

410.02 FURLOUGH VIOLATIONS

FEEDBACK & DOC RESPONSE

COMMENT PERIOD: FEBRUARY 16 – MARCH 8, 2012

Lines 132-141

Revocation of furlough- Should there be a criteria regarding not having an approved residence?¹

Lines 163-179

Waivers- It sounds like all graduated sanctions will need signed waivers. Is this correct?²

————— DOC's Response

¹ We would not revoke furlough for lack of residence; it would be suspended until a suitable residence was found.

² The grad sanction process is a waiver within itself.

line 138 - "The offender fails to report for Community Restitution as required by their mittimus."

Should also add "or fails to report for Community Restitution as required by the terms of an agreed upon Graduated Sanction."¹

We often use GS's as a tool to avoid lodgings and hold offenders accountable. I suppose it would be covered in line 141 in a general sense by not meeting program standards.²

A general concern from a supervisory standpoint, we do maybe anywhere from 15 to 25 returns a month and I wonder if this may increase the # of hearings we actually hold. If so it may be a resource issue. I also assume we would want to work closely with facility staff and possibly work out an agreement with them about holding some hearings or asking them if they would entertain performing the waiver process and then if the offender wants a hearing we would go up?? Or the other way, and we do waiver and they do the hearing. I know it is different around the state but currently we do all of our own waivers and hearings from RUPP. What is going to happen from field sites with great distances to the local facility??? Will they need to send staff to the jail and tie up 3-4 hours with travel and hearing time. Example...Bennington case does not waive and wants hearing. Probably a local issue and not needed in directive.³

————— DOC's Response

¹ Thank you. We added.

² We agree

³ We believe this is adequately covered in Sections 7 & 8.

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Line 51: Should be “incarcerative” and not “incarcerate”¹

Under Section 5.e. lines 297-299: This section makes no mention of a person who is found *not guilty* getting released. Under section 9.d. it makes mention of a person sentenced to the Community Restitution Program who is found *not guilty* getting released immediately.²

————— DOC’s Response

¹ Thanks. We fixed.

² Thanks. We edited it.

This directive appears to eliminate staffs ability to hold offenders accountable. Furlough is a privilege, not a right. Just because an offender is considered low risk (based on their offense) that doesn't mean they are suitable for furlough. If you implement this directive as is, you may as well discontinue the furlough program.¹

————— DOC’s Response

¹ Thank you for your comments. We disagree with your perception.

While the format of these forms ensures legible forms it is my understanding that 1) CCOs don't easily have access to computers and printers at the correctional facilities and 2) won't be able to complete these in the field.¹

When you tab on the forms it does not go in order from the first box to second box to third and so on and some boxes you cannot tab to but can click in so you have to go back to fill these out.²

NOS - It would be great if the drop down menu had all the furlough conditions listed in order as they appear on the furlough agreement.³

Notice of Hearing - It appears that we are returning to having an investigating officer like the old forms if that is the case the bottom of the NOS form should just be added to the Notice of Hearing form.⁴

Waiver Form - What goes in the large box below the first statement "have been advised of my right to appear furlough violation hearing regarding." Is it a list of the violations from the NOS Form?⁵

————— DOC’s Response

¹ Thanks for pointing this out. We will create non-electronic forms for those sites/staff who don't have the ability to complete these electronically.

² We fixed this, so you can tab from one to the next.

³ There is a box marked “Other”. You can put in here what the violation/behavior was.

⁴ We feel there should be a separate NOS form. If the offender waives the hearing, there is no need to assign an investigator.

⁵ The violation/behavior that caused staff to bring the offender in. It is meant to be a narrative entry.

