

Intermediate Sanctions for Probation Offenders	1
I. Definitions	2
II. Technical Violations	3
A. Responding to Technical Violations.....	3
B. Sanctioning Criteria.....	4
C. Offender-Acknowledged Technical Violations	4
D. Offender-Denied Technical Violations	5
E. Failure to Comply	7
III. Diversion Agreement (4-APPFS-2B-11)	7
A. Interventions.....	7
B. Basis for Additional Actions	8
C. Documentation	8
IV. References	8
V. Action.....	9
Attachments.....	10

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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 sanction should only be coercive enough to be meaningful to the offender and appropriate for the behavior exhibited. (4-APPFS-2A-07, 4-APPFS-2E-01, 4-APPFS-2B-11)

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. (4-APPFS-2A-01) 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. (4-APPFS-2A-08)

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.

I. Definitions

For the purpose of this procedure, the following are definition of terms:

- A. "Offender" applies to individuals under probation supervision by the Oklahoma Department of Corrections (DOC). This does not apply to interstate compact offenders.
- B. "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.
- C. "Intermediate Sanction Facility" is a county jail that provides a short term period of confinement.
- D. "Intermediate Revocation Facility" is a corrections center operated by DOC or a private facility or public trust operating pursuant to a contract with DOC which provides housing and intensive programmatic services for offenders who have violated the terms or conditions of a deferred/suspended sentence.
- E. "Technical Violation" is a violation of the rules or conditions of supervision, not including new offenses in which new felony or misdemeanor charges are filed.
- F. "Informal Sanction" is a verbal sanction, referral, updated Transition Plan or action taken by a probation and parole officer to address undesired behavior and not documented on the "Diversion Agreement."
- G. "Formal Sanction" is a sanction, referral or action taken by an officer in response to problematic offender behavior which is documented on the "Diversion Agreement."

II. 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 ([Attachment A](#) entitled "Allowable Sanctions," attached), provides alternative interventions to be considered). (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 him or herself;
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.

B. Sanctioning Criteria

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)

Based upon the criteria cited in Section II. A. items 1. through 7. of this procedure and the "Sanction Matrix" ([Attachment B](#), attached), the officer will determine if the response will be:

1. Informal Sanction: an informal response to the behavior is appropriate. The officer will impose the sanction; follow up to determine if the sanction was effective; or

2. Formal Sanction: a formal response to the behavior is appropriate. The formal response will be documented in a "Diversion Agreement."

C. 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 or formal agreement to address the cause of the behavior or technical violation. (4-APPFS-2A-10)

1. The supervising officer will refer to the "Sanction Matrix" ([Attachment B](#)) 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 or formal 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 will maintain frequent contact with the offender to ensure the offender's compliance with the agreement.
4. If confinement in an Intermediate Sanction Facility is the recommended sanction, the sentencing judge must approve and sign the "Technical Violation Sanction Form – County Jail Time" ([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 confinement in the Intermediate Sanction Facility (county jail) is imposed as a sanction, DOC will 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.
5. If confinement in an Intermediate Revocation Facility is the recommended sanction, the supervising officer will submit a violation report to the immediate supervisor citing all technical violations, previous sanctions imposed to change the offender's

behavior and gain compliance and a recommendation to issue a bench warrant.

- a. After the immediate supervisor has reviewed the violation report and approved the appropriateness of the recommendation, the report will be forwarded to the sentencing court.
- b. Upon issuance of a warrant the offender will be arrested and be held in the nearest county jail to await action by the court as to whether and what disciplinary sanctions will be imposed.

D. 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 his/her 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 will 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 will 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 formal 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 formal 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 E](#)). If the offender accepts the finding, the formal 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 in either an Intermediate Sanction Facility (county jail) or Intermediate Revocation Facility (corrections center) is the recommended sanction, the sentencing judge must approve and sign the "Technical Violation Sanction Form - Jail Time" and a copy must be filed with the court clerk and a file stamped copy must be provided to the sheriff or jail administrator of the Intermediate Revocation Facility.
 - a. When a short term of confinement in the Intermediate Sanction Facility (county jail) is imposed as a sanction, DOC will reimburse the county in an amount not to exceed \$30.00 per offender per day.
 - b. Upon court approval for county jail confinement the supervising officer forward the "Diversion Agreement" ([Attachment D](#)) and the "Technical Violation Sanction Form-County Jail Time" ([Attachment H](#)) to the intermediate revocation administrator.
 - 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 confinement in an Intermediate Revocation Facility is the recommended sanction, the supervising officer will submit a violation report to the immediate supervisor citing all technical violations, previous sanctions imposed to change the offender's behavior and gain compliance and a recommendation to issue a bench warrant.
 - a. After the immediate supervisor has reviewed the violation report and determined the appropriateness of the recommendation the report will be forwarded to the sentencing court.
 - b. Upon issuance of a warrant the offender will be arrested and be held in the nearest county jail to await action by the court as to whether disciplinary sanctions shall be imposed
10. 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 formal 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.

E. Failure to Comply

Failure of the offender to comply with the imposed sanction will 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.

III. Diversion Agreement (4-APPFS-2B-11)

A. Interventions

All formal interventions shall be reflected in a "Technical Violation and Sanction Form" ([Attachment D](#)). The diversion shall be evidenced by a written agreement that specifies:

1. Technical violation(s) committed;

2. Interventions to be completed;
 - a. If the Intervention imposed is placement in an Intermediate Revocation Facility (IRF) the Technical Violation and Sanction Form, (Attachment D) will include the following:
 - (1) The offender must abide by all institution rules;
 - (2) Must accept all housing assignments; and
 - (3) Must actively participate in all assigned program activities.
 - b. If the offender does not comply with the Diversion Agreement facility will notify the Probation and Parole District and submit any evidence for possible revocation proceedings.
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. Technical violations that have been successfully resolved by the offender through the "Diversion Agreement" cannot be used as a basis for the imposition of additional sanctions and will 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 will ensure that each intervention imposed, as well as the offender's response to the intervention, is documented in the offender's official record.

IV. References

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

Parole”

O.S. 22 § 991b.

O.S. 22 § 991a.

V. Action

The district supervisors are responsible for compliance with this procedure.

The division manager 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 April 1, 2014

Distribution: Policy and Operations Manual
Agency Website

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