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### **INVESTIGATION/DECISION**

#### **.01 AUTHORITY**

[Wisconsin Administrative Code Sections HA 2](#)

[Wisconsin Administrative Code DOC 331](#)

[Wisconsin Statutes 302.11](#)

#### **.02 GENERAL STATEMENT**

An offender's supervision may be revoked if the offender violates a rule or condition of supervision. When supervision is revoked, the offender is either:

- returned to court for sentencing, or
- transported to a correctional facility to begin serving the sentence indicated by the Court.

Protection of the public is the primary consideration in any revocation decision.

#### **.03 TIME FRAMES**

These time frames only apply to cases where an Order to Detain ([DOC-212](#)) has been authorized by the Department.

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If the offender is in custody, the offender should be interviewed within 3 working days.

The original 3 working day detention for investigation can be extended by completing a Detention Extension Request ([DOC-212](#)).

The supervisor may extend detention for 3 working days. The Regional Chief may extend for an additional 5 working days. If further extension is necessary, the Administrator or designee may approve any additional time in increments of five days.

Once a decision to revoke has been made, the Notice of Violation and Hearing Rights ([DOC-414](#)) shall be served within 2 working days. If revocation will proceed and an ATR is not likely at the time of issuance of the DOC-414, the Revocation Notification to Victim (DOC-2938) along with a Revocation Proceeding Fact Sheet for Victims shall be sent to the victim. In the event a preliminary hearing is necessary, contact the victim via phone call if possible to inform the victim of rights. A checklist of items to cover during the call may be found on MyDOC. Obtain signed authorizations for disclosure of health or other information from the client (if the client consents) in the event the victim may desire to attend proceedings.

On waived revocations, the “administrative packet” must be submitted to the Supervisor within 10 working days of the waiver. The supervisor in turn must process the packet within 5 working days and submit to the Regional Office. The Chief or designee will process the waiver within 5 working days of receipt.

If required, a Preliminary Hearing shall be held within 15 working days of the date of detention. Under special circumstances, the Regional Chief or designee may allow an additional five working days.

The Notice of Preliminary Hearing ([DOC-415](#)) must be served not less than one, or more than 5 working days from the date of the Preliminary Hearing. The victim shall be notified of the hearing date and time if requested.

The Final Revocation Hearing Request ([DOC-429](#)) must be completed by the agent using the [DOC-429](#) immediately following a finding of probable cause at a Preliminary Revocation Hearing. If the offender waives the Preliminary Hearing, or if no Preliminary Hearing is required, the ([DOC-429](#)) must be completed within 1 working day of the custody decision.

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The [DOC-429](#) will be electronically routed to the Division of Hearings and Appeals (DHA), the agent, supervisor, and status keeper mailbox. The [DOC-429](#) will only be routed to the defense attorney if an email address is included on the [DOC-429](#). The agent will receive a copy of the [DOC-429](#) composite document by email to print and place in the file. If the attorney is unknown at the time of submission, the agent should forward the email copy of the [DOC-429](#) to the defense attorney when one is appointed. If the [DOC-429](#) is amended at any time prior to the start of the hearing, the agent must provide the amended copy to the attorney and offender.

For offenders being held in county jails, the Final Hearing must begin within 50 calendar days of the date of detention unless the hearing has been postponed for cause. Under special circumstances, at the request of the agent or defense counsel, the Division of Hearings & Appeals may allow an additional ten (10) calendar days. Failure to begin a hearing within these time requirements may result in the Sheriff releasing the offender with notice.

If a formal alternative to revocation has not been found and the offender has not signed an Alternative to Revocation Agreement ([DOC-250](#)), the packet must be submitted to the Supervisor within 10 working days of the service of the Notice of Violation, Recommended Action and Statement of Hearing Rights ([DOC-414](#)). The Supervisor in turn must process the packet within 5 working days and submit to the Regional Office. The Regional Office shall process the packet within 5 working days of receipt.

A copy of the hearing packet should be submitted to the Division of Hearings & Appeals and the offender's defense counsel at least 10 calendar days before the date of the Final Hearing.

For sentence withheld cases only, the Revocation Order and Warrant, Revocation Summary ([DOC-1950](#)), signed waiver (or copy of the Administrative Law Judge's findings and recommendation), and a memorandum shall be submitted to the sentencing court within 10 calendar days of the effective date of revocation (the date the Revocation Order and Warrant is signed).

Prior to submitting packets to the defense counsel, Division of Hearings & Appeals, and the sentencing court (if applicable) the victim's personal identifiers including telephone number, email, street address, post-office box, zip code and email address shall be redacted.

### **.04 INVESTIGATION**

The agent investigates the facts underlying an alleged violation and meets with the offender to discuss the allegation within a reasonable period of time after becoming aware of the violation. After the investigation has been completed and it has been determined that a violation has occurred, the agent will utilize an evidence-based response to violation(s) and review the following items with his/her supervisor:

- The facts underlying the alleged violation including conflicting versions regarding the nature and circumstances of the alleged violation;
- The agent's investigatory efforts and conclusions:

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- A brief summary of agent's discussion with the offender;
- Summary of victim statement;
- The agent's recommendation and justification regarding disposition;
- A statement as to the custody status of the offender;
- Any pending criminal charges, guilty pleas, confession, or conviction for the conduct underlying the alleged violation; and
- Reference to the offender's prior adjustment, including but not limited to, prior record, violations, alleged violations, and absconding.

### **.05 PLOTKIN ANALYSIS (ABA STANDARDS)**

Violation of a rule of supervision can be both a necessary and sufficient ground for the revocation of supervision. Revocation should not be the disposition unless at least one of the following is met:

- Confinement is necessary to protect the public from further criminal activity by the offender;
- The offender is in need of correctional treatment, which can most effectively be provided if he/she is confined;
- It would unduly depreciate the seriousness of the violation if supervision were not revoked.

All of the following intermediate steps must be considered in every case as a possible alternative to revocation:

- A review of the rules of supervision followed by changes in them where necessary, including return to court;
- A formal or informal counseling session with the offender to re-emphasize the necessity of compliance with the rules or conditions;
- An informal or formal warning to the offender that any further violations may result in a recommendation for revocation.

### **.06 ALTERNATIVES TO REVOCATION**

Alternatives to Revocation (ATR) shall be considered in all cases. Alternatives can be formal or informal in nature. An informal ATR is one utilized without serving an offender with a [DOC-414](#).

A formal ATR is one utilized after the offender has been served a [DOC-414](#) and has signed an Alternative to Revocation Agreement ([DOC-250](#)). A revocation packet is not required if the offender signs the

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Alternative to Revocation Agreement ([DOC-250](#)) within ten working days of service. Any additional material required will be based on the intake requirements of the designated program.

A formal ATR may include a Residential Service Provider or Institution/Center placement.

In all cases where the department initiates revocation of an offender's probation, parole or extended supervision, the department must consider whether an appropriate alternative is available. An agent may continue to seek and consider ATRs at any time prior to issuance of a Revocation Order and Warrant.

An appropriate ATR may not be available when the decision is made to initiate revocation. In such a case, Revocation Hearing Request ([DOC-429](#)) as soon as that determination is made.

- If an appropriate ATR becomes available prior to the start of the Final Hearing, the agent should obtain a signed Alternative to Revocation Agreement ([DOC-250](#)), cancel the hearing, and withdraw the revocation request. A copy of the DOC-250 should be forwarded to the status keeper. The offender shall be released to the ATR.
- If an appropriate ATR is not available at the start of the Final Hearing, but one is expected to become available within a reasonable time, the agent may ask the Administrative Law Judge to reschedule the hearing. If the ATR becomes available, the agent shall obtain a signed [DOC-250](#), cancel the hearing, and withdraw the revocation request. The offender shall be released to the ATR. If the ATR is not available within a reasonable time, the agent shall proceed with the revocation.

An ATR shall be considered "not available" if it cannot be implemented within 60 calendar days of the date the Notice of Violation ([DOC-414](#)) was served upon the offender. The Regional Chief may authorize an exception, upon request of the agent. The agent's request must confirm that the offender is eligible, suitable, and willing to enter the ATR; that the offender has been accepted by the ATR program provider; and that the ATR provider has established a date by which the offender can enter the program.

No hearing should be cancelled before the offender enters the appropriate ATR program. The custody decision under [DOC 331.04](#) does not apply after the revocation process is terminated.

### **.07 ATR PLACEMENT PROCEDURE**

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1. Agent prepares and serves the [DOC-414](#) and [DOC-250](#). The offender must sign the [DOC-250](#). If the offender refuses to sign the DOC-250, the agent should consult with the CFS regarding pursuing revocation. The agent may also prepare amended Probation and Parole Rules ([DOC-10](#)).
2. The ATR plan should be stated in the COMPAS notes with a clear description of the criminogenic need addressed.

If a [DOC-44A](#) recommending revocation has already been processed, a second [DOC-44A](#) stating “Withdraw Revocation Request” must be submitted. If time has been stopped, check “Start Time.” The effective date of the Start Time is the date the offender signed the ATR agreement. Time may not be tolled beyond the ATR start.

