

103 CMR 430.00: INMATE DISCIPLINE

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430.01: Purpose

The purpose of 103 CMR 430.00 is to establish a fair and impartial system governing disciplinary proceedings involving inmates of state correctional institutions. The process is meant to serve as a method of maintaining order in the institutions while encouraging positive inmate behavior change.

430.02: Statutory Authorization

103 CMR 430.00 is issued pursuant to M.G.L. c. 124, § 1(b), (i) and (q) and M.G.L. c. 127, § 33. 103 CMR 430.00 is not intended to confer any procedural or substantive rights not otherwise granted by state or federal law.

430.03: Cancellation

103 CMR 430.00 cancels all previous departmental or institutional policy statements, rules or regulations, and all previous Commissioner's Bulletins and Orders, regarding the conduct of disciplinary proceedings, to the extent they are inconsistent with 103 CMR 430.00.

430.04: Applicability

103 CMR 430.00 is applicable to all employees and to inmates housed at all correctional institutions within the Department of Correction, except residents committed under M.G.L. c. 123A confined at the Massachusetts Treatment Center and subject to the provisions of 103 CMR 431.00 and residents of the Massachusetts Alcohol and Substance Abuse Center.

430.05: Access to 103 CMR 430.00

103 CMR 430.00 shall be maintained within the Central Policy File of the Department and shall be accessible to all Department Employees. A copy of 103 CMR 430.00 shall also be maintained in each Superintendent's Central Policy File, and at each inmate library.

430.06: Definitions

Automatic Discovery - evidence which the Disciplinary Officer shall provide to the inmate automatically, and without request by the inmate, prior to the disciplinary hearing.

Business Day - Monday through Friday, excluding holidays.

Central Inmate Disciplinary Unit (CIDU) - the centralized unit responsible for the oversight, implementation and auditing of all disciplinary functions within the Department of Correction regarding inmates.

Commissioner - the Commissioner of Correction.

Department Disciplinary Unit (DDU) - a restricted area or areas designated by the Commissioner to which an inmate has received a recommended sentence by a Special Hearing Officer.

Director of Discipline - the administrative manager appointed by the Commissioner to oversee all disciplinary functions within the Department of Correction regarding inmates.

Disciplinary Detention - the separation from the general population of an inmate who has been found guilty of a serious violation of the code of offenses.

Disciplinary Officer - an Officer of supervisory rank or function appointed by the Superintendent in consultation with the Director of Discipline, to oversee disciplinary functions at the institutional level, who shall report directly to the Superintendent.

Exculpatory Evidence - evidence which is potentially helpful to the inmate in either proving innocence or in establishing lesser responsibility for the offense(s) as charged.

Hearing Officer - an Officer of supervisory rank who is appointed by and reports to the Director of Discipline to conduct disciplinary hearings.

Offer of Proof - a brief description of expected testimony or evidence.

Preponderance of Evidence - a belief, formed after weighing the evidence, that the proponent's contention is more probably true than false.

Proponent - the staff member seeking a guilty finding against an inmate, or supporting a disciplinary report against an inmate.

Special Disciplinary Officer - a person appointed by the Commissioner or Superintendent to oversee any disciplinary matter or class of disciplinary matters.

Special Hearing Officer - a Hearing Officer appointed by the Commissioner to conduct DDU disciplinary hearings who shall report directly to the Director of Discipline.

Special Management Unit - a separate housing area from general population within institutions in which inmates may be confined for reasons of administrative segregation, special housing assignment, or disciplinary detention.

Superintendent - the chief administrative officer of a state correctional institution.

430.07: Disciplinary Personnel

(1) The Superintendent at each institution in consultation with the Director of Discipline shall appoint a Disciplinary Officer who is of supervisory rank or function, who will perform the functions of that office, as set forth in 103 CMR 430.00. An Assistant Disciplinary Officer of equal or lesser rank may be appointed by the Superintendent for the purpose of performing the functions of that office as set forth in 103 CMR 430.00. The Superintendent may appoint a Disciplinary Officer for a definite or indefinite term. In addition, the Commissioner or Superintendent may appoint a special Disciplinary Officer for any disciplinary matter or class of disciplinary matters.

(2) The Director of Discipline shall appoint a Hearing Officer or officers to conduct disciplinary hearings as set forth in 103 CMR 430.00. The Director of Discipline may appoint a Hearing Officer or officers for a definite or indefinite term and may in addition appoint a new Hearing Officer to hear and determine any disciplinary matter or class of disciplinary matters.

(3) The Commissioner may appoint a Special Hearing Officer or officers to handle a particular matter or class of matters.

430.08: Department Disciplinary Unit Referrals

(1) In cases where the Disciplinary Officer in consultation with the Superintendent, determines that a sentence to a Department Disciplinary Unit may be warranted, the Disciplinary Officer shall forward a copy of the disciplinary report and a summary of available information to the Director of Discipline. The Director of Discipline shall make the final determination whether a DDU hearing shall be held.

(2) The Commissioner shall appoint a Special Hearing Officer(s) to hear all disciplinary matters which may result in the inmate receiving a sentence to a DDU.

(3) All DDU hearings shall be recorded by the Special Hearing Officer.

(4) A DDU Special Hearing Officer may suspend a sanction, or any portion thereof, for a period of time not to exceed six months.

