

<p style="text-align: center;"><b>STATE OF VERMONT</b> <b>AGENCY OF HUMAN SERVICES</b> <b>DEPARTMENT OF CORRECTIONS</b></p>	<p style="text-align: center;"><b>Title:</b> <b>FACILITY RULES AND INMATE DISCIPLINE</b></p>	<p style="text-align: right;"><b>Page 1 of 22</b></p>						
<p><b>Chapter:</b> <b>Security and Supervision</b></p>	<p style="text-align: center;"><b># 410.01</b></p>	<p><b>Supersedes #410.01 dated 10/06/06 and any previous version of #410.01</b></p>						
<p><b>Attachments, Forms &amp; Companion Documents:</b></p> <ol style="list-style-type: none"> <li>1. Standardized Rules and Guidelines for Recommended Sanctions</li> <li>2. Inmate Disciplinary Report Form</li> <li>3. Notice of Hearing /Waiver of 24 Hour Notice of Hearing</li> <li>4. Confidential Informant Form</li> <li>5. Waiver of Appearance/Hearing/Refusal to Appear</li> <li>6. Waiver Process</li> <li>7. Inmate Disciplinary Appeal Form</li> <li>8. Hearing Report Form</li> <li>9. Special Observation Form</li> </ol>								
<p><b>Local Procedure(s) Required:</b> Yes - for establishment of written facility rules only and safekeeping of CI statements and DR recordings. (See Section 11 also.)  <b>Applicability:</b> All staff (including contractors and volunteers)  <b>Security Level:</b> "B" – Anyone may have access to this document.</p>								
<p><b>Approved:</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%; border: none;">_____</td> <td style="width: 30%; border: none; text-align: center;"><b><u>January 11, 2012</u></b></td> <td style="width: 30%; border: none; text-align: center;"><b><u>May 1, 2012</u></b></td> </tr> <tr> <td style="border: none;"><b>Andrew A. Pallito, Commissioner</b></td> <td style="border: none; text-align: center;"><b>Date Signed</b></td> <td style="border: none; text-align: center;"><b>Date Effective</b></td> </tr> </table>			_____	<b><u>January 11, 2012</u></b>	<b><u>May 1, 2012</u></b>	<b>Andrew A. Pallito, Commissioner</b>	<b>Date Signed</b>	<b>Date Effective</b>
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**PURPOSE**

The purpose of this administrative directive is to describe the inmate disciplinary system that will be used in the Department of Corrections to enforce rules and regulations and offer options for the inmate to repair the harm caused by misconduct.

**POLICY**

It is the policy of the Department of Corrections to provide for the orderly conduct of inmates by establishing rules of behavior and procedures to address misconduct. The Department views conflict as an opportunity to learn. Misconduct creates an obligation by the inmate to repair the harm done. This will be accomplished through the impartial application of a well-developed set of rules, regulations, and hearing procedures that incorporates all applicable due process requirements and restorative justice principles. Disciplinary action by the Department will be based on credible evidence of misconduct and will be timely, impartial, and consistent. Sanctions will be proportionate to the seriousness of the offense and the inmate’s disciplinary record, as well as relevant to the harm created by the misconduct.

**AUTHORITY**

[28 V.S.A. § 101\(1\), \(5\)](#); [28 V.S.A. § 102\(b\) \(2\), \(c\) \(1\), \(c\) \(5\), \(c\) \(6\)](#); [28 V.S.A. § 601 \(2\), \(3\)](#); [28 V.S.A. § 851, 852, 853, 855](#). [APA Rule #96-12](#), *Inmate Discipline*, 1996; [APA Rule #05-049](#) *Classification, Treatment and the Use of Administrative and Disciplinary Segregation for Inmates with a Serious Mental Illness*, December, 2005. Department Policy [#410](#) *Due Process*; Department Interim Procedure *Contraband Classification & Disposition* 3/18/2006; Administrative Directives [#410.02](#) *Violations of Furlough* and [#427](#) *Security Threat Groups*

**REFERENCE**

Administrative Directive [#413.11](#), Responses to Self-Harm, August 2006, [American Correctional Association Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition](#), January 2003, Standards 4-4226, 4-4227, 4-4229, 4-4230, 4-4232, 4-4233, 4-4234, 4-4235, 4-4236, 4-4237, 4-4238, 4-4239, 4-4240, 4-4241, 4-4242, 4-4243, 4-4244, 4-4245, 4-4246, 4-4247 and 4-4248.

**DEFINITIONS**Accessory:

Assisting a person to commit an act prohibited under this directive.

Alternative Dispute Resolution (ADR):

Techniques other than formal appeals or judicial processes that include advanced verbal communication techniques, negotiation, mediation or other practices to resolve a dispute.

Assault:

Any action, which brings about a harmful or offensive contact to another person

Attempt:

Conduct, which is likely to result in an act prohibited by this directive

Business Day:

Monday through Friday, excluding weekends and recognized State holidays

Confidential Informant:

A source of information whose identity must remain confidential for security or safety reasons

Confidential Information:

Including, but not limited to, case records unless access is provided for in *Directive 254.01*; records dealing with the detection and investigation of crime; treatment records unless access is provided for in *Directive 254.01*; records obtained from the Vermont Criminal Information Center (unless the Commissioner of Public Safety expressly approved disclosure); home or business addresses and home or business telephone numbers; names and/or identity of confidential informants referenced in a disciplinary report; information related to victims, such as their names, home or business addresses, home or business telephone numbers; whether a victim has requested notification of an offender's parole hearings or an offender's release to the community; "blue" notes; names of other offenders in treatment records when the request for access is for records of the subject of treatment, and as provided in [28 VSA ss204\(d\)](#), pre-sentence reports, pre-parole reports, or supervisory history of probationers or employees prepared by an employee of the Department except that disclosure is permitted in the following circumstances:

1. a court order is issued in compliance with [28 VSA ss204 \(d\)](#) removing the confidentiality of such records; or
2. criminal justice personnel and AHS employees are seeking access to supervision records for the purposes of protection of children or investigating/prosecuting offenses against children.