### .08 ATR INSTITUTION PLACEMENT PROCEDURE

In addition to the steps outlined above to be eligible for placement in an institution ATR, the offender must be on supervision for a felony conviction or be a misdemeanor with an enhancer on an imposed and stayed prison sentence.

The agent will email the following documents to the appropriate mailbox: (DOC DAI ATR Referral Male <DOCDAIATRReferralMale@wisconsin.gov> or DOC DAI ATR Referral Female <DOCDAIATRReferralFemale@wisconsin.gov>):

1. [DOC-2265](#) Institution ATR Referral
2. [DOC-414](#) Notice of Violation, Recommended Action, Statement of Hearing Rights and Receipt
3. [DOC-3472](#) (if needed) – Mental Health Screening Interview

The Program Supervisor will review the packet with 10 business days of receipt and determine if the offender is accepted into the program. If accepted, the OPA or designee monitoring the mailboxes will notify the agent. The agent will then arrange for transportation to the institution on the program start date. If necessary, the agent or supervisor will make arrangements for necessary medical screening. The agent will also forward the following documents:

1. [DOC-3](#) Face Sheet
2. [DOC-1163A](#) Authorization for Use and Disclosure of Protected Health Information (signed for communication between the agent and the facility)
3. Criminal Complaint
4. [DOC-250](#) ATR Agreement
5. [DOC-179](#) (if no PSI available)

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6. [DOC-2077](#) Health Transfer Summary (submitted, along with medication on transport date)
7. Visitors List
8. Program completion summaries, evaluations, etc., from the last one year of programming or discharge summaries from most recent programming if the offender is not currently receiving services.

For referrals to WRC (WWRC) the below forms will be provided to the agent for completion:

- WRC F-00224- WRC Referral Packet (please note release planning options must be completed)
- WRC F-1584 – WRC ATR Agreement
- WRC F-00946 – Medical Clearance

If the offender is not accepted, the designee monitoring the mailboxes is notified, returns the referral to the agent, and notifies the Regional Office or designee and the Deputy Warden or designee. Within five business days from the date of rejection, the Regional Office (or designee) and the Deputy Warden (or designee) will determine if another Institutional ATR program in DAI is more appropriate or if other options should be pursued.

While the offender participates in the Institutional ATR program, the agent will participate in person or by phone in program review and staffing on an ongoing basis as requested by DAI staff. Should the offender abscond or violate institutional rules, the facility superintendent or designee can authorize apprehension and detention requests, with a copy to the agent. The agent is responsible for assisting the offender in securing housing upon completion of the program.

The DCC Agent shall arrange pick up of the offender within two working days of being notified of the offender's completion, dropout, or termination. The DCC Agent shall make arrangements in coordination with Institution/Center point of contact to include day and approximate time of pick up. The DCC Agent should provide the program supervisors with information regarding transport.

Upon completion of ATR, the Unified Case Plan will be updated by the agent to reflect completion.

A list of FAQ can be found [here](#).

### **.09 FAILURE TO SUCCESSFULLY COMPLETE ATR**

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If the offender fails to complete a formal ATR, the agent is responsible for commencing revocation proceedings if appropriate. Any new violations of supervision, including failure to complete the ATR program, may be added as reasons for revocation. An amended Outline Receipt and Notice of Violation ([DOC-414](#)) must be served on the offender.

A preliminary hearing is not needed if the offender has signed a written statement admitting one or more of the violations. The previously signed [DOC- 250](#) may be used as such an admission.

### **.10 REVOCATION OF PAROLE**

All revoked parolees are entitled to due process on loss of good time. The Administrative Law Judge makes this decision at the time of the final revocation hearing. In the case of waived final hearings, the parolee retains the right to a good time/reincarceration hearing, which may also be waived. If this hearing is waived, the Regional Chief or designee makes the final decision on the amount of good time to be forfeited or the amount of reincarceration time to be served. If the hearing is requested, a Good Time Forfeiture/Reincarceration Hearing Request ([DOC-429A](#)) must be completed so that a hearing will be scheduled. The [DOC-429A](#) will require the packet to be attached prior to submission. The [DOC-429A](#), including the packet, will be routed electronically to DHA and the institution where the offender is housed. The agent and supervisor will receive a copy of the composite document of the [DOC-429A](#) form by email.

There are two laws that affect sentence reduction: (Inmates serving sentences for offenses committed on or after 12/31/99 are not eligible for sentence reduction).

Old Law: Inmates serving a term for an offense committed prior to June 1, 1984, can earn two types of good time: statutory good time and industrial good time. Inmates sentenced for crimes committed before June 1, 1984, had an opportunity to choose to be included under the new law.

New Law: The concept of "Good Time" does not exist under new law. The Mandatory Release date is automatically established at two-thirds of the length of the sentence. The MR date may be extended for institution misconduct. The new law automatically applies to all cases in which the crime was committed between June 1, 1984, and December 31, 1999.

### **.11 REVOCATION OF EXTENDED SUPERVISION**

An offender whose term of extended supervision is revoked is entitled to due process regarding the length of time for reconfinement. The Administrative Law Judge makes this determination at the final revocation hearing. If the offender waives the final revocation hearing but does not waive the good time forfeiture/reincarceration/reconfinement hearing, the agent shall submit a Good Time



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Forfeiture/Reincarceration Hearing Request ([DOC-429A](#)). The Division of Hearings and Appeals will schedule a hearing at the institution where the offender is confined.

### **.12 PROCEDURE**

An offender's good time forfeiture/reincarceration/reconfinement time information may be obtained by sending a Revocation Information Request ([DOC-416](#)) to the Registrar at Dodge Correctional Institution (DCI) for males and the Wisconsin Women's Center System (WWCS) for females. The agent must send the [DOC-416](#) as soon as it appears that a recommendation will be made for revocation. If the violation does not result in revocation, the DOC-416 remains valid for the duration of the supervision term unless specifically noted on the 416, Section Two, Item Three.

An offender's good time forfeiture/reincarceration/reconfinement time information may be obtained any time a parolee or offender on extended supervision is alleged to have committed a violation that may warrant revocation. If the [DOC-416](#) has not been sent in at the time the offender is in custody, the agent must email the [DOC-416](#) as soon as it appears that a recommendation will be made for revocation. The [DOC-416](#) will be returned to the agent indicating the amount of time available for forfeiture/reincarceration/reconfinement for New Law or TIS sentences. If the case under Old Law, the institution registrar will contact the agent to get the date of violation. If the case has multiple consecutive counts on one Judgment of Conviction, the institution registrar will contact the agent to ascertain the date of violation and whether a stop time has been issued for the offender.

The agent will, after supervisory consultation, make a specific forfeiture/reincarceration recommendation in the Revocation Summary ([DOC-1950](#)), on the [DOC-44A](#), and on the [DOC-414](#). For offenders with multiple cases, review of the [Revocation and Custody Credit Guidelines](#) is recommended. If the final revocation hearing and the forfeiture/reincarceration/reconfinement hearing are waived, the Secretary's Designee may increase or decrease the recommended amounts for good time forfeiture/reincarceration/reconfinement time.

The forfeiture recommendation for each case must be stated in years, months, and days.

Under the Old Law, the agent must recommend whether or not good time is to be earned on forfeited time when the violation prompting revocation occurred after the MR date. If the violation occurred prior to MR, good time will automatically be earned on forfeited good time.

### **.13 DECISION GUIDELINES**

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Once the registrar returns the information on the amount of good time/reincarceration/reconfinement time available, the agent calculates an appropriate recommendation. The agent reviews the recommendation with the supervisor at a case staffing for accuracy and supervisory approval.

The agent applies the penalty schedule for the most serious violation committed by the offender to determine the range of forfeiture/reincarceration/reconfinement.

Recommendation for good time forfeiture, extended supervision reconfinement, or parole reincarceration time shall be consistent with the penalty schedule. Deviation from the penalty schedule must be approved by the Regional Chief or designee. The justification for exceeding the penalty schedule and approval of the Regional Chief shall be addressed in the Revocation Summary ([DOC-1950](#)).

### **.14 OLD LAW DECISION GUIDELINES**

The following seven factors shall be considered by the agent and supervisor in arriving at a good time forfeiture recommendation:

- The nature and severity of the original offense;
- The offender's institution conduct record;
- The offender's conduct and behavior while on parole;
- The amount of time left before mandatory release if the offender is a discretionary release parolee;
- Whether forfeiture would be consistent with the goals and objectives of field supervision under [Chapter 328](#) of the Administrative Code;
- Whether forfeiture is necessary to protect the public from the offender's further criminal activity, to prevent depreciation of the seriousness of the violation, or to provide a confined correctional treatment setting which the offender needs;
- Other mitigating or aggravating circumstances.

For violations after the MR date, a recommendation shall be made on whether good time is to be earned on time forfeited. For discretionary parole violators, by law, time will be earned on forfeited good time and no recommendation is necessary.