(5) The Deputy Commissioner or a designee shall serve as the appellate authority in any disciplinary case in which an inmate receives a recommended sentence to a DDU, subject to the procedures set forth in 103 CMR 430.18 (1). When no DDU sentence is imposed the inmate shall follow the normal appeal procedure provided by 103 CMR 430.18.

(6) The Deputy Commissioner shall designate a staff person to conduct a disposition procedural review of all DDU hearings within ten business days of the conclusion of the appeal process, to ensure that all procedural guidelines established in accordance with 103 CMR 430, have been complied with. This review shall be documented.

Except for the provisions of 103 CMR430.08(1) through (6), disciplinary matters which may result in the inmate receiving a sentence to a Department Disciplinary Unit shall comply with the provisions of 103 CMR 430.00.

430.09: Detection and Reporting of Disciplinary Offenses

(1) Informal handling of lesser offenses in accordance with existing practices is not precluded or discouraged by 103 CMR 430.00. Where an employee reasonably believes that formal disciplinary action is not necessary, the employee may, with the approval and review of the employee's supervisor, within 24 hours issue a written warning or take other appropriate action and handle the matter informally. When informal sanctions are imposed the inmate shall be notified through an Informal Sanction Form. Additionally, each housing unit shall record this information into the unit/IMS Informal Sanction Screen to monitor and track informal sanctions being issued within the unit. Inmates may challenge the informal handling of a disciplinary matter and request that the matter be handled formally, and that a disciplinary report be written. If an inmate refuses to sign the Informal Sanction Form, which acts as the inmate's exercise of a challenge to informal handling, the employee may proceed as provided in 103 CMR 430.09(2).

430.09: continued

Informal Sanctions are limited to one of the following:

- (a) Written Warning;
- (b) one - five hours extra duty - to be assigned as needed by the Unit Officer;
- (c) one - three days room/unit restriction - to begin within 24 hours of the incident.
- (d) one - three days loss of a specified leisure activity - to begin within 24 hours of the incident.

(2) Where informal handling is not appropriate, an employee who has reason to believe that a disciplinary offense has been committed by an inmate shall, write a disciplinary report and submit it to the employee's supervisor for review within 24 hours.

(3) Upon receipt of the disciplinary report, the supervisor shall further investigate the matter if deemed necessary, within 24 hours and recommend one of the following:

- (a) the matter be handled informally in consultation with the reporting staff person;
- (b) the matter be dismissed if further investigation, facts or mitigating circumstances change the facts as originally presented;
- (c) Formal action be taken and forward the report to the Shift Commander.

(4) Upon receipt of the disciplinary report the Shift Commander shall within 24 hours recommend one of the following:

- (a) further investigation;
- (b) the matter be handled informally in consultation with the reporting staff person's supervisor;
- (c) the matter be dismissed if further investigation, facts or mitigating circumstances change the facts as originally presented;
- (d) formal action be taken and forward the report to the Disciplinary Officer.

(5) At all levels of review, the disciplinary report should be reviewed for accuracy, while ensuring adherence to applicable time frames.

(6) All disciplinary reports shall be reviewed in accordance with 103 DOC 650, *Mental Health Policy*.

#### 430.10: Responsibilities of the Disciplinary Officer

(1) Within two business days from receipt of the disciplinary report, the Disciplinary Officer shall review the disciplinary report, or make any further investigation the Disciplinary Officer deems necessary, to include a review of informant information if applicable, and do one of the following:

- (a) dismiss the disciplinary report;
- (b) with the approval of the Superintendent, take no immediate action on the report pending the receipt of further information; or
- (c) proceed with formal disciplinary action and assign offenses as set forth in 103 CMR 430.24.

(2) In cases which the Disciplinary Officer determines restitution may be an appropriate sanction, the disciplinary officer shall provide the inmate with an itemized list of damages or costs associated with or resulting from the inmate's actions. The itemized list of damages or costs shall be provided to the inmate within a reasonable time, but not less than 48 hours before the inmate's scheduled hearing.

#### 430.11: Proceedings in Formal Disciplinary Matters: Notice and Scheduling of Hearing Before a Hearing Officer

(1) Within two business days of assigning offenses to the disciplinary report, a copy of the disciplinary report, a notice of hearing, a request for representation/witness form and a request for evidence form, shall be served upon the inmate by the Disciplinary Officer or a designee. Automatic discovery shall ordinarily be served on the inmate at this time, but in no event not less than 48 hours before the hearing. Automatic discovery includes:

- (a) copies of incident reports concerning the incident alleged to have occurred in the disciplinary report;

