



## **Directive 410.04 Preliminary Probable Cause Hearings**

- 4.1.2 The accused may waive his/her right to a PPC Hearing however the Parolee or Probationer who wishes to waive his/her PPC Hearing is, as a matter of Policy, required to sign a form, which acknowledges the violation of Parole or Probation, "Waiver of Appearance and/or Hearing", appendix II. Once made, this waiver of a PPC Hearing made by the parolee/probationer is not revocable.
- 4.2 The Department's Hearings Administrator will provide written notice of the time, location and date of the PPC Hearing as well as the alleged violation(s), at least 24 hours prior to the scheduled hearing (Appendix I). The accused will also be provided with sufficient time (3 hour minimum if requested) to become familiar with the evidence that will be used, prior to the hearing.
- 4.3 At the PPC Hearing the parolee/probationer has the right to be heard in person and to present witnesses and documentary evidence. He/she has the right to confront and cross-examine adverse witnesses (unless the Hearings Administrator specifically finds good cause for not allowing confrontation).
- 4.4 Testimony of confidential informants, "Confidential Informant Form", Appendix III, will be forwarded to the Hearings Administrator with the violation packet.
- 4.5 The staff member compiling the violation packet will ensure the person taking the C.I.'s testimony reports such testimony in affidavit format. The narrative portion of the affidavit must state that the reporter believes the C.I. to be reliable and it must finish with the sentence "I swear (affirm) that the above written account is a true and accurate representation of the confidential informant's statement made to me on \_\_\_\_\_, 200\_.
- 4.6 The Hearings Administrator will render a written statement as to the evidence relied on and reasons for finding that a preponderance of the evidence exists to support the allegation of violation(s).

## **5. Training Method**

- 5.1 The Department's Hearings Administrator has the responsibility and authority to develop and deliver Administrative Due Process training for Hearing Officer Candidates.

## **6. Quality Assurance Processes**

- 6.1 A record will be maintained of the hearing. This record will be kept indefinitely in the offender case file and will contain the following:
  - 6.1.1 The date and time of the hearing
  - 6.1.2 A list of all witnesses and a summary of their testimony
  - 6.1.3 The Hearing Officer's decision regarding the existence of a preponderance of evidence in support of the alleged violation(s).
  - 6.1.4 A summary of evidence on which the decision was based
  - 6.1.5 Signature of the Hearing Officer.
  - 6.1.6 The tape recording of Preliminary Probable Cause Hearing will be retained for three years after the date of the hearing.

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- 6.1.7 Any confidential information used in a hearing where the Hearing Officer found that a preponderance of the evidence supported the allegation of violation will be kept with the hearing tape.

### **7. Financial Impact**

- 7.1 Due Process Hearings associated with the administration of Preliminary Probable Cause Hearings for those Parolees and Probationers being supervised under the Interstate Compact for the Supervision of parolees & Probationers demand the exclusive attention of those involved. The majority of the workload falls upon casework personnel. Casework Supervisors and correctional services specialists must concentrate their efforts at the task at hand when conducting investigations and participating in hearings. Security staff must provide and retrieve paperwork to and from the offender throughout the entire process. There are several occasions where a signed receipt needs to be collected from the offender. All paperwork involved must be distributed to multiple entities requiring specialized forms. Filing this information in various, retrievable, electronic and paper formats demands dedicated administrative personnel time. The process requires various degrees of knowledge depending upon the role that is being fulfilled. The field of expertise is somewhat fluid and very detailed, requiring ongoing training and re-certification. Budgets are based upon a predicted workload. Any unanticipated increase in workload connected with the administration of offender preliminary probable cause hearings may translate into additional personnel and operating expense.

### **8. Responsible Director and Draft Participants**

- 8.1 This Directive was written by John B. Murphy, Hearings Administrator and Jay W. Simons, Assistant Superintendent, after consideration of feedback solicited from the field as well as review and guidance from the Executive Management Team (EMT).

VT DOC LETTER HEAD

DATE

Offender's name  
Address

Re: Preliminary Probable Cause Hearing

Dear \_\_\_\_\_,

This letter is to inform you that an administrative due process hearing will be conducted at the \_\_\_\_\_ Correctional facility at the above address on \_\_\_\_\_ at \_\_\_\_\_ o'clock.

The Purpose of this hearing is to determine whether there is probable cause to believe that you have violated any conditions of your Parole/Probation granted by the State of \_\_\_\_\_ and Vermont in accordance with the Interstate Compact Agreement. **This is not a parole and or probation revocation hearing.**

You have allegedly violated \_\_\_\_\_ State Conditions as follows:  
(Sending state)

You have allegedly violated Vermont Conditions as follows:

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

Inmates name

Date

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

Sincerely,

Hearing Officer

Attachment: 410.04 Appendix II

C: Facility Superintendent

Field CSS

DCA/Sending State

CA-VT

*WAIVER OF APPEARANCE and/or HEARING*

I, \_\_\_\_\_, have been advised of my right to appear at my Preliminary Probable Cause Hearing regarding the charge of my violating

\_\_\_\_\_ condition(s) associated with my Parole and or (Sending State and/or Vermont)

Probation that has been scheduled for \_\_\_\_\_ hours on \_\_\_\_\_. (Date)

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

\_\_\_\_\_  
(Inmate Signature) (Date)

Witness: \_\_\_\_\_  
(Staff Member Signature) (Date)

**REFUSAL TO APPEAR**

I saw \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_

And advised the inmate of the right to appear before the Hearing Officer on \_\_\_\_\_.