### **.15 NEW LAW AND EXTENDED SUPERVISION DECISION GUIDELINES**

The following five factors shall be considered by the agent and supervisor in arriving at a reincarceration/reconfinement recommendation:

1. The nature and severity of the original offense;

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2. The offender's institution conduct record;
3. The offender's conduct and behavior while on parole;
4. Consistent with the goals and objectives of field supervision under [Chapter 328 of the Administrative Code](#); and
5. The period of reincarceration that is necessary to protect the public from the offender's further criminal activity, to prevent depreciation of the seriousness of the violation, or to provide a confined correctional treatment setting which the offender needs.

**.16 REINCARCERATION RECOMMENDATIONS**

The agent must first determine the category that best contains the most serious allegation. The agent must then make the calculation for the recommendation based upon the amount of time available using the following penalty schedule. Exceptions to the penalty schedule require the approval of the regional chief or designee.

The agent's final recommendation shall not be less than one year. If there is less than one year available, the agent will recommend 100% time available. Regional approval is not required in these circumstances. When dealing with multiple, consecutive cases, do not recommend the minimum on each case. It is only required that the final recommendation be a total of at least one year. When dealing with multiple concurrent cases, the sentence with the most time is controlling. Calculate the time on the case with the most time available and take the same from the remaining case. If one case has less than the calculated amount, the recommendation shall be 100% time available. Regional approval is not needed when exhausting cases under these circumstances.

**.17 PENALTY SCHEDULE**

The Regional Chief or designee must approve any deviation from the penalty schedule and any reincarceration recommendation in excess of 5 years.

| Up to 15% of time available | Up to 30% of time available | Up to 60% of time available |
|-----------------------------|-----------------------------|-----------------------------|
| CATEGORY 1                  | CATEGORY II                 | CATEGORY III                |
| Rules Violations            | Assaultive Misdemeanors     | Crimes against Person       |
| EMP Violations              | Possession of Weapons       | Weapons                     |
| Drug Possession, Use        | Property Felonies           | Homicide, Manslaughter      |
| Resisting, Obstructing      | Drugs, Delivery             | Death/Injury by OWI         |

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|                            |                                   |                       |
|----------------------------|-----------------------------------|-----------------------|
| Bail Jumping               | Possession with Intent to Deliver | Felony Sexual Assault |
| Misdemeanor Theft          | Special Rules Violations-SO       | Arson                 |
| Retail Theft               |                                   |                       |
| Program/Treatment Failures |                                   |                       |
| Non-Criminal Threats       |                                   |                       |
| ATR Violations             |                                   |                       |

Mitigating and Aggravating Circumstances

This system anticipates using the penalty schedule to calculate a recommendation for incarceration and subsequent extended supervision or parole supervision. Mitigating and aggravating circumstances may be used to support recommendations that vary from the penalty schedule but will require the approval of the Regional Chief or designee.

Mitigating Factors:

1. Recognition should be given to lengthy periods of supervision served crime free;
2. Violation and crime free preceding present revocation;
3. Completion or amenable to treatment program(s);
4. Pattern of stable and responsible behaviors in the community;
5. Involvement in current violation is minimal or offender is follower;
6. Victim(s) statements(s);
7. Original imprisonment portion of sentence less than 33% of ES available for reincarceration.

Aggravating Factors include:

1. Offender's negative institutional conduct record;
2. Prior revocations;
3. Prior assaultive behavior;
4. Special vulnerability of victim(s) (including age, disability, state of intoxication, etc.);
5. Extreme physical injury/cruelty of victim(s) – evidence of sadism;
6. Extreme property damage;
7. Victim(s) statement(s);
8. Multiple violations;

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### 9. Use of a Firearm

#### Consecutive Sentences

Consecutive periods of incarceration/reconfinement time are served as one continuous sentence. Offenders serve consecutive periods of parole/ES as one continuous sentence upon release from prison. Consecutive parole/ES cases discharge upon completion of that sentence. Thus, the time on the discharged cases is no longer available for reconfinement if the offender is revoked. The [DOC-416](#) will list the time available for each active count or case separately. Cases which have discharged will be noted in the center box of the [DOC-416](#) and no credit should be given prior to that date. A recommendation should be made on each case/count for which the agent is requesting revocation. Agents are not required to revoke all active consecutive cases/counts.

Consecutive cases/counts are not required to be revoked in the order they were sentenced. An agent may request revocation of the second case/count in a string while leaving the first case/count unrevoked.

- Agents should determine the total amount of reincarceration time recommended for reconfinement so that the case(s)/count(s) with the smallest amount of time available are exhausted first.
- If there are no cases/counts that could be completely exhausted, the time may be applied evenly to all cases/counts being revoked.
- Any active consecutive cases/counts not revoked will pause while the offender is serving time on the revoked cases/counts. The unrevoked count/case will begin running and a new maximum discharge date will be calculated for the unrevoked case/count once the offender is released from prison.
- Any active concurrent cases/counts will continue to run while the offender is serving time on the revoked case/count. There will be no change to the maximum discharge date for those unrevoked cases/counts. Any active probation cases not revoked will continue to run while the offender is incarcerated on the revoked cases/counts. There will be no change to the discharge date for any unrevoked probation cases.

#### Consecutive Prison Counts on a Judgment of Conviction

- As parole/ES time is served, consecutive prison counts, on one Judgment of Conviction, will be classified as *"no longer active or expired,"* and the time on that count will no longer be included in the reincarceration time reported on the [DOC-416](#).
- Because the multiple counts are under one active Judgment of Conviction, the counts cannot be discharged the way consecutive cases discharge.
- The time on these multiple count cases will be reported on the [DOC-416](#) as one number, broken down by years months and days.

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- If a count is “no longer active or expired,” there will be a date in the center box of the [DOC-416](#), and no custody credit shall be given prior to the date in that box.
- In multiple consecutive count Judgment of Convictions, staff need to ensure jurisdiction has been preserved when reporting older violation dates for revocation. Older violation dates, *such as absconding*, will allow for earlier counts to be active as long as jurisdiction has been preserved through the stop time process.
- Older violations which the agent learns about years later may be used to revoke active counts. However, earlier counts may have “expired” and that reconfinement time would not be included on the [DOC-416](#).
- Institution-based Alternative to Revocation (ATR) placements are not sentences and a count may “expire” while the offender is serving the ATR. In these circumstances, the time served in the ATR up to the discharge of the earliest count will no longer be available for reincarceration if the supervision is later revoked.

### **.18 UPDATING the COMPAS ASSESSMENT FOLLOWING REVOCATION DECISION**

The static portion (Question 1-30) of the COMPAS Core assessment must be updated, following the decision to revoke when:

- A new criminal arrest prompted one of the allegations, and
- The offender is facing or has the potential to face prison confinement. For example, an offender with an imposed and stayed prison sentence who also has a new criminal arrest prompting one of the allegations, the static portion of the Core should be completed. If an offender has a withheld felony sentence and also has a new criminal arrest prompting one of the allegations, the static portion of the Core should be completed.
- Formal Institution ATR’s where a new criminal arrest resulted in the ATR.

Updating is done by using the Create function. If the previous assessment completed was a WPN or Reentry, the agent should use the create function to forward and update the static information into a new CORE - Incarcerated Language assessment. The Create function copies only the static information from the official records section. In the Reason for Assessment field, the agent should choose “revocation update required”.

The updated assessment must be completed within thirty days of the service of the [DOC-414](#).

The assessment will show as “incomplete”. An assessment note must be entered for all cases where the offender is facing or has the potential to face prison confinement. This note will make it clear for DAI the reason an assessment was or was not done. For example:

- Assessment not updated: no new criminal arrest.
- Assessment updated: new criminal arrest.

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If the offender is revoked, DAI will complete the assessment with the offender in the institution.

If the offender is not revoked, the agent will complete the remaining sections of the Core assessment within 60 days of the decision not to revoke.

### **PRE-PRELIMINARY HEARING**

#### **.01 Policy**

The Department may proceed with revocation hearings if there are provable violations of the rules of supervision. A revocation proceeding will be conducted to conclusion regardless of the disposition of the criminal charge.

#### **.02 NOTICE TO OFFENDER AND VICTIM OF DECISION TO REVOKE**

The agent prepares a Notice of Violation, Recommended Action, Statement of Hearing Rights and Receipt, Waivers and Custody Decision and an Outline of Revocation Procedures ([DOC-414](#)). The agent shall complete “Rights of Offender – Section A” portion of the ([DOC-414](#)), indicating whether a preliminary hearing will be held. The supervisor will also complete the “Supervisor’s Decision on Offender Custody” section of the ([DOC-414A](#)) to inform the offender of the custody decision. The offender shall be served within two working days of the decision to revoke. The agent shall advise the offender of the reasons for revocation, his or her rights, and an explanation of the “Outline of Revocation Procedures.”

If revocation will proceed and an ATR is not likely at the time of issuance of the DOC-414, the Revocation Notification to Victim (DOC-2938) shall be sent to the victim, along with the Revocation Proceeding Fact Sheet for Victims. Obtain signed authorizations for disclosure of health or other information from the client (if the client consents) in the event the victim may desire to attend proceedings. Complete the Confidential Crime Victim Information (DOC-2939) identifying names and email addresses of victims opting in for rights on the DOC-2938 for eventual submittal to DHA.