- (b) copies of, or access to all exculpatory evidence;
  - (c) copies of, or access to all documentary, photographic, audio, or video graphic evidence referred to in the disciplinary report or, which the Disciplinary Officer intends to introduce at the hearing.
  - (d) informant information checklist with applicable sections completed by the Disciplinary Officer.
- (2) It is the responsibility of the Disciplinary Officer to approve or deny with good cause and in writing any requests made by the inmate for witnesses or evidence. This response shall be served on the inmate no less than 48 hours prior to the hearing. The factors that the Disciplinary Officer may consider when ruling on these requests shall include but not be limited to the following:
- (a) relevance;
  - (b) whether the evidence is cumulative or repetitive;
  - (c) unavailability of the reporting staff person or other staff person for a prolonged period of time due to illness, authorized absence or for other good cause;
  - (d) failure of the inmate to provide an offer of proof of the expected testimony of a proposed witness or the need for requested evidence.
- (3) The Disciplinary Officer shall schedule a hearing before a Hearing Officer within a reasonable time, but not less than 24 hours after the inmate has been served with both the disciplinary report and the notice specifying the date and time of the hearing. The Disciplinary Officer or Hearing Officer may continue a hearing. The inmate shall be given written notice of such continuance and the new date and time for the hearing. The inmate shall be entitled to one continuance for good cause provided that any request for a continuance must ordinarily be made at least 24 hours prior to the scheduled time of the hearing. Requests for continuances will not be unreasonably denied.
- (4) An inmate may waive the right to 24 hours notice of the disciplinary hearing. An inmate may waive the right to appear before the Hearing Officer. Such waivers shall be appropriately documented.
- (5) An inmate may waive the right to a disciplinary hearing and enter a guilty plea or agree to a continuance without a finding pursuant to 103 CMR 430.26 before the Disciplinary Officer or Hearing Officer. If the inmate pleads guilty, the Disciplinary Officer or Hearing Officer shall conduct an interview with the inmate and may assess mitigating circumstances presented by the inmate. The Disciplinary Officer or Hearing Officer shall then recommend sanction(s) in accordance with 103 CMR 430.25. An inmate may appeal the sanction in accordance with 103 CMR 430.18.
- (6) If an inmate wishes to be represented in accordance with the provisions of 103 CMR 430.12(1) and (2) or if the inmate wishes to have the reporting staff person or other witnesses present in accordance with the provisions of 103 CMR 430.14(4) and (5), the inmate shall complete the request for representation and witness form and submit it to the Disciplinary Officer within 24 hours of receipt. The request for evidence form must also be submitted by the inmate within 24 hours of receipt. The inmate's unexcused failure to submit a request for representation and witness form or evidence form may, at the discretion of the Disciplinary Officer, constitute a waiver of the inmate's rights to call witnesses, request additional evidence and to be represented at the hearing. However, such a failure to submit forms shall not deny the inmate automatic discovery.
- (7) Contraband evidence that is deemed to constitute a risk to the safety or security of the institution, its staff, inmates or any participant in the hearing process will not be presented at the hearing. Reasonable attempts must be made to supply the inmate with either photographs or photocopies of the evidence. Attorneys or law students who represent the inmate, may request in writing, to view contraband evidence prior to the hearing by notifying the Disciplinary Officer at least 48 hours prior to the hearing. The Disciplinary Officer shall grant or deny the request with a written explanation should the request be denied.

430.12: Representation of Inmates and the Recording of Proceedings

(1) An inmate may be represented by an attorney or a law student in disciplinary proceedings in accordance with 103 CMR 430.00. It shall be the inmate's responsibility to secure such representation and the inmate shall be allowed to make, or have made on the inmate's behalf, a telephone call for that purpose. A representative shall be allowed a continuance unless the Disciplinary Officer determines the continuance would cause undue delay or is otherwise unreasonable. The inmate's representative shall be entitled to make an amended written request for witnesses, evidence or the reporting staff person's presence, provided that such amended request must ordinarily be communicated to the Disciplinary Officer at least three business days prior to the scheduled time for the hearing.

(2) Where an inmate is illiterate or non-English speaking, or where the issues presented are complex, the inmate shall be afforded the right to be assisted by a staff member designated by the Disciplinary Officer or telephonic interpreter service designated by the Department of Correction. It shall be the inmate's responsibility to request such assistance within a reasonable time prior to the scheduled hearing.

(3) An inmate shall be permitted to record a hearing before a Hearing Officer through use of tape recording equipment provided by the inmate or the inmate's representative. Upon timely request by the inmate to the Disciplinary Officer, ordinarily to be made along with the inmate's request for representation/witness form but in no case less than 48 hours prior to the hearing, the institution shall make a tape recording of the hearing for the inmate's use with a reasonable charge to be paid by the inmate. The Hearing Officer shall be allowed to record a hearing. An indigent inmate, as defined by 103 CMR 481.00, shall be afforded a tape(s) of the hearing upon prior written request by the inmate or the inmate's representative. The inmate shall be required to deliver any tape(s), so used, to the Hearing Officer at the close of the disciplinary hearing. The Hearing Officer shall deliver such tape(s) to the Disciplinary Officer who shall be responsible for the safekeeping of the tape(s). The inmate or the inmate's representative shall have access to the tape(s) for future reference and the representative shall be permitted to make and retain a duplicate tape at the hearing.

430.13: The Hearing Officer's General Powers

(1) The Hearing Officer shall govern the conduct of every phase of a hearing including, but not limited to, the interpretation and construction of 103 CMR 430.00 and the conduct of all parties. The Hearing Officer may for good cause go into executive session at any time to consider procedures, and reconvene the hearing at a reasonable date and time.

(2) The Hearing Officer shall be impartial. If the inmate challenges the impartiality of the Hearing Officer, the Director of Discipline or a designee shall determine if the inmate has stated substantial reasons to support the claim. For example, a witness to the event at issue shall not sit as a Hearing Officer. If the Hearing Officer is removed by the Director of Discipline, the Director of Discipline or a designee shall designate a replacement as soon as practicable.