Conspiracy:

Agreeing with one or more persons to participate in an act prohibited by this directive, and any one of those individual's acts in furtherance of the conspiracy

Continuance:

Temporary suspension of a hearing for good cause shown either by the Department or the inmate

Contraband:

Anything not specifically authorized to be in an inmate's possession; used in an unauthorized or prohibited manner; altered in any way; or in excess of allowable limits.

Contraindication:

Something (such as a symptom or medical condition) that makes a particular treatment or procedure inadvisable.

Dangerous Instrument:

A weapon or any other unauthorized object or substance which may cause physical injury or death under the circumstances in which it is possessed, used, or attempted or threatened to be used, or is capable of being used.

Disciplinary Committee:

A minimum of three qualified, trained staff persons appointed by the Superintendent by name (of which at least two members equals or constitutes a quorum for imposition of discipline.)

Disciplinary Segregation:

A form of separation from the general population in which inmates committing serious violations of conduct regulations are confined for short periods of time to individual cells separated from the general population. Placement in disciplinary segregation may only occur after finding of a rule violation at an impartial hearing and when there is not an adequate alternative disposition to regulate the inmate's behavior.

Escape:

Any action by the offender, which leads Corrections' employees to believe the offender, intends to absent him or herself from State custody or supervision indefinitely.

Facility Rules:

Written rules established by a specific facility concerning inmate conduct. These rules are specific to the facility and will not contradict this administrative directive.

Hearing Assistant:

A person who assists an inmate in preparing and presenting their case. It does not have to be a staff person, but cannot be an attorney.

Hearing Officer:

A person designated by the Commissioner of Corrections and assigned by the Superintendent or designee to conduct administrative due process hearings.

Interviewing Officer:

A staff person not involved in the violation incident, who takes the oral testimony of a confidential informant and swears to the accuracy of their report. This can be the Investigating Officer.

Investigating Officer:

A staff person selected by the Superintendent or designee to investigate the charge against an inmate and compile evidence for submission to the Superintendent. This person cannot have been involved in the violation incident.

Major Violation:

The most serious instance of inmate misconduct, constituting violent acts or serious threats to institutional security or personal safety. They are divided into two categories, A and B, Major A being the most serious.

Minor Violation:

The least serious inmate misconduct injurious to order and discipline.

Possession:

An item that is

1. found on one's person or the clothing being worn by that person; or
2. found in one's personal belongings or cell; or
3. found in an area that one exerts control over, and there is independent evidence that the inmate knew it was there. Independent evidence of knowledge includes, but is not limited to:
  - a. information exists supporting that the inmate had knowledge the contraband was there;
  - b. staff observation of the inmate's behavior led to staff suspicion that the inmate is hiding contraband;
  - c. staff observed an inmate with contraband; or
  - d. other evidence indicated the contraband was placed by the inmate.

Presenting Officer:

A staff person assigned by the Hearing Officer to present facts relevant to the incident for disciplinary consideration. The Presenting Officer may also have been the Investigating Officer.

Privilege:

A benefit bestowed upon an individual to whom a person has no right or legal entitlement.

Reporting Staff:

The staff member who recommends bringing a charge against an inmate by preparing a disciplinary report (*Attachment 2*)

Responsibility:

An individual's personal obligation or accountability for performance

Security Threat Group (Gang):

A group of inmates specifically designated by the Commissioner/ designee which poses a threat to the safety of staff, the facility, the public, or other inmates (e.g., "Aryan Brotherhood", "Latin Kings").

SFI-designated Inmate:

An inmate designated by the Chief of Mental Health Services to be severely functionally impaired, based on an inmate's diagnosis and functioning during incarceration and the recommendation of DOC medical and mental health providers.

Serious Physical Injury:

Any injury, which requires an individual to receive immediate medical treatment by a health care professional before the individual, can continue normal activity.

Suspended Sanction:

The postponement of a disciplinary sanction for a specified period of time

Threatening or Threatening Behavior:

For purposes of the disciplinary process, these include any of the following:

1. Verbal threats when the offender has the ability and opportunity to carry out the threat; (Ability and opportunity are defined using the non-lethal use of force standard.)
2. physical threats when the offender has entered another person's space in an intimidating manner - the offender's behavior may or may not include gross motor activity;
3. verbal threats where the offender demonstrates knowledge of another person's personal life, such as, "Don't you live at (address)?" or "Your kid goes to (specific school), doesn't she?" This knowledge must be articulated in conjunction with threatening behavior.

**PROCEDURAL GUIDELINES**

Each facility Superintendent shall ensure that their facility establishes local written facility rules concerning inmate conduct. If broken, these rules will be considered to be *minor violations*. Facility rules shall be posted in all housing units and put in the facility's Inmate Handbook.

Each inmate will be responsible to follow all facility and Department rules, policies and staff direction. Failure to obey the rules will subject an inmate to disciplinary action. Misconduct creates an obligation by the inmate to repair the harm that they have caused.

