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<b>Section-16 Probation and Parole</b>	<b>OP-161002</b>	<b>Page: 1</b>	<b>Effective Date: 11/18/2011</b>
<b>Intermediate Sanctions</b>	<b>ACA Standards: 4-APPFS-2A-06, 4-APPFS-2A-07, 4-APPFS-2A-10, 4-APPFS-2B-02, 4-APPFS-2B-03, 4-APPFS-2B-06, 4-APPFS-2B-09, 4-APPFS-2B-11, 4-APPFS-2E-01</b>		
<b>Justin Jones, Director</b> <b>Oklahoma Department of Corrections</b>	<b>Signature on File</b>		

## **Intermediate Sanctions for Probation Offenders**

Supervision must include timely feedback to the offender, identifying progress made, intervening when problems arise and recognizing and responding to behavior; both positive and negative. An officer's response to offender technical violations should be based upon public safety, the assessed criminogenic risk and needs of the offender, and the probability that the response will move the offender toward compliant behavior. (4-APPFS-2A-06, 4-APPFS-2E-01)

Response to offender behavior is most effective when the response is timely, proportionate, consistent, and individualized. Reinforcement should occur as closely as possible to the behavior to be reinforced or extinguished. It should be balanced and increasingly progressive; the behavior(s) should be acknowledged and reinforced or sanctioned each time it occurs. The incentive or sanction should be meaningful to the offender and appropriate for the behavior exhibited. (4-APPFS-2A-07, 4-APPFS-2E-01)

Corrective responses that influence the behavior of offenders in the community serve as an effective alternative to probation acceleration/revocation to prison without compromising public safety. (4-APPFS-2B-11) By use of the offender's transition plan and contacts by the supervising officer with the offender, the supervising officer shall encourage pro-social behavior in order to reduce the likelihood of technical violations of conditions of supervision. When discussing the conditions of supervision with an offender, the supervising officer shall include information, insight and recommendations for how possible technical violations of conditions can be prevented, including discussion about pro-social activities and companions. The offender must be aware there are external consequences to non-compliant behavior. Consequences, or sanctions, should be only coercive enough to be meaningful to the offender and to move him/her into compliant behavior. (4-APPFS-2A-06, 4-APPFS-2B-11)

One of the primary reasons for the offender's transition plan is to establish goals addressing assessed criminogenic risk and needs to prevent behaviors that are criminal in nature or that violate supervision conditions. As part of this risk management strategy, if the offender is failing to make progress under the transition plan and/or engages in high-risk, negative, or anti-social behavior that could lead to a violation of conditions, that behavior shall be addressed by applying an appropriate sanction and revisions made to the transition plan. (4-APPFS-2A-06)

The supervising officer shall consider changes in supervision strategies for supervising the offender with the emphasis on increasing desired behavior in the offender.

For the purpose of this procedure, the term "offender" applies to individuals under community supervision by the Oklahoma Department of Corrections.

I. Technical Violations

A. Responding to Technical Violations

When responding to technical violations, the supervising officer should consider the offender's risk to the community and the likelihood of behavioral changes with appropriate interventions. (4-APPFS-2B-11) Before a response is chosen, the following should be considered:

1. The assessed criminogenic risk and needs of the offender;
2. The progress the offender has made or failed to make under the transition plan;
3. The risk of harm the offender immediately presents to the community, a victim, other specific persons, or the offender;
4. The circumstances of the technical violation, including the offender's attitude and willingness to address the behavior;
5. The offender's criminal history and prior technical violations;
6. Evidence of the offender's motivation to progress or succeed in supervision; and
7. Interventions or sanctions previously applied and the outcome.

