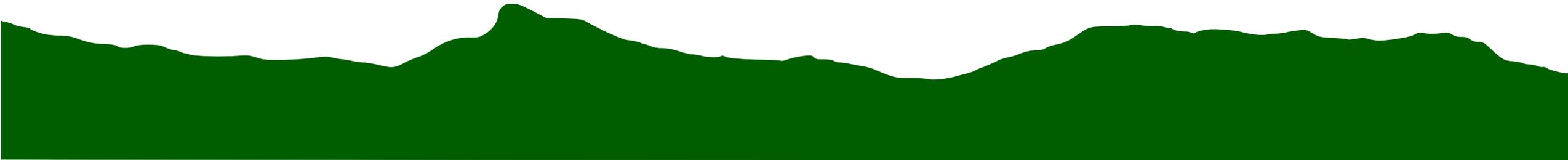


Vermont Department of Corrections
Testimony to the Senate Judiciary Committee

S. 127: Proposed Modifications to Rule 74

March 8, 2022



Vermont Department of Corrections

Testimony to the Senate Judiciary Committee

“To preserve the appropriate separation of judicial and executive powers, we presume that judicial review of administrative decisions is deferential absent a clear statement of contrary intent. De novo review, whereby the superior court would simply substitute its judgment for that of the director, necessarily usurps power delegated to the executive branch; therefore that standard is inappropriate unless the statute expressly so provides.”