**1. Disciplinary Report (DR)**

When an incident or event occurs where a staff person suspects a violation of a rule has occurred, and there is no acceptable alternative means of resolution, the *reporting staff* shall:

- a. Prepare an *Inmate Disciplinary Report (Attachment 2)* which clearly states:
  - i. The name and date of birth of the inmate
  - ii. Date and time of offense
  - iii. Living assignment
  - iv. Location of the incident
  - v. The alleged violation
  - vi. Witness(es) (if not confidential)
  - vii. Description of any physical evidence and the incident/event
  - viii. Time and date that the form was completed, with a signature.
- b. Complete an Incident Report with the details of the alleged violation to substantiate the charge, including a description of any physical evidence or contraband.
- c. Review the DR and Incident Report with a supervisor to discuss the facts of the incident.
- d. The supervisor will:
  - i. Determine if any and what rule violation(s) may have occurred;
  - ii. Dismiss the alleged violation, *or*
  - iii. Amend the alleged violation to a major A or B or minor violation as written, *or*
  - iv. If a minor violation, recommend the incident be handled using an alternative dispute resolution technique;

**NOTE:** MAJOR VIOLATIONS MUST BE HANDLED BY FORMAL DISCIPLINE PROCEDURES.

- v. Assign the investigation of any major violation to an individual not involved in the incident which gave rise to the DR;
- vi. For *inmates who have a serious functional impairment (SFI)*, refer them to a qualified mental health professional for assessment prior to holding a hearing. The qualified mental health professional assessment will include:
  - a) An opinion as to whether the behavior results from the serious functional impairment and if so, if the DR should be dismissed;
  - b) A determination if contraindications exist to using any specific sanction and specifically, segregation;
  - c) A recommendation to the Hearing Officer for disposition or sanction options or alternative actions
- e. Once finalized, assigned staff will enter both the Incident Report and/or DR into the Department database

## 2. Major Violations:

Major violations are divided into two categories, *Major A* and *Major B*.

- a. *Major A* violations are the most serious. These constitute violent acts or serious threats to institutional security or personal safety.
- b. *Major B* violations are serious instances of misconduct of a lesser extent than Major A violations.
- c. Housing Pending a Formal Hearing for Major Violations
  - i. In cases where major violations are charged and a referral for resolution to the Hearing Officer is made, the Superintendent or designee will make a determination of the level of security required to house the inmate pending the hearing. Should the inmate's presence in general population represent a threat to the safety and/or orderly running of the facility, they may be housed in a higher security unit pending the disposition of the charged violation(s.)
  - ii. Under circumstances where an inmate is placed on Administrative Segregation status pending the results of a disciplinary investigation, the investigation must be completed within three (3) business days, and the disciplinary hearing must be held within four (4) business days unless there is an institutional emergency. (Day one is the first full business day after Administrative Segregation begins.)
  - iii. An inmate who has been designated SFI (*serious functional impairment*) cannot be placed on Administrative Segregation unless a physician ensures that no contraindications exist and approves the placement.
- d. Major violations will be handled through the formal disciplinary process and referral for prosecution as needed. (See *Inmate Disciplinary Report*) An inmate may receive sanctions as prescribed by *Standardized Rules and Guidelines for Recommended Sanctions (Attachment 1)* for a major violation.

### 3. Minor Violations

- a. Minor violations constitute the least serious misconduct or violation(s) of written facility rules or behaviors listed in *Attachment 1*. Staff may attempt to resolve minor violations through an informal process as outlined below (b.) that includes providing the inmate with a written statement of the alleged violation, (*Attachment 2*), and a decision within twenty-four (24) hours by the Shift Supervisor or a Supervisor not involved in the incident.
- b. The person/s designated by the Supervisor to resolve the minor disciplinary infraction will 1) discuss the violation with the inmate and options for them to repair any harm to the facility or others harmed by their misconduct, or 2) refer the inmate and any person involved to an alternative dispute resolution (ADR) process.
  - i. If no agreement can be reached, the Supervisor will impose sanction(s) and inform the inmate of the action taken and when the sanction(s) will be carried out.
  - ii. If this is an SFI-designated inmate, staff will discuss options for informal resolution with a qualified mental health professional within one (1) business day of the written decision to impose a sanction.
- c. No record of minor violations will be kept in the inmate's file.
- d. The inmate may reject the informal sanction(s) resulting from the minor DR at the time the sanction(s) are imposed by requesting a disciplinary report and an Administrative Due Process DR Hearing. Any such request must be made at the time the minor DR sanction(s) are imposed. The inmate may have a Major DR issued to them that is based upon the underlying behavior that resulted in the issuance of the minor DR. The issuance of this Major DR will take place within three (3) business days of the request for an Administrative Due Process DR Hearing. Day one (1) is the first full business day following the request for the formal hearing.

### 4. Investigation of Alleged Major Violations

- a. The Superintendent or designee will start an investigation into each alleged major disciplinary violation by referring the case for resolution before a Hearing Officer (*Attachment 2*). An investigation may be delayed due to an institutional emergency or other documented exceptional circumstance for a reasonable amount of time. The Investigating Officer must be an employee who was not involved in the violation incident.
- b. The Investigating Officer will:
  - i. Interview the inmate and other parties who may have information about the incident as soon as is practical;
  - ii. Make a record of the interviews for further review - records must include any accommodations needed based on an SFI designation;
  - iii. Take written statements from witnesses and, when appropriate, gather pertinent supplemental records prepared by others;
  - iv. Keep names and testimony of confidential informants (CI) in a separate folder and withheld from the inmate. (See *Confidential Informant Form, Attachment 4*);
  - v. Forward statements of confidential informants to the Hearing Officer with the disciplinary packet;



- vi. Ensure the person taking the informant's confidential testimony reports such testimony in affidavit format. The narrative portion of the affidavit must state that the reporter believes the CI 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 (date) " \_\_\_\_\_, 20\_\_".
- vii. Notify the inmate not less than twenty-four (24) hours prior to the hearing (*Notice of Hearing form, Attachment 3*). The inmate may waive the twenty-four hour notice by indicating so in writing using the *Waiver of 24 Hour Notice of Hearing* (bottom of *Notice of Hearing, Attachment 3*)
- viii. Prepare a report of findings and a recommendation to be included with the disciplinary packet (*Attachment 2*). They will recommend to the Superintendent or their designee one of the following:
  - a) Refer for resolution of charge as reported
  - b) Amend to another charge and refer for resolution
  - c) Dismiss the charge
- ix. Provide the inmate with a *Notice of Hearing (Attachment 3)* and copies of all non-confidential reports, including the Investigating Officer's report. The inmate will have 24 hours prior to the hearing to review the disciplinary packet.