For each instance of undesired behavior or for each occurrence of a technical violation, an appropriate response will be made by the supervising officer. Every technical violation should be addressed and documented. When the supervising officer determines that a serious technical violation has occurred, an appropriate response shall be initiated within three working days. (4-APPFS-2B-03)

B. Offender-Acknowledged Technical Violations

If the offender acknowledges the occurrence of undesired behavior or of the technical violation, the offender will be required to participate in the development of an informal agreement to address the cause of the behavior or technical violation. (4-APPFS-2A-10)

1. The supervising officer shall refer to the “Sanction Matrix” ([Attachment B](#), attached) to determine possible sanctions appropriate to address the technical violation.
2. The supervising officer will discuss with the offender the elements of the technical violation and the proposed sanction. The supervising officer will develop, with the offender, an informal agreement using the “Technical Violation and Sanction Form (Diversion Agreement)” ([Attachment D](#), attached) to correct the noncompliant behavior. (4-APPFS-2A-10)
3. Once the agreement has been developed, the sanction will be imposed and the offender will implement the steps outlined in the agreement. The supervising officer shall maintain frequent contact with the offender to ensure the offender’s compliance with the agreement.
4. If jail time is the recommended sanction, the sentencing judge must approve and sign the “Technical Violation Sanction Form - Jail Time to Serve” ([Attachment H](#), attached) and a copy will be filed with the court clerk and a file stamped copy presented to the sheriff or jail administrator.
  - a. When a short term of incarceration in the county jail is imposed as a sanction, the Department of Corrections (DOC) shall reimburse each county in an amount not to exceed \$30.00 per offender per day (57 O.S. § 38.2).
  - b. The offender will be ordered to reimburse DOC for the cost of any imposed sanction, to include reimbursing the cost of incarceration, if the offender is financially able to do so.

C. Offender-Denied Technical Violations

If the offender refuses to acknowledge violations or refuses to participate in the development of a diversion agreement, a staffing with the team supervisor will be scheduled. (4-APPFS-2B-03) Should the staffing fail to resolve the issues, the offender will be advised of their right to an administrative hearing. An explanation of the hearing process will be given to the offender. If a hearing is requested, the supervising officer will develop a diversion agreement utilizing the “Technical Violation and

Sanction Form (Diversion Agreement)” ([Attachment D](#)) as outlined in Section II. of this procedure which will be presented in the hearing.

Each district will designate persons in the job class of Probation/Parole Officer III and higher to serve as the Administrative Hearing Officers (AHO). The selected hearing officer must report in a chain of command different from the supervising officer of the offender. (4-APPFS-2B-09)

1. The Administrative Hearing Officer (AHO) will be contacted by the supervising officer to schedule a date, time and place for the hearing, and record such on the “Notice of Administrative Hearing Form” ([Attachment C](#), attached). A copy of the “Notice of Administrative Hearing Form” and the proposed “Diversion Agreement” will be given to the offender. Copies will be placed in the offender’s file and copies forwarded to the AHO.
2. The hearing shall be scheduled at a date, time, and location accessible to the offender. (4-APPFS-2B-06) Refusal to attend the hearing may result in termination of the sanction process and a request for a warrant.
3. The hearing will be conducted according to the “Administrative Hearing Guide” ([Attachment E](#), attached) and will be recorded in its entirety.
4. At the conclusion of the hearing, the AHO shall determine, based on a preponderance of the evidence, whether or not a technical violation occurred and will note such on the “Findings of Administrative Hearing Officer” form ([Attachment F](#), attached). (4-APPFS-2B-09)
5. Upon a finding that a technical violation occurred, the AHO may order the offender to participate in the recommended “Diversion Agreement” or a modified “Diversion Agreement.”
6. If the AHO determines that a technical violation did not occur or that the behavior did not require a sanction, it will be noted on the “Findings of the Administrative Hearing Officer” form and the offender will be referred back to the supervising officer for continued supervision.
7. If the AHO determines that a technical violation did occur and a sanction was recommended, the findings will be documented on the “Findings of the Administrative Hearing Officer” form. The offender will document whether he or she accepts or rejects the finding of the AHO by checking the appropriate box on the “Findings of Administrative Hearing Officer” form ([Attachment F](#)). If the offender accepts the finding, the sanction will be imposed, and the offender will participate in the “Diversion Agreement.” The

offender will be advised that by accepting the finding, he or she is waiving their right to appeal the finding to the sentencing judge.