(3) The Hearing Officer shall not be bound by the rules of evidence or privilege observed by the courts of the Commonwealth.

(4) All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a professional manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. The Hearing Officer may take whatever appropriate actions are necessary to conduct a hearing when confronted with the improper conduct of any participant.

(5) The Hearing Officer cannot compel the attendance of non-Department of Correction staff.

(6) The Hearing Officer shall make findings of fact, determine guilt or innocence, and make sanction recommendations.

430.14: Fact Finding Aspects of a Hearing before a Hearing Officer

(1) At the beginning of a hearing on a disciplinary offense which has been designated as a referral to the District Attorney for prosecution, the Hearing Officer shall advise the inmate that the inmate has the right to remain silent and that anything the inmate says during the hearing may be used against the inmate in a court of law. The Hearing Officer shall then read the offenses to the inmate and ask if the inmate wishes to admit or deny the offenses. If the inmate admits the offenses, the Hearing Officer may immediately consider mitigating evidence when recommending the sanction(s).

(2) If the inmate does not admit the offenses, the Hearing Officer shall conduct a fact finding hearing at which the Hearing Officer may consider written, oral and physical evidence. All evidence considered by the Hearing Officer shall be presented in the presence of the inmate except certain informant information which shall be presented in accordance with the provisions of 103 CMR 430.15.

(3) The disciplinary hearing shall begin with the Hearing Officer identifying the date, time and place of the hearing, the parties present, and reading the disciplinary report aloud. The inmate shall then be asked for a plea of guilty or not guilty.

After the reading of the disciplinary report and the inmate's plea, the Hearing Officer shall consider any preliminary matters.

When requested by the Hearing Officer or Reporting Officer, the Disciplinary Officer or Assistant Disciplinary Officer shall present the case at issue. Evidence shall ordinarily be presented first by the proponent(s) of the disciplinary report(s), with an opportunity for cross-examination allowed by the inmate or the inmate's representative. The inmate shall then be allowed but not required to present testimony or evidence in support of the inmate's case. An inmate's silence may be used to draw an adverse inference against the inmate, but silence shall not be the sole basis for a guilty finding. An inmate's request for sequestration of witnesses shall not be unreasonably denied, although the Hearing Officer may have appropriate staff present throughout the hearing as required by particular security or safety concerns. The foregoing procedure in no way limits the authority of the Hearing Officer as set forth in 103 CMR 430.13.

(4) The inmate shall be allowed to call and question witnesses in the inmate's defense, or to present other evidence, when permitting the inmate to do so will not be unduly hazardous to personal or institutional safety. The factors that the Hearing Officer may consider when considering an inmate's request to call witnesses, questioning of witnesses, or offer of other documentary or physical evidence shall include, but shall not be limited to, the following:

- (a) relevance;
- (b) whether the evidence is cumulative or repetitive;
- (c) hazards presented by an individual case.

(5) The reporting staff person shall, when requested by the inmate or the Hearing Officer, attend the hearing unless a determination of unavailability has been made. If the inmate does not request the presence of the reporting staff person at the disciplinary hearing, the Hearing Officer may accept the reporting staff person's statement in the report as true, provided that the report is based on the staff person's eyewitness account or other personal knowledge and is otherwise credible. Further, such statements in the report may be considered by the Hearing Officer in making findings pursuant to 103 CMR 430.16(1). Any determination of unavailability shall be in writing and shall be reviewed by the Superintendent or a designee prior to the commencement of the hearing. The Superintendent or a designee may approve the determination or disapprove it and require rescheduling of the hearing at a time when the reporting staff person will be available.

(6) The Hearing Officer may call and question witnesses on the Hearing Officer's own motion. The Hearing Officer may continue a hearing.

430.15: Procedures for the Use of Informant Information

In disciplinary cases involving informant information, the Hearing Officer may consider documentary evidence and/or testimony which is not presented in the presence of the inmate or the inmate's representative only if, after viewing or hearing such documentary evidence or testimony, the Hearing Officer has:

430.15: continued

- (1) Made a finding that the informant is reliable and that the information is credible. This finding shall be included in the record and should contain the following information:
  - (a) The facts upon which the Hearing Officer based the conclusion that the informant was reliable and that the information was credible. These facts should ordinarily not be general and must be specific, as set forth in 103 CMR 430.15(1)(b).
  - (b) A statement of the information provided by the informant with as much specificity as is possible, without creating a substantial risk of disclosing the identity of the informant. The statement should demonstrate that the informant had personal knowledge of the information provided.
  - (c) In making the foregoing findings, the Hearing Officer shall be guided by and record the findings on a form approved by the Commissioner consistent with these regulations, which includes criteria focusing on the personal knowledge, reliability, and credibility of the informant and the specificity of the information supplied. A separate inquiry and finding shall be made for each informant. Each form with these findings shall be given to the inmate at a reasonable time before the inmate is given an opportunity to question the reporting officer or other witnesses and to present the inmate's case.
- (2) Made a finding that the disclosure of the documentary evidence or testimony provided by the informant to the inmate or the inmate's representative would create a substantial risk of harm to the informant, to any other person, or to the security of the institution.
- (3) The Hearing Officer shall present a written summary of the information provided by the informant to the inmate at the hearing, which shall be included with the form required by 103 CMR 430.15. Such a presentation may, however, be foregone in cases where disclosure of the information in any greater detail than that which is contained in the disciplinary report itself would create a substantial risk of disclosing the identity of the informant. In such a case, the Hearing Officer shall justify this non-disclosure with specific written findings included in the form given to the inmate. However, the inmate or the inmate's representative may question the reporting officer subject to the provisions of 103 CMR 430.13 and 103 CMR 430.15(I)(b) with regard to the reliability and credibility of the informant.
- (4) The Hearing Officer may consider informant information and base the findings in 103 CMR 430.15(1) on information which is limited to oral or written hearsay evidence subject to the foregoing provisions. The Hearing Officer shall not be required to interview the informant in person.
- (5) The form required by 103 CMR 430.15 and any written summary of informant information shall be included in the Hearing Officer's written record of the proceedings. This standard form may from time to time be revised with the approval of the Commissioner; in such case, any prior form(s) shall be discontinued and the revised form shall be used in all disciplinary hearings until it is replaced.