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Line 164-168

Why is a designated hearing officer the only one who "can execute a waiver agreement"? Often a furlougee does not want a hearing and signs the waiver prior to being returned to a facility. This saves a great deal of time for staff involved. DOC employees who are very knowledgeable about the hearing process are competent to take care of this.¹

Line 169-173

Yet more work involved in a process that is not suppose to become more consuming than a criminal court proceeding. DOC processes should not be made more time consuming and elaborate. The legislature is now even getting involved in our processes by mandating paperwork reductions. Putting a wavier on a recording is still enough that no time is saved and still a lengthy process.²

Line 180-

The investigation is not necessary. Yet another layer of work and process that is time consuming and not necessary. And involves doing more paperwork .the report that will be required by the investigator.³

Line 316-324

Requiring the P&P offices to do the investigation is requiring more work and time than is necessary. Involving staff from outside the facility will be difficult to ensure the time limits set for conducting the hearing. "additional parts in the system can only yuck up the system."⁴

Line 216-218

SFI should not be made part of this process. The current (or lack of guidelines) on determine SFI is so vague that there are too many offenders being designated to a status that should not. Too many offenders will have to be mentally cleared now and the 4 day timeframe will be jeopardized. Having a hearing assistant should be adequate for assisting the offender.⁵

The issue I have with the new draft {of 410.02} is the lack of mention of an appeal process.

DOC's Response

¹ In order to ensure consistency and adherence to the waiver process.

² This needs to be a designated Hearing Officer. Staff who regularly deal with these should/can become Hearing Officers.

³ Thanks. If the offender waives the hearing, no investigation is needed. We added this to the directive.

⁴ It is the field office that is violating the furlough, so it is their responsibility. Please see Section 8.

⁵ It is not the responsibility of correctional staff to decide if someone is SFI. An inmate is designated SFI by the Chief of Mental Health Services. However, we deleted this from the directive.

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Meaning there is not written structure detailing the process of appealing a furlough violation hearing. Likewise, in the standard 410.01 disciplinary directive there is no mention of using that policy appeal form in conjunction with a 410.02 violation hearing decision. Basically, there is no written policy in place, which directs an inmate on how to appeal a 410.02 hearing decision. Essentially a 410.02 hearing is the same as a 410.01 hearing both are constructed with due process that is mandated with the policy. Both entail due process and procedure subject to time frame, and notice, and witness. In a 410.01 hearing violation of the due process procedure or lack of use of the due process procedure is argument for appeal to the Superintendent and subsequently review by the Superior Court through a rule 75 action. A 410.02 hearing should have the same appeal coverage as a 410.01 hearing by the facility Superintendent and or the regional or district manager of probation and parole whom were in charge of supervision of the inmate within the community.

The sole purpose of an appeal process is for administrative review of facts, evidence and due process requirements.

A great deal of convictions are regrettably based on a bias hearing officers assessment so in appeal to a less involved party sometimes results in a fairer remedy.

The opportunity of appeal can also save the expenditure of litigation through a rule 75 complaint.

When considering an appeal process for a 410.02 hearing we need first to establish who the governing appointee would be. It has been my experience as acting as hearing assistance that a 410.02 hearing can be held by either a officer of a correctional facility or a officer working for probation & parole.

Because the hearing officer holds the written record and recorded record of said hearing it would be there supervisor of P&P to hear the appeal or the superintendent of the correctional facility.

This understanding would be need to be clarified within the policy so the correct person could hear such an appeal.

Basically if a officer of a correctional facility acts as hearing officer then the superintendent of that facility would hear the appeal. Likewise if a field supervisor hears the case then the regional manager of P&P would need to hear the appeal.

Once clarified in the policy I think it would be a simple process to follow. At any rate I believe this is an issue which needs to be considered or added to the 410.02 policy. I would certainly appreciate any feedback you can give me regarding this issue.¹

DOC's Response

¹ We have added a sentence explaining the case staffing appeal process. You can appeal the case staffing decision by filing a grievance to the Commissioner (as outlined in directive 320.01.) We also added a section on appealing a furlough violation - the same as a DR Appeal, except it goes to the District Manager

ll. 60-61 – “That reduce the offender’s risk to offend.” Thought to reduce – No guarantee.¹

DOC's Response

¹ Thank you for your comment.

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Line 82 – “but cannot be an attorney.” Why not? An attorney seems better than a random person.¹

————— DOC’s Response

¹ The Supreme Court in *Wolff v. McDonnell* held that attorneys were not required and that inmates had no right to appointed or retained counsel in prison disciplinary proceedings.

It is the DOC’s belief that that to allow inmates to be represented by an attorney at administrative due process hearings would unduly complicate the proceedings and potentially create an adversarial climate at cross purposes to the rehabilitative objectives of the administrative proceedings.