## 5. Hearing Process

- a. A disciplinary hearing may not be held sooner than 24 hours after the *Notice of Hearing* is served upon the inmate unless they waive this time period by signing a *Notice of Hearing/Waiver of 24 Hour Notice of Hearing (Attachment 3)*. A disciplinary hearing will be held no later than seven (7) business days from the issuance of the DR, four (4) days if the inmate was moved to segregation. Day one (1) begins at the start of the first full business day after the DR is issued.
  - i. For SFI-designated inmates, the Hearing Officer will confirm that the Supervisor referred the inmate to a qualified mental health professional for assessment prior to holding a hearing. (See sec. 1 d. vi. above.)

### b. Continuances

#### i. Requested by the Department:

The Hearing Officer may postpone a disciplinary hearing for one (1) business day for good cause. The Superintendent's approval is required for continuances of greater than one (1) business day. The Hearing Officer will document the basis for such good cause on the *Hearing Report Form (Attachment 8)*. Good cause for a continuance of a disciplinary hearing, includes, but is not necessarily limited to (1) facility emergencies and/or other unusual operational occurrences; (2) work schedules, transfers and other circumstances that limit witness availability for the specific hearing date; and (3) absence of the inmate.

#### ii. Requested by the inmate:

The inmate may request a continuance for good cause (such as a witness not being available) which may be granted by the Hearing Officer for up to two (2) business days. The Hearing Officer will document the basis for such good cause on the *Hearing Report Form*.

- c. Waiver of Hearing/Appearance at Hearing
  - i. An inmate may waive their hearing or their appearance and admit to guilt with an agreed-upon sanction by checking the appropriate statement on the *Waiver of Appearance/Hearing /Refusal to Appear Form (Attachment 5)* Only an employee who has been designated as a Hearing Officer by the Commissioner of Corrections can execute a Waiver Agreement that includes an admission of guilt.
  - ii. All hearing waivers that include an admission of guilt must be made on the record. (See *Attachment 6, Waiver Process*, for the script.) The inmate must acknowledge on the record that they are freely and knowingly waiving their right to a due process hearing in this matter. The voice recording of the waiver process will be archived in the same manner as due process hearings.
  - iii. An inmate may:
    - a) Waive their appearance and claim innocence by checking the appropriate statement on *Attachment 5*;
    - b) Refuse to appear without a specific signed waiver statement.
      - 1.) In the event an inmate declines to attend the due process hearing without making a statement of waiver, the DOC staff person must fill out section B of *Attachment 5*.
- d. Hearing Assistant Role
  - i. An inmate has the right to a hearing assistant to help them prepare their case; however, this cannot be an attorney.
  - ii. The Hearing Officer will ensure that the accused inmate and hearing assistant have had sufficient time - at least three (3) hours if requested - to confer and review the violation packet prior to the hearing.
  - iii. Both the hearing assistant and accused will be present in the hearing room unless the inmate or the hearing assistant refuses to attend.
  - iv. If the conduct of the inmate or hearing assistant is repeatedly disrespectful, unruly or presents a hazard to institutional security or safety of the individuals, the hearing may continue without them.
  - v. A hearing assistant will attend the hearing on the inmate's behalf if the inmate does not attend for any reason.
  - vi. In the case of an SFI-designated inmate, and in the case of any inmate where the Hearing Officer feels they do not have the capacity to fully understand the process, a hearing assistant will be appointed by the Hearing Officer if one is not selected by the inmate.

e. Presenting Officer Role

The Hearing Officer shall designate a staff member to be the Presenting Officer. It is the Presenting Officer's duty to present facts relevant to the incident up for violation consideration. The Hearing Officer may only assign as Presenting Officer an employee who was not involved in the violation incident. The Investigating Officer may be used as the Presenting Officer.

## f. Hearing Officer Role

- i. The Hearing Officer should start the hearing no sooner than 24 hours after written notice was served upon the inmate by the *Notice of Hearing (Attachment 3)*, unless the inmate waives the 24-hour period by signing the *Waiver of 24 Hour Notice of Hearing* at the bottom of this attachment.
- ii. The Hearing Officer will conduct the hearing in a professional and fair manner. They will record the hearing by digital, audio or audiovisual equipment.
- iii. During the hearing, the Hearing Officer will explain to the inmate the nature of the violation(s) and the inmate's rights and opportunities as outlined on the *Notice of Hearing*.
- iv. Plea - The Hearing Officer will permit the inmate to enter a plea of *guilty* or *not guilty*. If the inmate refuses to make a plea, the Hearing Officer will enter a plea of *not guilty* on the record.
- v. The Hearing Officer may terminate or restrict any questioning or testimony if it is done in a repeatedly disrespectful or disorderly manner, is repetitive, or is clearly irrelevant. If this occurs, the Hearing Officer will indicate why in the *Hearing Report Form (Attachment 8)* and on the hearing recording.
- vi. If the inmate does not attend for any reason, the Hearing Officer will indicate that in the *Hearing Report Form*, record the inmate's absence on the recording of the hearing, as well as the reason(s) and ensure a hearing assistant is assigned and attends the hearing on the inmate's behalf.

## 6. Findings

In order to determine if the inmate is guilty of the charged violation or of a lesser or equal violation, the Hearing Officer will consider all evidence presented at the hearing. No inmate may be found guilty of a disciplinary violation unless it is supported by at least a preponderance of the evidence presented.