8. If jail time is the recommended sanction, the sentencing judge must approve and sign the "Technical Violation Sanction Form - Jail Time to Serve" and a copy must be filed with the court clerk and a file stamped copy must be provided to the sheriff or jail administrator.
  - a. When a short term of incarceration in the county jail is imposed as a sanction, DOC shall reimburse each county in an amount not to exceed \$30.00 per offender per day.
  - b. The offender will be ordered to pay for the cost of any imposed sanction, to include reimbursing the cost of incarceration, if the offender is financially able to do so.
9. If the offender does not accept the recommended sanction, the AHO will advise the offender of his right to appeal the findings to the sentencing court and that DOC may pursue revocation proceedings as provided by law.
  - a. The offender will be given an "Appeal of Administrative Hearing Sanction Form" ([Attachment G](#), attached), and advised to contact legal counsel to assist in filing the appeal with the Court.
  - b. The sanction(s) will be imposed within five working days of the finding of the AHO unless a file stamped copy of the "Appeal of the Administrative Hearing Sanction Form" has been received by the officer, or the officer has received other verifiable information that the appeal has been filed.

D. Failure to Comply

Failure of the offender to comply with the imposed sanction shall constitute a technical violation of the rules and conditions of supervision. Depending upon the severity of the technical violation and the officer's perceived ability to continue to constructively work with the offender, the sanctioning process may be initiated again.

II. Diversion Agreement

A "Diversion Agreement" is an agreement citing the offender with a technical violation of one or more terms of supervision, setting out specific additional requirements or conditions to be satisfied to correct the behavior and stating that once those conditions are satisfied within a specified time period, the technical violation will be considered resolved.

A. Interventions

All formal interventions shall be reflected in a "Diversion Agreement." The diversion shall be evidenced by a written agreement that specifies:

1. Technical violation(s) committed;
2. Interventions to be completed;
3. Duration of diversion;
4. Acknowledgement that failure to abide by the terms of the "Diversion Agreement" may result in revocation proceedings being initiated; and
5. Acknowledgement that failure to abide by the terms of the "Diversion Agreement" may result in the original technical violations being used in a revocation proceeding.

B. Basis for Additional Actions

1. Behaviors that have been successfully addressed by the offender through the diversion agreement cannot be used as a basis for the imposition of additional sanctions and shall not be cited as a reason for revocation actions.
2. Technical violations that have occurred during the current period of supervision that are discovered after the imposition of a "Diversion Agreement" may be used as a basis for further actions.

C. Documentation

The supervising officer shall ensure that each intervention imposed, as well as the offender's response to the intervention, is documented in the offender's official record.

III. References

Policy Statement No. P-160100 entitled "Purpose and Function of Probation and Parole"

O.S. 22 § 991b.

IV. Action

The district supervisors are responsible for compliance with this procedure.

The deputy director of Community Corrections is responsible for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-161002 entitled "Intermediate Sanctions for Probation Offenders" dated August 18, 2010

Distribution: Policy and Operations Manual  
Department Website

<u>Attachments</u>	<u>Title</u>	<u>Location</u>
<a href="#">Attachment A</a>	"Allowable Sanctions"	Attached
<a href="#">Attachment B</a>	"Sanction Matrix"	Attached
<a href="#">Attachment C</a>	"Notice of Administrative Hearing"	Attached
<a href="#">Attachment D</a>	"Technical Violation and Sanction Form (Diversion Agreement)"	Attached
<a href="#">Attachment E</a>	"Administrative Hearing Guide"	Attached
<a href="#">Attachment F</a>	"Findings of Administrative Hearing Officer"	Attached
<a href="#">Attachment G</a>	"Appeal of Administrative Hearing Sanction Form"	Attached
<a href="#">Attachment H</a>	"Technical Violation Sanction Form- Jail Time to Serve"	Attached