believe that you have violated any conditions of your Parole/Probation granted by the State of (*Name of State*) and Vermont in accordance with the National Interstate Commission for Adult Offender Supervision (ICAOS).

This is not a parole and/or probation revocation hearing.

You have allegedly violated (*Sending State*) State Conditions as follows:

(*Type in Alleged Violation.*)

You have allegedly violated Vermont Conditions as follows:

(*Type in Alleged Violation.*)

You may appear at the hearing and speak on your own behalf and bring letters, documents, or individuals who can give relevant information to myself, the Hearing Officer; and you may be represented by an attorney or a hearing assistant.

You may also waive or decline to appear at this hearing by signing *Attachment 2, Waiver of Appearance and/or Hearing/Refusal to Appear* of VT DOC Administrative Directive #410.04. By waiving and/or choosing not to appear at the Preliminary Probable Cause Hearing, you agree that probable cause does exist that you have violated the conditions of Parole/Probation.

Sincerely,

(*Hearing Officer's Name*)

Cc: Facility Superintendent, Field PO, DCA/Sending State CA-VT

Rev. 5/2012

WAIVER OF APPEARANCE AND/OR HEARING/REFUSAL TO APPEAR

I, *(Name of Person)*, have been advised of my right to appear at my Preliminary Probable Cause Hearing regarding the charge of my violating *(Sending State and/or Vermont)* condition(s) associated with my Parole and or Probation that has been scheduled for *(Time of Hearing)* hours on *(Date of Hearing)*.

I do not wish to appear at or have this Preliminary Probable Cause Hearing, and I hereby waive that right. I realize that by waiving my right to appear at or have a hearing on this matter, I am admitting my guilt and/or admitting that a preponderance of the evidence supports my being found guilty of the violation(s) that I have been accused of.

(Offender Signature) *(Date)*

Witness: _____
(Staff Member Signature) *(Date)*

REFUSAL TO APPEAR

I saw *(Offender's Name)* on *(Date)* at *(Time)* and advised the offender of the right to appear before the Hearing Officer on *(Date of the Hearing)*.

The offender declined to appear at the Hearing but refused to sign *A Waiver of Appearance and/or Hearing/Refusal to Appear*.

(Staff Member Signature) *(Date)*

(Second Staff Witness) *(Date)*