- a. The Hearing Officer must review the statements of confidential informants and ensure that the *Hearing Report Form (Attachment 8)* and the hearing recording show that the Hearing Officer believes (1) the informant(s) are reliable, (2) the statements are reliable, and (3) the informant(s) had first hand knowledge of the facts alleged.
- b. Questions above will be determined by completing a *Confidential Informant Form, (Attachment 4)* for each CI statement used as evidence. The accused inmate will receive a copy of the *CI Form* should a finding of guilt be made, since there is no information in it that will jeopardize facility security or endanger any inmates. Confidential information itself is never provided to an inmate or Hearing Assistant.
- c. If any requested witness(es) (including the Reporting Officer) did not testify or did not appear at the hearing for any reason, the Hearing Officer will state the reasons why on the hearing recording and in the written report, (*Attachment 8*), noting in the report the forms of alternative testimony used. Witnesses may provide testimony using alternate forms of communication when they cannot be present at the hearing (e.g., Interactive TV, telephone report, written statement.)

- d. The Hearing Officer will find the inmate:
  - i. Guilty of the charged violation, or
  - ii. Not guilty of the charged violation but guilty of a lesser or equal violation (including a minor violation), or
  - iii. Not guilty of the charged violation or any lesser violation or an equal violation
- e. If the Hearing Officer determines that the inmate *is not* guilty of any violation, the inmate will receive written findings stating such (*Attachment 8.*) The DR relating to the matter will not be placed in the inmate's file.
- f. If the Hearing Officer determines that the inmate *is* guilty of a violation, the Hearing Officer:
  - i. Will inform the inmate and give to them the outcome and the facts that the Hearing Officer relied on to support the finding of guilt, on the *Hearing Report Form*;
  - ii. Will permit the inmate to enter a statement, if they wish, orally or in writing, regarding their agreement or disagreement with their guilt, and enter it on the *Hearing Report Form*;
  - iii. Will explain to the inmate the appeals process, and give them an *Inmate Disciplinary Appeal Form (Attachment 7)*;
  - iv. May, at this time, offer a restorative process to address the underlying violation; or
  - v. May impose sanctions

## 7. Sanctions

The Hearing Officer will review all aggravating and mitigating factors in order to impose the most proportionate sanction(s) consistent with the severity of the violation.

- a. For findings of guilt for violations, the Hearing Officer may only impose sanctions within the guidelines set in *Attachment 1, Standardized Rules and Guidelines for Recommended Sanctions*, and must immediately inform the inmate of the sanction imposed.
- b. With the exception of loss of good time, monetary restitution, and placement on Disciplinary Segregation (see below, d. i.), a Hearing Officer may impose any combination of sanctions in *Attachment 1*.
  - i. Loss of good time may only be used as a sanction for Major A or B violations with inmates who are on work camp status (per statute.)
  - ii. *Monetary restitution may only be used as a sanction for violations that result from destruction or damage of State-owned property (per statute.)*
- c. Suspended Sanction – A disciplinary sanction for a *Major B* offense may be suspended for a period not to exceed 60 days. If the inmate does not commit a new offense under this directive during the period of suspension, the suspended sanction will not be imposed, and the record will be expunged. If the inmate commits a major violation during the period of the suspension, the original disciplinary action and any disciplinary action resulting from the new offense will be imposed.

## d. Disciplinary Segregation

- i. Disciplinary Segregation may only be imposed as a sanction for specific Major A and Major B violations where indicated in *Attachment 1*.
- ii. Any placement on Disciplinary Segregation for conviction of a *single* Major A offense may not exceed thirty (30) calendar days.
- iii. Any placement on Disciplinary Segregation for a *single* Major B offense may not exceed fourteen (14) calendar days.
- iv. Where a sanction of Disciplinary Segregation is imposed, the Hearing Officer will not impose the maximum penalty unless the behavior warrants this.
- v. Disciplinary Segregation may not be imposed as a sanction for a minor violation.
- vi. When Disciplinary Segregation is imposed for multiple offenses, the total applied sanction may not exceed thirty (30) calendar days.
- vii. No disciplinary sanctions restricting visits may be placed on any inmate on Disciplinary Segregation unless it is expressly called for as a result of the due process proceedings.
- viii. SFI-designated inmates: Any use of Disciplinary Segregation for SFI-designated inmates will be in accordance with departmental policy and rule, Classification, Treatment and the Use of Administrative and Disciplinary Segregation for Inmates with a Serious Mental Illness ([#370](#)).
  - a) A physician must approve the use of Disciplinary Segregation before placing an SFI inmate on this status.
  - b) An SFI-designated inmate will not be kept in Disciplinary Segregation continuously for more than fourteen (14) calendar days.
  - c) In their monthly segregation report, each Superintendent will include the monthly roster detailing any SFI-designated inmates, the reasons for the segregation, and the specific length of stay.
  - d) All mental health and health services rounds in segregation for SFI-designated inmates will occur as required by Departmental Policy #370.

**NOTE:** AN INMATE WHO IS CONVICTED OF A DISCIPLINARY INFRACTION WHILE ON ADMINISTRATIVE SEGREGATION STATUS WILL NOT BE REMOVED FROM ADMINISTRATIVE SEGREGATION STATUS AS A RESULT OF THAT DR CONVICTION. ANY DR SANCTION IMPOSED IN SUCH CIRCUMSTANCES WILL BE SERVED WHILE THE INMATE REMAINS ON ADMINISTRATIVE SEGREGATION.

## e. Security Threat Group Violation

When an inmate is found guilty of security threat group affiliation, the inmate will, without further hearing, be designated as a security threat group member and, in addition to any applicable sanctions, will be subject to the provisions of *Directive 427, Security Threat Groups*.