430.16: Deliberation and Decision by the Hearing Officer

- (1) After the close of the presentation of the evidence, the Hearing Officer shall consider and determine the guilt or innocence of the inmate. Evidence relied upon by the Hearing Officer, shall be that on which reasonable persons are accustomed to rely in the conduct of serious affairs. The proponent(s) of the disciplinary report shall have the burden of proving the offense(s) by a preponderance of the evidence.
- (2) If the inmate is found guilty, the Hearing Officer may recommend one or more of the sanctions listed in 103 CMR 430.25. The inmate's disciplinary chronology shall not be considered by the Hearing Officer in determining the guilt or innocence of the inmate but it may be considered in deciding the appropriate sanction. The Hearing Officer may recall the inmate after reaching a guilty finding but prior to recommending a sanction to discuss issues related to the decision on sanction(s). Upon a rehearing, the Hearing Officer should not increase the sanction previously recommended without good cause.

430.17: Record of Disciplinary Proceedings

(1) If a guilty finding is reached, the Hearing Officer shall prepare a written decision containing the following:

- (a) description of the evidence relied upon in reaching the guilty finding;
- (b) a statement of the reason(s) for the sanction recommendations including any mitigating circumstances;
- (c) an explanation for the exclusion of evidence and witnesses;
- (d) a notice of the right of appeal.

This written decision shall be given to the inmate within five business days of the close of the hearing.

A copy of the findings and sanctions (if any) shall also be sent directly to the individual who represented the inmate at the disciplinary hearing via mail or fax, at the request of the inmate.

(2) The evidence relied upon for the guilty finding and the reasons for the sanction recommendation shall be set out in specific terms. Where the hearing has involved the use of informant information, the statement of the evidence shall be set out in accordance with 103 CMR 430.15.

(3) All disciplinary decisions, dispositions and appeal results shall be maintained in the records of the Disciplinary Officer. The Disciplinary Officer shall regularly confer with supervisory staff regarding the disciplinary decisions and appeals resulting from disciplinary reports written by their subordinate staff, to benefit and learn from this feedback.

(4) Where the inmate has been found guilty, all reports, notices, correspondence, requests and any other related documents shall be kept in the inmate's institutional and central office records.

430.18: Appeal Procedures

(1) All inmates may appeal the finding or sanction(s) of the Hearing Officer to the Superintendent within 15 days following the inmate's receipt of the Hearing Officer's written decision. If the 15th day of this appeal period does not fall on a business day, this day will not count and the next business day shall be counted as the 15th day. In matters in which a DDU sanction is recommended the appeal shall be to the Deputy Commissioner or a designee as provided in 103 CMR 430.08(5).

(2) The Superintendent as the appellate authority may sustain the finding and sanction recommendation of the Hearing Officer, order a rehearing, reduce or suspend the recommended sanction, dismiss the offenses, or take whatever remedial action the Superintendent deems appropriate. A Superintendent may take into consideration an inmate's documented disability upon appeal. In no event shall the Superintendent increase any sanction recommendation on an appeal from a decision of the Hearing Officer but, may decrease the recommended sanctions as defined in 103 CMR 430.25. The Superintendent shall normally decide an appeal within 30 days of its receipt and notify the inmate in writing of the decision with supporting reasons.

(3) The Commissioner or a designee may appoint an individual or group of individuals to serve as the appellate authority in place of the Superintendent or Deputy Commissioner in any disciplinary case or class of cases.

430.19: Review of Dispositions

The Deputy Superintendent shall conduct a procedural review of all disciplinary dispositions within ten business days of the conclusion of the appeal process, to ensure that all procedural guidelines established in accordance with 103 CMR 430.00, have been complied with. This review shall be documented.

430.20: Not Guilty Findings and Dismissals

Dismissed and not guilty reports may be kept for the specific and exclusive purposes of, and may only be used for research, officer training and statistical data.

430.21: Placement on Awaiting Action Status/Transfer to Higher Custody

(1) At the discretion of the Superintendent or a designee and subject to any applicable review requirements, an inmate who is under investigation for a possible disciplinary offense or has been charged with or found guilty of a disciplinary offense, may be placed on awaiting action ("AA") status at the institution where the inmate is then confined, or transferred to another Massachusetts institution, or an out-of-state institution prior to a classification hearing, when required by particular security or safety concerns. Such status shall consist of more restrictive confinement as deemed appropriate by the Superintendent or a designee and subject to 103 CMR 430.21. Awaiting Action confinement includes any conditions which restrict the inmate from the general population of the institution.