The inmate declined to appear at the Hearing but refused to sign A Waiver of Appearance and or Hearing.

\_\_\_\_\_  
(Staff Member Signature) (Date)

\_\_\_\_\_  
(Second Staff Witness) (Date)

Accused

Docket Number



Institution	
<input type="checkbox"/> NWSCF	<input type="checkbox"/> NERCF
<input type="checkbox"/> CRCF	<input type="checkbox"/> CCWC
<input type="checkbox"/> MVRFCF	
<input type="checkbox"/> SESCOF	
<input type="checkbox"/> DALE	
<input type="checkbox"/> WRCF	
<input type="checkbox"/> NSCF	

Community Supervision	
<input type="checkbox"/> St. Albans	<input type="checkbox"/> St. Johnsbury
<input type="checkbox"/> Burlington	<input type="checkbox"/> Newport
<input type="checkbox"/> Rutland	<input type="checkbox"/> Morrisville
<input type="checkbox"/> Bennington	<input type="checkbox"/> Chelsea
<input type="checkbox"/> Brattleboro	<input type="checkbox"/> Middlebury
<input type="checkbox"/> White River Junction	
<input type="checkbox"/> Barre	

**Confidential Informant Form**

(To be completed by the Hearing Officer before the findings of fact and outcome)

In considering statements of confidential informants I will:

- A. Only consider Confidential Information when it is accompanied by a report by a staff member of the statements made by the Confidential Informant (**CI**).
- B. Examine the statement(s) of each confidential informant before reaching a decision on the charge.
- C. Never disclose to the accused the identity of a confidential informant or the contents of his/her statement. I will only provide the appendix IV to the accused if it will not disclose the identity of the CI.
- D. Fill out one appendix IV for each confidential informant statement. If more than one exists, each will be labeled CI1, CI2, CI3, etc.
- E. Attach the completed appendix IV to the completed Hearing Report Form. All confidential information will be sent to the Security Unit at central office.

Why is the testimony of the witness confidential?

\_\_\_\_\_ to protect the witness from harm

\_\_\_\_\_ to protect facility security

If neither, then disclose the statement to the accused.

Identify the name of the Interviewing Officer (**IO**) who took the CI's statement?

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1. Does the CI have first-hand knowledge of the alleged charge? \_\_\_ Yes \_\_\_ No  
(If the answer to #1 is "No," do not use the CI.)

2. If "Yes," briefly describe the facts as related by the informant that deal with the alleged charge. **(Omit if disclosure will reveal the identity of the CI.)**

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3. Does the CI have a motive to lie? \_\_\_ Yes \_\_\_ No  
**(If the answer to #3 is "Yes," do not use the CI.)**

4. Does the IO's report indicate the CI is reliable? \_\_\_ Yes \_\_\_ No

**If "No," do not use the CI**

**If "Yes," the IO established reliability by indicating that:**

(a) CI has provided accurate information if the past? \_\_\_ Yes \_\_\_ No

(b) there is corroborating evidence? \_\_\_ Yes \_\_\_ No

(c) other. Explain: \_\_\_\_\_

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5. Did the IO:

(a) swear or affirm in writing that the CI's statement is accurately reported and that s/he believes the CI is reliable? \_\_\_ Yes \_\_\_ No.

**(If the answer to #5(a) is "No," do not use the CI.)**

(b) testify at the DR hearing as to the reliability of the CI? \_\_\_ Yes \_\_\_ No

If "No," explain: \_\_\_\_\_

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(c) If "Yes," did you find the IO credible? \_\_\_ Yes \_\_\_ No

**(If the answer to #5(c) is "No," do not use CI)**

**(If the answer to 5(a), 5(b) and 5(c) are "Yes," then the CI is reliable. Proceed to #7.  
If the answer to 5(a) and 5(c) are "Yes" and 5(b) is "No," then continue with #6.)**

6. I established the CI is reliable because:

(a) I interviewed the CI? \_\_\_ Yes \_\_\_ No.

(If "No," go to (b))

If "Yes," was the CI found reliable? \_\_\_ Yes \_\_\_ No.

(If "Yes," then explain. If "No" do not use the CI and go to #7.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) I have personal knowledge that the CI has provided truthful and accurate information in the past? \_\_\_ Yes \_\_\_ No.

or;

(c) there is corroborating evidence supporting the CI? \_\_\_ Yes \_\_\_ No.

(If "Yes," identify the corroborating evidence.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(If either 6(a) (both parts), 6(b) OR 6(c) is "Yes," then the CI is reliable. If the answer to 6(a), 6(b) AND 6(c) are "No," then the CI is not reliable and may not be used. Go to #7.)**

7. I did \_\_\_ did not \_\_\_ find the statements of the Confidential Informant reliable.

I did \_\_\_ did not \_\_\_ use the statement of confidential informant as evidence in the hearing.

\_\_\_\_\_  
Hearing Officer Signature

\_\_\_\_\_  
Date