

TOOL 6 – EXCEPTIONS TO INCARCERATION CAPS

To be exercised by the Court or BOPP only with a hearing and upon entry of appropriate findings. The use of exceptions is dependent upon the nature of each violation, not the number of hearings. Note that pursuant to HB3004, 2016 3rd Special Session, §77-18-1-(12)(e)(ii): “Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or ~~that the entire probation term commence anew~~ reinstated for all or a portion of the original term of probation.

PROBATION		PAROLE	
1	<p>Finding that conduct presents a substantial threat to public safety which cannot be addressed through behavior modification sanctions.</p> <p>Substantial threats to public safety examples include:</p> <p>A. “Per Se” Violations: e.g. dangerous weapons, fleeing via high speed chase, violent arrest behavior, new person crime allegations; or</p> <p>B. “Crime of Commitment Dependent” Violations: e.g. sex offender in cycle, repeat DUI violations, person crime absconder.</p>		1
2	<p>Jurisdiction over new criminal conviction with new guideline recommendations from Forms 1-6 attached.</p>		2
3	<p>Finding that execution of sentence previously imposed is warranted pursuant to §77-18-1(12)(e)(iii)(B).</p>	<p>Revocation of parole for lying or engaging in criminal conduct prior to parole pursuant to §77-27-10(1)(b),</p> <p>including when offender engaged in criminal conduct prior to release and BOPP was unaware of conduct at the time it made decision to release; or offender lied prior to release and that lie led to BOPP decision to release.</p>	3
		<p>Guilty and Mentally Ill compliance pursuant to §77-16a-205,</p> <p>including when the BOPP is required by statute to conduct a formal review of an offender who plead guilty and mentally ill before considering release. The time required to conduct this review could exceed the caps.</p>	4
		<p>Parole Violation Hearing continued pursuant to Admin. Rule R671-204,</p> <p>including when new charges are pending; an evidentiary hearing is required; competency or mental illness needs of the offender; to allow victim participation; or offender requests continuance.</p>	5
		<p>Rescission pursuant to Administrative Rule R671-310,</p> <p>including when the BOPP decides to rescind a parole date that was previously granted because offender engaged in major misconduct in prison or was convicted of further criminal conduct.</p>	6