#### **.03 PRELIMINARY HEARING NOT REQUIRED**

A preliminary revocation hearing is not required when:

- The offender is not being held in custody;
- It is waived by the offender in writing;
- The offender has given and signed a written statement which admits the violation;
- There has been a finding of probable cause in a felony matter and the offender is bound over for trial for the same or similar conduct, including a federal grand jury indictment; or
- There has been an adjudication of guilt by a court for the same conduct that is alleged to be a violation of supervision.

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If a preliminary hearing is not required, the agent must submit a Request for Final Hearing ([DOC-429](#)) within one working day of the waiver of the preliminary hearing or service of the [DOC-414](#). The supervisor shall complete the lower half of the Waiver and Custody Decision page of the [DOC-414](#), indicating a preliminary hearing will not be held as well as the custody decision. A copy of the [DOC-414](#) be forwarded to the defense attorney.

### **.04 MAGISTRATE APPOINTMENT**

The supervisor or designee will arrange for a magistrate who has not been involved in the revocation decision to conduct the Preliminary Hearing. The Regional Chief or designee will make training available to senior agents, who upon completion, are then able to act as Preliminary Hearing magistrates.

### **.05 SETTING HEARING DATE**

The magistrate will set a time and date for the Preliminary Hearing after service of the [DOC-414](#).

### **.06 NOTICE TO OFFENDER AND VICTIM OF PRELIMINARY HEARING**

The agent prepares and serves the Notice of Preliminary Hearing ([DOC-415](#)) for the magistrate. The hearing will be not less than one, nor more than five working days from service of the [DOC-415](#). In the event the victim opts for notification of proceedings, the agent notifies the victim of the date, time and location of the preliminary hearing.

### **.07 INSTITUTION PROCEDURES**

In some cases, offenders are returned to institutions pending revocation. In these cases, the agent of record is responsible for completing the [DOC-414](#) as well as the [DOC-415](#).

If a liaison agent is assigned to the institution, the agent of record shall prepare the [DOC-414](#) and mail or e-mail it to the liaison agent, who will then serve the offender. The liaison agent will then notify the agent of record whether or not the offender has waived the hearing and will return the signed document.

At institutions where there is no liaison agent, the agent of record may call the institution social worker and request assistance in serving the [DOC-414](#).

If a preliminary hearing is required, the agent shall immediately prepare a [DOC-415](#) within 2 working days of the receipt of the returned [DOC-414](#) and mail or e-mail 4 copies to the liaison agent or



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institution social worker, who will then serve the offender and immediately return 3 copies to the agent of record.

The agent of record is responsible for:

- obtaining a magistrate for the hearing;
- arranging a hearing room at the institution;
- notifying the institution of the date and time of the hearing;
- notifying the victim of the date and time and location of the preliminary hearing if the victim desires
- notifying the institution of the names of any witnesses or victims that need to be present.

The agent may request the assistance of the institution social worker or liaison agent.

### **.08 ATTORNEY PACKET**

The agent notifies the public defender's office, which will make determinations concerning counsel and appoint counsel if appropriate.

When counsel at the Preliminary Hearing represents an offender, the agent should prepare a packet for the attorney as follows:

- Court Order or [DOC-44A](#)
- WICS Sentencing Component Screen
- Applicable COMPAS EBRV
- Rules of Community Supervision
- Notice of Preliminary Hearing ([DOC-415](#))
- Revocation Notice to Victim (DOC-2938)

### **.9 POSTPONEMENT OR EXTENSION OF PRELIMINARY HEARING**

A preliminary hearing must begin within fifteen (15) working days of the date of the Division's detention order. However, with the approval of the Regional Chief or designee, the offender and the Department may agree to a new preliminary hearing date. If an offender or the offender's attorney requests an extension, a notice shall be sent to the Regional Chief or designee. If the agent requests a change, the agent shall forward the request to the Regional Chief or designee. The re-scheduled hearing must take place within 20 working days of the Division's detention order. If the extension is approved, the

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Regional Chief or designee will so advise by routing the request for extension, with approval noted, to the supervisor. Service of a new [DOC-415](#) is required in these cases. A copy of this notice must be given to the Sheriff or other person in charge of the detention facility.

Witnesses and other hearing participants shall be notified promptly of postponed and rescheduled hearings.

If the request for extension is denied, the original preliminary hearing date will stand.

### **.10 SUBPOENA**

Witnesses and documents required at the Preliminary Revocation Hearing may be subpoenaed. The agent shall enter all of the necessary information on the Subpoena form ([DOC-1304](#)) and submit it to the regional chief for signature prior to service. The agent is then responsible for serving subpoena(s) upon witnesses in a timely manner. If witnesses fail to appear, the court may be petitioned for enforcement of the subpoena.

The agent should help witnesses complete the Claim for Witness Fees ([DOC-424](#)) and submit it to the DCC Business Office. By statute, only expenses indicated on the [DOC-424](#) may be paid to witnesses.

### **.11 RE-ISSUANCE OF NOTICE**

If the Notice of Preliminary Hearing ([DOC-415](#)) is found to be improper and the impropriety in itself results in the dismissal of the revocation proceedings, the Department may issue a proper notice and begin the proceedings again.

If a magistrate decides that there is no probable cause to believe the offender committed the violation and later the Department learns of additional relevant information regarding the alleged violation, revocation proceedings may be started again with issuance of a new [DOC-415](#). Such information must not have been known to the Department prior to issuance of the first notice. It may not be information that was known but not used.

## **WAIVED HEARINGS**

### **.01 GENERAL STATEMENT**

The offender may waive any required hearing (preliminary, final revocation, or good time forfeiture/reincarceration/reconfinement) by signing the appropriate section of the "Waivers and

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Custody Decision” ([DOC-414A](#)). If the offender waives the preliminary hearing but requests a final hearing, the supervisor will make the decision on custody status. If an offender on parole or extended supervision waives the final revocation hearing, the offender is entitled to a good time forfeiture/reincarceration/reconfinement hearing which may be waived.

If there is doubt of an offender's ability to make a competent decision, a waiver will not be accepted without the approval of the offender's attorney. Once an attorney has been retained or appointed, a waiver should not be taken without giving advance notification to the attorney.

The agent shall only accept waivers when there is an assurance that the offender is knowingly, voluntarily, and intelligently making a decision to waive.

### **.02 FORMS AND DOCUMENTS REQUIRED OF AGENT**

The following list indicates those documents which are required:

- [Applicable COMPAS EBRV reports](#)
- [DOC- 20](#) Judgment of Conviction/Sentence Imposed and Stayed, Probation Ordered (for imposed and stayed cases only)
- [DOC-44A](#) Recommendation for Administrative Action with a copy to the status keeper
- WICS Synopsis with Sentence Component(s)
- [DOC- 414](#) Notice of Violation, Recommended Action, Statement of Hearing Rights and Receipt with a copy to the status keeper
- [DOC- 414A](#) Waivers and Custody Decision with a copy to the status keeper.
- [DOC- 416](#) Revocation Information Request
- [DOC- 1950](#) Revocation Summary ([Revocation Summary Instructions](#))
- Other relevant reports (treatment summary, police reports, etc.)
- Signed 1163 or 1163A Authorization for Disclosure of Confidential/Protected Health/non Health Information
- DOC – 2938 Revocation Notification to Victim

### **.03 FORMS REQUIRED OF REGIONAL CHIEF OR DESIGNEE**

[DOC-1221](#) Revocation Order and Warrant

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### .04 WAIVER PROCEDURE

Staff Responsibilities:

#### Agent

- Review the [DOC-414](#) with the offender and afford the opportunity to waive.
- Forward the revocation packet to the supervisor within 10 working days of receipt of the waiver.
- Review the revocation packet for completeness and accuracy, checking the following:
  - The dates of violation are the same on the [DOC- 44A](#) and [DOC-416](#) (parole cases or extended supervision cases);
  - The appropriate information is completed under agent's responsibility on [DOC-44A](#);
  - Completion of Section C and D of the [DOC-414](#) (parole or extended supervision cases);
  - Plotkin Analysis and, in parole cases and extended supervision cases only, the Good Time Forfeiture, Reincarceration Time, or Extended Supervision Reconfinement Recommendations are justified;
  - The Good Time Forfeiture/Reincarceration/Reconfinement Recommendation should be consistent with the Penalty Schedule (10.01.17). If the final revocation hearing is waived but a forfeiture/reincarceration/reconfinement hearing is requested, a revocation packet must be sent to the designated e-mail box at the DAI institution where the offender is confined following revocation. The subject line must include the offender's name, offender number, and the wording "Reconfinement Hearing Packet."

#### Supervisor

- Review, approve, and forward the revocation packet to the Regional Chief within 5 working days of receipt.
- If a revocation packet has already been submitted to the regional office, a signed copy of the [DOC-414A](#) (waiver) should be immediately forwarded to the Regional Office. The final hearing should be canceled with Hearings and Appeals.