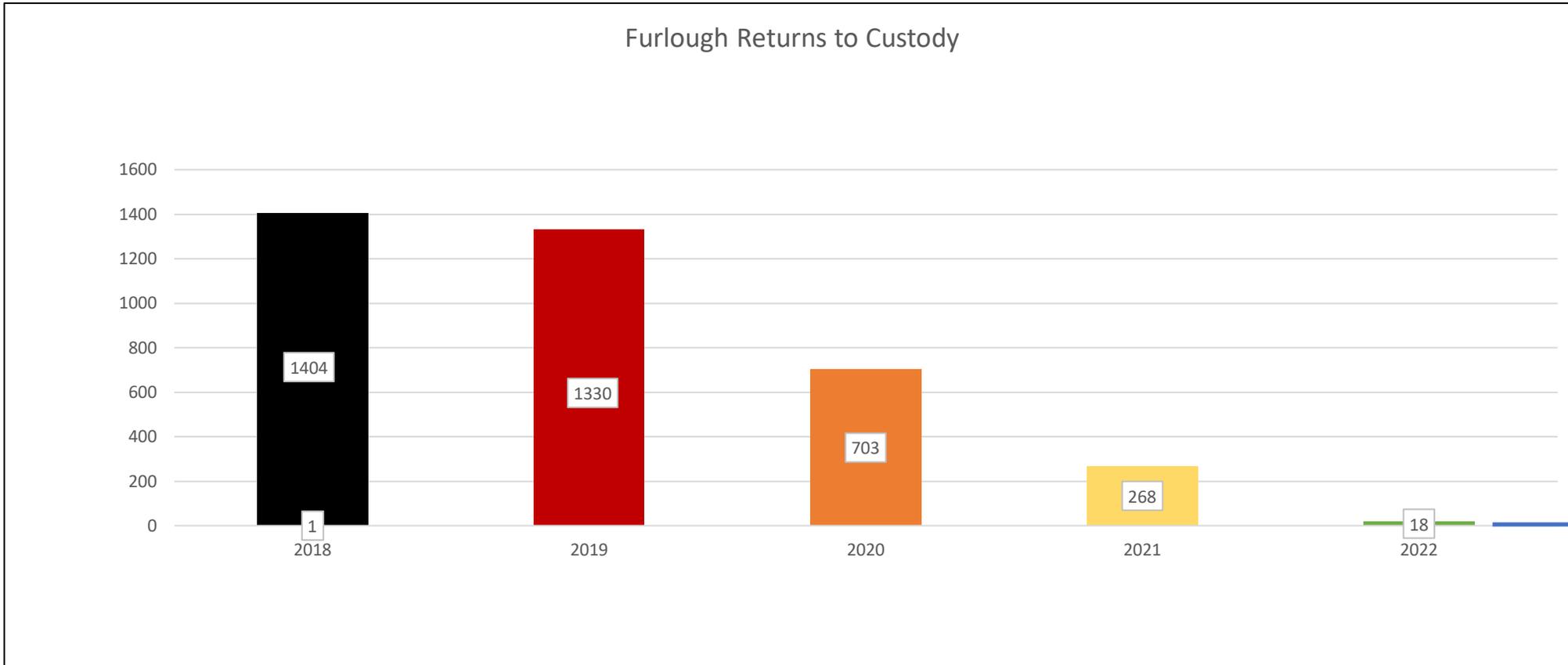
Desjadon v. Baker
21-CV-01992

“The puzzle is how this court can determine that the agency abused its discretion if the court (1) considers information presented now that was not presented to the agency, and/or (2) make a de novo determination rather than reviewing the agency’s decision under an ‘abuse of discretion’ standard of review. The answer is that it cannot do so. The statute is internally inconsistent.”



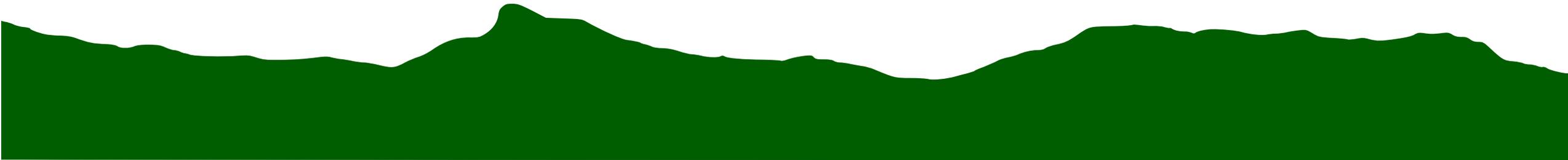
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Regardless of the intervention strategies the Department employed, since first interacting with the corrections system, these 18 supervised individuals account for 164 new criminal convictions.