(2) An inmate under investigation for a possible disciplinary offense should be charged with a disciplinary offense or released from AA status within 90 days of placement on AA status. This time limit may be exceeded only in extraordinary circumstances by the Superintendent and for no longer than necessary. Whenever an inmate is placed on AA status, the inmate's status shall be reviewed in accordance with 103 CMR 423.00. If the inmate's retention on AA is approved, the decision and supporting reasons shall be in writing and served on the inmate promptly. This decision shall include an estimate of how much longer the inmate will remain on AA status with supporting reasons.

(3) No inmate on AA status shall be denied access to usual amenities and/or privileges available where the inmate is confined, such as television, radio, canteen, telephone, exercise, showers, and mail unless the inmate is housed in a Special Management Unit or if extraordinary circumstances exist and are set forth in writing with supporting reasons by the Superintendent or designee and promptly served on the inmate. The foregoing amenities or privileges do not include access by an inmate on AA status to common facilities while being used by the general population (such as the exercise yard, library, and chow hall).

(4) If the inmate is subsequently found guilty of any offense arising from an incident which led to the inmate's AA status, the inmate shall ordinarily receive credit for each day on AA status, which exceeds 30 days against a resulting DDU or disciplinary detention sanction.

(5) An inmate who is under investigation for a possible disciplinary offense, may be transferred to another Massachusetts institution, or an out-of-state institution prior to a classification hearing, when required by particular security or safety concerns. An inmate so transferred may, at the direction of the Superintendent or Deputy Superintendent at the receiving institution, and subject to any applicable review requirements, be placed on AA status. Such status may include more restrictive confinement as deemed appropriate by the Superintendent or Deputy Superintendent subject to the provisions of 103 CMR 430.21.

430.22: Disciplinary Detention

(I) An inmate may be placed in disciplinary detention only pursuant to a sanction recommended by a Hearing Officer and approved by an appellate authority, if the inmate files an appeal. Placement in disciplinary detention shall not occur until:

- (a) the inmate has waived the right to appeal either through submitting a written waiver to the Disciplinary Officer or failure to file an appeal within the time prescribed in 103 CMR 430.18; or
- (b) the inmate's appeal has been decided against the inmate; or
- (c) the inmate has requested in writing to begin the disciplinary detention time notwithstanding the fact that the appeal is pending.

(2) The Superintendent shall designate such person or persons as deemed appropriate to review the status of inmates housed in disciplinary detention on a weekly basis. No inmate shall be retained in disciplinary detention continuously for more than 15 days for any one offense. No more than 30 days disciplinary detention shall be imposed on an inmate for all offenses arising out of the same or substantially connected incident(s), unless specifically authorized by the Commissioner. No inmate shall, at any given time, be facing more than 30 days disciplinary detention time, unless for good cause specifically authorized in writing by the Commissioner. Each Superintendent may convert disciplinary detention to an equal amount of room/unit restriction based on operational needs of the facility.

430.23: Time Limits

The procedural time limits set forth in 103 CMR 430.00 are directory and may be waived by the Superintendent, Commissioner or their designees for good cause and in writing.

430.24: Code of OffensesCategory 1

- 1-1 Killing of another.
- 1-2 Aggravated assault on a staff member, contract employee, or volunteer.
- 1-3 Aggravated assault on another inmate.
- 1-4 Aggravated assault on a visitor.
- 1-5 Taking or holding any person hostage.
- 1-6 Escape or attempted escape.
- 1-7 Possession, manufacture or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
- 1-8 Possession, manufacture or introduction of any gun, firearm, weapon, sharpened instrument, knife or poison or any component thereof.
- 1-9 Sexual assault on a staff member, contract employee, or volunteer.
- 1-10 Sexual assault on another inmate.
- 1-11 Sexual assault on a visitor.
- 1-12 Rioting.
- 1-13 Inciting others to riot.
- 1-14 Setting a fire.
- 1-15 Introduction, distribution or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 1-16 Engaging in or inciting an organized work stoppage.
- 1-17 Fighting with, assaulting or threatening another person, due to security threat group activities or gang activities.
- 1-18 Engaging, encouraging, recruiting or pressuring others to engage in security threat group activities.
- 1-19 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

Category 2

- 2-1 Unauthorized possession of items or material likely to be used in an escape.
- 2-2 Causing a valid threat of transmission of a contagious disease to any person due to intentional or reckless action.
- 2-3 Assault on a staff member, contract employee, or volunteer.
- 2-4 Assault on another inmate.
- 2-5 Assault on a visitor.
- 2-6 Making a bomb threat.
- 2-7 Fighting with any person.
- 2-8 Refusing to submit to a urinalysis, breathalyzer, or other standard sobriety test or failure to provide a urine sample when ordered to do so by a staff member without medical or mental health justification.
- 2-9 Refusing or failing to submit to testing required by statute, or order, such as DNA blood tests, when ordered to do so by a staff member.
- 2-10 Engaging in or inciting a group demonstration or hunger strike.
- 2-11 Unauthorized use or possession of drugs, narcotics, illegal drugs, unauthorized drugs or drug paraphernalia.
- 2-12 Possession, manufacture or introduction of unauthorized keys.
- 2-13 Indecent exposure.
- 2-14 Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.
- 2-15 Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties during an emergency.
- 2-16 Tampering with, damaging, blocking or interfering with any locking or security device or window.
- 2-17 Impersonating any staff member, contract employee, volunteer or visitor.