#### Regional Chief

- Review and approve or disapprove the revocation within 5 working days of receipt.
- If disapproved, return the packet to the unit supervisor for continued supervision.
- If approved, prepare the Revocation Order and Warrant ([DOC-1221](#)).
- Packets and revocation information is disseminated per regional policy.

### .05 FINAL HEARING WAIVED, REQUESTED RECONFINEMENT HEARING PROCEDURE

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Upon receipt of the signed Revocation Order and Warrant [DOC-1221](#), the agent will complete and submit the Good Time Forfeiture/Reincarceration/Reconfinement Hearing Request ([DOC-429A](#)) within one business day. The revocation packet will be required as an attachment when submitting the [DOC-429A](#). The [DOC-429A](#) and attachments will be routed to the institution where the offender is housed pending the re- confinement hearing.

The reconfinement hearing will be held at the institution where the offender is assigned. Agents and attorneys are not required to attend and hearings are not open to the public, with the exception of the victim(s) if there is a desire to attend proceedings.

The agent will receive a notice of the hearing as well as the reconfinement time decision. An appeal may be filed within ten days of the issuance of the decision.

### **.06 WAIVER WITHDRAWN PROCEDURE**

Approval for withdrawal of waivers is with the Regional Chief. Waivers may only be withdrawn upon request before the final revocation order is issued and the matter set for a final administrative hearing. The burden is on the offender to make a showing that the waiver was not knowingly, willingly, or voluntarily made.

## **PRELIMINARY HEARINGS**

### **.01 PURPOSE**

The Preliminary Hearing is to determine: 1) whether there is probable cause to believe that the offender violated the terms of supervision and; 2) whether or not the offender should remain in custody pending the final revocation hearing.

### **.02 AGENT RESPONSIBILITY**

The agent will have the case file available at the hearing. The attorney's or offender's access to the file during the hearing is controlled by the magistrate.

The agent must be prepared to testify concerning the following:

- Offender's court history;
- Establishment of probable cause; and
- Recommendation for and justification of continued custody.

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The agent must be prepared to call and question witnesses and to present documents and other appropriate evidence. The agent may cross-examine the offender and/or offender's witnesses after they have testified. The agent and Division witnesses should be prepared to be cross-examined by the offender or defense attorney.

Hearsay evidence is admissible. Witnesses need not appear at the preliminary hearing when the agent can present or testify from a trustworthy and reliable written report regarding the facts of the alleged violation (i.e., investigating police officers reports or criminal complaint), or can testify to the facts of the alleged violation as told to the agent by the witnesses during the investigation. For example, a police officer who investigated an offense and filed a written report, or a witness who personally observed an offender commit an alleged violation, need not appear if the facts are sufficient to support probable cause based on the testimony of the investigating agent.

In the event the victim desires to attend, check with the victim to see if an accommodation request is needed. Notify the magistrate if the victim desires to attend and if a victim accommodation request is needed so that the right to be heard may be exercised outside the presence of the client.

### **.03 MAGISTRATE RESPONSIBILITY**

The magistrate is responsible for conducting the hearing and having testimony presented in an orderly manner. The magistrate will retain a brief written summary or digest as a record of what occurred at the preliminary revocation hearing. Handwritten notes are acceptable to meet this requirement. These records shall be maintained for two years.

The following is the normal sequence of events:

- Introductory comments.
- Determination that offender and offenders attorney received notice of the hearing.
- Determination that the offender received notice of the violation(s) alleged.
- Agent's presentation: court history, testimony as to probable cause.
- Documents or evidence may be presented during agent or witness testimony.
- Cross-examination of the agent.
- Testimony of agent's witnesses.
- Cross-examination of agent's witnesses.
- Defense counsel or offender's presentation.
- Documents or evidence presented by the defense counsel/offender may be concurrent with offender or witness testimony.
- Cross-examination by agent.

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- Testimony of defense counsel/offender's witnesses.
- Magistrate may question any of the parties.
- Magistrate states the probable cause decision and reasons.
- Agent makes detention recommendation and justification.
- Cross-examination of agent.
- Defense counsel/offender makes detention recommendation and justification.
- Cross-examination of offender.
- Magistrate asks any victims present if they have a desire to be heard.
- Magistrate states the detention decision and reasons for the decision.
- Magistrate advises that the offender and attorney will receive notice of the date/time/place of the final revocation hearing.

Magistrate explains the following in regard to the final hearing:

- The victim(s) relating to the case(s) pending revocation may attend and be heard.
- Administrative in nature, not a court hearing.
- May present material witnesses, but not character witnesses.
- May introduce letters, documents, and other material evidence.
- Questions regarding the final hearing should be referred to the Office of the Division of Hearings and Appeals.
- Offender may waive.
- The offender will receive the Letter of Decision.
- If released from custody with conditions, violations of any conditions of release or rules of supervision may result in the offender being returned to custody by the agent.

Within a reasonable period of time after the preliminary hearing, the magistrate prepares and distributes a written decision letter addressed to the offender with a copy to the agent, the agent's supervisor, and the offender's attorney.

### **.04 MAGISTRATE GUIDELINES**

1. Jurisdictional issues such as timeliness of the revocation, Division authority (commitment, reinstatements, extensions, warrants, etc.), constitutional issues, competency and technical legal questions are not to be considered, as they are outside the scope of the hearing.

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2. Motions that facilitate the conduct of the hearing (e.g., sequestering of witnesses, adjournment of hearing, etc.), may be acted upon by the magistrate, but motions and objections of a technical, jurisdictional, or legal nature should be noted for the record.
3. Procedural errors or issues should be handled by waiver on the part of the offender or by adjournment to allow correction, rather than by dismissal.
4. Exceeding manual guidelines as to time constraints for service of Notices and conduct of the hearing does not in and of itself constitute grounds for dismissal.
5. The magistrate should decide whether to deal with multiple allegations jointly or individually. The magistrate may make a probable cause decision in each allegation or may move to the issue of detention after probable cause is found on any allegation. Probable cause need not be determined on all allegations at the preliminary hearing. However, the most serious allegations should be ruled on so that they are considered in the detention phase of the hearing. Probable cause on any one of the violations is sufficient to continue the revocation process.
6. The magistrate will maintain sufficient control of the hearing to allow testimony to proceed without undue interruption so long as the testimony is relevant to the issue at hand. The magistrate's questioning should be reserved for clarifying or developing information needed to make a decision. Questions by the magistrate should ordinarily occur after each party has ample opportunity to testify and cross-examine and should be limited to fact-finding rather than carrying the Division's case.
7. Questioning of witnesses' credibility is limited to the relevant issues at hand.
8. In no case will a magistrate unilaterally amend a statement of allegation or other information on the Notice. If amendments to the allegations are mutually agreed to by the agent and attorney, the magistrate will rule on the amended allegation.
9. More thorough explanation of procedure by the magistrate is necessary when an attorney does not represent the offender.
10. Unless contested, the agent's testimony is sufficient for establishing probable cause (e.g., bindover, written admission). If contested, documentary evidence must be submitted. Documentary evidence, which supports the testimony as to the basis for probable cause, constitutes grounds to proceed to the detention issue.
11. When a criminal complaint is issued on criminal charges that are substantially the same as an alleged violation, the preliminary hearing magistrate can justify a probable cause finding based upon the existence of that criminal complaint. The resolution of any issues in the criminal complaint can be addressed at the final revocation hearing.
12. In the event that probable cause is not found, the magistrate will issue a written decision stating the reasons for not finding probable cause. The responsibility for releasing the offender from custody rests with the agent and supervisor.



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13. Witnesses will not be required to appear if probable cause can be sufficiently established by testimony of the agent regarding the investigation of the allegation and/or by submission of other evidence. Objections on the basis of a lack of confrontation and cross-examination should be noted for the record, and the hearing should proceed.
14. In dealing with the issue of detention, the magistrate may elicit information necessary to make a finding, to include the nature and circumstances of the violation alleged, the offender's family ties, employment, financial resources, length of residence in the community, past conduct, past record of arrests and convictions, past record of appearance at court proceedings, and any past absconding from supervision or flight to avoid prosecution.
15. The magistrate will verbally provide reasons for the decision regarding probable cause and detention.
16. Upon request, the magistrate may sign the certificate of attendance for submission of witness fees to the DCC Business Office.
17. The magistrate's Letter of Decision is to be prepared within two working days of the hearing.
18. In the event the offender or his attorney, after receiving due notice of the hearing fail to appear, the magistrate may proceed with the hearing. The hearing shall be postponed to permit representation by an attorney if the offender, after being informed of his or her right to representation, requests an attorney based on a timely and colorable claim that he or she did not commit the alleged violation and the magistrate concludes either that the complexity of the issues will make it difficult for the offender to present his or her case or that the offender is otherwise not capable of speaking effectively for himself or herself.
19. Extenuating and/or mitigating circumstances are not considered when determining probable cause.
20. Revocation hearings are not open to the public. Excluding Division representatives, the offender, the offender's attorney, and the victim(s), the magistrate controls who may or may not attend the hearing.

### **.05 PROBABLE CAUSE BASIS**

Probable cause is defined as any evidence that makes it reasonable for the magistrate to believe that the person probably committed the violation.