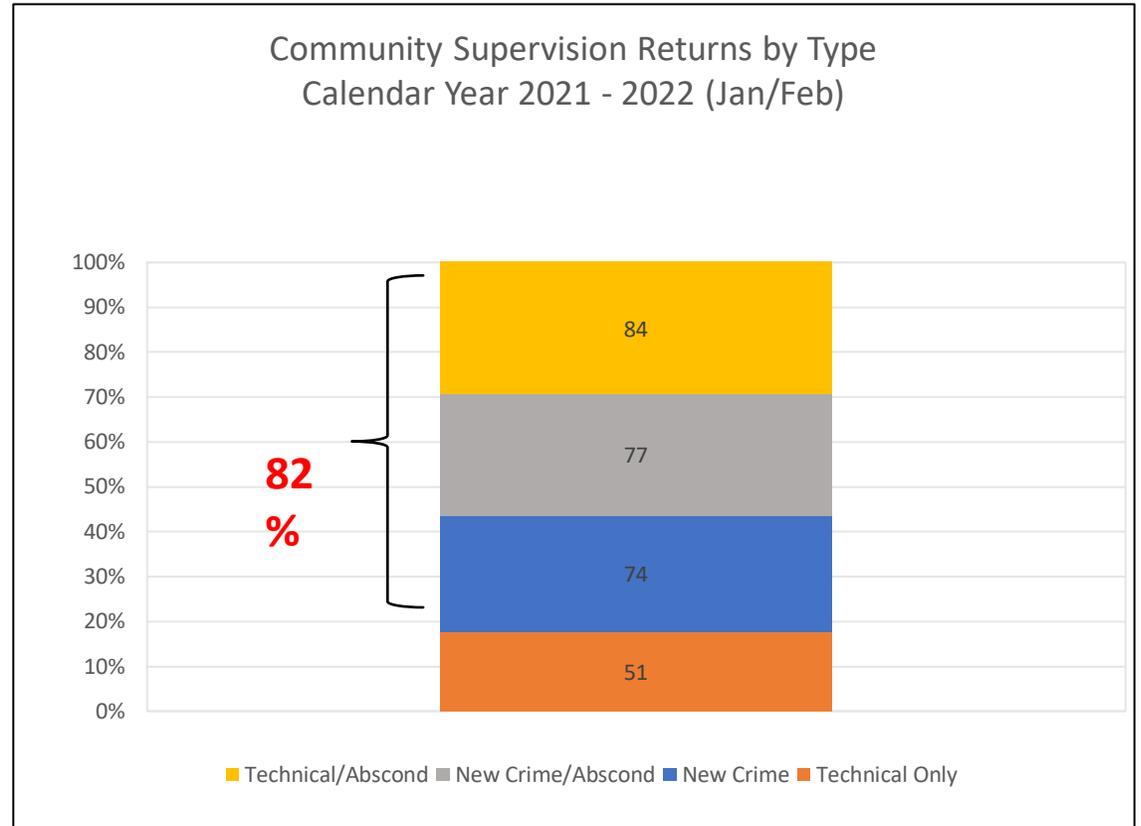
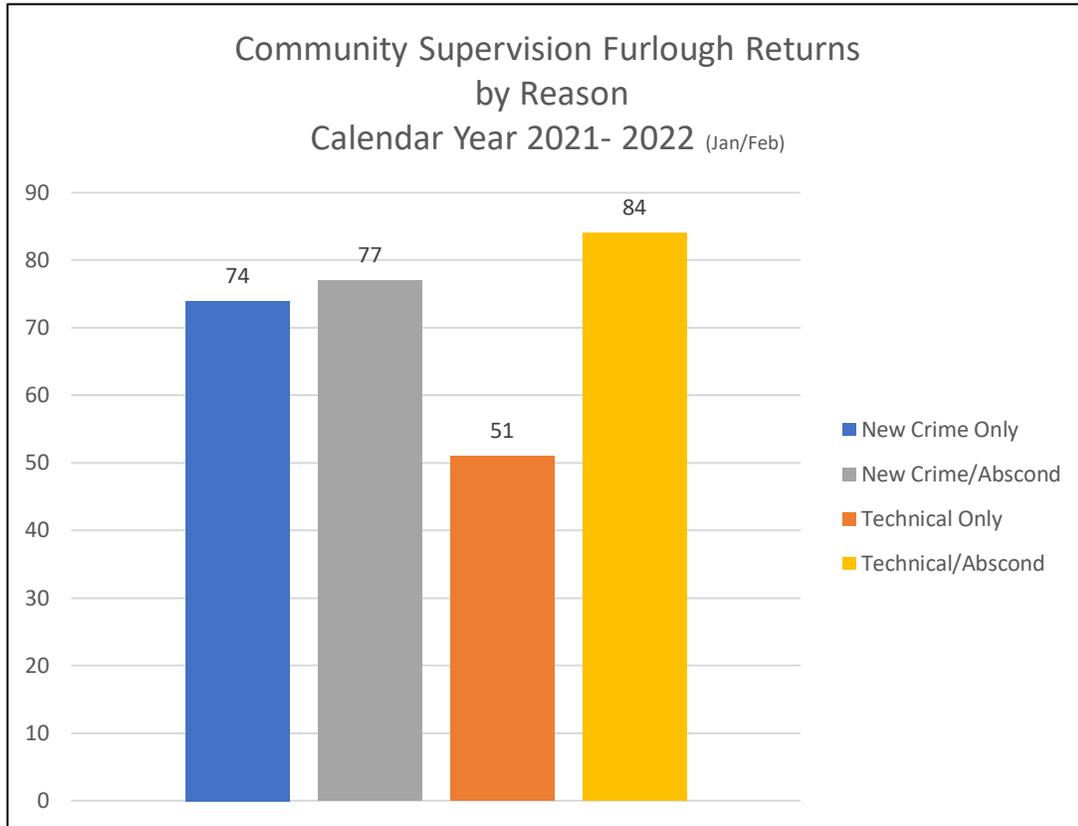
2018-2020 include people returned for work crew failures. Those returns are not counted in 2021 and 2022.