Line 97 – “Found in one’s personal belongings.” And not accessible by others, or it’s a set-up.¹

————— DOC’s Response

¹ We do not think it is reasonable to add this.

Line 123 – “Gross Motor Activity” is a term that varies from person to person and should be omitted.¹

————— DOC’s Response

¹ This is a trained Department standard; we will keep in the directive.

Line 141- This reason should be handled with Graduated Sanctions.¹

————— DOC’s Response

¹ We disagree.

Line 158 – If “Due Process” has anything to do with grievances then it is flawed because DOC does not have to respond if it has to do with “Criminal Activity or Staff Misconduct”.¹

————— DOC’s Response

¹ We don’t feel this is relevant to this directive.

Line 234 – Once again, why not an attorney? Maybe a fireman or an addict might be better??¹

————— DOC’s Response

¹ See above.

Lines 161 & 241 – “Safety & Security” are used so broadly that it can be used as abuse of power & control for the outcomes of hearings.¹

————— DOC’s Response

¹ This is a standard Departmental term and used throughout operational directives; it is necessary.

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Line 266 – “disorderly” allows far too broad of a definition, dealing mainly with one’s own perception, bias & prejudice.¹

_____ DOC’s Response

¹ This is standard due process language. Order is needed to conduct the hearing process in a fair and structured manner. The hearing officer needs broad discretion to conduct the hearing so that all aspects of due process due an individual are met.

Line 302 – “facts” – this is an assumption, it is simply random information provided.¹

_____ DOC’s Response

¹ We disagree with your perception.

Line 362 – There is nothing guaranteeing re-offense, so no such determination can be made.¹

_____ DOC’s Response

¹ We changed ‘control’ to ‘reduce the risk for...’.

Line 409 – Anything to do with “threats” where DOC is concerned should be eliminated because there is always threatening behavior attached to anything DOC says or does ex. “if you???? * then we will...” *(*couldn’t read*)¹

_____ DOC’s Response

¹ We disagree.

Line 130 – states that: “At times, graduated sanctions are insufficient to address offender behavior and the furlough revocation process is necessary.” There is confusion amongst offenders about when graduated sanctions are appropriate and utilized. It seems as if, more often than not, offenders have to go through the entire revocation process and receive case staffing prior to, or instead of, simply receiving a graduated sanction. Perhaps this should be cleared up.¹

_____ DOC’s Response

¹ We don’t feel changing the directive is the way to address this.

Line 134 – Should end with a semi-colon instead of a colon IF this is first in a list. The items that follow in i-vi are in addition to “violated a condition or conditions” of their furlough”, not examples of. This is not clear the way the section is currently punctuated.¹

_____ DOC’s Response

¹ Thank you. We added language to clarify this. The list of 6 is key violations where staff could revoke a furlough. It is not all-inclusive.

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Can the offender be presented with an amended “Notice of Hearing” after being returned to the facility or is the initial “Notice of Hearing” the document of record once it has been presented to and signed by the offender?¹

_____ DOC’s Response

¹ It can be amended; but timelines can’t be changed.

Currently, waivers aren’t recorded. Is staff logistically prepared to record these waiver interactions in cases where guilt is admitted.¹

_____ DOC’s Response

¹ We plan to be prepared to record these.

When a hearing is held, who coordinates the witnesses an offender wants to call?¹

_____ DOC’s Response

¹ The Hearing Officer

Who makes the decision, and what are the criteria, to determine if a witness is reasonably available?¹

_____ DOC’s Response

¹ The Hearing Officer makes the decision and the determination.

Will the offender be given access to a telephone to contact potential witnesses in a timely manner without having to wait for the PCS pin-sheet process?¹

_____ DOC’s Response

¹ That decision would be made by the Hearing Officer.

What is the timeline for a Case Staffing? How much time can pass? A common question offenders have is, “when will my case staffing happen?”¹

_____ DOC’s Response

¹ There is no specific timeline. It is held at the convenience of operational staff as soon as practical.

Line 375 (Quality Assurance) – This language seems to be a mistake, as it has been copied and pasted verbatim from Directive 410.03. It seems like, as this directive doesn’t usually deal with a ‘segregation report’, that other language should be used here to determine quality assurance.¹

_____ DOC’s Response

¹ Thank you. We removed it and added other QA language.