Any of the following are sufficient to establish probable cause:

- Conviction of a new offense;
- Bindover for trial for a new felony offense;
- Stipulation to probable cause;

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- Signed written admission to the alleged violation
- Submission of proof of violation by the agent at the time of the hearing if the charges are substantially the same as the alleged violation.

### **.06 CUSTODY DECISION**

When there is a Preliminary Hearing, the magistrate shall decide if the offender is to remain in detention or is to be taken into custody and detained pending the outcome of the final hearing. The magistrate's decision may not be appealed.

Detention is advisable if one of the following is true:

- The offender is believed to be dangerous;
- There is a likelihood that the offender will flee;
- The offender is likely to engage in criminal behavior before the revocation takes place;
- The offender is likely to engage in an activity that does not comply with the rules and conditions of supervision; or
- The length of the term to be served upon revocation is great.

A detained offender is not eligible for partial release from detention (e.g., release during working hours).

### **.07 RELEASE FROM CUSTODY RESTRICTED**

The magistrate in determining probable cause and custody is acting for the Secretary of the Department of Corrections. This restricts the authority of the agent and/or supervisor from releasing a person who has been ordered to be held in custody pending the final revocation hearing. The Secretary or designee may alter the custody decision at any time if the public interest warrants it.

## **POST-PRELIMINARY HEARING**

### **.01 PLACE OF DETENTION**

Offenders being held for the revocation process will ordinarily be confined in county jails. Pursuant to [s. DOC 328.27\(5\)](#), the Department may detain an offender on parole, extended supervision, or on felony probation with an imposed and stayed prison sentence in a state correctional institution including a probation and parole holding facility pending revocation proceedings. When the agent and supervisor decide that the most appropriate place of detention is a DAI facility, a recommendation is made to the

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Regional Chief or designee. The Regional Chief or designee will make arrangements for the transfer. Detention in a DAI facility may occur due to:

### Security Concerns:

- In some cases the jail may be unable to insure the protection of other inmates or staff. The agent shall notify the Regional Chief or designee, who will contact the Director of the Bureau of Offender Classification and Movement. The Director will then review the information and make a decision regarding secure placement in an adult institution.
- The agent will then arrange for transportation of the offender to that facility by the Sheriff or DOC personnel.

### Medical Concerns:

- The field supervisor shall notify the Regional Chief or designee of the request for a DAI medical bed.
- The Regional Chief or designee shall contact the Director of Bureau of Offender Classification and Movement to advise of the detailed medical status of the offender using the format below:
  1. Offender name and DOC number;
  2. Court case information that permits legal admission for detention (JOC);
  3. Physical location of offender;
  4. Reason for request for use of a DAI bed;
  5. Jail and/or hospital medical staff name(s) and phone number(s) if the reason for request involves medical or mental health concerns;
  6. Scheduled revocation date;
  7. Whether competency will be an issue for revocation; and
  8. DCC point of contact name(s) and phone number(s).
- The Director will consult with DAI BHS staff relative to the decision regarding an appropriate medical or mental health bed and choose the site for housing the offender and advise the Regional Chief or designee.
- The agent will then arrange for transportation of the offender to the designated facility by the Sheriff or DOC personnel.

In all cases, the agent must ensure that the following information accompanies the offender:

- Order to Detain ([DOC-212](#))

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- Detailed summary of the issues causing detention in a DAI facility.

### **.02 SENTENCING CREDIT**

The agent must document in the Violation Report/Revocation Summary ([DOC-1950](#)) the exact dates the offender was detained by the agent. Utilize the [Revocation and Custody Credit Guidelines](#) to ensure sentence and custody credit is granted. This information will be entered on the Revocation Order and Warrant ([DOC-1221](#)). On sentences where return to court is not necessary, the Department credits the jail time. On withheld sentences, the court credits the jail time at the time of sentencing.

Credit will be granted to sentences for:

- Time spent in detention in the county jail as a condition of probation;
- Time spent in a county jail or correctional facility as an alternative to revocation, DOC hold, or extended supervision sanction.
- Time spent on a home monitoring program as authorized by the sheriff in lieu of confinement in the jail as a condition of probation (time spent on the Department of Corrections' Electronic Monitoring Program is not creditable time);
- Pretrial credit as specified on the Judgment of Conviction;
- Time spent under commitment for the determination of competency to stand trial under [s971.14\(2\)](#), or commitment as not competent to stand trial under [s971.14\(5\)](#);
- Detention in jail or correctional facility in another state when that detention is in connection with a course of conduct for which sentence is imposed in Wisconsin;
- Any time spent on Intensive Sanctions.
- Any time spent by the offender in confinement as an Act 33 Jail Term

Credit will not be granted to sentences for:

- Holds served on consecutive parole or ES cases that have officially discharged from supervision and a discharge slip has been issued. Credit may be granted if jurisdiction has been preserved by a stop time, or if a violation warrant has been issued.
- The center box on the Revocation Information Request ([DOC-416](#)) will list any consecutive cases which have discharged. If there is a case number in that center box, any custody credit prior to the date listed in that box cannot be used. Doing so will result in duplicate credit, and will result in the reopening of discharged case(s).
- For more information about this issue click this link to see a video presentation . <http://docmedia.wi.gov/main/Play/b1f951fe03194dabad3fbf405c081f611d>

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Applying Custody Credit for Offenders Arrested/Convicted and in Custody in another State:

- Offenders arrested on a WI Apprehension Request, without new charges, get custody credit from the date of arrest until they enter the WI prison system.
- Offenders arrested on a WI Apprehension Request, with new charges that result in prison, get custody credit from the date of arrest until they are sentenced to prison, if the sentence in the foreign jurisdiction is deemed concurrent. If the sentence in the foreign jurisdiction specifically states that it is consecutive and the offender is given presentence credit in the foreign jurisdiction, then no custody credit is due. (Agents should include the JOC from the foreign jurisdiction in the hearing packet so this can be accurately determined).
- Offenders arrested on a WI Apprehension Request, with new charges that result in probation, get custody credit from the date of arrest until they enter the WI prison system.
- Offenders arrested on a WI Apprehension Request, with new charges that result in a jail sentence, get custody credit from the date of arrest until they are sentenced to jail. They do not get custody credit during the time they are actually serving the jail sentence. They would again begin to get custody credit from the date they finish serving the sentence and are made available to WI until they enter the WI prison system.
- Offenders arrested on a WI Apprehension Request, with new charges that result in time served, get custody credit from the date of arrest until they enter the WI prison system.
- Offenders get custody credit from the date they are released in the foreign jurisdiction and made available to WI until they enter the WI prison system.
- Offenders arrested, convicted, and sentenced on new charges in a foreign jurisdiction, for which WI never had an apprehension request, nor placed a violation warrant, are not entitled to presentence credit on the WI case (Be careful that the offender was not detained by the agent in the other state at our request).
- Offenders are not entitled to credit for time spent in prison serving a sentence in a foreign jurisdiction.

(In the rare circumstance that the judge in the foreign jurisdiction orders the new sentence of any kind to run concurrent with the WI sentence, consult with the institution records office about how the credit will be applied).

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Federal Prison Sentences:

- Offenders who are revoked after being sentenced on federal charges will be returned to the Wisconsin Prison System (WPS) to serve that time consecutively to the federal sentence.

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- Offenders who are revoked before being convicted on federal charges will serve the WI sentence concurrent to the federal prison term, and will only be returned to the WSP if the WI sentence is longer than the federal prison term.

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### **.03 ADDITIONAL ALLEGATIONS**

If additional allegations are to be added after the Preliminary Revocation Hearing, an amended Notice of Violation, Recommended Action and Statement of Hearing Rights and Receipt ([DOC-414](#)) is prepared to include the new allegations. The offender/attorney and Administrative Law Judge are provided notice of witnesses and evidence no later than ten (10) working days prior to the Final Revocation Hearing. Any additional allegations may be added up to the time of the Final Hearing, but the offender/attorney and Administrative Law Judge shall be provided notice of the new allegations as soon as possible after they are discovered.

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### **.04 AGENT'S RESPONSIBILITY**

When a Final Revocation Hearing is required, prepare and submit the Revocation Hearing Request ([DOC-429](#)) within one (1) working day following a preliminary hearing, a waiver of preliminary hearing, or a determination that no preliminary hearing is necessary.

DHA shall be notified of any victims desiring to be notified of proceedings or attend proceedings within five (5) working days following a preliminary hearing. Signed authorizations for disclosure of protected information shall be included with the revocation packet if agreed to by the client. In the event disclosures are not signed, portions of the proceeding may need to be held in closed session. Revocation Notification to Victim forms (DOC 2938) shall be included with the revocation packets as well. The Division of Hearing and Appeals will prepare a Notice of Final Revocation Hearing within 10 days of their receipt of the [DOC-429](#).

Request for Victim/Witness to Testify Outside the Presence of the Offender: An agent may request that a victim/witness be allowed to testify outside the presence of the offender, if there is reason to believe that the victim/witness may be subject to physical or psychological harm if they are required to testify with the offender present. This is accomplished by checking the box immediately under the witness section and completing the necessary information on the [DOC-429](#).