430.24: continued

- 2-18 Causing an inaccurate count by means of unauthorized absence, hiding, concealing oneself or other form of deception or distraction.
- 2-19 Making, introducing or transferring intoxicants and alcohol, or possession of ingredients, equipment, formula, or instructions that are used in making intoxicants and alcohol.
- 2-20 Possession of the clothing of a staff member or contract employee, or visitor.
- 2-21 Causing injury to another person by resisting orders, resisting forced movement or physical efforts to restrain.
- 2-22 Making a false fire alarm or tampering with, damaging, blocking or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.
- 2-23 Counterfeiting, committing forgery, altering or unauthorized reproduction of any document, article of identification, money, security, or official paper.
- 2-24 Conduct which interferes with the security or orderly running of the institution.
- 2-25 Wearing or displaying colors or any type of emblem, insignia or logo suggesting possible membership or affiliation with a gang, group party or other association whenever such wearing or display may, when the Superintendent has reasonable cause to believe, pose a threat to the security, good order or safety of the institution.
- 2-26 Possessing, wearing or using security threat group paraphernalia or photographs.
- 2-27 Failure to timely report to a location or program assignment resulting in a declaration of escape status.
- 2-28 Distribution or sale of tobacco.
- 2-29 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

Category 3

- 3-1 Lying to or providing false information to a staff member.
- 3-2 Engaging in sexual acts with another.
- 3-3 Unauthorized possession of any alcoholic or intoxicating beverage.
- 3-4 Threatening another with bodily harm or with any offense against another person, property or family.
- 3-5 Refusing a direct order by any staff member.
- 3-6 Impersonating another inmate.
- 3-7 Refusing a transfer to another institution.
- 3-8 Extortion, blackmail, or demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
- 3-9 Throwing objects, materials, substances or spitting at another.
- 3-10 Theft of property or possession of stolen property.
- 3-11 Unauthorized accumulation/misuse of prescribed medication.
- 3-12 Possession, manufacture or introduction of an unauthorized tool.
- 3-13 Organizing or participating in an unauthorized group activity or meeting.
- 3-14 Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from another inmate or an inmate's friend(s) or family.
- 3-15 Flooding a cell or other area of the institution.
- 3-16 Refusing a cell or housing assignment.
- 3-17 Causing an individual to be penalized or proceeded against by providing false information.
- 3-18 Gambling and/or possession of gambling paraphernalia.
- 3-19 Giving, receiving or offering any person a bribe or anything of value for an unauthorized favor or service.
- 3-20 Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia and/or body piercing.
- 3-21 Fraud, embezzlement, or obtaining goods, services, money or anything of value under false pretense.
- 3-22 Creating an emergency by feigning illness or injury.
- 3-23 Possession of tobacco products and/or an incendiary device.
- 3-24 Being out of place or in an unauthorized area.

## 430.24: continued

- 3-25 Communicating, directly or indirectly with any staff member or contract employee, volunteer, or a member of their family at their home address or home telephone number, or for non-official business.
- 3-26 Use of obscene, abusive or insolent language or gesture.
- 3-27 Conduct which disrupts the normal operation of the facility or unit.
- 3-28 Possession of an altered appliance.
- 3-29 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

Category 4

- 4-1 Receipt or possession of contraband.
- 4-2 Mutilating, defacing or destroying state property or the property of another person.
- 4-3 Unauthorized possession of money or other negotiable items.
- 4-4 Use of mail or telephone in violation of established rules or regulations.
- 4-5 Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary action.
- 4-6 Possession of any photographic, or hand drawn material and/or unauthorized publication that depicts sexually explicit acts, and/or nudity.
- 4-7 Self mutilation.
- 4-8 Misuse or waste of issued supplies, goods, services, or property.
- 4-9 Failure to maintain acceptable hygiene.
- 4-10 Failure to maintain acceptable hygiene or appearance of a housing area.
- 4-11 Violating any departmental rule or regulation, or any other rule, regulation, or condition of an institution or community based program.
- 4-12 Failure to comply with standing count procedures.
- 4-13 Being out of place or an unauthorized area.
- 4-14 Possession of an altered appliance.
- 4-15 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

430.25: Sanctions

- (1) Sanctions for each Category 1 offense are as follows:
  - (a) Loss of statutory good time, not to exceed 360 days loss for all charges arising out of any one incident or substantially related incidents;
  - (b) Disciplinary Detention for up to 15 days;
  - (c) 60-120 days loss of a privilege, including but not limited to one of the following: television, radio, canteen, either visits or phone privileges, hot pots, and leisure programs;
  - (d) Cell or housing restriction for up to 20 days;
  - (e) Restitution, including, if applicable, any medical treatment assessment under M.G.L. c. 124, § 1(s);
  - (f) Referral to Department Disciplinary Unit for a period not to exceed ten years for all violations arising out of one incident or substantially related incidents;