## 8. Disciplinary Committee (*See Definitions*)

- a. The Hearing Officer will submit the *Hearing Report Form* to the Disciplinary Committee within two (2) business days.
- b. The Disciplinary Committee will review all documentation, and determine the following:
  - i. Whether there is a preponderance of evidence to support the charges;
  - ii. Whether there is sufficient compliance with applicable disciplinary policies and directives;
  - iii. Whether the sanction imposed is proportionate to the rule violation.
    - a) The Disciplinary Committee may lessen the sanction imposed, but cannot amend to a more serious violation nor impose a harsher sanction.
- c. The Disciplinary Committee will forward their reviews and findings to the Superintendent within two (2) business days.
- d. The Superintendent will, on their own motion, 1) support the Disciplinary Committee's decision; 2) reverse the decision; 3) order a new hearing; or 4) modify the sanction imposed, whenever such action is warranted by the record, *Hearing Report*.
  - i. Under such a review, the Superintendent cannot find a more serious violation nor impose a harsher sanction than recommended by the Disciplinary Committee.
- e. The Superintendent will forward the decision to the inmate within five (5) business days of the hearing. Day one of five is the first full business day after the conclusion of the hearing.

**NOTE:** IN INSTANCES WHERE THE INMATE HAS BEEN TRANSFERRED TO ANOTHER SITE, THE DETERMINATION WILL BE FAXED TO THE RECEIVING SITE AS SOON AS PRACTICAL.

## 9. Appeal Process

- a. If an inmate wishes to appeal the final decision, they must file a written appeal with the Superintendent within seven (7) business days of receipt of the final decision. (*See Inmate Disciplinary Appeal Form, Attachment 7*) If it is not filed within the seven (7) business days, it may be denied solely on the basis that it is out of time. Any inmate who needs assistance in completing the *Appeal Form* should contact their Caseworker and/or the Prisoners' Rights Office.
- b. The staff person receiving the *Appeal Form* to the Superintendent will fill in the appropriate signature, date and time blocks on the form, forward it to be included with the appeal package, and give the inmate the receipt portion.
- c. The Superintendent may, upon their review of the appeal, deny the requested relief, or direct any other appropriate action; e.g., dismiss the appeal, order a new hearing, order a modification of findings reducing sanctions, etc. The Superintendent will specifically address all appeal issues raised by the inmate in the appeal. The Superintendent will respond to the appeal within thirty (30) calendar days from the date the appeal was delivered by the inmate to a staff member at the facility. Failure to respond to the appeal within thirty (30) calendar days will result in the dismissal of the disciplinary action, and staff will expunge the DR packet from the inmate's file and the database.
- d. Appeals to the Superintendent will delay access to the courts for the instant issue until the appeal process is completed or thirty (30) calendar days, whichever is sooner.

- e. Any appeal in process during a facility-to-facility transfer must be completed by the *sending* facility and the decision delivered to the inmate within the thirty (30) calendar day time frame.

#### 10. Transfer Facility-to-Facility Pending Discipline Investigation or Disciplinary Hearing

An inmate who is the subject of a disciplinary investigation may be transferred to another facility prior to the completion of the investigation and/or disciplinary hearing. Under such circumstance, the *receiving facility* will be responsible for conducting the disciplinary hearing. The *sending facility* will be responsible for providing the necessary documentation to the receiving facility

#### 11. Hearing Record Preservation

- a. Record of findings: A record will be maintained of the hearing on the *Hearing Report Form (Attachment 8)*. This record will be placed in the inmate's file.
- b. Records of guilt for minor violations will *not* be kept in the inmate's file.
- c. The recording of a formal disciplinary hearing will be retained for three (3) years after the date of the hearing.
- d. Any confidential information used in a hearing where the inmate was found guilty will be kept with the disciplinary hearing recordings. Superintendents will develop local procedures ensuring the safekeeping of confidential informant statements and disciplinary hearing recordings.

#### 12. Segregation Report

Each Superintendent with a restrictive housing unit will prepare a Segregation Report on the last day of each month. The report will provide:

- a. A roster of inmates assigned to segregation for any part of the month, by name and inmate ID;
- b. A notation as to whether or not the inmate is on the list of persons with serious functional impairment (SFI);
- c. The date of each inmate's placement on segregation;
- d. The reason for placement; and
- e. The length of stay

The report will be sent as part of the facility monthly report to the Director of Facility Operations and Health Services Director, with a copy to the Director of Policy Development & Offender Due Process.

**TRAINING**

1. The Director of Human Resource Development has the responsibility and authority to develop and deliver Administrative Due Process training for Hearing Officer Candidates.
2. The Director of Facility Operations will work with both the Department's Director of Human Resource Development and Director of Policy Development & Offender Due Process to ensure that all appropriate personnel are trained in the provisions of this directive.

**QUALITY ASSURANCE**

The segregation report information (see sec. 12 above) will be compiled monthly at Central Office. The report may include discussion re: trends, patterns and corrective action needed or taken.



(Rev. 12.2011)

**VERMONT DEPARTMENT OF CORRECTIONS**  
**STANDARDIZED RULES AND GUIDELINES FOR**  
**RECOMMENDED SANCTIONS**

**These guidelines are for all violations, both major and minor. The attempt or formulation of a plan, or aiding or soliciting another or others to commit a violation is a violation and carries the same sanction as if the violation had been committed. Sanctions A & M may only be used for those violations designated below. Sanction B may only be used for those offenders assigned to work camp status whose offense occurred while they were assigned to work camp status and were earning work camp good time. All other sanctions may be imposed for any violation.**

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**APPROVED SANCTIONS**

- A. Placement in Disciplinary Segregation
- B. Loss of "Good Time" as prescribed by law
- C. Loss of privileges within an inmate's classification for a pre-determined and specific amount of time never to exceed thirty (30) calendar days
- D. Removal from program and/or group activity for up to thirty (30) calendar days
- E. Change in living unit.
- F. Restriction to the area of the living unit (not just cell or room)
- G. Early lock-in
- H. Temporary loss of the use of personal property for a pre-determined and specific amount of time never to exceed thirty (30) calendar days
- I. Institutional community service/reparation
- J. Reprimand
- K. Apology
- L. Written essay concerning the infraction or participation in a structured activity pertinent to the offense
- M. Make monetary restitution.

