

Chapter 07 - Supervision and Monitoring

Section 04 - The Violation Hearing

A. Purpose.

The purpose of this section is to establish general procedures and practices for an employee to prepare for and provide evidence in a violation hearing.

B. Definitions.

(1) In this section, the following terms have the meaning indicated.

(2) Terms defined.

(a) "Certified copy" means a copy of a document or record, signed and certified as a true copy by the custodian of the original document or record. In Maryland, a certified copy is often called a true test copy.

(b) "Employee" means a Divisional employee whose job tasks include presenting evidence, directly or through a state's attorney, at a violation hearing.

(c) "Evidence" means the testimony, writings, and other material things that are offered during a violation hearing to prove the existence or nonexistence of a fact.

(d) "Violation hearing" means a hearing, held before a judge or a parole commissioner, to determine whether an offender violated a term or condition of probation or release.

C. Business Records.

(1) The records that are kept in the ordinary course of the Division's business constitute the bulk of the material upon which an employee shall rely in order to initiate, prepare for, and participate in a violation hearing. These business records include:

(a) Offender sign-in sheets;

(b) Correspondence, including electronic mail;

(c) Forms, including:

(i) DPP-ADM-7A ("Daily Activity Worksheet");

(ii) Those related to drug testing and the Interstate Compact; and

(iii) Signed releases of information;

(d) The Case Assignment by Agent Printout ("CABA");

(e) Reports to the court or Parole Commission; and

(f) Field notes.

(2) **Content of a business record.** The content of a business record affects an employee's ability to:

- (a) Write an accurate and thorough report to a court or the Parole Commission;
- (b) Prepare for a violation hearing; and
- (c) Testify effectively at a violation hearing.

(3) For the reasons given in paragraph (2), an employee shall establish and maintain business records, including field notes that are:

- (a) Accurate;
- (b) Thorough;
- (c) Devoid of:
 - (i) Personal opinion;
 - (ii) Bias; and
 - (ii) Extraneous entries that are unrelated to the business purpose of the record; and
- (d) If handwritten, in accord with the provisions set forth in section 01 of this chapter.

D. Preparing for a Violation Hearing.

- (1) An employee shall prepare for a violation hearing by:
 - (a) Reviewing the pertinent business records;
 - (b) Determining what, if any, documents will be offered as evidence; and
 - (c) Obtaining, as needed, a:
 - (i) Certified, or true test, copy, as set forth in paragraph (2) of this subsection; and
 - (ii) Declaration of a drug-test result.
- (2) When the basis for a violation hearing is that a probationer failed to obey all laws, the employee shall obtain a copy of:
 - (a) The statement of charges or offense report to establish the date that the crime was committed; and

(b) A certified copy of the trial outcome, as set forth in paragraph (3) of this subsection.

(3) A certified copy of a trial outcome may:

(a) Be obtained from the clerk of the court where the offender was tried;

(b) Vary in form from one jurisdiction, or court, to the next; and

(c) Be a photocopy of a:

(i) Court folder;

(ii) Document within a court folder; or

(ii) Paper copy of a computerized court record.

(4) When the basis for a violation hearing is that a parolee or mandatory releasee failed to obey all laws, the employee shall obtain a copy of the:

(a) Offense report or statement of charges to establish the date that the crime was committed; and

(b) If trial has been held, certified trial outcome, as set forth in paragraph (3) of this subsection.

(5) When the basis for a violation hearing is that an offender failed to obey all laws by committing a serious traffic offense, such as driving drunk or drugged, the employee shall, as applicable, obtain a copy of the offender's:

(a) Motor vehicle record;

(b) Traffic citation;

(c) Offense report; or

(d) Statement of charges.

(6) The purpose of obtaining a record or document listed in the preceding paragraph is to establish the date the serious traffic offense occurred.

E. Offender Admissions.

(1) If admitted into evidence, an offender's admission to committing a violation of probation or release can alone prove the violation alleged.

(2) For the reason provided in paragraph (1), an employee shall:

(a) Reduce to writing an offender's admission that the offender violated a condition or term or probation or release; and

(b) Endeavor to record, in writing, the exact words spoken by the offender in admitting to a violation.

(3) An employee who records the exact words spoken by an offender shall enclose the offender's words in quotation marks.

Example: In response to an agent's telling an offender that the offender's most recently submitted urine specimen, obtained four days ago, tested positive, the offender said, "That can't be right, I haven't used cocaine in almost two weeks."

F. Appearance at Violation Hearing.

(1) Prior to a violation hearing, an employee shall ensure that the employee:

(a) Is familiar with each of the violations charged against the offender; and

(b) Possesses the documents, including certified copies, field notes and other case material, that will:

(i) Be offered as evidence; or

(ii) Helpful to the employee's recollection.

(2) An employee shall appear at the violation hearing room:

(a) On the date and at the time specified on the subpoena or summons; and

(b) Attired in accordance with the Level One dress standards set forth in Chapter 03.01C of this manual.

(3) Upon arriving at the hearing room, an employee shall follow the local custom or established procedure for making the employee's appearance known to the, as applicable:

(a) Judge;

(b) Parole commissioner;

(c) State's attorney; or

(d) Court clerk.

(4) While an employee is inside of a hearing room awaiting the employee's case to be called, the employee shall refrain from any activity that may be regarded as unprofessional or disrespectful by a judge or parole commissioner.

F. Testifying Effectively.

(1) An employee's greatest assets at a violation hearing are the employee's:

- (a) Credibility;
- (b) Preparedness; and
- (c) Professionalism.

(2) **Department.** When providing testimony, an employee shall:

- (a) Speak in a clear voice and even tone;
- (b) Listen carefully when a question is asked;
- (c) Look at the:
 - (i) Questioner when the question is asked; and
 - (ii) Judge or parole commissioner when answering the question;
- (d) Stop speaking when a judge or parole commissioner speaks;
- (e) Refrain from argumentation, joking, sarcasm, and using:
 - (i) Slang terms; or
 - (ii) Jargon.

(3) **Cross examination.** After an employee provides the factual support for the charges leveled against an offender, the offender's attorney may cross examine the employee regarding any matter that was raised in, or reasonably flows out of, the employee's direct testimony.

(4) An employee shall ask a questioner to repeat or to restate a question that the employee does not:

- (a) Hear completely; or
- (b) Understand fully.

G. Request for Sentencing or Revocation Recommendation.

(1) If an offender is found guilty of violating a condition or term of probation or release and the judge or parole commissioner solicits the employee's sentencing or revocation recommendation, the employee may:

- (a) Respectfully decline; or

(b) Offer a recommendation.

(2) If an employee makes a recommendation regarding an offender's revocation or sentencing, the employee shall be prepared to provide the basis for the recommendation in the event the judge or parole commissioner asks for it.

(3) The basis for a revocation or sentencing recommendation given by an employee shall be:

(a) Based upon the employee's training and experience in supervising or monitoring offenders;

(b) Devoid of personal considerations, views, or bias; and

(c) Consistent with the Division's mission.

H. Request to Refer Unpaid Monies to the Central Collection Unit.

(1) An employee shall request that all unpaid money be referred to the Central Collection Unit if:

(a) As a result of a violation hearing, the offender's case is to be closed; and

(b) The unpaid money was to have been collected by the Division.

(2) An employee may not request that a judge or parole commissioner deem uncollectable money that was to be paid through the Division by an offender.