The Division of Hearings and Appeals staff will flag any [DOC-429](#) that contains this request and the final hearing will be scheduled as usual. Within two weeks of the final hearing, the ALJ will schedule a conference call between the agent and the defense attorney to hear any arguments for or against the request. The ALJ will make a ruling in advance of the hearing so the victim/witness may be informed in advance of the final hearing.

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The agent shall submit a revocation packet to the supervisor within 10 working days of date of service of the [DOC-414](#) and shall maintain copies of the documents in the case file.

There may be regional differences in the contents required in a revocation packet; however, the following list indicates those documents, which are often required:

- DOC- 20 Judgment of Conviction (for all cases being revoked)
- [DOC- 1950](#) Revocation Summary ([Revocation Summary Instructions](#))
- [DOC- 44A](#) Recommendation for Administrative Action
- WICS Synopsis with Sentence Component(s)
- [DOC- 414](#) Notice of Violation, Recommended Action, Statement of Hearing Rights and Receipt
- [DOC- 416](#) Revocation Information Request
- Other relevant reports

The agent must also prepare packets for the Administrative Law Judge and offender's attorney. These packets contain all of the documents indicated above except for the social or presentence investigation and redacted victim information. Personal identifiers such as telephone number, street address, post-office box, zip code and email address shall be redacted from revocation packets prior to submission to the courts, attorneys, or the Division of Hearings and Appeals. Written statements or documentary evidence to be used at the final hearing should also be included.

### **.05 SUPERVISOR'S RESPONSIBILITY**

Review the revocation packet for completeness and accuracy.

Complete the "supervisor's section" of the Recommendation for Administrative Action ([DOC-44A](#)) and review the good time forfeiture/reincarceration/reconfinement recommendation on parole and extended supervision cases.

### **.06 REGIONAL CHIEF'S RESPONSIBILITY**

The Regional Chief or designee will process the packet within 5 working days of receipt, and make a temporary file pending the final revocation decision.

Distribute the packet material as follows when the offender is transported to a state correctional institution:

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Central Record Unit

One copy of each:

- Recommendation for Administrative Action ([DOC-44A](#))
- WICS Synopsis with Sentence Component(s)
- Violation/Revocation Summary ([DOC-1950](#))
- Revocation Order and Warrant – Original ([DOC-1221](#))
- Probation Social or Pre-Sentence Investigation (probation cases only) or if there is a new sentence.

Institution Registrar

One copy of each:

- Recommendation for Administrative Action([DOC-44A](#))
- Court Order (Imposed and Stayed cases only)
- Revocation Order and Warrant ([DOC-1221](#))

DCI – A&E Unit

One copy of each:

- Violation/Revocation Summary ([DOC-1950](#))
- Most recent social history or Presentence Investigation if not available in COMPAS or Virtual Folders
- Clinical Services Reports

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### **.07 EX PARTE COMMUNICATIONS**

Ex parte communication is any oral or written communication to the decision-maker by a party to the revocation process. Division staff will not communicate with the Administrative Law Judge in any way concerning the merits of the revocation prior to the time the decision is rendered. If any ex parte communications are made, the Administrative Law Judge is required to disclose them.

No division staff should call or write the Administrative Law Judge or Administrator of the Division of Hearings and Appeals to discuss the merits of the case before the Administrative Law Judge has rendered a decision. Contact with the Administrative Law Judge should be limited to routine matters such as requests for amended notices of final revocation hearing, etc.

### **.08 WITHDRAW REVOCATION**



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The agent, with supervisory approval, may withdraw the recommendation for revocation at any time prior to the final revocation hearing. This would be appropriate if an acceptable alternative to revocation were developed that did not previously exist. When this is done, the agent must immediately notify the Division of Hearings & Appeals of the need to cancel any scheduled hearing. The agent must also prepare a new Recommendation for Administrative Action ([DOC-44A](#)), checking “Withdraw Revocation Request,” and document the justification for the recommendation in the “Recommendation submitted for the following reasons” section. The agent shall then document the decision in the COMPAS notes. Notification of withdrawal shall be made to any victims or witnesses who were called to testify as well as the original offense victim if registered for notifications.

### **.09 COMPETENCY CONCERNS**

If there are reasons to doubt the competency of the offender to participate in the revocation process prior to the final hearing, the agent should contact the Office of Hearings and Appeals to request an expedited status conference. The agent and the offender’s attorney may present information specific to the offender’s ability to understand the nature of the proceeding or to assist in defense. The Administrative Law Judge will make a determination whether to hold an informational hearing to address those concerns or, more likely, will send a Vanderbeke letter (State ex rel. Vanderbeke v Endicott, 210 Wis.2d 503) without convening a hearing to the circuit court requesting a competency evaluation.

If the offender is found not competent and not likely to regain competency by the circuit court judge, the revocation must be withdrawn and supervision must resume. The agent should work closely with community mental health providers during the duration of supervision. Custodies due to violations may continue to occur. It is critical that the agent continue to be in close communication with mental health providers regarding disposition to the violation and subsequent case planning.

If the offender is found not competent but is likely to regain competency by the circuit court judge, the revocation, which was stayed by the ALJ, should remain stayed while the offender receives treatment until the offender regains competency or for a period not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. The offender shall receive custody credit while detained or receiving treatment. Once the offender regains competency, the agent should notify the ALJ and the offender’s attorney to resume the revocation.

### **FINAL REVOCATION HEARING**

#### **.01 AUTHORITY**

[Wisconsin Administrative Code DOC 331](#)

[Wisconsin Administrative Code HA 2](#)

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### **.02 NOTICE**

The Division of Hearings & Appeals will prepare a notice of the date, time, and place of the Final Revocation Hearing within 10 days of their receipt of the [DOC- 429](#).

### **.03 REQUEST TO POSTPONE FINAL HEARING**

The offender, the offender's attorney, or agent may request that the hearing be rescheduled. A verbal or written request shall be made to the Division of Hearings & Appeals, stating the reasons for the request.

The Division of Hearings & Appeals may extend the 50-day deadline by ten calendar days for cause. If an extension is granted, or the hearing is rescheduled, notice of the rescheduled hearing must be given to the offender, the sheriff or other person in charge of the detention facility, and the agent. The agent shall then provide prompt notice of the rescheduled hearing to Division witnesses.

### **.04 SUBPOENA**

Witnesses and documents required at the Final Revocation Hearing may be subpoenaed. The authority to issue subpoenas has been delegated to the supervisor. The agent shall enter all of the necessary information on the Subpoena form ([DOC-1304](#)) and submit it to the supervisor for approval and signature prior to service. The agent is then responsible for serving subpoena(s) upon witnesses in a timely manner. If witnesses fail to appear, the court may be petitioned for enforcement of the subpoena.

The Claim for Witness Fees [DOC-424](#) may be given to the witness at the time the subpoena is served. By statute, only expenses indicated on the [DOC-424](#) may be paid to witnesses.

### **.05 AGENT RESPONSIBILITY**

If the Final Revocation Hearing process is not occurring in a prompt and timely manner, the agent will immediately contact the supervisor concerning the situation.

The agent must be prepared to prove that the offender committed the alleged violation(s), and the conduct constitutes a violation of the rules or conditions of supervision, and the violation is sufficiently serious to require revocation according to Plotkin standards.

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The agent will be responsible for the presence of any witnesses who will give information upon which revocation is based. The agent will have the case file material available at the hearing. The Administrative Law Judge controls attorney or offender access to the file during the hearing.

The agent will have copies of all of the documents listed in the Post- Preliminary Hearing section available to present at the hearing:

The agent must be prepared to testify to the following as outlined in the DOC-1950 Revocation Summary ([Revocation Summary Instructions](#)):

- Court history
- Rules of supervision
- Violation(s) alleged
- Plotkin Analysis
- Offender's behavior and adjustment
- Good time forfeiture recommendation/reincarceration/reconfinement recommendation
- Alternatives to revocation
- Custody credit

### **.06 FINAL HEARING FORMAT**

The exact format varies with each Administrative Law Judge and case situation. Generally, the agent should be prepared for the following:

- Agent's testimony
- Testimony of witnesses
- Cross-examination of witnesses
- Redirect examination of witnesses
- Defense testimony
- Cross-examination by agent
- Redirect examination by defense
- Questioning by Administrative Law Judge
- Good time forfeiture/reincarceration/reconfinement recommendation

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- Closing statement by agent
- Closing statement by defense
- Decision by Administrative Law Judge

### **.07 ADMINISTRATIVE LAW JUDGE'S DECISION**

Following conclusion of the hearing, the Administrative Law Judge will prepare a written Findings of Fact, Conclusion of Law, which will be furnished to the Division of Community Corrections, the offender, and the offender's attorney within 10 working days.

The Administrative Law Judge's decision will be the final decision and order within 10 working days, unless a petition for review by the Administrator of the Division of Hearings & Appeals of such order is submitted by the offender or the Division.