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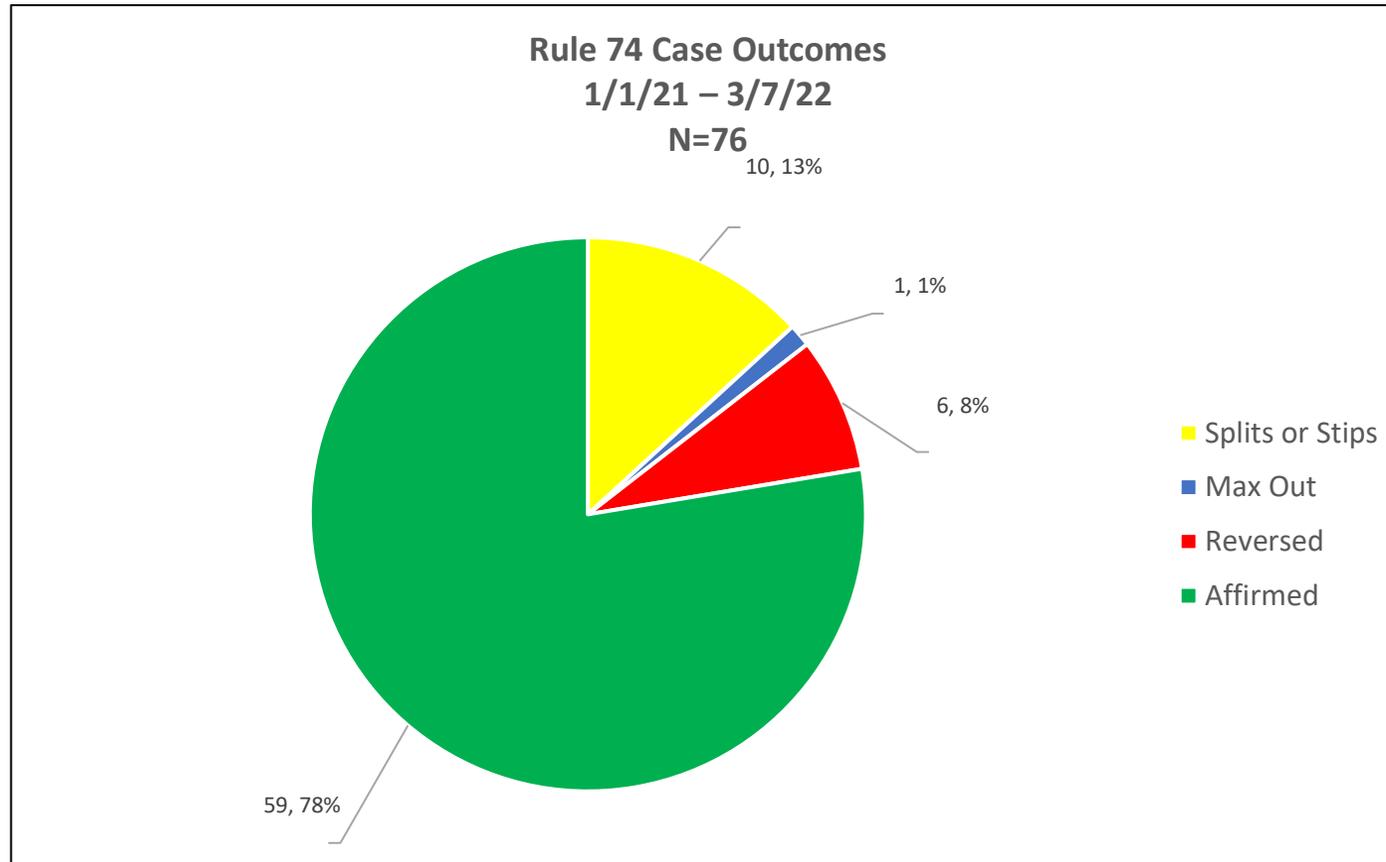
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82% of returns include a new charge/crime or absconding behavior