**NOTE: INMATES WHO ARE DESIGNATED AS *SFI* (SERIOUS FUNCTIONAL IMPAIRMENT) MUST HAVE A PHYSICIAN SIGN OFF THAT NO CONTRAINDICATIONS EXIST PRIOR TO PLACEMENT ON DISCIPLINARY SEGREGATION. SFI-DESIGNATED INMATES MAY NOT BE PLACED IN DISCIPLINARY SEGREGATION FOR MORE THAN FOURTEEN (14) CONSECUTIVE DAYS.**

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**DATA BASE ENTRY CODES ARE IN BOLD****MAJOR "A" VIOLATIONS**

1. Killing any Person **A02** (A, 30 days)
2. Assault, physically attacking another person with or without the use of an object or substance **A01E** (A, 0-30 days)
  - a. First conviction 0-14 days
  - b. Second conviction 0-21 days
  - c. Subsequent convictions 0-30 days
3. Assault on a Department of Corrections' employee, contractor or volunteer. Intentionally striking or attacking a Department of Corrections employee, contractor or volunteer with or without the use of an object or substance, or behaving in such a reckless manner that one's actions cause a strike of a Department employee, contractor or volunteer. **A01F** (A, 0-30 days)
4. Sexual Assault (Sexual Abuse) **A01B** (A, 0-30 days)
  - a. First conviction 0-14 days
  - b. Second conviction 0-21 days
  - c. Subsequent convictions 0-30 days
5. Fighting where bodily injury is attempted or carried out **A01D** (A, 0-30 days)
  - a. First conviction 0-14 days
  - b. Second conviction 0-21 days
  - c. Subsequent convictions 0-30 days
6. Escape from an institution **A03A**, armed escort **A03B**, Correctional Officer custody, to include intentional absence from a furlough or facility work crew from a correctional institution. **A03C** (A, 0-30 days)
7. Creating disturbances that threaten the order and safety of the facility including, but not limited to, riots, work strikes and hunger strikes **A06** (A, 0-30 days)
  - a. First conviction 0-14 days
  - b. Second conviction 0-21 days
  - c. Subsequent convictions 0-30 days
8. Possession, manufacture or introduction of any item that constitutes a danger to the order of the facility including, but not limited to, weapons, dangerous instruments, escape tools, or communication devices (e.g., cell phones). This also includes possession of any unauthorized weapon while in the custody of the Commissioner of Corrections outside a correctional facility (e.g., at Court, a hospital, etc.). **A07** (A, 0-30 days)
9. Possession, introduction or use of (including, but not limited to) any alcohol, narcotics, depressants, stimulants, hallucinogenic substances or marijuana (any plant material, extract or

- resin of the genus cannabis) or related paraphernalia not prescribed for the individual by the medical providers. **A19** (A, 0-14 days)
10. Refusing to submit to a breathalyzer, alco-sensor or any method of testing for drugs, alcohol or intoxicants **A20** (A, 0-14 days)
  11. Giving false information/making a false allegation – Inmates are prohibited from intentionally and/or knowingly making a false allegation against any staff person or any person under contract to the Department of Corrections, and/or intentionally misleading staff in the course of their official duty. **A21** (A, 0-14 days)
  12. Arson – Inmates are prohibited from setting a fire or causing an explosion. **A08** (A, 0-30 days)
  13. Security Threat Group Affiliation – Inmates are prohibited from possessing or displaying any materials, symbols, colors or pictures of any identified security threat group or engaging in membership in or in behaviors uniquely or clearly associated with a security threat group. **A22** (A, 14 days)
  14. Unauthorized use of the mail or telephone; to include, but not be limited to, making a call to a person on an inmate’s authorized phone list and having them forward the call to someone not on the authorized list. **A23** (A, 0-14 days)
  15. Tampering with fire alarms, fire safety apparatus (such as extinguishers, air pacs, sprinkler heads, hoses, fire blankets, etc.) or any other safety equipment **A24** (A, M, 0-14 days)
  16. Unauthorized Use of a Computer – using, accessing or viewing a computer or computer terminal in any manner that is not authorized by departmental personnel; using accessing or viewing a computer or computer terminal for gaining access to the Internet; using accessing or viewing a computer in a fraudulent manner or for a fraudulent purpose; introducing, installing or using any software, utility, application; using a computer or computer terminal to access or view pornographic website(s), pornographic image(s), or to distribute pornographic material; or any other digital media that has not been authorized by departmental personnel. **A25** (A, 0-14 days)
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### MAJOR “B” VIOLATIONS

1. Tampering with locking or security devices or electrical outlet covers, **B01A**, making holes in walls, damaging windows **B01B** or wearing a disguise or mask. **B01D** (A, 0-14 days)
2. Counterfeiting, forging, altering or reproducing any document, article of identification, money, security or official paper without authorization. **B02** (A, 0-7 days)
3. Adulteration of any food or drink with the intent that it be consumed to cause harm **B03** (A, 0-7 days)
4. Assault **B05A**, or fighting where serious bodily injury was not carried out, to include inmate-on inmate Sexually Abusive Contact **B05D** (A, 0-14 days)
5. Making sexual proposals to another person, including, but not limited to: repeated sexual advances, requests for sexual favors, verbal comments, or gestures or actions of a derogatory or offensive sexual nature by one inmate directed toward another inmate or staff person **B06** (A, 0-14 days)
6. Indecently exposing oneself or another **B07** (A, 0-14 days)
7. Unauthorized absence from headcount **B09** (A, 0-7 days)