No more than one sanction shall be imposed per offense and no more than five sanctions (in addition to restitution) may be imposed for all offenses arising out of anyone or substantially related incidents in which the highest offense(s) alleged is from Category 1.
- (2) Sanctions for each Category 2 offenses are as follows:
  - (a) Loss of statutory good time, not to exceed 180 days loss for all charges arising out of any one incident or substantially related incidents;
  - (b) Disciplinary Detention for up to 15 days;
  - (c) 30-90 days loss of a privilege, including but not limited to one of the following: television, radio, canteen, either visits or phone privileges, hot pots, and leisure programs;
  - (d) Cell or housing restriction for up to 15 days;
  - (e) Restitution, including, if applicable, any medical treatment assessment under M.G.L. c. 124, § 1(s);

## 430.25: continued

(f) Referral to Department Disciplinary Unit for a period not to exceed five years for all violations arising out of one incident or substantially related incidents;

No more than one sanction shall be imposed per offense and no more than four sanctions (in addition to restitution) may be imposed for all offenses arising out of anyone or substantially related incidents in which the highest offense(s) alleged is from Category 2.

(3) Sanctions for each Category 3 offense are as follows:

- (a) Disciplinary Detention for up to ten days;
- (b) Up to 60 days loss of a privilege, including but not limited to one of the following: television, radio, canteen, either visits or phone privileges, hot pots, and leisure programs;
- (c) Cell or housing restriction for up to ten days;
- (d) Restitution, including, if applicable, any medical treatment assessment under M.G.L. c.124, § 1 (s);
- (e) Prohibition from replacing any altered appliance for up to four months;
- (f) Up to 15 hours of extra duty.

No more than one sanction shall be imposed per offense and no more than three sanctions (in addition to restitution) may be imposed for all offenses arising out of anyone or substantially related incidents in which the highest offense(s) alleged is from Category 3.

(4) Sanctions for each Category 4 offense are as follows:

- (a) Up to 30 days loss of a privilege, including but not limited to one of the following: television, radio, canteen, either visits or phone privileges, hot pots, and leisure programs;
- (b) Restitution, including, if applicable, any medical treatment assessment under M.G.L. c. 124, § 1(s);
- (c) Room/Unit restriction up to five days;
- (d) Prohibition from replacing any altered appliance for up to four months;
- (e) Up to ten hours of extra duty;
- (f) Written reprimand.

No more than one sanction shall be imposed per offense and no more than two sanctions (in addition to restitution) may be imposed for all offenses arising out of anyone or substantially related incidents in which the highest offense(s) alleged is from Category 4.

(5) No more than a total of 30 days disciplinary detention or 40 days cell, housing, or unit restriction may be imposed for all violations arising out of one incident or substantially related incidents.

(6) Findings requiring the payment of an amount of restitution by an inmate shall be supported by a preponderance of evidence.

430.26: Continuance Without a Finding

(1) Disciplinary Officers, Hearing Officers, and any appellate authority under these regulations may wholly within their discretion, and with the consent of the inmate, continue the inmate's disciplinary report(s) without a finding for a period not to exceed one year or any shorter period as may be set by the Disciplinary Officer, Hearing Officer, or appellate authority. Regardless of the foregoing, if at the conclusion of any such continuance the inmate has pending but unresolved disciplinary charges the continuance shall be extended until after a hearing is held, and findings issued for any such pending charges which arose during the period of continuance. At the end of any such continuance the disciplinary report which was continued without a finding shall be filed, unless prior to such time the inmate is charged with and later found guilty of a disciplinary offense committed during the period of the continuance. If the inmate has been found guilty of a disciplinary offense committed during the period of the continuance, guilty findings shall automatically enter on all charges in the continued disciplinary report and the inmate shall be allowed to be heard only on the question of sanctions. A request to be heard on the question of sanctions shall be directed to the Superintendent of the institution in which the inmate is housed.

430.26: continued

(2) An inmate agreeing to a continuance without a finding shall be informed in writing that the inmate is waiving the right to a hearing or appeal under 103 CMR 430.00 other than the right to be heard on the question of sanctions if sanctions are later imposed. The inmate in such case shall have no right to appeal the guilty findings or sanction entered under this procedure. Such waiver shall be on a form consistent with these regulations and approved by the Commissioner or designee and shall be signed by the inmate and any staff aforementioned in 103 CMR 430.26(1). A request to be heard on sanctions shall be directed to the Superintendent of the institution in which the inmate is housed.

(3) Continuances without a finding under 103 CMR 430.26 shall not ordinarily be granted for Category 1 offenses.

430.27: Emergency

Whenever in the opinion of the Commissioner, Deputy Commissioner or the Superintendent of a state correctional institution, an emergency exists which requires the suspension of part or all of 103 CMR 430.00, such a suspension may be ordered, provided that any such suspension beyond 48 hours must be authorized by the Commissioner for good cause.

430.28: Responsible Staff

The Director of Discipline shall be responsible for implementing and monitoring 103 CMR 430.00 throughout the Department. Each Superintendent shall be responsible for implementing and monitoring 103 CMR 430.00 at the institution.

430.29: Annual Review

103 CMR 430.00 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions, or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

430.30: Severability

If any article, section, subsection, sentence, clause or phrase of 103 CMR 430.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 430.00.

REGULATORY AUTHORITY

103 CMR 430.00: M.G.L. c. 124, § 1(b), (i) and (q) and c. 127, § 33.