Vermont Department of Corrections

Testimony to the Senate Judiciary Committee



32 Rule 74 furlough interrupt appeals are pending in the courts.

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DOC Policy 430.11: Response to Furlough Violations

Notice of Suspension (NOS) and Furlough Revocation Criteria

1. A significant violation is the following:
 - a. An arrest or citation for a new felony or listed offense;
 - b. Offender's behavior directly threatens or harms an identifiable person/individual;
 - c. Evidence of behavior(s) that pose a direct risk to public safety;
 - d. When an offender is arrested on a Commissioner Warrant for absconding;
 - e. A pattern of risk-related behavior where previous interventions have failed to mitigate the risk; or
 - f. A pattern or history of behavior that continues after the exhaustion of lower-level technical sanctions have failed to gain offender compliance.
2. Furlough revocation should only be considered when the DOC can demonstrate that:
 - a. an offender's risk can no longer be adequately controlled in the community and no other method to control non-compliance is suitable; or
 - b. the violation or pattern of violations indicate the offender poses a danger to others or to the community or poses a threat to abscond or escape from furlough.

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Policy 430.11 Significant Violation Sanctioning Grid

Violation #	Risk Score		
	Low Risk	Moderate Risk	High Risk
1 st Significant	90 days	180 days	1 Year
2 nd Significant	180 days	1 Year	2 Years
3 rd + Significant	1 Year	2 Years	4 Years

1. If a supervised individual completes one year in the community without incurring a signification violation, they will be reset to violation level #1.
2. If a supervised individual does not complete a year without a sanction and incurs a new violation, the next level sanctions are applied.
3. The Parole Board will continue to review cases and may grant parole to someone who has an interrupt.

Vermont Department of Corrections
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Violation and Response Guide	
Level 1 Violating Behavior (Low)	Level 1 Response (low)
<ul style="list-style-type: none"> • Failure to report as instructed • Out of Place • Missed Treatment/Programming Group • Unemployment or Failure to Seek Employment to PPO satisfaction within 45 days • Failure to Fulfill Financial Obligations • Failure to Follow Case Plan or supervision contract • Non-compliance with Special Conditions • Suspension or Placed on Probation in Treatment/Programming Group • Corrective action plan for intervention services 	<ul style="list-style-type: none"> • Apology (Verbal or Written) • Verbal Warning • Effective use of disapproval • Structured Skill building activities • Use of Cost Benefit Analysis • Use of Cognitive Restructuring • Use of Problem Solving • Develop an Intervention Plan
Level 2 Violating Behavior (moderate)	Level 2 Response (moderate)
<ul style="list-style-type: none"> • Failure to Comply with previous Sanctions • Contact with Restricted Persons (Non-Sex Offender or Domestic Violence Related) • Misdemeanor arrest/non-violent • Positive Drug/Alcohol Test • Repeated and multiple Level 1 violations without behavior change 	<ul style="list-style-type: none"> • Written Essay/Educational Activities • Increase Contacts for specified period of time • Increase Curfew Restrictions[^] • Use of Schedules for up to thirty days[^] • Increased Reporting as directed for Alcosensor, drug testing, employment search, or other related activity • Referral for Treatment Assessment or a higher level of care • Use of Electronic Monitoring Equipment for up to thirty days[^] • Referral to a Restorative Justice Process • Any Level 1 response
Level 3 Violating Behavior (High)	Level 3 Response (high)[^]
<ul style="list-style-type: none"> • Repeated and multiple Level 2 violations without behavior change • Serious violating behavior that does not involve risk 	<ul style="list-style-type: none"> • Community Service or Work crew for up to 40 hours • Activities to Address Risk Behaviors • Use of Schedules for up to sixty days • Use of Electronic Monitoring Equipment for up to sixty days • Any Level 1 or 2 Response
Level 4 Violating Behavior (Highest)	Level 4 Response (Highest)[^]
<ul style="list-style-type: none"> • Significant and multiple lower-level violation without behavior change • Significant behavior that does not reach the threshold for an emergent return 	<ul style="list-style-type: none"> • House Arrest* • Any response from Level 1-3