8. Threatening another with harm, bodily injury or an act with adverse consequences for any reason; to include, but not limited to, the use of debt, threats of physical harm, peer pressure, deceit or personal favors to force or cajole sexual favors from another. **B10** (A, 0-7 days)
9. Stealing, taking another's property without consent or being in possession of stolen property. **B11** (A, 0-7 days)
10. Failure to carry out any disciplinary sanction order (whether from informal or formal resolution) **B12** (A, 0-7 days)
11. Destruction or damage of state property or property of another valued at more than \$50.00 **B28A** or second or subsequent destruction or damage of state property or property of another valued at \$50.00 or less within 60 days. **B28B** (A, 0-7 days, M)
12. Extortion, blackmail or protection in return for money or anything of value **B16** (A, 0-7 days)
13. Engaging in sexual acts or activity without use or threat of force, to include but not limited to, kissing, fondling of self or another person in a manner, which produces or is intended to produce sexual stimulation or gratification without the appearance of threat or harm on the part of both persons **B17** (A, 0-7 days)
14. Interfering with an officer in the performance of duties or any disobedience or refusal of an officer's instruction or order that threatens or disrupts institutional security or interferes with the taking of an official institutional headcount **B18** (A, 0-7 days)
15. Giving or offering a bribe to a state employee, volunteer, or contractor. **B19** (A, 0-7 days)
16. Conduct, which disrupts or interferes with inmate safety, security, or the orderly running of the facility **B21** (Only to be used if another Major "B" violation is not applicable) (A, 0-14 days)
17. Making a derogatory comment to another person, staff or inmate, regarding race, gender, ethnicity, religious affiliation, or sexual orientation. **B29** (A, 0-7 days)
18. Being in possession of any amount of tobacco in excess of the amount contained in one cigarette **B27** (A, 0-7 days)
19. The introduction, or attempt at introducing, tobacco of any amount into or onto the grounds of a correctional facility. **B33** (A, 0-14 days)
20. Misuse of authorized medication, including, but not limited to, inmates transferring or selling their medication to another inmate **B30** (A 0-14 days)
21. Tattooing or possession of tattooing tools, or the recipient of a tattoo, this rule pertains only to recipients of "new" tattoos and not to tattoos previously acquired. **B31** (A, 0-7 days)
22. Failure to abide by transition furlough (from facility) conditions **B32** (A, 0-7 days)

## MINOR VIOLATIONS

1. Passing or possession of contraband items other than as described in the Major Disciplinary category. **M02**
2. Refusing to work **M03**
3. Refusing to obey the order of a staff member other than as described in the Major Disciplinary category. **M04**
4. Unexcused absence from any work assignment **M05**
5. Gambling **M08**
6. Agitating or provoking staff, volunteers, members of the community or inmates. **M09**
7. Failure to maintain proper hygiene **M10**
8. Failure to maintain sanitary and orderly housing conditions **M11**
9. Destruction or damage of state property or property of another valued at \$50.00 or less. **M45 (M)**
10. Engaging in minor disruptive behavior that interferes with normal facility operations or interferes with the program or living environment of other inmates. **M16**
11. Defacing or misusing state property. **M17**
12. Malingering or faking an illness. **M18**
13. Possession of unauthorized clothing, food or books **M20**
14. Using abusive or obscene language, verbal comments, gestures or actions of a derogatory or offensive nature in the presence of staff, volunteers or others **M22**
15. Unauthorized use of mail or telephone other than as stated as a Major A violation **M24**
16. Conduct in violation of visiting rules. **M25**
17. Failure to abide by facility unit rules not listed in Major categories. **M26**
18. Driving a motor vehicle of any type without prior approval of Department of Corrections **M33**
19. Possession or use, to include being in the presence of tobacco smoke or a small amount of tobacco; i.e., an amount equal to or less than the amount of tobacco contained in one cigarette **M44**

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**DEFINITIONS FOR PURPOSES OF THE DISCIPLINARY PROCESS**

<sup>1</sup> *Escape* for purposes of the disciplinary process is defined as any action by the offender, which leads Corrections' employees to believe the inmate intends to absent him or herself from state custody or supervision indefinitely.

<sup>2</sup> For the purpose of disciplinary violations regarding the possession of weapons and other types of contraband or other items not approved by the Superintendent, *possession* shall be defined as:

An item that is

- 1) Found on one's person or the clothing being worn by the person, or
- 2) Found in one's personal belongings or cell, or
- 3) Found in an area that one exerts control over and there is independent evidence that the inmate knew it was there; i.e.,
  - a) Information exists supporting the inmate had knowledge the contraband was there;
  - b) Staff observation of inmate's behavior led to staff's suspicion that the inmate is hiding contraband;
  - c) Staff observed the inmate with contraband;
  - d) Other evidence indicating the contraband was placed by the inmate.

<sup>3</sup> For purposes of disciplinary violations regarding *threatening or threatening behavior*, it shall be defined as:

- 1) Verbal threats when the inmate has the ability and opportunity to carry out the threat;
- 2) Physical threats when the inmate has the capability of inflicting harm, has the coinciding distance and time to do so, and has committed an overt act;
- 3) Verbal threats where the inmate demonstrates knowledge of another person's personal life, such as "Don't you live at (*address*)?" or "Your kid goes to (*specific school*) doesn't she?" This knowledge must be articulated in conjunction with threatening behavior.

<sup>4</sup> For the purpose of disciplinary violations regarding assault, an *assault* shall be defined as any action, which brings about a harmful or offensive contact to another person.

<sup>5</sup> For purposes of disciplinary violations, *Sexual Assault (Sexual Abuse)* shall be defined as: Inmate-on-inmate Sexually Abusive Penetration. Penetration by an inmate of another inmate includes contact between the penis and the vagina or the anus; contact between the mouth and the penis, vagina or anus; or penetration of the anal or genital opening of another person by a hand, finger or other object.

<sup>6</sup> For purposes of disciplinary violations *Sexually Abusive Contact* shall be defined as: Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by an inmate of another inmate.

<sup>7</sup> For purposes of disciplinary violations involving an allegation of assault, a *strike* shall be defined as to hit sharply, as with the hand, fist or weapon; to inflict a blow.

<sup>8</sup> For purposes of disciplinary violations, an *attack* shall be defined as a violent act of aggression; to be set upon with violent force.

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