In reaching this decision, the Administrative Law Judge will consider only the evidence presented and decide:

- Whether the offender committed the conduct underlying the alleged violation;
- If the offender committed the conduct, whether the conduct constitutes a violation of the rules or conditions of supervision;
- If the offender violated the rules or conditions of supervision, whether revocation should result; and
- Make specific findings as to dangerousness, whether a decision not to revoke would unduly depreciate the seriousness of the violation, whether there is a need for further correctional treatment, and whether this is best provided in an institutional setting.

The Administrative Law Judge will make a reconfinement determination for extended supervision cases that are revoked on and after October 1st, 2009.

### **APPEALS**

#### **.01 ADMINISTRATIVE LAW JUDGE'S DECISION**

When the Administrative Law Judge enters an order for continued supervision (not revoke), this order will not cause the release of the offender from custody until 10 working days from the date it is entered. If during these 10 working days the Division of Community Corrections requests a review of the Administrative Law Judge's proposed order, the order is stayed, and the offender will remain in custody pending the final order.

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The petition is addressed to:

Administrator

Division of Hearings & Appeals

5005 University Avenue, Suite 201

Madison, WI 54705

Prior to mailing, the petition must be approved by the Field Supervisor. It must be submitted within 10 working days from the date the Administrative Law Judge's order was entered. Copies of the petition will be sent to the Office of the Division of Hearings and Appeals, the offender, the offender's attorney, and the Regional Chief.

Only relevant material, including petitions, letters, reports, and other evidence, which was accepted into evidence in the hearing, will accompany the petition.

### **.02 ADMINISTRATOR'S DECISION (DIVISION OF HEARINGS & APPEALS)**

The Administrator of Hearings and Appeals will review the synopsis, the Administrative Law Judge's decision, and all materials submitted for review. The Administrator will decide to modify, sustain, reverse, or remand the Administrative Law Judge's decision based on evidence presented at the hearing and materials submitted for review. The final decision will be issued within twenty-one working days of the receipt of the appeal.

The Administrator's decision will be forwarded to the offender, the offender's attorney, if any, the agent's supervisor, the Regional Chief, and the Department of Corrections.

### **.03 APPEAL OF ADMINISTRATOR'S DECISION**

The Department or any offender contesting the decision of the Administrator or designee, unless the matter is returned to the Office of Hearings and Appeals for further action, may seek judicial review of the decision by petition for Writ of Certiorari to the sentencing court.

## **REVOCATION AND REINSTATEMENT ORDERS**

### **.01 GENERAL STATEMENT**

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At the conclusion of the revocation process, the Department's order may be to revoke or to return the offender to supervision (reinstate). An order to reinstate may include tolled time if the offender is found by the Administrative Law Judge to be in violation of the rules or conditions of supervision.

### **.02 REVOCATION ORDER AND WARRANT**

The Regional Chief prepares the revocation order and related materials when an offender waives the revocation hearing. If there is a final revocation hearing, the Administrative Law Judge prepares the revocation order and related materials.

Upon receipt of revocation order and warrant, if the offender is not in custody, the agent shall immediately apprehend and place in custody. If the offender cannot be located, a copy of the revocation order goes to the sentencing court for warrant. If an exception to this requirement is appropriate, the agent will contact the Regional Chief to secure that exception.

On imposed and stayed, ES, or parole cases, send a memo to the Sheriff and issue an apprehension request.

The agent will provide the offender and sheriff/ detention facility with a copy of the revocation order and warrant.

For imposed and stayed cases, the agent will provide a copy of the Judgment of Conviction to the sheriff/detention facility. The local unit shall work with the Clerk of Courts Office to establish a procedure for communicating the amount of any court obligations that remain outstanding.

On sentence withheld probation cases, the revocation order and warrant, revocation summary, Notice of Violation, Recommended Action, Statement of Hearing Rights and Receipt ([DOC-414](#)), signed waiver (or copy of the Administrative Law Judge's findings and recommendation), Financial Obligation Screens (WICS Screens), and a memo shall be submitted to the sentencing court within 10 calendar days from the effective date of revocation (date Order and Warrant signed by Regional Chief or designee or final order from Hearings and Appeals). Each region should use their standing policy on the return of offenders to court.

The court should be advised of the location of the offender, other revocation actions and reincarceration recommendations, and any outstanding financial obligations.

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### **.03 REINSTATEMENT ORDER**

If the Administrative Law Judge's order is to reinstate, the order is prepared by the Division of Hearings & Appeals. If time is tolled, the order will indicate the new discharge date.

Upon receipt of the Order to Reinstate Probation or Parole, the agent shall forward a copy to CRU and the status keeper so the official record can be amended. A notation should be made in the COMPAS general notes indicating the reinstatement of supervision.

### **.04 VICTIM/WITNESS NOTIFICATION**

Upon receiving the final decision, the results must be communicated to victim(s) testifying, witnesses called by the agent (except for law enforcement officers), victim(s) of the violation, the victim of the original offense if registered for notification, and others as needed.

## **SPECIAL REVOCATION PROCEDURES**

### **.01 AUTHORITY**

[Wisconsin Administrative Code DOC 328.03](#)

[Wisconsin Administrative Code DOC 331.03\(10\)](#)

### **.02 GENERAL STATEMENT**

All offenders are subject to revocation under [Chapter 331](#) of the Administrative Code except those supervised under the statutes noted below:

[971.17 - Not guilty by reason of mental disease or defect](#)

[51.37\(9\) - Conditional transfer or discharge by the Director of Mental Health institutes to field supervision](#)

161.47 – Conditional discharge for possession of a controlled substance under 161.41(3) (Probation without Conviction)

[975 – Sex crimes commitments](#)

[980 – Sexually violent persons commitments](#)

[939 – Lifetime supervision](#)

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### **LEGAL RULES, AIDS, & GUIDELINES**

#### **.01 HEARSAY**

Hearsay evidence is defined as a statement, which is offered as proof of the truth of the matter asserted, but the statement-maker is not available for questioning or cross-examination.

Although rules of evidence may be relaxed somewhat at a revocation hearing, they cannot be relaxed to the point where a violation may be proven entirely by unsubstantiated hearsay testimony.

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#### **.02 WITNESSES**

Agents may request that witnesses provide testimony at the Final Revocation Hearing. The revoking agent will arrange for any witness' attendance at the hearing. If an agent deems it inadvisable by reason of "good cause" to have a witness present at the hearing, an affidavit relating such reasons is prepared to accommodate the witness' absence from the hearing. The agent is required to provide advance notice in writing to the offender, attorney, and the Administrative Law Judge if the agent intends to use testimony by affidavit. The Administrative Law Judge may, however, reject such a request.

"Good cause" includes, but is not limited to, the following:

- Substantial risk of harm;
- Absence from the jurisdiction;
- Age of the witness (very young or very old)
- Illness or infirmity.

The agent will contact Legal Counsel for assistance in preparing an affidavit.

Agents will select witnesses that can best support their case.

Agents should request written statements from witnesses at the time of the violation investigation. Witnesses should be interviewed immediately prior to the hearing to allow them to refresh their memory regarding their written statement.

Defense questioning must be within the scope of the hearing. Other questions can be objected to as irrelevant, immaterial, leading, etc. Any objection must be made immediately and the basis for



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objection identified. If the same questions are repeated, the agent can object on the basis that the witness has already answered the question, even if it is in a different form.

When the defense objects to an agent's question because it is leading, the agent should rephrase the question in the form "state whether or not, etc."

A subpoenaed state witness may claim witness fees and mileage by preparing a Claim for Witness Fees ([DOC-424](#)) and having attendance certified by the agent, Administrative Law Judge, or magistrate.

### **.03 EVIDENCE**

While physical evidence is not required at hearings, use of it can be effective. Photographs of physical evidence are accepted and often preferred by Administrative Law Judges.

An Administrative Law Judge may use as supportive evidence an admission by silence if the offender refuses to answer a question to which a reasonable person, who did not commit the violation, would answer "no." Physical evidence held by the agent that is the property of a victim or witness shall be returned to the owner as soon as possible following the hearing.

### **.04 "OFFER OF PROOF"**

If the agent has information or evidence to be entered during the hearing, but the Administrative Law Judge sustains defense counsel's objection, the agent should state, "I wish to make an offer of proof to preserve the record." Though the evidence may not be accepted by the Administrative Law Judge, this "offer of proof" allows the agent to show the Administrative Law Judge what would be shown if allowed to enter the evidence.

The benefit of "offer of proof" is that the evidence is on the record and useful for future appeals if necessary.

### **.05 PUBLIC ACCESS TO HEARINGS**

Revocation hearings are exempt from public view. The "public" is any person not a participant at the hearing.

An Administrative Law Judge or magistrate can regulate the course of the hearing, and the public can be barred from such hearing. Only those participants necessary to present testimony or evidence for

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consideration, or victims, must be permitted to attend. Witnesses may be sequestered and allowed into a hearing only to give testimony.

The Administrative Law Judge or magistrate may permit anyone to attend a revocation hearing but is not bound to do so. The Administrative Law Judge or magistrate is the final determiner of who may or may not attend a hearing.